[Cite as *Eckel v. Bowling Green State Univ.*, 2012-Ohio-3164.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Norman I. Eckel, Ph.D.,	:	
Plaintiff-Appellee/ Cross-Appellant,	:	
	:	No. 11AP-781
v.		(Ct. of Cl. No. 2007-02815)
	:	
Bowling Green State University,		(REGULAR CALENDAR)
	:	
Defendant-Appellant/ Cross-Appellee.	:	

D E C I S I O N

Rendered on July 12, 2012

R. Jeffrey Lydy, for Norman I. Eckel, Ph.D.

Michael DeWine, Attorney General, and *Velda K. Hofacker*, for Bowling Green State University.

APPEAL from the Court of Claims of Ohio.

BRYANT, J.

{¶ 1} Defendant-appellant and cross-appellee, Bowling Green State University ("BGSU"), appeals from a judgment of the Court of Claims of Ohio awarding damages for breach of employment contract to plaintiff-appellee and cross-appellant, Norman I. Eckel, Ph.D. Because (1) the evidence supports the Court of Clams' conclusion that BGSU breached its employment contract with plaintiff and acted arbitrarily in suspending plaintiff without pay, and (2) the Court of Claims properly concluded plaintiff is entitled to an award of back-pay for the summer and fall 2005 semesters, but (3) the Court of

Claims failed to consider the effect of plaintiff's sick pay on that award, we affirm in part and reverse in part.

I. Facts and Procedural History

{¶ 2} On March 12, 2007, plaintiff filed a complaint in the Court of Claims alleging BGSU breached its employment contract with plaintiff when it suspended him and failed to follow the procedure in its contract with the faculty for disciplining a faculty member who allegedly threatened violence to his students. The Court of Claims ordered the issues of liability and damages bifurcated for trial.

{¶ 3} According to the evidence presented at trial, plaintiff, who holds a Ph.D. in accounting and economics, began teaching at BGSU in 1979 and received tenure in 1985 in the College of Business Administration. During the spring 2005 semester, plaintiff taught three sections of Accounting 222, "a cost managerial principles course required of all business majors." (Tr. Vol. I, 33.) The classes met on Tuesdays and Thursdays at 9:30 a.m., 11:30 a.m., and 1:00 p.m.

{¶ 4} On Tuesday, February 1, 2005, a student came into plaintiff's 11:30 a.m. class at 12:30 p.m., 15 minutes before the class was scheduled to end. Plaintiff asked the student if he knew what time it was and told the student to return to his dorm room, as only 15 minutes remained of the class. Plaintiff then turned to the rest of the class, pointed his finger like a gun, put it to his own head, said "duh," and then said no, he should "shoot you guys." (Tr. Vol. I, 42, 99.) Plaintiff continued, telling the class he should shoot the whole class with his AK-47, and "two clips ought to do it." (Tr. Vol. I, 100.) Plaintiff testified he was joking and some students laughed.

{¶ 5} Dr. Tim Chambers, director of undergraduate student development in the College of Business Administration, testified that several students from plaintiff's 11:30 a.m. class contacted the provost's office between February 1st and 2nd to report the incident. Dr. Chambers notified the Associate Dean of the College of Business Administration, Dr. Nancy Merritt, and the Dean of the College of Business Administration, Robert Edmister, regarding the incident.

{¶ 6} One student who reported the incident to Dr. Chambers was "scared to go back" to class, so Dr. Chambers escorted the frightened student to the Thursday, February 3rd class. (Tr. Vol. II, 416.) Because plaintiff conducted a pop quiz in his class

that day, he was able to report from the quizzes that 42 students were in his 11:30 a.m. class, which represented no drop in attendance from his February 1st class. Dr. Chambers confirmed a sufficient number of students attended the February 3rd class.

{¶ 7} After plaintiff finished teaching his 1:00 p.m. class on February 3rd, he returned to his office where he received a phone call from Dr. Larry Kowalski, the chair of the accounting department. Dr. Kowalski told plaintiff to come to Dean Edmister's office for a meeting. In the meeting, plaintiff admitted to making the AK-47 statement, explained he was joking, and offered to apologize to the class. After a short deliberation, Dean Edmister and Dr. Kowalski informed plaintiff he was suspended with pay for the remainder of the spring semester, pending an investigation into the matter. Dean Edmister sent plaintiff a letter on February 7, 2005 reiterating plaintiff's suspension with pay pending the investigation, informing plaintiff he could not return to campus until the investigation concluded, and advising him Dean Edmister appointed Dr. Kowalski, Dr. Merritt, and Dr. Chambers to conduct the investigation.

{¶ 8} Dean Edmister asked the investigative committee to provide him "an independent and objective opinion regarding the validity of the classroom activities that were reported by students and by Dr. Eckel himself on February 1st." (Tr. Vol. I, 195.) In investigating the statements, the committee interviewed students from the 11:30 a.m. class and plaintiff. Although some students were "obviously fearful and obviously shaken by the remark," others gave positive reports of plaintiff and regarded the February 1st statement as a joke. (Tr. Vol. II, 453.) Dr. Merritt reported that her investigation revealed plaintiff had grown increasingly frustrated with students since 1990, as he believed the "students had gotten worse and worse" over the years. (Tr. Vol. II, 448.)

{¶ 9} On April 13, 2005, the investigative committee issued its report to Dean Edmister, finding plaintiff more likely than not made the alleged statements and further concluding a reasonable student would have felt the statements to be threatening. The committee decided plaintiff's conduct violated three sections of the academic charter: Section B-II.E regarding professional ethics, Section B-II.F.2(b)(1) regarding ethical responsibilities towards students, and Section B-II.F.4 concerning BGSU's policy on violence. The committee did not recommend any specific disciplinary action because, as Dr. Kowalski stated, "that wasn't within the charge of our assignment." (Tr. Vol. II, 404.)

{¶ 10} Dean Edmister sent plaintiff a letter on May 9, 2005 informing him that, pursuant to the investigative committee's findings, plaintiff's statements violated the academic charter and BGSU's violence free workplace policy. As remedial action for the violations, Dean Edmister suspended plaintiff without pay from May 7, 2005 until January 1, 2006. Dean Edmister stated the decision to suspend plaintiff without pay was his, and he received the provost's approval to proceed with that action. The letter also informed plaintiff he could file a grievance against the action pursuant to Section B-I.E of the charter but did not specify any time limitation for doing so.

{¶ 11} Plaintiff did not receive the investigative committee's report until June 14, 2005. On August 22, 2005, plaintiff sent a letter to Dr. Ben Muego, chair of the Faculty Personnel and Conciliation Committee ("FPCC"), stating plaintiff intended to grieve Dean Edmister's decision suspending him without pay. Plaintiff suffered a debilitating stroke on September 24, 2005.

