

NOTICE  
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2012 IL App (5th) 100614-U  
NO. 5-10-0614  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

JENNA LILLEY, JESSICA LILLEY, CANDACE LINDSEY, and ASHLEY CUNNINGHAM,	)	Appeal from the
Individually and on Behalf of All Others Similarly Situated,	)	Circuit Court of
	)	Madison County.
	)	
Plaintiffs-Appellees,	)	
	)	
v.	)	No. 08-L-113
	)	
CAREER EDUCATION CORPORATION and SANFORD BROWN COLLEGE, INC.,	)	Honorable
	)	Daniel J. Stack,
Defendants-Appellants.	)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.  
Presiding Justice Donovan concurred in the judgment.  
Justice Chapman dissented.

**ORDER**

¶ 1 *Held:* The circuit court erred in certifying a class of all persons who enrolled in a specified program at a vocational school within a specified time period on the basis of common law fraud and the school's violation of various provisions of the Illinois Private Business and Vocational Schools Act (105 ILCS 425/1 to 27 (West 2008)) and the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 to 12 (West 2008)), where individualized issues predominate regarding whether the class members actually relied on any alleged misrepresentations by agents of the school and whether the school's alleged violations of the Acts caused the class members to incur damages.

¶ 2 The defendants, Career Education Corporation and Sanford Brown College, Inc., (the College) appeal the November 29, 2010, order of the circuit court of Madison County, which granted the motion of the plaintiffs, Jenna Lilley, Jessica Lilley, Candace Lindsey, and Ashley Cunningham, individually and on behalf of all others similarly situated, to certify the

following class:

"All persons who attended Sanford Brown College in Collinsville, Illinois and enrolled in the Medical Assistant Program at any time during the period from July 1, 2003 through and including the present date. Excluded from the class are Defendants, Defendants' employees and any entities in which either Defendant has a controlling interest, and the parents, subsidiaries, affiliates, and the officers and directors of Defendants and the members of their immediate families, and persons who have filed in a forum of competent jurisdiction an individual action for damages and/or injunctive relief."

For the reasons that follow, we reverse.

¶ 3

#### FACTS

¶ 4 On February 11, 2008, the plaintiffs filed a class action complaint in the circuit court of Madison County against the College. The class action complaint was twice amended, and the operative complaint is the second amended complaint (complaint), filed September 24, 2010. According to the complaint, the plaintiffs entered the medical assistant diploma program at the Collinsville campus of the College. Each plaintiff met an admissions representative of the College, who took them through a standard admissions procedure prior to their enrollment. First, the complaint alleges that each plaintiff was administered a testing instrument designed to determine whether she possessed a high school equivalent of basic reading and math abilities. Along with this testing instrument, the complaint alleges the College developed sales scripts designed to indicate to each plaintiff that her test results made her better suited to the medical assistant program. However, the complaint alleges that these tests were not validated for use in this manner.

¶ 5 Second, the complaint alleges that each plaintiff was given copies of literature and an enrollment agreement which disclosed placement and salary statistics for recent graduates

of the College. According to the complaint, on information and belief, the enrollment agreements contained misinformation and misrepresentations which amounted to a violation of section 15.1(11) of the Illinois Private Business and Vocational Schools Act<sup>1</sup> (Schools Act) (105 ILCS 425/15.1(11) (West 2008)) and also amounted to a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 to 12 (West 2008)), because the statistics differed from those filed with the Illinois Board of Education. Furthermore, the complaint alleges that the enrollment agreements contained false certifications by the admissions representatives regarding their compliance with State Board of Education rules and regulations and the Schools Act.

¶ 6 Third, the complaint alleges that each plaintiff met with financial aid advisors who failed to comply with unspecified legal requirements that they disclose in writing the average monthly payment schedule for their student loans and failed to disclose that graduates of the medical assistant program suffer from higher debt-to-income ratios and higher rates of default than graduates of traditional, nonproprietary colleges and universities in the area. In addition, the complaint alleges that each plaintiff was required to sit through a preenrollment interview with an admissions representative which included scripted misrepresentations regarding job opportunities offered to graduates of the College. In addition, the complaint alleged that each plaintiff was required to view flip charts that further misused placement statistics and falsely lulled each plaintiff into a sense of trust and confidence with the admissions representative.

¶ 7 Fourth, the complaint alleged that the admissions representatives falsely informed the plaintiff, Jenna Lilley, that the academic credits earned from attending the College would

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<sup>1</sup>Effective February 1, 2012, the Schools Act has been repealed and replaced with the Private Business and Vocational Schools Act of 2012 (105 ILCS 426/1 to 999 (West Supp. 2011)).

transfer to any accredited nursing program in the area, in violation of specific enumerated regulations of the Illinois Board of Education. The complaint also contained numerous other allegations that the equipment and supplies were outdated or substandard, the teachers were inadequate, and the overall training the plaintiffs received was inadequate.

