

DISTRICT COURT, COUNTY OF BOULDER, STATE OF COLORADO

Case No. 2000 CV 658, Division 4

RULING AND ORDER

CARLOS MARTINEZ,

Plaintiff,

vs.

THE REGENTS OF THE UNIVERSITY OF COLORADO,

Defendant,

This matter comes before the Court on the Plaintiff's Motion for Preliminary Injunction/Stay pursuant to C.R.C.P. 65. After reviewing the motions, record, and file, the Court issues the following Ruling and Order.

I. INTRODUCTORY FACTS

The Plaintiff, Carlos Martinez, a senior at the University of Colorado, Boulder, expected to graduate after the Spring 2000 semester. Mr. Martinez did not graduate as planned, however, because he was expelled from the University on April 20, 2000 for violations of the University's Student Code of Conduct.

The University's Code of Conduct, entitled the Student's Rights and Responsibilities Regarding Standards of Conduct, outlines standards for student behavior and requisite procedures following alleged violations of those standards. During the Fall 1999 semester, University staff including several members of the Bursar's office, a writing instructor, and University Parking Enforcement officers reported several incidents of abusive and disruptive

Certainly, the evidence presented at the hearing adequately supports Ms. Goldblum's decision to expel Mr. Martinez. Although the underlying facts supporting the initial decision to place Mr. Martinez on probation are not in dispute here, they provide context to her decision. The record shows that Mr. Martinez' interactions with Bursar office staff members were extremely unsettling and created palpable apprehension amongst these staff members. Mr. Martinez was barred from having any contact with these staff members and the Bursar's Office and his actions were reported to the police who supplied the staff with panic buttons to alert the police should Mr. Martinez reappear. Mr. Martinez' actions continued to concern Ms. Goldblum well after the imposition of probation. She reported that Mr. Martinez never accepted responsibility for his actions and claimed the University conspired against him. She testified that she herself felt fear and apprehension towards Mr. Martinez as a result of her interactions with him. Evidently Ms. Goldblum also had information of other alleged incidents of harassment of University Staff.² Finally, Ms. Goldblum testified that Mr. Martinez continued to deny the University's authority to impose the probationary conditions, and, rather than comply, planned to challenge these through the legal system. In conclusion, Ms. Goldblum stated that this was the worst case of student misconduct that she had ever experienced and that expulsion was warranted largely due to the number of persons adversely affected and the degree of harm. Thus, although expulsion may seem an extreme sanction for failure to comply with probationary conditions, the evidence as a whole supports Ms. Goldblum's decision.

This Court's duty, however, is not to determine whether Ms. Goldblum's decision was reasonable based on the evidence presented at the hearing, but whether the record before the

the Fall infractions supported probation with two conditions and nothing more. The mere fact of failure to comply with probation them, with no allegations of further Code violations, does not support such an extreme sanction. At the hearing before the Court, evidence was presented that there were aggravating circumstances in this case. If these facts were made available to the reviewing officer, the record might then support the decision to expel. The Court has been denied this information. Therefore review is impossible under 106(a)(4) as to whether the reviewing officer's decision was an abuse of discretion and thus the Court is unable to gauge the probability of Mr. Martinez' success on the merits of this claim.

Preliminary Injunction under Mr. Martinez' Second Claim for Relief – Declaratory Judgement

Regardless of the Court's inability to determine whether Mr. Martinez has a reasonable probability of success on his claim under 106(a)(4), an injunction may be applicable under his complaint for Declaratory Judgement pursuant to C.R.C.P, 57. An action for declaratory judgement is an appropriate method for challenging government action that is not subject to Rule 106(a)(4) review or where 106(a)(4) review is inadequate. *Grant v. District Court*, 635 P.2d 201 (Colo. 1985). See also *Denver Center for the Performing Arts*, 696 P.2d 201 (Colo. 1995)(dismissal of claim for declaratory relief appropriate where review under 106(a)(4) considered all issues of that claim). The granting of declaratory relief under Rule 57 is within the sound discretion of the court and is appropriate where a court's finding would settle uncertainty as to a claimant's legal relations or rights and would terminate a controversy. *Troelstrup v. District Court*, 712 P.2d 1010 (Colo. 1986); *Heron v. City and County of Denver*, 411 P.2d 314 (Colo. 1966); *People ex rel. Inter-Church Temperance movement v. Baker*, 297 P.2d 273 (Colo. 1956).