{¶ 12} The grievance procedure, spelled out in the academic charter, provided for both the grievant and respondent to have a facilitator appointed to guide them through the process. In November 2005, the FPCC asked Dr. Lawrence Daly, a tenured professor of history at BGSU and an attorney, to serve as plaintiff's facilitator; Dr. Merritt served as Dean Edmister's facilitator. Dr. Daly filed a formal grievance petition on January 20, 2006 alleging the administration failed to observe due process and failed to conform to BGSU's policies and procedures when it suspended plaintiff without pay. Dean Edmister filed several motions to dismiss the grievance as untimely filed; the FPCC denied the motions.

{¶ 13} On November 7, 2006, the FPCC held a hearing on plaintiff's grievance. All seven of the randomly selected faculty members on the FPCC grievance committee concluded Dean Edmister should not have suspended plaintiff without pay, and six determined Dean Edmister should not have suspended plaintiff at all. The majority also decided the administration denied plaintiff due process because the investigatory panel was not impartial, plaintiff was not given an adequate opportunity to defend himself, and plaintiff did not receive the investigative committee's report in a timely fashion. The FPCC recommended that BGSU reimburse plaintiff for his lost pay and benefits.

{¶ 14} The grievance procedure in the academic charter required the FPCC to issue its report and recommendation to the Vice President of Academic Affairs ("VPAA"), who had authority to either accept or reject the FPCC's recommendation. On December 19, 2006, Dr. John Folkins, the provost and VPAA, issued a memorandum rejecting the FPCC's recommendation. Dr. Folkins determined plaintiff's grievance was untimely and, even if it were timely, the suspension of one semester without pay was an appropriate remedy.

{¶ 15} Additional evidence indicated that Dr. Folkins approved both the suspension with pay in February 2005 and the later suspension without pay in May 2005. Dean Edmister stated he consulted with Dr. Folkins "fairly frequently" regarding the decision to suspend plaintiff without pay, even though Dean Edmister knew Dr. Folkins would possibly render the final decision if plaintiff filed a grievance against the suspension. (Tr. Vol. I, 185.)

{¶ 16} Following the liability portion of the trial, the Court of Claims found in plaintiff's favor. Although the court determined BGSU acted reasonably and within its discretion when it initially suspended plaintiff with pay pending the investigation, the court concluded BGSU's reasonable response "escalated into an arbitrary punishment for plaintiff's one-time lapse in judgment." (Liability Decision, at 12.) The court decided that, in suspending plaintiff's pay and his voting privileges from May 7 to December 31, 2005, BGSU not only interfered with plaintiff's tenure right but breached its employment contract with plaintiff by imposing an unpaid suspension and by failing to follow the disciplinary measures outlined in the policy prohibiting workplace violence.

{¶ 17} Following the damages portion of the trial, the court issued a judgment entry on August 8, 2011 awarding plaintiff damages in the amount of $87,978.88. The court's award was comprised of $51,423 in back-pay for the fall 2005 semester, $20,569 in back-pay for the summer 2005 semester, an upward adjustment of $13,760 to account for present value, $2,201.88 for health care benefits, and the $25 court filing fee.

II. Assignments of Error

{¶ 18} BGSU appeals, assigning the following errors:

> Assignment of Error 1:
>
> The [Court of Claims] Erred as a Matter of Law in Holding that Dr. Eckel was Entitled to Recover Damages Against BGSU for Breach of Contract
>
> Assignment of Error 2:
>
> The [Court of Claims] Erred as a Matter of Law in Finding that the Charter Required the Administration to Follow the Faculty Grievance Procedure in Section B-1.E and Awarding Damages as a Result of This Alleged Breach of Contract
>
> Assignment of Error 3:
>
> The [Court of Claims] Erred as a Matter of Law in Finding that the Suspension Without Pay Interfered with Plaintiff's Tenure Rights
>
> Assignment of Error 4:
>
> The [Court of Claims] Erred as a Matter of Law in its Interpretation of Section B-1.C.3.A of the Academic Charter
>
> Assignment of Error 5:
>
> The [Court of Claims] Erred as a Matter of Law in Finding that the Decision to Suspend Dr. Eckel was Arbitrary and Capricious
>
> Assignment of Error 6:
>
> The Decision of the [Court of Claims] is Against the Manifest Weight of the Evidence
>
> Assignment of Error 7:
>
> The [Court of Claims] Erred as a Matter of Law in Granting Dr. Eckel His Summer Teaching Salary
>
> Assignment of Error 8:
>
> The [Court of Claims] Erred as a Matter of Law in Granting Dr. Eckel Back Pay for the Fall Semester When by His Own

> Admission, his Stroke Prevented Him from Teaching. The Court Erred When It Failed to Reduce the Back Pay Award by the Amount He Was Paid for Sick Leave Upon His Retirement and the Leave Without Pay Dr. Eckel Would Have Had to Take had He not been Suspended for the Fall 2005 Semester
>
> Assignment of Error 9:
>
> The [Court of Claims] Erred as a Matter of Law in Making an Adjustment And Award of Monies for The Present Value of Dr. Eckel's Back Pay

{¶ 19} Plaintiff cross-appeals, assigning the following error:

> The [Court of Claims] erred in finding that appellee-cross appellant failed to prove damages for his lost consulting business.
>
> A. The record below demonstrates that cross appellant/appellee (Eckel) has suffered a loss of consulting income as a result of appellant's breach of contract. Therefore, the [Court of Claims] should have awarded lost consulting income to Eckel.

For ease of discussion, we address BGSU's assignments of error out of order.

III. First, Second, Third and Fourth Assignments of Error - Breach of Contract

{¶ 20} BGSU's first, second, third, and fourth assignments of error collectively allege the Court of Claims erred in determining BGSU breached its employment contract with plaintiff.

{¶ 21} Each academic year, BGSU sent plaintiff a contract for employment, also referred to as a faculty appointment letter, which continued plaintiff's tenure with BGSU and specified plaintiff's salary for the year. The yearly employment contract incorporated by reference the academic charter into the contract. Accordingly, the academic charter governs the dispute between the parties.

{¶ 22} The construction of a written contract is a matter of law for the court. *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241 (1978), paragraph one of the syllabus. The purpose of contract construction is to effectuate the intent of the parties,

which is presumed to reside in the language they chose to employ in the agreement. *Skivolocki v. E. Ohio Gas Co.*, 38 Ohio St.2d 244 (1974), paragraph one of the syllabus; *Kelly v. Med. Life Ins. Co.*, 31 Ohio St.3d 130 (1987), paragraph one of the syllabus. "Common words appearing in a written instrument will be given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument." *Alexander* at paragraph two of the syllabus.