¶ 8 Count I of the complaint alleged numerous violations of the Schools Act (105 ILCS 425/1 to 27 (West 2008)) and regulations promulgated thereunder (23 Ill. Adm. Code § 451.120 to 451.590 (2000)). Counts II and III alleged violations of the Consumer Fraud Act (815 ILCS 505/1 to 12 (West 2008)) by way of deceptive conduct and unfair practice, respectively. Counts IV and V alleged common law fraud by way of misrepresentation and omission, respectively. The complaint requested monetary relief in the form of compensatory damages, restitution, injunction, and attorney fees.

¶ 9 The plaintiffs filed a motion for a class certification, dated July 31, 2008, pursuant to section 2-801 of the Illinois Code of Civil Procedure (735 ILCS 5/2-801 (West 2008)), requesting a certification of the above-described class, consisting of every student who attended the medical assistant program at the Collinsville campus of the College from July 1, 2003, "through and including the present date." In support of their motion, the plaintiffs produced, *inter alia*, affidavits of three former admissions representatives of the College, attesting to the practices outlined in the complaint, and copies of the enrollment materials and flip charts allegedly used by the College.

¶ 10 In opposition to the motion for a class certification, the College produced excerpts of the depositions of the various plaintiffs. In one excerpt, Cassandra Allen testified that she relied on oral representations made by the admissions representative of the College in making her enrollment decision and neither read nor relied upon the written materials furnished in the enrollment agreements. Miss Allen testified that had she read the placement statistics furnished in the enrollment agreement, she would not have enrolled at the College.

According to the deposition excerpt, it was the admissions representative's representation that the average starting salary for a graduate was \$15 to \$20 per hour that induced her to enroll. Similarly, while the documentation she was provided represented that the graduation rate was 40%, she did not read, and thus did not rely upon, the documentation. Instead, she relied upon the admission representative's representation that the graduation rate was 98%. Finally, while the documentation showed the employment rate was 73.64%, she did not read and did not rely upon that figure, but rather relied upon the admissions representative's statement that the rate was 90%.

¶ 11 Jessica Lilley's testimony in the deposition excerpt provided by the College was similar to that of Cassandra Allen, but she worked with a different admissions representative of the College. Jessica Lilley testified that she did not read the statistics set forth in the enrollment agreement and did not rely upon them in making her enrollment decision. Rather, she testified that her decision to enroll was based on a false statement made by her admissions representative regarding the transferability of credits to other colleges. Ashley Cunningham's testimony in the deposition excerpt provided by the College told a similar tale, but in relation to yet a different admissions representative. However, Miss Cunningham could not remember what representations were made to her, other than a statement regarding credit transferability. She did not read, and did not rely upon, the statistics provided by the College in the enrollment agreement.

¶ 12 The College also produced an affidavit of Lynn Johnson, a representative of the College, who averred that each admissions interview process is different and that the scripts provided by the College only act as a guide. In addition, the College produced affidavits of four former students of the College, who are class members based on the definition requested in the motion for a class certification. Each of these former students averred that they were currently employed, were never misled by the College, and were satisfied with the education

and employment they obtained through the College.

¶ 13 The circuit court held a hearing on the motion for a class certification on November 15, 2010, based on oral argument of counsel and the documentary submissions set forth above. At the conclusion of the hearing, the circuit court requested further briefing on the issue of whether the plaintiffs are required to prove causation as an element of their claims under the Schools Act (105 ILCS 425/1 to 27 (West 2008)). After supplemental briefing was provided, the circuit court entered an order on November 29, 2010, granting the plaintiffs' motion and certifying the class as proposed. On December 28, 2010, the College filed a petition for leave to appeal, which this court allowed on February 2, 2011.

¶ 14

#### ANALYSIS

¶ 15 "Decisions regarding class certification are within the sound discretion of the trial court and should be overturned only where the court clearly abused its discretion or applied impermissible legal criteria." *Bemis v. Safeco Insurance Co. of America*, 407 Ill. App. 3d 1164, 1167 (2011) (quoting *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 125-26 (2005)). "However, the trial court's discretion must be exercised within the bounds of section 2-801 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-801 (West 2006)), which sets forth the four prerequisites that the proponent of class certification must establish before the class may be certified." *Bemis*, 407 Ill. App. 3d at 1167 (citing *Avery*, 216 Ill. 2d at 126). "These were explained in *Avery* as follows:

'(1) numerosity ("[t]he class is so numerous that joinder of all members is impracticable"); (2) commonality ("[t]here are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members"); (3) adequacy of representation ("[t]he representative parties will fairly and adequately protect the interest of the class"); and (4) appropriateness ("[t]he class action is an appropriate method for the fair and efficient adjudication of

the controversy").' " *Bemis*, 407 Ill. App. 3d at 1167 (quoting *Avery*, 216 Ill. 2d at 125 (quoting 735 ILCS 5/2-801 (West 1998))).

