

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ERIK KORTE

APPELLANT,

v.

**THE CURATORS OF THE UNIVERSITY OF MISSOURI,
WILLIAM CRIST, AND RACHEL BROWN**

RESPONDENTS.

DOCKET NUMBER WD71241

DATE: May 18, 2010

Appeal From:

Boone County Circuit Court
The Honorable Kevin M. J. Crane, Judge

Appellate Judges:

Division Three: James M. Smart, Jr., Presiding Judge, Joseph M. Ellis and Gary D. Witt, Judges

Attorneys:

George S. Smith, Columbia, MO, for appellant.

Phillip J. Hoskins, Columbia, MO, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Before Division Three: James M. Smart, Jr., Presiding Judge, Joseph M. Ellis and Gary D. Witt, Judges

In 2007, Erik Korte was a student in good standing at the University of Missouri's School of Medicine when it was alleged that he violated the University's Honor Code. Korte does not dispute that while he was the Class Treasurer for the School of Medicine, he misappropriated funds from the class checking account. Specifically, Korte wrote two checks from this account for a total amount of \$3,500.00 that he placed into his own checking account and spent for his own personal benefit. Korte attempted to withdraw an additional \$2,000.00 from this account but was unsuccessful because the class checking account had insufficient funds.

After Korte's conduct was discovered by the University, the Honor Council held a hearing after which it found that Korte's conduct violated the Honor Code and made nine "recommendations" as to Korte's punishment. The Honor Council did not recommend that Korte be dismissed from the University.

Pursuant to the University's Honor Code, the aggrieved student or the Associate Dean for Student Programs is empowered to appeal any disciplinary action taken by the Honor Council. In her role as the Associate Dean for Student Programs, Rachel Brown exercised her right to appeal the Honor Council's Report as it pertained to the sanctions for Korte's misconduct. According to the University's Honor Code, this appeal was to be presided over by a three member committee ("Committee") composed of the Dean of the School of Medicine and two other members of the faculty. Ultimately, the Committee decided that Korte was to be dismissed from the University based on his Honor Code violations, and Korte was provided written notice of the decision. Korte subsequently appealed the Committee's decision to the Chancellor of the University, and the Chancellor also denied his appeal.

Korte then filed the instant Petition, that *inter alia*, requested a declaratory judgment finding that the University had violated Korte's Fourteenth Amendment right to procedural due process pursuant to 42 U.S.C. Section 1983. Both Korte and the University submitted evidence at trial, and various witnesses were called to testify including members of the Committee. The

trial court issued its judgment denying Korte's requested relief and set forth detailed findings of fact and conclusions of law. Korte now appeals.

AFFIRMED.

In Point One, Adams argues that the "trial court erred in applying Missouri law to Adams' breach of contract claim because California law applies in that Missouri's conflict of laws principles require application of California law." In the realm of discipline at institutions of higher learning, a student is only entitled to adequate notice, definite charge, and a hearing with opportunity to present one's own side of the case and with all necessary protective measures. When denying Korte's claims, the trial court found that "no procedural or substantive due process rights guaranteed by the 5th and 14th amendments to the United States Constitution have been denied Plaintiff by the Defendants." Korte has failed to demonstrate that the trial court somehow erred in concluding that he received the due process he was entitled to receive or that this conclusion by the Court was somehow against the weight of the evidence.

In Point Two, Korte argues that the trial court erred in refusing to grant injunctive relief because the University "took actions outside the authority granted them under the Honor Code by reversing the HC's decision absent any finding of error." Here, the Commission agreed with the Honor Council that Korte's actions violated the Honor Code but disagreed with the Honor Council's recommended punishment. Korte asserts that, in order to do so, the Commission must have found some error in the actions or findings of the Honor Council. The Honor Code does not set forth the standard of review that is to be applied by the Commission and does not require any deference be given to the Honor Council's findings or conclusions. In rejecting Korte's claim, the trial court found that the Committee was not materially and substantively outside its authorized scope of review. We therefore conclude that Korte has failed to demonstrate that the trial court's findings and conclusion in this regard were somehow in error.

In Point Three, Korte argues that the trial court erred in failing to grant him relief because the Commission improperly substituted its judgment for that of the Honor Council. Simply put, Korte fails to cite any persuasive authority that the Commission was *not* allowed to substitute its judgment for that of the Honor Council. Nothing in the Honor Code prevents the Commission from substituting its judgment as it pertains to "the Honor Council's sentence" when reviewing the Honor Council's findings. We therefore affirm the trial court's conclusion that the "Honor Code of the School of Medicine was not materially and substantively violated by the action of the Dean and/or the three-member appellate committee's substitution of its judgment for the sentence of the Honor Council."

In Point Four, Korte argues that the Defendants are collaterally estopped and bound by the decision of the Honor Council. However, the initial determination and recommendation by the Honor Council was not a "final judgment," that precluded the University from exercising its right of appeal under the University's Honor Code. Korte cites no authority for the proposition that when a party has an established right to appeal, the doctrine of collateral estoppel can be used as a tool by the opposing party to preclude and prevent that appeal. Point denied.

Finally, in Point Five, Korte argues that the trial court erred because its judgment "failed to provide any basis for its conclusion of the specific fact issues raised, and it contained no grounds for its decision pursuant to Plaintiff's Rule 73.01(c) request which contained specific requests for findings of fact on Plaintiff's legal claims." It is undisputed that the Court in fact made voluminous findings of fact in its judgment rejecting Korte's claims. Korte fails to point to any element of his claims for which the trial court neglected its duty. We therefore are at a loss as to why Korte believes he is entitled to relief on appeal in this regard. Point Five is denied.

The judgment of the circuit court, denying Korte's claims, is hereby affirmed.

Opinion by: Gary D. Witt, Judge

May 18,2010

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