{¶ 23} " '[A]n instrument must be considered and construed as a whole, taking it by the four corners as it were, and giving effect to every part.' " *Chan v. Miami Univ.*, 73 Ohio St.3d 52, 57 (1995), quoting *Brown v. Fowler*, 65 Ohio St. 507, 523 (1902). The court's duty is to give effect to the words used in the contract and not to delete or insert words not used. *DiMarco v. Shay*, 154 Ohio App.3d 141, 2003-Ohio-4685, ¶ 22 (10th Dist.), quoting *Cleveland Elec. Illum. Co. v. Cleveland*, 37 Ohio St.3d 50, 53 (1988).

A. *Tenure*

{¶ 24} BGSU's first, third, and fourth assignments of error allege the Court of Claims erred in concluding that the suspension without pay violated plaintiff's tenure rights under the charter.

{¶ 25} " '[T]enure' is a source of many rights and is unique to each set of given circumstances considering whether the setting is a public or private institution, and depending upon whether the source of the rights is statutory, contractual or constitutional." *Ohio Dominican College v. Krone*, 54 Ohio App.3d 29, 31 (10th Dist.1990). "The purpose of academic tenure, as used in the academic community, is the preservation of academic freedom and the correlative protection of economic security for teachers." *Rehor v. Case Western Reserve Univ.*, 43 Ohio St.2d 224, 230 (1975). Tenure "insures that a professor will not lose his job for exercising academic freedom, namely, his rights to teach, to think and to speak in accordance with his conscience in the traditions of the academic community." *Id.* at 230-31.

{¶ 26} "[T]he granting of tenure creates an expectation of continued employment subject to discharge for cause." *Chan* at 59. A written contract with an explicit tenure provision " 'clearly is evidence of a formal understanding that supports a teacher's claim of entitlement to continued employment unless "sufficient cause" is shown.' " *Id.*, quoting

Perry v. Sindermann, 408 U.S. 593, 601 (1972). "Tenure has the status of a property right and may be revoked only pursuant to constitutionally adequate procedures defined by the right itself." *Id.*, citing *Cleveland Bd. of Edn. v. Loudermill*, 470 U.S. 532, 538-41 (1985).

{¶ 27} Dr. Folkins and Barbara Waddell, the assistant vice provost, stated the academic deans of each college had the discretion to discipline faculty members, with the approval of the provost. Although they testified BGSU had suspended faculty members in the past, neither stated BGSU ever had suspended a tenured faculty member without pay. Rather, the trial evidence demonstrated, and both parties admit on appeal, that the academic charter does not contain a provision regarding suspension or discipline of faculty members. Waddell and Dr. Folkins testified that, although the faculty senate has considered adding a provision to the charter, the faculty senate has yet to do so.

{¶ 28} The issue, then, does not concern ambiguity in the charter but the charter's failure to address BGSU's ability to suspend a tenured faculty member. BGSU contends that, in the absence of a provision in the charter regarding discipline, discipline is left to the discretion of the administration on a case-by-case basis. Plaintiff, to the contrary, asserts the administration does not have the authority to suspend a faculty member in the absence of a provision in the charter providing for suspension. Underscoring the schism, Dr. Daly testified that "anybody can be disciplined [under the charter], tenured or nontenured. But when you deal with tenured faculty, you have to be very careful, because tenure is a protected property right." (Tr. Vol. II, 337.) The Court of Claims concluded that, even if plaintiff's suspension does not violate a specific provision of the academic charter dealing with suspensions, the unpaid suspension infringed upon plaintiff's tenure rights under the charter.

{¶ 29} The academic charter specifically defines tenure at BGSU to mean "the opportunity to accept full-time employment through each successive academic year at a salary appropriate to the appointee's rank and in an assignment that is appropriate to the appointee's professional training and experience as a faculty member." (Joint exhibit A, Section B-I.C.3(a).) The charter further provides that a faculty member's tenure "shall continue until one of the following occurs: death, resignation, retirement because of age or disability, discontinuance of the position as a consequence of a Universitywide financial exigency (*Appendix A*), termination of the appointment for adequate cause, or failure to

accept within sixty days an assignment * * * for the ensuing academic year." (Joint exhibit A, Section B-I.C.3(a).) Both parties acknowledge that none of the above-listed conditions occurred here.

{¶ 30} Under the charter, the right to receive payment is one of the essential rights of tenure at BGSU. Even a tenured faculty member terminated for cause is entitled to receive "full salary up to and including the date of dismissal and for one academic year thereafter to be paid in accordance with the terms of the then existing employment contract of the dismissed faculty member." (Joint exhibit A, Section B-I.C.3(c).) As a tenured faculty member at BGSU, plaintiff had a right to accept full-time employment each year at a salary appropriate to his rank, a right that was to continue until one of the specified events in Section B-I.C.3(a) occurred. Because none of those events occurred, BGSU violated plaintiff's right of tenure, as specified in Section B-I.C.3 of the academic charter, in suspending plaintiff without pay.

{¶ 31} BGSU responds that, because plaintiff violated the policy on violence found in Section B-II.F.4 of the charter, BGSU had an inherent right to discipline him, did so reasonably, and acted within its discretion. The policy on violence provides that BGSU will not tolerate threats of violence, and any person found to be in violation of the policy "may be subject to disciplinary action (B-II.F.3 and B-I.E)." (Joint exhibit A, Section B-II.F.4.) Although Sections B-II.F.3 and B-I.E refer to grievance procedures, neither speaks to the type of discipline BGSU may impose on a faculty member. The policy on violence must be construed in a manner consistent with the rest of the charter, including the two-pronged meaning of tenure in Section B-I.C.3(a) that includes: (1) the opportunity to accept full-time employment through each successive academic year, and (2) at a salary appropriate to the appointee's rank. *EFA Assocs., Inc. v. Dept. of Adm. Servs.*, 10th Dist. No. 01AP-1001, 2002-Ohio-2421, ¶ 32. Accordingly, we are constrained to conclude that, although BGSU could discipline plaintiff for his statements, BGSU could not, under the guise of discipline, negate plaintiff's tenure rights unless one of the specified events in Section B-I.C.3(a) occurred. As a result, even if the suspension itself did not directly breach a provision of the charter regarding discipline, its effect on plaintiff's tenure rights nonetheless breached the charter.

{¶ 32} Relying on *Dodson v. Wright State Univ.*, 91 Ohio Misc.2d 57 (Ct. of Cl.1997), BGSU contends that courts should afford universities "wide discretion in evaluating an employee's performance and exercising subjective judgment in evaluating various decisions." (Appellant's brief, at 12.) *Dodson* does not advance BGSU's argument. In *Dodson*, the university, which did not have a tenure system, removed a professor from his position as a department chair but did not suspend the professor's ability to teach. Although the university's bylaws were silent on the procedures to effect such a removal, the court determined the professor's role as department chair was akin to that of an "at-will" employee. *Id.* at 64.