In this case, Mr. Martinez claims that the procedures as outlined in the Code of Conduct for Sanction Review fail to provide due process as required by the federal constitution. A finding of unconstitutionality would settle the uncertainty regarding Mr. Martinez' right to a more meaningful review of his expulsion and, as Rule 57 grants a court the power to order further relief as necessary or proper, could result in a Court order to the University to provide Mr. Martinez with a review process which comports with due process. Consequently, the Court finds that a claim for Declaratory Judgement is appropriate in this case.

Furthermore, the Court finds that, if Mr. Martinez can establish the *Rathke* factors as to this claim, a preliminary injunction would be necessary to protect his constitutional rights pending the outcome of a trial on the merits, *Rathke, supra* at 653 (before a preliminary injunction issues, plaintiff must show that injunctive relief is necessary to protect existing legitimate property rights or fundamental constitutional rights) .³

³ This assumes that the right to remain in good standing at the University is a legitimate right protected by the Constitution and which may not be denied without due process. *See infra* at 7.

[7]

Therefore, the question is first whether Mr. Martinez has a reasonable probability of success on this claim.

Reasonable probability of success on the merits

To show a due process violation, Mr. Martinez must first show that his interest in continuing in good standing at the University is a protected interest under the Fourteenth Amendment. "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972). When protected interests are implicated, due process requires at the minimum notice and an opportunity to be heard. Not all interests, however, are so protected.

To determine whether process requirements apply, courts look to the nature of the interest at stake. *Roth, supra* at 571; *Morrissey v. Brewer*, 408 U.S. 471 (1972). Although it is impossible to define with exactness what "liberty" and "property" interests are protected, many courts have determined that expulsion from state schools implicates both. According to the U.S. Supreme Court, liberty interests include the right to acquire knowledge as well as the right to a person's good name, reputation, honor and integrity. *Roth supra* at 572-3 citing *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Wisconsin V. Constantineau*, 400 U.S. 433,437 (1971). Certainly, then, the opportunity to attain a college education and the right to be free from an unwarranted loss of reputation which follows expulsion fall within this definition of a liberty interest .⁴

Likewise, protected property interests defy exact definitions. They are created and their dimensions defined by existing rules or understandings that stem from an independent source such as state law. *Roth, supra* at 577. Here, Colorado has determined that higher education should be made available to its citizens and to that end the state provides funding for the University of Colorado and, through the delegation of power to University Regents, determines the standards of eligibility for that benefit. See C.R.S. §§ 23-1-101-1 23-1-103.5; 23-1-113; 23-20-112. The State then, by creating and defining the terms of that interest, may not withdraw that interest from a student who has shown himself or herself eligible to receive the benefit of that interest without due process.

Consequently, attending an institute of higher learning implicates both a liberty and

property interest and before those interests may be removed due process attaches. As there is no exact formula for determining what process is due in all circumstances, the question is what process is due here. In answering this question, courts apply a balancing test as developed by the U.S. Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under this test, courts consider 1) the nature of the interest at stake for the individual; 2) the risk of erroneous deprivation of that interest through existing procedures and the benefits of additional safeguards; and 3) the government's interest in using the current procedures. *Id*

Balance of Equities

Here the Court finds that the harm of expulsion to Mr. Martinez far outweighs the benefit to the University of having the expulsion take effect immediately given the ability of the Court to order that Mr. Martinez be excluded from campus pending the outcome of the case. As noted above, expulsion has grave and far reaching consequences. The University, on the other hand, will largely be inconvenienced by having to expend more time and effort on this case. Nevertheless, given the import and the constitutional rights at issue, the equities favor the due process concerns.

⁵ Indeed in this case it would appear that the reviewing officer may have relied on oral communications with Ms. Goldblum which were thus un rebuttable by Mr. Martinez where review was restricted to a paper review.