¶ 16 As in *Bemis*, the College focuses primarily on the commonality requirement of section 2-801 of the Code (735 ILCS 5/2-801 (West 2010)) on appeal, arguing that because under all the theories the plaintiffs advance, they must prove that any violations of the Schools Act (105 ILCS 425/1 to 27 (West 2008)) or the Consumer Fraud Act (815 ILCS 505/1 to 12 (West 2008)) caused them to incur damages. Accordingly, the College argues that common questions of fact or law do not predominate over the questions affecting only individual class members. Similarly, under the plaintiffs' common law fraud theories, the College submits that there would be individual issues regarding detrimental reliance and causation. As we explained in *Bemis*, "[i]n order to satisfy the commonality requirement, the proponent of class certification must show that the ' "successful adjudication of the purported class representatives' individual claims will establish a right of recovery in other class members." ' " 407 Ill. App. 3d at 1167 (quoting *Avery*, 216 Ill. 2d at 128 (quoting *Goetz v. Village of Hoffman Estates*, 62 Ill. App. 3d 233, 236 (1978))). "Where this test is met, ' " 'a judgment in favor of the class members should decisively settle the entire controversy, and all that should remain is for other members of the class to file proof of their claim.' " ' " *Bemis*, 407 Ill. App. 3d at 1167 (quoting *Smith v. Illinois Central R.R. Co.*, 223 Ill. 2d 441, 449 (2006) (quoting *Southwestern Refining Co. v. Bernal*, 22 S.W.3d 425, 434 (Tex. 2000) (quoting *Life Insurance Co. of the Southwest v. Brister*, 722 S.W.2d 764, 772 (Tex. Ct. App. 1986))).

¶ 17 In *Bemis*, we further described our role in assessing commonality as follows:

" 'Determining whether issues common to the class predominate over individual issues requires the court to identify the substantive issues that will control the outcome, assess which issues will predominate, and then determine whether these

issues are common to the class.' [Citation.] 'Such an inquiry requires the court to look beyond the pleadings to understand the claims, defenses, relevant facts, and applicable substantive law.' [Citation.] 'The test for predominance is not whether the common issues outnumber the individual ones, but whether common or individual issues will be the object of most of the efforts of the litigants and the court.' " *Bemis*, 407 Ill. App. 3d at 1167-68.

¶ 18 With the above principles in mind, we turn to the substance of the plaintiffs' claims, beginning with the claims under the Schools Act (105 ILCS 425/1 to 27 (West 2008)) and regulations promulgated thereunder (23 Ill. Adm. Code § 451.120 to 451.590 (2000)). The purpose of the Schools Act is:

"to provide for the protection, education and welfare of the citizens of the State of Illinois; to provide for the education, protection and welfare of the students of its private business and vocational schools; and to facilitate and promote quality education and responsible, ethical business practices in each of the private business and vocational schools enrolling students in this State." 105 ILCS 425/1.2 (West 2008).

¶ 19 To effectuate its purposes, the Schools Act creates a Private Business and Vocational Schools State Advisory Council under the State Board of Education (the Board), charged with carrying out the intent of the Schools Act, protecting the interests of the students, and enhancing the ability of the schools to provide quality courses of instruction. 105 ILCS 425/2 (West 2008). To that end, the Board is authorized to promulgate standards for courses of instruction and to issue certificates of approval to vocational schools, which are required prior to their operation. 105 ILCS 425/4, 5 (West 2008). The Schools Act sets forth specific requirements for documentation that a vocational school is required to submit to obtain a certificate of approval, and also sets forth requirements for sales representatives to meet in



order to obtain a permit to represent a vocational school. 105 ILCS 425/6, 7, 9, 10, 11 (West 2008).