{¶ 33} Plaintiff, by contrast, was not merely an at-will employee but possessed tenure rights that the academic charter not only defined but guaranteed would continue until certain specified events occurred. The suspension without pay violated both aspects of plaintiff's tenure right, as well as the vocational security the right of tenure ensured. *See* Joint exhibit A, Article I (noting "[t]enure provides a sense of vocational security that helps attract to the University persons of competence"). Dr. Folkins admitted BGSU had "a whole host of different types of sanctions that have been applied and are used" to discipline faculty members at the university, meaning BGSU could have implemented a sanction which did not violate plaintiff's tenure right. (Tr. Vol. I, 231.) Because it chose one that did, it violated the charter and plaintiff's employment contract with BGSU.

{¶ 34} BGSU's first, third, and fourth assignments of error are overruled.

B. *Procedure Under the Charter*

{¶ 35} BGSU's second assignment of error asserts the Court of Claims erred in concluding the charter required BGSU administration to follow the faculty grievance procedure in Section B-I.E to discipline plaintiff. BGSU also asserts that, even if it did violate the procedure called for under the charter, plaintiff is not entitled to recover damages for the alleged breach.

{¶ 36} The Court of Claims determined the policy on violence in Section B-II.F.4 of the charter referred to "two separate sections of the academic charter that are applicable when a violation of that policy has occurred: Sections B-II.F.3 and B-I.E." (Liability Decision, at 11.) The court concluded, and BGSU does not dispute, that Section B-II.F.3, detailing the grievance procedure to resolve sexual, racial, or ethnic discrimination, does

not apply to the facts of the case. The court, however, also determined BGSU did not follow the applicable provision, Section B-I.E, that details the faculty grievance procedure. Section B-I.E provides the FPCC with the power "to resolve faculty grievances by a process of facilitation, conciliation, Board of Inquiry, Board of Appeal, or Direct Appeal to the VPAA, or President and culminating in a recommendation to the VPAA or the President." (Footnote omitted.) (Joint exhibit A.)

{¶ 37} BGSU initially contends the Court of Claims ignored that plaintiff violated several provisions of the charter, and only the policy on violence contained a parenthetical reference to the faculty grievance process. The May 9, 2005 letter suspending plaintiff accepted the findings of the investigative committee's report, which concluded that plaintiff violated Sections B-II.E, B-II.F.2(b)(1), and B-II.F.4. Section B-II.E states that "faculty members are expected to abide by the standards of professional ethics and responsibilities." (Joint exhibit A.) Section B-II.F.2(b)(1) imposes on BGSU faculty a responsibility to maintain "an atmosphere conducive to free inquiry, [and] the respect of the student as an individual." (Joint exhibit A.) Neither Section B-II.E nor B-II.F.2(b)(1) provide a method for disciplining faculty members who may violate those sections. Section B-II.F.4, however, expressly provides that BGSU will not tolerate threats of violence and that individuals "found in violation of this policy may be subject to disciplinary action (B-II.F.3 and B-I.E)." (Joint exhibit A.)

{¶ 38} When one part of an instrument " 'is certain on a given subject, and all the other parts are uncertain on that subject, the certain will prevail over the uncertain.' " *Chan* at 57, quoting *Brown* at 523. In *Chan*, the Supreme Court of Ohio determined the university breached its contract with a tenured professor when it terminated a tenured professor's employment pursuant to the university's procedure for resolving a sexual harassment claim, rather than the procedure for terminating tenured faculty. *Id.* at 59-60. The court noted it was "simply not reasonable to assume or conclude that a procedure established for the resolution of affirmative action grievances * * * is intended to take the place of a procedure that expressly provides for the determination of whether conduct by a tenured faculty member constitutes grounds for terminat[ion]." *Id.* at 58.

{¶ 39} Similarly, here, BGSU could not reasonably impose discipline on plaintiff through procedures outside of the charter, when one of the charter sections BGSU

charged plaintiff with violating expressly referred to Section B-I.E, the faculty grievance procedure. Dean Edmister admitted that, in putting together the investigatory committee and deciding to suspend plaintiff without pay, he did not follow any procedure identified in the charter. Because Section B-II.F.4 is the only certain section regarding the procedure for imposing discipline, it prevails over the uncertain sections, and BGSU breached the charter when it failed to follow it. *See, e.g., Elliott v. Univ. of Cincinnati*, 134 Ohio App.3d 203, 211-12 (10th Dist.1999) (concluding university's failure to follow college guidelines regarding the number of faculty members required to administer a Ph.D. candidate's oral examination constituted a breach of contract).

{¶ 40} BGSU, relying on Barbara Waddell's testimony, contends the "administration [was] not required to follow" the procedure in Section B-I.E in order to discipline Dr. Eckel. (Appellant's brief, at 5.) Indeed, BGSU asserts it could not properly follow the faculty grievance procedure in these circumstances.

{¶ 41} As assistant vice provost, Waddell stated her primary job responsibility was to handle faculty personnel issues and resolve issues related to discipline. Regarding the policy on violence, Waddell stated that, although the policy referenced Sections B-II.F.3 and B-I.E, the administration was not always required to follow those sections. Waddell explained that the policy on violence applied to all constituent groups at BGSU, including hourly employees, at-will employees, and faculty, but the charter would not apply to hourly or at-will employees. According to Waddell, Dean Edmister would have acted inappropriately had he filed a grievance against plaintiff because "students * * * were concerned for their safety." (Tr. Vol. II, 377.) As Waddell explained, the faculty grievance procedure could take months to complete, making the administration appear "to be unresponsive to parent and student concerns had [BGSU] taken this through that process." (Tr. Vol. II, 377.)

{¶ 42} Section B-I.E.1(b) of the charter states the FPCC shall consider a grievance brought "by a department Chair, a school Director, a Dean, the VPAA, or the President against individual faculty members." (Joint exhibit A.) Waddell admitted that, pursuant to Section B-I.E.1(b) of the charter, Dean Edmister could have filed a grievance against plaintiff regarding his statement. Waddell also stated that, pursuant to Section B-I.E.1(f), the FPCC could decide to not consider a grievance the administration brought. Section B-

I.E.1(f) provides that the FPCC shall "not consider grievances from faculty also holding an administrative appointment if the grievance focuses primarily on administrative issues or duties." (Joint exhibit A.) Waddell believed Section B-I.E.1(f) potentially applied to the case because "[e]very administrator is also a faculty member." (Tr. Vol. II, 380.)