[10]

Real, Immediate, and Irreparable Injury

As stated earlier, expulsion poses grave consequences for Mr. Martinez. His aspirations and goals will be severely limited and his future success negatively impacted. If the injunction does not ensue, the expulsion becomes effective, is placed on his transcript, and begins to impact Mr. Martinez' ability to pursue his future goals. Mr. Martinez has applied to the University of Colorado's Law School. Although the fact that Mr. Martinez is subject to a disciplinary action makes his acceptance more difficult, his expulsion would prohibit his attendance at the University's Law School. The harm of wrongful expulsion is immediate, real and irreparable.

Plain, adequate and speedy remedy at Law

A preliminary injunction is not appropriate where the plaintiff has an adequate remedy in law. "Such is the case where everything that a plaintiff asserts is measurable and compensable in money and evidence shows that defendant is amply able to respond to a money judgement and is subject to the jurisdiction of Colorado courts." *American Investors Life Ins. Co. v. Green Shield Plan, Inc.*, 3 58 P.2d 473 (Colo. 1960). Thus, where there are not adequate money damages, the plaintiff has no adequate remedy at law. Here, no amount of money can restore Mr. Martinez' good name or unstained future prospects if an unwarranted expulsion goes forward. There are no remedies at law and the only remedy for Mr. Martinez is a meaningful opportunity to challenge the decision to expel. ⁶

Maintaining the Status Quo

The purpose of a preliminary injunction is to preserve the "status quo" and protect rights pending the final outcome. The Court finds that the only way to protect Mr. Martinez' rights is to prevent the expulsion from becoming effective pending the outcome of the case. Nevertheless, the Court does not find that this mandates a restoration of Mr. Martinez to pre-expulsion status. A trial court has great discretion to formulate the terms of injunctive relief and may prescribe certain requirements as a condition to the granting of injunctive relief when equity so requires. *Colorado Springs Bd of Realtors v. State*, 780 P. 2d 494 (Colo. 1989); *Brennan v. Motivon*, 50 P.2d 534 (1935). Here, equity requires that the University be protected from any possible disruptions by Mr. Martinez and that Mr. Martinez be protected from the immediate consequences of an expulsion without due process. Therefore, in the event the Court finds that an injunction should ensue, the Court will enter appropriate orders to this end.

⁶ Martinez earlier filed suit in case 2000 CV 618 against the University challenging the initial sanction decision which resulted in his being placed on probation. This suit included a breach of contract claim which if successful, would have provided a remedy at law. The suit was dismissed on May 4, 2000 as untimely under Rule 106. The court's judgement as to those claims is now res judicata and Mr. Martinez has not pled breach of contract here.

[11]

III. CONCLUSION

For the aforementioned reasons, the Court finds that Mr. Martinez has established all six *Rathke* factors. Thus, the Court grants Mr. Martinez' motion for a preliminary injunction. In order to protect all parties pending the outcome of the suit and to preserve the status quo, the Court enters the following orders:

Johnson, and Debra Johnson.

4. The University may keep his records on hold but the expulsion will not be effective pending the outcome of this case.

Security

Additionally, Rule 65 requires that no preliminary injunction shall issue except upon the giving of security by the applicant. Although no such condition appears in Rule 106, this injunction enters pursuant to Declaratory Relief and thus is subject to Rule 65's constraints. *See PII of Colo. Inc. v. District Court*, 591 P.2d 1316 (Colo. 1979). The amount of security is discretionary with the court but must bear some relationship between the potential costs and losses in the event the injunction is later determined to have been improperly granted. *Apache Village, Inc., v. Coleman Co.*, 776 P.2d 1154 (Colo. App. 1989).

Mr. Martinez argues that the Court in its discretion should waive the security requirement given his financial condition. The Court, however, is under an obligation to follow the rules. *See Apache Village, supra* (injunction inappropriate where trial court made no mention of potential costs and determined that no security should be posted). Here, the Court finds that the University made no objection to Mr. Martinez' claim of financial difficulties and failed to establish what monetary losses if any would ensue if the injunction were granted. As the damage to the University consists largely in the requirement of holding another hearing with minimal costs, the Court orders Mr. Martinez to post a security bond of \$1.00.

Finally, the Court desires to timely resolve Plaintiffs Rule 106 claim. Therefore, Defendant is ordered to file a certified record of the proceedings at issue on or before July 5,2000.

Done this 6th day of JUNE, 2000.

BY THE COURT

Daniel C. Hale
District Court Judge