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Idaho Supreme Court
Karel Lehrman, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPEME COURT OF THE STATE OF IDAHO

JUN YU,

Plaintiff-Appellant,

v.

IDAHO STATE UNIVERSITY, MARK ROBERTS, Individually and in His Official Capacity as a Faculty Member of Idaho State University; SHANNON LYNCH, Individually and in Her Official Capacity as a Faculty Member of Idaho State University; KANDI TURLEY-AMES, Individually and in Her Official Capacity as a Faculty Member of Idaho State University; CORNELIS J. VAN der SCHYF, Individually and in His Official Capacity as a Faculty Member of Idaho State University; ARTHUR C. VAILAS Individually and in His Official Capacity as President of Idaho State University and JOHN/JANE DOES I through X, whose true identities are presently unknown,

Defendants-Respondents.

NO. 46364-2018

APPELLANT'S REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE HONORABLE ROBERT C. NAFTZ DISTRICT JUDGE PRESIDING

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ARGUMENT

THE DISTRICT COURT ERRED BY SUMMARILY DISMISSING THE CASE

A.

The District Court Erred in Finding the Appellant Failed to Comply With the Idaho Tort Claims Act (ITCA) as Idaho Code §§ 6-905 and 6-908 are Inapplicable to Claims Brought Under 42 U.S.C. § 1983 and Contract Claims are Not Subject to the Notice Requirement of the ITCA.

The district court concluded in its Memorandum Decision and Order:

> As such, all of the Plaintiff's claims against the Defendants are barred for failure to comply with the Idaho Tort Claims Act and for failure to bring this action within the proscribed statute of limitations. The Defendants' Motion for Dismissal is therefore GRANTED.

Id. p. 15 (emphasis added). (R. p. 539.)

Regardless of what Respondent thinks the district court meant to say, the actual words of the order dismissed all claims for two reasons; 1) for failure to comply with the Idaho Tort Claims Act (ITCA) and 2) because they were untimely. This is because the conjunction "and" was used. Had the conjunction "or" been used then all of the claims were not necessarily dismissed as failing to comply with the ITCA, but it was not.

Further, in its ruling the district court never specified what claims were subject to the Idaho Tort Claims Act and so failed to identify exactly what claims it was dismissing for this reason if it was in fact less than all. Rather, the district court just made unhelpful statements like it is proper to dismiss all of the Plaintiff's claims subject to the Idaho Tort Claims act for failure to comply with it. While the district court stated the parties' various arguments and positions regarding different matters it never detailed which ones it was adopting. The district court certainly did not adopt all of Appellant's positions and so simply having an argument or position mentioned by the court does not convert it into a ruling.

The bottom line is that the district court never directly ruled on what was subject to the ITCA and what was not. Thus, Appellant had to take the district court at its word that it was dismissing all of his claims for failure to comply with the ITCA and accordingly explained why that was error. Had Appellant not done so, Respondent would presumably be arguing that the case must be affirmed because Appellant failed to challenge all grounds for its dismissal.

In any event, Appellant has comprehensively addressed the district court's order regarding the ITCA, and Respondent in its brief is unable to refute any of Appellant's arguments regarding the tort claim notice. Rather, the Respondent sets up a straw man to knock down by arguing at length that the negligent infliction of emotional distress claim against ISU was properly dismissed, which Respondent itself admits Appellant is not contesting.

To conclude, as detailed in Appellant's opening brief, for all claims at issue in this appeal, the ITCA was either complied with or compliance was not required and the district court erred in dismissing all claims for failing to comply with the Idaho Tort Claims Act.

B.

The District Court Erred in Finding the Appellant's Allegations Were Barred by the Applicable Statutes of Limitations.

Contrary to Respondent's argument, Appellant's new claims accrued between March 13 and March 26 of 2016 because, as explained in Appellant's opening brief, that is when he learned of his additional injuries, to wit, that he had been injured because he was dismissed from the Doctoral Program in Clinical Psychology in an arbitrary and capricious manner that substantially deviated from accepted academic norms.

Respondent concedes that Federal law controls when the cause of action accrues on a 42

U.S.C. §1983 claim. Here, given the standards involved for the claim, March 26, 2016, is when Appellant learned of his injury.[1] Again, regardless of what the federal court had done in the parallel litigation, the state district court erred when it failed to properly apply the law as to when this claim accrued and instead dismissed it as untimely. The district court simply held that all claims accrued on October 2, 2013, without regard to whether all torts were completed then or not.