{¶ 43} Although Waddell's testimony suggested reasons BGSU might have wanted to avoid the grievance procedure, it does not demonstrate Dean Edmister would have been out of line under the charter had he pursued it. To the contrary, Waddell admitted Dean Edmister could have filed a grievance against plaintiff pursuant to Section B-I.E.1(b). As to BGSU's concern about delay, the administration immediately suspended plaintiff with pay on February 7, 2005, prohibiting plaintiff from returning to campus pending the investigation. BGSU does not explain why the suspension with pay could not have continued until the faculty grievance procedure was complete. Nor does Section B-I.E.1(f) of the charter appear to apply, as Dean Edmister's grievance would have been filed against plaintiff regarding his statements as faculty and would not have concerned Dean Edmister's administrative duties as dean.

{¶ 44} BGSU alternatively contends plaintiff failed to prove the outcome would have been different had BGSU followed the grievance procedure. " 'In order for an individual to recover on a contract cause of action, it is necessary to show that that individual has been damaged by a breach of contract.' " *Logsdon v. Ohio N. Univ.*, 68 Ohio App.3d 190, 195 (3d Dist.1990), quoting *Munoz v. Flower Hosp.*, 30 Ohio App.3d 162, 168 (6th Dist.1985). *See also Morgan v. Mikhail*, 10th Dist. No. 08AP-87, 2008-Ohio-4598, ¶ 53, quoting *Fada v. Information Sys. & Networks Corp.*, 98 Ohio App.3d 785, 792 (2d Dist.1994) (noting the " 'existence of error does not require a disturbance of the judgment unless the error is materially prejudicial to the complaining party' ").

{¶ 45} Dr. Daly explained that had Dean Edmister filed a grievance petition against plaintiff, the FPCC would have set up a facilitator and tried to resolve the problem through a conciliation committee. Had conciliation failed, the FPCC then would have assembled an investigatory panel, and plaintiff would have responded to Dean Edmister's petition. At a hearing, both Dean Edmister and plaintiff would have had the opportunity to voir dire the panel members and present evidence. The panel then would issue its

report, containing explicit recommendations to the VPAA on how to resolve the grievance. Dr. Folkins, as VPAA, would decide whether to accept or reverse the FPCC's decision.

{¶ 46} BGSU contends the outcome would not have differed had Dean Edmister filed a grievance against plaintiff, because Dr. Folkins still would have made the ultimate decision and imposed the same unpaid suspension. Had Dean Edmister filed the grievance against plaintiff, however, the process of determining and imposing discipline would have been sufficiently different in at least two respects that we cannot say the outcome would have been the same.

{¶ 47} Initially, the FPCC majority determined plaintiff's statement was not a threat of violence; accordingly, FPCC likely would have found plaintiff did not breach the charter. The FPCC majority also determined the unpaid suspension was improper, suggesting that, even if the FPCC found the statement violated the charter, the FPCC would not have recommended an unpaid suspension as a sanction in their report to Dr. Folkins. Whether Dr. Folkins would have implemented an unpaid suspension where the FPCC did not recommend such a sanction is questionable.

{¶ 48} Moreover, Dr. Folkins testified he overturned the FPCC decision because the majority report concluded the administration had not followed due process. Had Dean Edmister filed a grievance against plaintiff, the FPCC would not have found a lack of due process in the proceedings.

{¶ 49} Lastly, the charter provides that, in reviewing the FPCC's report, the VPAA "shall not discuss the grievance" with any of the parties involved and must conduct its review "solely on the written evidence, audio tapes of the hearing, and written reports objecting to the FPCC-EC's decision." (Joint exhibit A, Section B-I.E.12(b)(1).) Here, Dr. Folkins admitted he decided to overrule the FPCC's decision based on "what [he] knew about the situation" from his prior consultations with Dean Edmister, and he stated he could not "divorce [himself] from the involvement earlier." (Tr. Vol. I, 234-35.) Had Dean Edmister filed the grievance against plaintiff, Dr. Folkins likely would have made his decision based on the information before the FPCC and not his earlier involvement in the situation. Accordingly, BGSU's argument about the outcome of the grievance procedure is unpersuasive.

{¶ 50} For the reasons stated, BGSU's second assignment of error is overruled.

IV. Fifth and Sixth Assignments of Error – Arbitrary Decision

{¶ 51} BGSU's fifth and sixth assignments of error assert the Court of Claims erred in finding BGSU's decision to suspend plaintiff without pay arbitrary, a conclusion BGSU contends is against the manifest weight of the evidence.

{¶ 52} A trial court must defer to the academic decisions of colleges unless the decisions so substantially depart from accepted academic norms as to demonstrate that the committee or person responsible did not actually exercise professional judgment. *Bleicher v. Univ. of Cincinnati College of Med.*, 78 Ohio App.3d 302, 308 (10th Dist.1992), quoting *Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 (1985). "The standard of review is not merely whether the court would have decided the matter differently but, rather, whether the faculty action was arbitrary and capricious." *Id.* If some competent, credible evidence going to all the essential elements of the case supports the trial court's judgment, a reviewing court will not reverse it as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), syllabus.

{¶ 53} The Court of Claims determined that BGSU's initial reasonable response to plaintiff's statements in the form of a paid suspension "escalated into an arbitrary punishment for plaintiff's one-time lapse in judgment." (Liability Decision, at 12.) The court noted that BGSU's expert, Eugene Deisinger, chief of police at Iowa State University and a threat assessment consultant, opined that plaintiff did not pose a serious risk of carrying out the threat. (Liability Decision, at 11.) The court also questioned whether BGSU truly believed plaintiff posed a threat of serious harm, as BGSU did not even inquire whether plaintiff attended or enrolled in anger management classes before inviting him to return to campus in June 2005. In that context, the court further noted the attendance in plaintiff's classes did not vary between February 1st and February 3rd.

{¶ 54} BGSU asserts plaintiff's suspension without pay was not arbitrary because the experts in the field of campus safety "testified that the actions of BGSU were reasonable and appropriate." (Appellant's brief, at 21.) BGSU presented the expert testimonies of Deisinger and Gary Margolis, chief of police at the University of Vermont and an expert on college campus safety. Margolis and Deisinger both testified plaintiff's statements were threatening and BGSU reasonably removed plaintiff immediately from

the campus. Deisinger testified it "was appropriate and necessary for some level of disciplinary action to take place" and a suspension without pay was a reasonable sanction. (Tr. Vol. III, 594, 602-05.) Deisinger, however, also stated he did not know whether BGSU's charter permitted BGSU to suspend a tenured professor without pay. Margolis did not have an opinion on whether plaintiff was a dangerous person, and Deisinger stated he believed plaintiff "did not pose a high risk of physical violence" as reflected in plaintiff's statements in the classroom. (Tr. Vol. III, 547, 606.)

