

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT  
CIVIL ACTION NO. 02-1234

JERI BAILY

vs.

HILLSIDE SCHOOL INC.  
a corporation sole d/b/a  
HILLSIDE SCHOOL

MEMORANDUM OF DECISION AND JUDGMENT

This matter was tried without a jury over the course of two days. The plaintiff brought claims essentially for breach of contract (Counts I - III) and for promissory estoppel (Count VII).<sup>1</sup> Based on the testimony adduced at trial and on the exhibits introduced by the parties, I find that the plaintiff has not established by a preponderance of the evidence that she is entitled to recovery on any of her claims in this matter and that judgment should enter for the defendant.

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Findings of Fact

Based on the testimony at trial and on the exhibits introduced by the parties, I make the following findings of fact:

1. Jeri Baily (Baily) was employed at the Hillside School for twelve years before the events which form the basis of the dispute between the parties. She was a counselor at the time in question. David Beecher (Beecher) was the Headmaster at the Hillside School during the relevant time period. Richard Meyer (Meyer) was the Dean of Faculty and Academics at the Hillside School until July 1, 2000. As of that date he became the Dean of Students and Baily's direct supervisor.
2. In the Spring of 2000, Beecher met with Baily to give her an evaluation of her performance and to discuss the 2000-2001 academic year. In that discussion he outlined changes in the

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<sup>1</sup>Other counts were dropped on the first day of trial.

counseling program which he was planning to put into effect, which changes included some night duty. Baily inquired about some additional compensation for the additional duties now planned for the counselors and Beecher agreed that such additional compensation would be appropriate, but that he would need to confirm such compensation with the Finance Committee. By a letter dated July 14, 2000, Beecher offered Baily continued employment as a school counselor for the annual salary of \$32,042.00 and asked her to return a signed copy of an agreement. Baily did not do so since she had not signed such agreements in the past and since the additional compensation for the additional duties had not yet been agreed upon.

3. There were meetings in the Spring of 2000 at which the details of the changes in the counseling program were worked out and, at a meeting on June 7, 2000, Beecher confirmed that Baily would receive additional compensation for the additional duties. Although there is some dispute between Beecher and Baily as to precisely what transpired at that meeting, I find that the parties had an agreement in June of 2000 that Baily would return as a school counselor for the next academic year and take on additional duties one night a week and that she would receive additional compensation of approximately \$2,000.00 for the additional duties. That agreement was not reduced to writing; however, both Baily and Beecher felt there was an agreement and proceeded as though there was such an agreement.
4. During the Summer of 2000, Ms. Baily did some work on the Skills For Life program in anticipation of the upcoming school year. I find that such work was what would normally have been expected of her or another teacher involved in that program at the Hillside School.
5. On August 28, 2000, one week before the school year was to begin with faculty orientations and meetings, Baily met with Beecher to discuss the Skills For Life program. At the end of that meeting she presented Beecher with a request that she be allowed to take one day a week off. I accept Mr. Beecher's version of that discussion. He was surprised by the request given the earlier discussions about the added responsibilities and hours and the additional compensation which he had approved. I do not find credible Baily's assertion that her request was made because the compensation issue had not been finalized and she was merely requesting time off in lieu of a salary increase. There was an agreement in June of 2000 and Ms. Baily's request for time off was not in accordance with that agreement. Beecher denied

the request and spelled out clearly in his letter of August 28, 2000 (Exhibit 8) his reason for denying the request. He asked Baily to let Richard Meyer know by Friday, September 1, 2000, if she was not planning to meet those expected hours outlined in the letter. She did not notify Meyer that she would not comply with the expectation of the school. A payroll status change form reflecting the absence of Baily from work on September 1, 2000, for the upcoming school year.

