[Cite as *Townsend v. Antioch Univ.*, 2009-Ohio-2552.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

PETER TOWNSEND, et al. :

Plaintiffs-Appellants : C.A. CASE NO. 2008 CA 103

v. : T.C. NO. 2008 CV 0300

ANTIOCH UNIVERSITY : (Civil appeal from Common Pleas Court)

Defendant-Appellee :

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O P I N I O N

Rendered on the 29th day of May, 2009.

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WOLFF, J. (by assignment)

{¶ 1} The appellants, a group of tenured Antioch College professors, appeal from the

trial court's judgment entry dismissing their amended complaint against appellee Antioch University pursuant to Civ.R. 12(B)(1) and Civ.R. 12(B)(6).

{¶ 2} The appellants advance three assignments of error. First, they contend the trial court erred in finding, as a matter of law, that the relief they sought required judicial intervention in the management and operation of Antioch College. Second, they claim the trial court erred in finding, as a matter of law, that a "Faculty Personnel Policies and Procedures" manual constituted a personal-service contract. Third, they assert that the trial court erred in finding, as a matter of law, that they had an adequate remedy in the form of money damages for the breach of contract alleged in their amended complaint.

{¶ 3} The record reflects that the appellants filed their initial complaint on March 10, 2008. The filing was in response to the Antioch University Board of Trustees' June 2007 declaration of a "financial exigency" and announcement that Antioch College would suspend its operations effective July 1, 2008 with an aspirational goal of reopening in four years. The appellants filed an amended complaint for specific performance and permanent injunctive relief on April 11, 2008.

{¶ 4} The amended complaint, which was the subject of the trial court's ruling, alleged that Antioch College is owned and operated by Antioch University, an Ohio non-profit corporation. The appellants alleged that their rights as tenured professors were governed by a manual entitled, "Faculty Personnel Policies and Procedures," a copy of which was attached to the amended complaint. The appellants alleged that this manual constituted a contract between them and Antioch University. They further alleged that the decision by Antioch University's Board of Trustees to declare a financial exigency and to suspend the operation of Antioch

College violated the contract. In particular, the appellants cited language in the manual that defined a "financial exigency" as "a situation where an imminent financial crisis exists which threatens the survival of the College and cannot be alleviated by less drastic means." The appellants alleged that less drastic means existed to address a financial crisis at Antioch College, including raising additional funds or negotiating a sale of the school to a group of alumni investors. The appellants further alleged that Antioch University had "spurned" all available less drastic options and, in so doing, had breached the Faculty Personnel Policies and Procedures manual. As a result, they prayed for "a permanent injunction requiring Defendant University to specifically perform the Faculty Personnel Policies and Procedures by implementing the least drastic means required to alleviate financial problems at Antioch College."

{¶ 5} Antioch University subsequently moved to dismiss the amended complaint pursuant to Civ.R. 12(B)(1) and Civ.R. 12(B)(6). It argued, among other things, that specific performance could not be used to enforce an employment agreement between a private college and its faculty. Antioch University later filed a supplement to its motion, seeking dismissal on the basis of mootness. On November 26, 2008, the trial court dismissed the amended complaint under Civ.R. 12(B)(1) and Civ.R. 12(B)(6) without addressing the mootness issue. In support of its ruling, the trial court determined that it lacked jurisdiction to intervene in the management and operation of Antioch College, that it would not decree specific performance of a personal-service contract, and that injunctive relief was unavailable because the appellants had an adequate remedy in the form of money damages. This timely appeal followed.

{¶ 6} Before turning to the appellants' assignments of error, we pause to address three issues raised by Antioch University on appeal that were not addressed by the trial court below:

(1) the appellants' standing to pursue their lawsuit, (2) the potential mootness of this action, and (3) whether the amended complaint failed to state a claim because it relied on allegedly "less drastic means" that arose only *after* Antioch University's declaration of a financial exigency. The appellants argue that these issues are not properly before us because Antioch University never challenged their standing below, only belatedly raised the issue of mootness in supplemental motion the trial court did not address, and did not seek dismissal based on the absence of "less drastic means" before the declaration of a financial exigency. The appellants also point out that Antioch University failed to submit any evidence in the trial court to support its mootness claim.