{¶ 55} BGSU also points to the testimony of Dr. Merritt. She testified that, following her investigation into the matter, she was concerned plaintiff "would go back into the classroom without anger management, without some counseling, * * * that he would stay angry, that he would get angrier." (Tr. Vol. II, 448-49.) The May 9, 2005 letter suspending plaintiff without pay stated that, upon plaintiff's return in 2006, he was to participate in a professional development workshop related to maintaining a violence free work environment. Yet, on June 14, 2005, shortly after BGSU implemented the suspension without pay, Dr. Merritt sent plaintiff a letter inviting him "to return to campus and [his] office," prohibiting him only from participating in committee or departmental business. (Joint exhibit P.) Dr. Merritt admitted that, prior to inviting plaintiff back to campus, she never advised plaintiff to seek counseling and never asked if he received stress counseling; she stated that, once the suspension was over, BGSU was ready to place plaintiff back in the classroom. Indeed, the FPCC majority determined plaintiff's statements did not constitute a threat of violence, noting that if BGSU truly believed plaintiff's statement was a serious threat, "why were the police not involved and why was grievant allowed to return to campus? Why was the grievant not referred to appropriate mental health professionals * * *, especially before being allowed to return to campus?" (Joint exhibit EE.)

{¶ 56} The evidence the Court of Claims relied on is competent and credible, and supports the court's conclusion that BGSU acted arbitrarily in suspending plaintiff for a semester without pay. Neither of the experts on campus safety believed plaintiff posed a serious threat of following through on his comments. Indeed, BGSU invited plaintiff to return to campus one month after plaintiff's suspension without pay and did not inquire

whether plaintiff had participated in any type of counseling. Such evidence indicates that BGSU also did not believe that plaintiff posed a serious risk of violence.

{¶ 57} Plaintiff's fifth and sixth assignments of error are overruled.

V. Seventh, Eighth, and Ninth Assignments of Error - Damages

{¶ 58} BGSU's seventh, eighth, and ninth assignments of error dispute various aspects of the Court of Claims' damages award to plaintiff.

{¶ 59} Damages for a breach of contract are those which are the natural or probable consequence of the breach of contract or damages resulting from the breach that were within the contemplation of both parties at the time of making the contract. *Atelier Dist., L.L.C. v. Parking Co. of Am., Inc.*, 10th Dist. No. 07AP-87, 2007-Ohio-7138, ¶ 60, quoting *Wells v. C.J. Mahan Constr. Co.*, 10th Dist. No. 05AP-180, 2006-Ohio-1831, ¶ 11, quoting *The Toledo Group, Inc. v. Benton Industries, Inc.*, 87 Ohio App.3d 798, 806 (6th Dist.1993). Contract damages are intended to place the injured party in the same position it would have been had the contract not been breached. *Atelier*, citing *Wells*, citing *Schulke Radio Prods., Ltd. v. Midwestern Broadcasting Co.*, 6 Ohio St.3d 436, 439 (1983). Damages need not be calculated with mathematical certainty but cannot be based on mere speculation and conjecture. *Atelier*, citing *Allied Erecting & Dismantling Co., Inc. v. Youngstown*, 151 Ohio App.3d 16, 2002-Ohio-5179, ¶ 64 (7th Dist.) Plaintiff must show his entitlement to damages in an amount ascertainable with reasonable certainty. *Atelier*, citing *Allied*; *Interstate Gas Supply, Inc. v. Calex Corp*., 10th Dist. No. 04AP-980, 2006-Ohio-638, ¶ 59.

A. *Summer Teaching Salary*

{¶ 60} BGSU's seventh assignment of error asserts the Court of Claims erred in granting plaintiff his summer teaching salary. The parties agreed plaintiff was not compensated for the fall 2005 semester and his economic loss for that semester was $51,423, one-half of his teaching salary for the 2005-06 academic year. The parties disagreed, however, whether plaintiff was entitled to compensation for the summer 2005 semester. The Court of Claims determined plaintiff presented competent testimony to indicate "he was scheduled to teach two accounting courses in the first session of summer 2005," and so it awarded plaintiff $20,569, "the amount that he would have earned if he

had been allowed to teach the two classes that he was scheduled to teach in the summer of 2005." (Damages Decision, at 1-2.)

{¶ 61} Plaintiff's regular contract for faculty employment covered the academic year, running from August through May. Teaching summer classes was elective, "over and above [the] normal nine-month contract," and required plaintiff to enter into a separate contract with BGSU. (Tr. Vol. IV, 733-34; Joint exhibit B.) Using a point system and a "summer school sheet" where professors could sign up to teach during the summer, the chair of the accounting department determined which professors would teach summer classes. (Tr. Vol. I, 52.) The point or rating system took into account longevity, rank, the number of summer classes the professor had taught in the last four years, and the demand for the course. Dr. David Stott, a faculty member in BGSU's accounting department, testified the accounting department's policy gave priority for summer teaching to those professors who were closest to retirement. In 2005, plaintiff was nearing retirement and thus was on the "top of the [priority] list" to teach summer courses. (Tr. Vol. IV, 674-75.)

{¶ 62} Although Dr. Stott admitted summer teaching was not guaranteed, and the ability to teach summer courses depended on supply and demand, he also stated that the demand for accounting courses was high. Dr. Stott stated that during his 12 years at BGSU, the administration had never cancelled a summer accounting class. The administration created the summer session schedule during the fall semester, and professors knew by January or February what they would be teaching in the summer, even though they might not sign the summer teaching contract until a couple of days before the class began.

{¶ 63} BGSU had two separate summer semester terms; "summer one" ran from May to June and "summer two" ran from the end of June to August. Dr. Stott explained that, because the State Teachers Retirement System ("STRS") measured the fiscal year from July 1st to June 30th, the summer one session came at the end of a fiscal year and was considered part of the preceding academic year, while the summer two session came at the beginning of the following fiscal year and was treated as part of the subsequent academic year. BGSU's compensation policy regarding summer teaching was to pay faculty 10 percent of their base 9-month salary per course. Thus, if a professor taught 2 classes during the summer, the professor would receive 20 percent of base salary. Had

plaintiff taught 2 courses in the first summer session of 2004, he would have received $19,338 in compensation, representing 20 percent of his 2003-04 academic year salary of $96,704.

{¶ 64} Plaintiff testified that Dr. Kowalski scheduled him to teach 2 classes in the summer two session of 2005. He fully expected to teach them, as "the courses had already been announced and [he] was already on the sheet to teach summer." (Tr. Vol. IV, 672.) Dr. Stott affirmed plaintiff was "scheduled to teach the summer of 2005, during the second summer session of 2005, [and] was scheduled to teach two classes." (Tr. Vol. IV, 733, 752-53.) If not for the unpaid suspension in fall 2005, plaintiff's academic year salary for the 2005-06 school year would have been $102,846. Plaintiff and Dr. Stott both testified that, had plaintiff taught the 2 summer two courses, he would have earned $20,569, 20 percent of plaintiff's 2005-06 academic year salary. Plaintiff stated he was ready, willing, and able to teach in summer 2005. The May 9, 2005 letter, however, suspended plaintiff "from BGSU without pay, effective May 7, 2005, until January 1, 2006." (Joint exhibit N.) On July 11, 2005, Dr. Merritt approved an addendum to plaintiff's 2005-06 teaching contract, stating that "Dr. Eckel has been placed on UNPAID suspension for the Summer and Fall semesters of 2005." (Emphasis sic.) (Joint exhibit B.)