6. On Tuesday, September 5, 2000, the faculty/staff orientation program began at 9:00. The program was mandatory for all faculty, including Baily. Five minutes before the start of that program, Baily approached Beecher and asked to speak with him concerning her request for time off. She characterizes her approach as simply seeking to clear up any misunderstanding; however, I find that Beecher's letter on August 28, 2000, and her acceptance of its terms did not leave anything to be cleared up. Beecher responded that there was nothing to be discussed and that she should either attend the meeting with the rest of the faculty and staff or that she should leave. I credit Beecher's testimony with regard to the conversation on September 5, 2000, and do not credit Baily's version. I find that Beecher did not order Baily to leave his office and to leave the campus. She chose not to attend any of the meetings which were required of the staff, some of which she had been scheduled to lead. I find that the failure to attend the meetings was not ordered by Beecher, but rather was a deliberate, wilful choice made by Baily.
7. On the next day, Baily met with Meyer at the end of the day to discuss what had occurred and why she had not attended the required faculty meetings. They discussed her request for time off and Meyer made it clear that Baily would be entitled only to what was permitted by the faculty handbook. The continued discussions about her requests for time off run counter to her position at trial that she was willing to abide by the agreement reached in June and reiterated in Beecher's letter of August 28, 2000. Meyer's recollection of the meeting was vague and he could not recall how he left it with Baily. Baily asserts that she and Meyer had reached an agreement in which she would abide by the agreement and by the faculty handbook and that Meyer would speak to Beecher and call her the next day. Even assuming the truth of that assertion, I find that Meyer did not have the authority to make employment decisions or to bind the defendant to any hiring or employment decision he made.

8. On that same date, Beecher met with David Wood, the financial officer and human resources person at the school regarding Baily's status at the school. They revisited the issue the next day and decided that they would rescind the employment offer since, in their view, Baily had reneged on the agreement and had not reported for work. He informed Meyer of the decision and Meyer agreed, but in agreement with the decision.
9. On September 7, 2000, Baily received a call asking her to meet with Beecher the next day. She agreed to do so and brought with her a letter (Exhibit 9) setting forth her position on the issues. At the meeting on September 8, 2000, at which David Wood was present, Beecher rescinded the employment offer to Baily. Baily then met with Wood to discuss termination benefits and forms. Baily declined to sign any forms then, including an authorization for release of information about her employment at Hillside.
10. Subsequently, Hillside received requests for information from prospective employers of Baily, but Beecher declined to provide information since there was no authorization to release such information at those times. In November, 2000, Baily signed a consent form authorizing only the release of information concerning her salary and dates of employment. In February, 2001, Baily provided another consent form authorizing the release of information concerning her salary, her position, the dates of her employment, and performance assessments. I find that the plaintiff did not establish by a preponderance of the evidence that the defendant or its administrators deliberately tried to impede Baily's search for new employment by not responding to requests for information.

### **Rulings**

Based on those findings and on the applicable law as discussed below, I find for the defendant. There was a contract between the plaintiff and the defendant which was agreed to in June of 2000 and the terms of that agreement were clearly spelled out in communications from Beecher in August of that year. The parties proceeded as though there was an agreement. The agreement was breached by Ms. Baily after her efforts to modify the terms of that agreement were unsuccessful. To recover for a breach of contract by the defendant, the plaintiff must establish her full and complete performance of all obligations under the contract; however, a material breach of the contract by one party excuses further performance by the nonbreaching party. G.M. Abodeely Insurance Agency, Inc. V. Commerce Insurance Co., 41 Mass.App.Ct. 274 (1996). One of the obligations of a faculty


member was to attend the orientation sessions; Baily failed to do so. She asserts that she was ordered off of the campus; however, as noted above, I do not find that assertion credible. She continued to press her desire to modify the terms of the employment agreement and the school continued to refuse to alter those terms. When she pressed the issue with Beecher on September 5, 2006, she was told that she was not to be allowed to discuss and that she was either on board and should attend the meetings about to begin or she should leave. I find that she left on her own and was not ordered off of the campus. That action was a breach of the agreement with Hillside and such breach warranted Hillside's response of rescinding its offer of employment. Where one party to a contract has failed to perform her obligations under the contract, the other party is thereafter excused from performing its contractual obligations. *Id.* at 278. Although the plaintiff offered in evidence a letter which she gave to Beecher on the date of her firing indicating her intent to meet all of her obligations, the breach had already occurred and Hillside was not obligated to return her to her position. On the findings of fact that I have made, the plaintiff cannot prevail on her claim of promissory estoppel.

For the foregoing reasons, I find that the defendant did not breach the employment agreement it had made with the plaintiff and that the plaintiff cannot prevail on her claim of promissory estoppel.

#### **ORDER**

For all of the foregoing reasons, judgment shall enter for the defendant on all of the claims of the plaintiff in this matter.

Dated: 4/10/06

  
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Bruce R. Henry  
Associate Justice