¶ 20 The Schools Act provides that vocational schools shall utilize enrollment agreements making written disclosures of specific facts to all prospective students, including statistics showing the number of students who enrolled in past years, the number of students who graduated, and the number who were employed in their field of study, delineating the number of students who were employed utilizing the vocational school's placement services, as well as average starting salary. 105 ILCS 425/15.1 (West 2008). This information is also required to be submitted to the Board on an annual basis. 105 ILCS 425/15.2 (West 2008). The Board has the authority to refuse to renew or to suspend, place on probation, or revoke certificates or sales representative permits for a variety of causes, specifically delineated in the Schools Act, including for violations of the Act or any standard, rule, or regulation promulgated thereunder. 105 ILCS 425/16 (West 2008).

¶ 21 The Schools Act specifically sets forth a detailed statutory scheme for enforcing its provisions. In addition to the above-mentioned authority to suspend or revoke certificates of authority or sales representative permits, the Board is empowered to investigate violations, either upon its own motion or upon verified complaint of any student or employee of a vocational school (105 ILCS 425/17 (West 2008)), and the Schools Act sets forth an administrative hearing and appeals procedure for the suspension or revocation of such certificates and permits. See 105 ILCS 425/17 to 23 (West 2008). In addition, certain enumerated violations of the Schools Act are declared to also be violations of the Consumer Fraud Act (815 ILCS 505/1 to 12 (West 2008)), including false and misleading statements tending to induce students to enroll in the vocational school and failure of the vocational school to make the required disclosures in the enrollment agreement. 105 ILCS 425/25.2(a) (West 2008). To that end, the Attorney General or a state's attorney is empowered to

investigate and enforce the provisions of the Schools Act to the same extent as set forth in the Consumer Fraud Act. 105 ILCS 425/25.2(b) (West 2008). Additionally, the Schools Act specifies that violations of its provisions are considered a business offense under the law, except fraudulent misrepresentations, which are delineated as Class A misdemeanors for the first offense and Class 4 felonies for the second or subsequent offenses. 105 ILCS 425/26 (West 2008). Finally, the circuit courts are empowered to issue injunctions prohibiting violations of the Schools Act upon application of the Board, the Attorney General, or any state's attorney. 105 ILCS 425/26.1 (West 2008).

¶ 22 It is clear from the foregoing that the Schools Act provides a broad and detailed statutory scheme for administrative and criminal enforcement of its provisions, and any rules or regulations promulgated thereunder, giving the Board, the Attorney General, and the state's attorneys the power to remedy or enjoin *any* violations. In contrast, the language in the Schools Act providing for a private right of action is limited, stating that such a private right of action exists only for "[a]ny person *who suffers damages as a result of a violation of this Act.*" (Emphasis added.) 105 ILCS 425/26.2 (West 2008). Accordingly, we find that the plaintiffs, in order to recover for a violation of the Schools Act or its accompanying rules or regulations, must prove that said violation caused them harm. It is clear from the record before us that if any one of the named plaintiffs is able to show that they were so harmed, this will not necessarily establish a right of recovery in all the other class members. The dissent contends that causation is not a factor and the plaintiffs only need to prove a violation of the Schools Act. This may very well be correct if the cause of action was brought by the Illinois Attorney General or the Madison County State's Attorney, but causation and damages are required for a private right of action.

¶ 23 The individual questions and issues that will predominate in order to establish a right of recovery in the class members are apparent when examining the deposition excerpts of the

named plaintiffs. Although the complaint alleges various violations of the provisions of the Schools Act that require written disclosures of graduation and placement statistics in the enrollment agreement (105 ILCS 425/15.1 (West 2008)), all of the plaintiffs testified that they did not read, and did not rely, on these statistics in their decision to enroll at the College. Rather, each of the plaintiffs complain of various misrepresentations that were made by different sales representatives of the College that they encountered. The scenarios encountered by the various members of the class as far as which admissions representative they encountered, what, if any, false representations were made, whether they relied on those representations in making their enrollment decision, and whether their decision to enroll at the College caused them some type of damage, would have to be borne out on an individual basis in order for each class member to recover.

¶ 24 The same is true for the plaintiffs' remaining Schools Act claims based on the screening test and financial aid irregularities. In order to establish a private right of recovery, each plaintiff needs to prove that any alleged violations by the College caused them damage. It is clear from the numerous affidavits submitted by the College by class members who are fully satisfied by their education at the College and placements that the individual issues would predominate at a trial on the plaintiffs' Schools Act claims.