{¶ 65} BGSU contends "Dr. Eckel's damages are limited to losses resulting from this infringement upon his tenure, i.e. the unpaid suspension for the Fall Semester," as those were the only damages within the contemplation of the parties when they entered into the contract. (Appellant's brief, at 26.) Breach of contract " '[d]amages are not recoverable for loss that the party in breach did not have reason to foresee as a probable result of the breach when the contract was made.' " *Trucco Constr. Co., Inc. v. Columbus*, 10th Dist. No. 05AP-1134, 2006-Ohio-6984, ¶ 42, quoting Restatement of the Law 2d, Contracts, Section 351 (1981).

{¶ 66} BGSU reasonably could foresee that plaintiff would teach in summer 2005, as plaintiff was nearing retirement and the evidence indicated professors nearing retirement typically taught summer classes to increase their final average salary for retirement purposes. Moreover, both the May 9, 2005 letter and the July 11, 2005 contract addendum demonstrate that BGSU intended to suspend plaintiff for the summer and fall semesters. A foreseeable result of BGSU's so suspending plaintiff was that

plaintiff would not be able to teach in summer 2005. The Court of Claims did not err in concluding plaintiff was entitled to damages for his lost summer 2005 teaching salary.

{¶ 67} BGSU also contends that "the amount of the damages was not reasonably certain as Plaintiff's expert used the wrong figures." (Appellant's brief, at 27.) On cross-examination, BGSU asked Dr. Stott what plaintiff's summer salary would have been had plaintiff been scheduled to teach the summer one session instead of the summer two session. Dr. Stott testified that, if plaintiff taught 2 classes in the summer one session his compensation would have been $19,962, representing 20 percent of $99,814, plaintiff's base salary from the 2004-05 academic year. In awarding plaintiff $20,569 for his summer salary, the Court of Claims stated the amount was for the 2 classes plaintiff would have taught in "the first session of summer 2005." (Damages Decision, at 1.) The testimony in the record, however, indicated only that plaintiff was scheduled to teach two classes in the summer two session of 2005, not the summer one session. Dr. Stott also testified that STRS considered the summer two session part of the following academic year, and BGSU did not present evidence indicating otherwise. Accordingly, Dr. Stott correctly calculated plaintiff's summer pay for the summer two session based on plaintiff's salary for the 2005-06 academic year, and the Court of Claims correctly awarded that amount.

{¶ 68} BGSU's seventh assignment of error is overruled, though we modify the Court of Claims' damages decision only to correct a typographical error and reflect that the amount awarded plaintiff was for the two classes he was scheduled to teach in the second, and not the first, summer session.

B. *Adjusting for Present Value*

{¶ 69} BGSU's ninth assignment of error contends the Court of Claims erred as a matter of law in adjusting plaintiff's back-pay upward to its present value.

{¶ 70} Dr. Stott testified that, as a result of BGSU's breach, plaintiff lost $71,992 from his 2005 salary, $51,423 from the fall semester and $20,569 from the summer semester. Dr. Stott explained he did a "present value calculation" in order to determine what the value of $71,992 in 2005 would be today. (Tr. Vol. IV, 740.) To achieve that end, Dr. Stott used a "ten-year moving average investment yield to determine what the yield would have been for that five-year span of time" based on six-month United States

treasury bill rates, which are "riskless securities." (Tr. Vol. IV, 741.) Dr. Stott concluded $71,992 in 2005 would be worth $85,752 in November 2010, when Dr. Stott prepared his report. The Court of Claims agreed with Dr. Stott's present value calculation and awarded the $13,760 difference to plaintiff as a lump sum amount.

{¶ 71} BGSU does not dispute Dr. Stott's calculations. Rather, BGSU contends that an adjustment to "present value" can only occur when calculating future damages. (Appellant's brief, at 30.) Although BGSU is correct that, "[u]nder the common law of Ohio, future damages must be reduced to present value," BGSU does not identify, nor have we found a rule, prohibiting a court from adjusting a back-pay award to account for the passage of time. *Galayda v. Lake Hosp. Sys., Inc.*, 71 Ohio St.3d 421, 425 (1994), citing *Maus v. New York, Chicago & St. Louis RR. Co.*, 165 Ohio St. 281 (1956), paragraph one of the syllabus.

{¶ 72} Dr. Stott's adjustment of the back-pay award to present value is similar to an award of prejudgment interest. The purpose of prejudgment interest is "compensation to the plaintiff for the period of time between accrual of the claim and judgment." *Royal Elec. Constr. Corp. v. Ohio State Univ.*, 73 Ohio St.3d 110 (1995), syllabus (noting that, pursuant to R.C. 2743.18(A) and 1343.03(A) and in cases involving "breach of contract where liability is determined and damages are awarded against the state, the aggrieved party is entitled to prejudgment interest on the amount of damages found due by the Court of Claims").

{¶ 73} The Court of Claims judgment effectively compensated plaintiff per the rationale of *Royal Elec.* Accordingly, BGSU's ninth assignment of error is overruled.

C. *Adjustment for Sick Leave*

{¶ 74} BGSU's eighth assignment of error asserts the Court of Claims erred in failing to account for the effect plaintiff's stroke, and his corresponding need to take sick leave, had on plaintiff's back-pay award. BGSU alleges that, even had BGSU not suspended plaintiff without pay during the fall 2005 semester, plaintiff would have had to begin taking sick leave on September 24, 2005 due to his stroke. Plaintiff so acknowledged and further admitted that, due to his stroke, he could not work from September 24, 2005 to January 1, 2008.

{¶ 75} BGSU presented the testimony of Larry Smith, manager of payroll accounting at BGSU. Smith stated that plaintiff used 397 of the 427.5 sick days he had accumulated from the time his unpaid suspension ended until he returned to teaching. When plaintiff retired, he received a pay out from STRS of $4,021 for the 30.5 days of sick leave remaining. Smith explained that, had plaintiff been working during fall 2005, he would have had to take 57 sick days that semester, representing the number of days worked between September 24, 2005 and the end of the fall 2005 semester. As such, he testified, plaintiff would have exhausted all of his sick leave and would not have received the $4,021 pay out upon retirement. Smith further testified that, but for the suspension, plaintiff would have run out of paid sick days and would have had to take leave without pay. Smith explained that, if plaintiff had worked during the fall 2005 semester, he would have earned 7.5 sick days, such that plaintiff would have been short by 19 sick days before the spring 2008 semester began.