Next, since the breach of contract and promissory estoppel claims were based on the substantive due process (42 U.S.C. §1983) claim, they also accrued at the same time and the district court likewise erred when it dismissed them as untimely. Instead of ruling that those claims accrued On March 26, 2016, the district court held (and Respondent argues in its brief) that the contract claims somehow arose prior to the substantive due process claim on which they were based, and instead accrued on October 2, 2013.

But even assuming for the sake of argument that the breach of contract causes of action did accrue on October 2, 2013, an action based on a written contract would still be timely. However, the district court, with no analysis whatsoever, simply declared the contract involved in the instant case was implied, and thus the shorter four year statute of limitations for oral contracts controlled and dismissed the breach of contract claims. (R. p. 536.)

In Appellant's opening brief, it was pointed out that all counts of breach of contract were based on written and published documents and a partial list was provided. Respondent asserts in its brief that Idaho law <u>suggests</u> that any contract would be implied. (Respondent's brief, p. 10.) However this is not a decided question in Idaho and some courts have held a school's

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[1] As explained in Appellant's opening brief, it just so happens to be the same time as when it would accrue under Idaho state law as well under the continuing tort theory

catalog does constitute a written contract.[2]

C.

<u>Respondents are Not Entitled To an Award of Costs or an Award of Attorney Fees Under I.C. § 12-121.</u>

Appellant asserts that Respondent is entitled to neither costs nor attorney fees. First as to costs, Appellant asserts that Respondent will not be the prevailing party.

As to attorney fees, as explained above and in Appellant's opening brief, the district court both misapplied the law regarding the ITCA and the statute of limitations. The district court made erroneous factual findings regarding the statute of limitations as well.

But even assuming arguendo that this Court disagrees, given the district court's rulings, this appeal was not brought unreasonably, frivolously or without foundation. And of course, under I.C. § 12-121 an award of attorney fees is appropriate only where the appeal was brought frivolously, unreasonably, or without foundation. Further, "[f]ees will generally not be awarded for arguments that are based on a good faith legal argument." *Easterling v. Kendall*, 159 Idaho

[2] For example, *Doe 12 v. Baylor University*, 336 F.Supp.3d 763 (W.D. Texas 2018) explains:

> Under Texas law, "a school's catalog constitutes a written contract between the educational institution and the student where the student entered the institution under the catalog's terms." *Alcorn v. Vaksman*, 877 S.W.2d 390, 403 (Tex. App.—Houston [1st Dist.] 1994, writ denied). Some Texas courts have also suggested that documents outside of the course catalog may constitute this written contract. *Southwell v. Univ. of Incarnate Word*, 974 S.W.2d 351, 356 (Tex. App.— San Antonio 1998, writ denied) ("[I]n the absence of a binding catalog, the student agrees that those terms are subject to change throughout the course of his or her education."). It remains unclear, however, whether a student may have a cause of action for breach of contract when a school fails to provide benefits other than those explicitly named in the catalog or other documents.

Id., n. 19.

902, 918, 367 P.3d 1214, 1230 (2016). Accordingly, Respondent's request for an award of attorney fees should be denied.

CONCLUSION

To reiterate, Mr. Yu has complied with the ITCA where the law mandated that he do so, and for the rest of the claims the law does not require he do so. Thus, the District Court erred when it dismissed all claims for failure to comply with the ITCA.

Likewise, the District Court erred when it dismissed all claims as being barred by the statute of limitations. The cause of action for the 42 U.S.C. § 1983 claims only accrued between March 13, 2016 and March 23, 2016; therefore, the complaint was timely filed. The contract claims were derivative of the 42 U.S.C. § 1983 claim and could not have been filed before it and so were timely as well.

Finally, Respondent is not entitled to an award of costs or attorney fees.

Therefore, for all the reasons above and in Appellant's opening brief, it is respectfully requested that this Court reverse the decision of the District Court and remand this case back to the District Court for trial.

DATED this 20th day of February, 2019.

APPELLANT
By Appellant's Attorney

IDAHO EMPLOYMENT LAW SOLUTIONS

_____/s/_________________
R.A. (RON) COULTER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February, 2019, I caused a true and correct copy of the foregoing brief to be served via the file and serve system to the email identified as the party's service contact:

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Dated and certified this 20th day of February, 2019.

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R.A. (RON) COULTER