¶ 25 An identical analysis applies to the plaintiffs' Consumer Fraud Act (815 ILCS 505/1 to 12 (West 2008)) and common law fraud claims. Section 10a(a) of the Consumer Fraud Act (815 ILCS 505/10a(a) (West 2008)) provides that "[a]ny person who suffers actual damages as a result of a violation of this Act committed by any other person may bring an action against such person." The elements of a cause of action under the Consumer Fraud Act are: (1) a statement by the seller; (2) of an existing or future material fact; (3) that is untrue without regard to the defendant's knowledge or lack thereof of such truth; (4) made for the purpose of inducing the reliance; (5) on which the plaintiff relied; and (6) that resulted

in damage to the plaintiff. *Tolve v. Ogden Chrysler Plymouth, Inc.*, 324 Ill. App. 3d 485, 490 (2001). The Illinois Supreme Court has made clear that any private individual seeking actual damages under the Act must show that the violation of the Act proximately caused the damages. *Barbara's Sales, Inc. v. Intel Corp.*, 227 Ill. 2d 45, 72 (2007).

¶ 26 Based on the foregoing, each and every class member would need to show that reliance on a misrepresentation of fact caused them damage in order to recover under the Consumer Fraud Act, as well as under the common law fraud theories advanced in the complaint. See *Tolve*, 324 Ill. App. 3d at 490 (elements of common law fraud are: (1) a false statement of material fact; (2) known or believed to be false by the party making it; (3) an intent to induce the other party to act; (4) action by the other party in reliance on the truth of the statement; and (5) damage to the other party as a result of the reliance). Again, the record shows that individual issues of reliance and damage would predominate at trial. Accordingly, the circuit court abused its discretion when it certified the class. The four named plaintiffs can proceed with their individual causes of action and, if successful, receive an award of actual damages, treble damages if fraud is proven, injunctive relief, and reasonable attorney fees and costs. 105 ILCS 426/85(m) (West Supp. 2011).

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, the November 29, 2010, order of the circuit court of Madison County, which granted the plaintiffs' motion for a class certification, is reversed.

¶ 29 Reversed.

¶ 30 JUSTICE CHAPMAN, dissenting:

¶ 31 I do not agree with the majority.

¶ 32 I will confine my analysis to the requisite issue of commonality, as did the majority.

In determining commonality, the court must first understand what are the substantive issues that control the outcome. I believe my colleagues misapprehend what are the substantive issues, in holding that individualized questions of law and fact predominate, *i.e.*, whether the class members relied on any misrepresentations by school agents and whether the school's violations of the Acts caused the class members to incur damages. Instead, the focus should have centered on whether defendants violated the Illinois Private Business and Vocational Schools Act (105 ILCS 425/15.1(11) (West 2008)) and the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 to 12 (West 2008)) by failing to provide and explain required disclosures to persons protected under the Acts, thereby depriving the class members of an informed decision. This proof would establish the causation element of plaintiffs' claims and the common right of recovery for all class members.

¶ 33 The trial judge got it exactly right when he stated in his class certification order that " 'causation' is not a factor as it appears that the plaintiffs need only prove violation of the Illinois Private Business and Vocational Schools Act, 105 ILCS 425/1 *et seq.* and that the members of the class are all persons meant to be protected by that act in order to establish a right to recover."

¶ 34 I also believe that my colleagues' reliance on *Bemis v. Safeco Insurance Co. of America* is misplaced. The *Bemis* case sought class certification against Safeco Insurance for breach of contract in failing to pay the full amount of medical expenses members claimed under their automobile medical payments coverage. *Bemis*, 407 Ill. App. 3d at 1165, 948 N.E.2d at 1056-57. This court held that common issues do not predominate because proof of the nonpayment of the customary charge for one class member's reasonable and necessary medical expenses would not establish a right of recovery for any other class member. *Id.* at 1168, 948 N.E.2d at 1059. The court reasoned that since Illinois did not allow for a presumption that a billed charge is the usual and customary charge for a reasonable and

necessary medical service, proof of the determination of breach would be required on an individualized basis. *Id.*

¶ 35 This is not the situation in the case before us, where the right of recovery is established as to all class members because causation is inherent in the proof of the violation of the statute. Statutory violations are somewhat unique in this regard in that the violation itself can constitute the common injury to the proposed class. *Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 850 N.E.2d 357 (2006).

¶ 36 Furthermore, any issue of actual loss or individual damages (as distinguished from injury/damage) is not determinative of class certification. Factual variations among the individual class members do not defeat the class and can be determined in ancillary proceedings. *Id.* at 677, 850 N.E.2d at 369. The court can utilize a number of procedures to address individual damages. *Clark v. TAP Pharmaceutical Products, Inc.*, 343 Ill. App. 3d 538, 549, 798 N.E.2d 123, 132 (2003).

¶ 37 This is a consumer-oriented action that is most appropriate to class litigation. The certification of the class in this case would serve the interests of justice and judicial economy while preserving defendants' due process rights and defenses.

¶ 38 I would affirm the circuit court's class certification.