{¶ 76} If we assume plaintiff took all of his paid sick days from September 24, 2005 onward, the 19 unpaid sick days would have come at the end of the fall 2007 semester. Plaintiff's pay rate for the 2007-08 academic year was $527.39 per day, meaning plaintiff would have forfeited $10,020.41 in compensation during the fall 2007 semester for 19 days of leave without pay. Although plaintiff cross-examined Smith regarding plaintiff's ability to return to BGSU had plaintiff known his paid sick days were about to run out, plaintiff testified his "health did not permit [him] to work" until January 2008. (Tr. Vol. IV, 685, 820-21.)

{¶ 77} The purpose of a back-pay award "is to put the employee in the same position the employee would have been in had the employer honored the contract." *State ex rel. Stacy v. Batavia Local School Dist. Bd. of Edn.*, 105 Ohio St.3d 476, 2005-Ohio-2974, ¶ 33-35 (concluding court properly reduced the back-pay award to an employee, whom the employer wrongfully forced to retire by the amount of retirement payments the employee received to prevent a windfall). Here, if plaintiff were teaching during the fall 2005, he would have begun taking sick leave as of the date of his stroke on September 24, 2005. The Court of Claims did not address Smith's testimony or the effect of plaintiff's stroke and his need to take sick leave on the back-pay award. BGSU's argument is well-taken in that regard.

{¶ 78} BGSU also alleges that the collateral source rule in R.C. 2743.02(D) applies and "also requires this deduction." (Appellant's brief, at 29.) Because we have resolved the assigned error on general contract principles we need not address BGSU's contention regarding R.C. 2743.02(D).

{¶ 79} Accordingly, BGSU's eighth assignment of error is sustained. This matter must be returned to the Court of Claims to calculate the damages award, taking into account the effect of plaintiff's illness on his sick days.

VI. Cross Appeal – Consulting Business

{¶ 80} Plaintiff's sole assignment of error on cross-appeal alleges the Court of Claims erred in failing to award plaintiff damages for the loss of his consulting business. Outside of his employment at BGSU, plaintiff engaged in litigation consulting work. Plaintiff alleges that the suspension without pay destroyed his consulting business and he is entitled to damages for the loss. The Court of Claims was not convinced BGSU's breach of contract "was the sole reason that plaintiff's consulting business came to an end in 2005." (Damages Decision, at 3.) The Court of Claims determined the evidence was unclear whether the unpaid suspension or the publication of plaintiff's classroom statement proximately caused the loss of his consulting business.

{¶ 81} Plaintiff explained that since 1979 he had qualified as an expert in economics in somewhere between 300 to 500 court cases. Plaintiff engaged in consulting work with varying frequency over the years; some years he did no consulting work and in other years he earned over $40,000 from such work. Plaintiff stated that after "the first suspension," he received phone calls from attorneys who appeared to be in "waiting mode to see what was going to happen with this case." (Tr. Vol. IV, 662.) Following the suspension without pay, plaintiff stated he received phone calls from attorneys indicating that "given what's taken place, you know, we would no longer be able to use you." (Tr. Vol. IV, 664.) Plaintiff testified the suspension without pay was "like a guilty verdict;" it was the "nail in the coffin." (Tr. Vol. IV, 695.)

{¶ 82} Dr. Daly stated that the facts prompting plaintiff's suspension were reported in the BGSU student newspaper, the local newspapers for the Toledo and Bowling Green areas, and on local television. Plaintiff admitted news reports were issued regarding the statements he made in class on February 1, 2005, the attorneys who called him "had read

the newspapers," and he, since May 2005, never attempted to solicit consulting jobs. (Tr. Vol. IV, 690-91, 695, 697.)

{¶ 83} At trial, plaintiff sought to call Attorney Mollenkamp to testify as an expert witness regarding the effect plaintiff's suspension had on his ability to serve as an expert witness. On BGSU's motion in limine, the Court of Claims excluded Mollenkamp's testimony, finding the testimony would not be relevant and would not offer information beyond what was already in the record. Plaintiff proffered Mollenkamp's report into the record. (Tr. Vol. IV, 712.)

{¶ 84} Plaintiff's cross-appeal contends the Court of Claims erred in refusing to admit into evidence and consider the report of Mollenkamp, a contention plaintiff did not assign as error. Pursuant to App.R. 12(A)(1)(b), appellate courts must " 'determine [an] appeal on its merits on the assignments of error set forth in the briefs under App. R. 16.' Thus, this court rules on assignments of error only, and will not address mere arguments." *Ellinger v. Ho,* 10th Dist. No. 08AP-1079, 2010-Ohio-553, ¶ 70, quoting *In re Estate of Taris,* 10th Dist. No. 04AP-1264, 2005-Ohio-1516, ¶ 5. In the end, however, Mollenkamp's report largely reiterates plaintiff's testimony and thus presents little basis for finding reversible error.

{¶ 85} As to plaintiff's claim that the court should have awarded damages for his consulting business, damages resulting from breach of contract must flow naturally and proximately from the breach. *Mills v. Best Western Springdale*, 10th Dist. No. 08AP-1022, 2009-Ohio-2901, ¶ 13. (Internal citations omitted.) Plaintiff did not present any basis for the court to conclude that, had he made the same statements but not served an unpaid suspension, his consulting practice would not have suffered. Plaintiff admitted both print and television media reported the comments he made and his attorney clients read those reports, highlighting the difficulty the Court of Claims would have in attempting to determine whether the suspension without pay or plaintiff's comments destroyed his consulting business. Moreover, plaintiff's estimate that he would have "average[d] [$]30,000 a year, I think," provides little basis for an award of damages. (Tr. Vol. IV, 714.) Plaintiff's own exhibit demonstrated that his consulting income varied widely from year to year.

{¶ 86} Accordingly, plaintiff's single assignment of error on cross-appeal is overruled.

VII. Disposition

{¶ 87} Having overruled BGSU's first, second, third, fourth, fifth, sixth, seventh, and ninth assignments of error and plaintiff's single assignment of error on cross-appeal, but having sustained BGSU's eighth assignment of error, we affirm in part and reverse in part the judgment of the Court of Claims, we modify the damages decision to reflect that plaintiff was awarded damages based on his being scheduled to teach the summer two session in 2005, and we remand the case to the Court of Claims to consider the effect plaintiff's stroke and corresponding need to take sick leave during the fall 2005 semester had on the damages to which plaintiff is entitled.

Judgment affirmed in part and reversed in part; case remanded.

BROWN, P.J., and KLATT, J., concur.

_____