{¶ 7} Upon review, we need not dwell on whether Antioch University properly preserved its standing argument.[1] As tenured faculty members who lost their jobs when Antioch University suspended its operation of Antioch College in alleged breach of a contract, the appellants plainly have a personal stake in the outcome of the dispute. *Middletown v. Ferguson* (1986), 25 Ohio St.3d 71, 75. Therefore, they have standing. We also reject Antioch University's argument that the amended complaint did not state a claim because it failed to allege the existence of some "less drastic means" before the trustees declared a financial exigency. Antioch University contends it is irrelevant whether any less drastic means surfaced

[1]In *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 77, 1998-Ohio-275, the Ohio Supreme Court noted that "[l]ack of standing challenges the capacity of a party to bring an action, not the subject matter jurisdiction of the court." Standing is "jurisdictional only in limited cases involving administrative appeals, where parties must meet strict standing requirements in order to satisfy the threshold requirement for the administrative tribunal to obtain jurisdiction." Id. at n.4; see, also, *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision*, 86 Ohio St.3d 181, 183, 1999-Ohio-148.

after the trustees' declaration. We note, however, that Antioch University did not seek dismissal on this basis below. In any event, the amended complaint asserted that "less drastic means *existed and exist* to address the alleged financial crisis at Antioch College." (Emphasis added). Although the amended complaint identified two potential alternatives that arose after the school's announced closing, the implication of the amended complaint is that Antioch University could have pursued those alternatives before the trustees declared a financial exigency.

{¶ 8} As for mootness, Antioch University raised this issue below in a supplemental filing, which the trial court did not address. In any event, mootness is an issue that may be raised at any time. "No actual controversy exists where a case has been rendered moot by an outside event," and a moot appeal is subject to dismissal. *Tschantz v. Ferguson* (1991), 57 Ohio St.3d 131, 133. We note too that an appellate court may consider evidence outside the record in order to dismiss an appeal as moot. *Pewitt v. Lorain Correctional Inst*., 64 Ohio St.3d 470, 1992-Ohio-91 (dismissing a habeas petition as moot even though "the fact that appellant was released from confinement did not appear in the record or in any other cited source"). Acting sua sponte, an appellate court also may take judicial notice of facts generally known within its territorial jurisdiction or facts capable of accurate and ready determination by resort to sources whose accuracy reasonably cannot be questioned. Evid.R. 201(B), (C), and (F); see, also, *City of Englewood v. Village of Clayton* (Feb. 21, 1997), Montgomery App. No. 16219 (taking judicial notice of a fact "widely reported in the news media"). Therefore, contrary to the appellants' argument, Antioch University's failure to submit evidence on the issue of mootness does not preclude us from considering the issue on appeal.

{¶ 9} The appellants' April 11, 2008 amended complaint requested "a permanent injunction requiring Defendant University to specifically perform the Faculty Personnel Policies and Procedures by implementing the least drastic means required to alleviate financial problems at Antioch College." This prayer for relief sought to require Antioch University's Board of Trustees do something other than suspending operations at Antioch College and terminating the appellants' employment. We take judicial notice, however, that Antioch College closed in the summer of 2008.[2] Thus, insofar as the appellants sought a prohibitory injunction to prevent Antioch University from suspending its operation of Antioch College and terminating their employment, the issue raised in their amended complaint is now moot. Antioch College is closed, and the appellants' employment has been terminated.

{¶ 10} It is certainly possible, however, to read the amended complaint as seeking a mandatory injunction, which is "an extraordinary remedy that compels the defendant to restore a party's rights through an affirmative action." *State ex rel. Gen. Motors Corp. v. Ohio Indus. Comm.*, 117 Ohio St.3d 480, 482, 2008-Ohio-1593. "The distinction between these two categories of injunctive relief can best be summed up as follows: a prohibitory injunction is used to prevent a future injury, but a mandatory injunction is used to remedy past injuries." Id. at 482-483. If we read the amended complaint as seeking a mandatory injunction to compel Antioch University to reopen Antioch College and to rehire the appellants as tenured professors while taking some less drastic action to

[2]See *New York Times*, March 10, 2009, page A-16, "College Awaits Rebirth as its Library Labors On" (recognizing that Antioch College closed in the summer of 2008); see, also, Antioch College's official web site, www.antioch-college.edu, acknowledging that "[t]oday Antioch College is closed[.]"

solve the financial crisis, then their lawsuit is not moot.

{¶ 11} A potential problem arises, however, if we treat the amended complaint as seeking a mandatory injunction. The Ohio Supreme Court has recognized that a prohibitory injunction is an adequate remedy in the ordinary course of law. *State ex rel. Evans v. Blackwell*, 111 Ohio St.3d 1, 9, 2006-Ohio-4334; *State ex rel. United Auto. Aerospace & Agricultural Implement Workers of Am. v. Ohio Bureau of Workers' Comp.*, 108 Ohio St.3d 432, 441, 2006-Ohio-1327. A mandatory injunction, on the other hand, is an extraordinary remedy. *Evans*, 111 Ohio St.3d at 9, citing *State ex rel. Fenske v. McGovern* (1984), 11 Ohio St.3d 129, paragraph one of the syllabus. As such, it is not available where an alternative adequate remedy in the ordinary course of law exists. *Buzzard v. Pub. Emp. Retirement Sys. of Ohio* (May 9, 2000), 139 Ohio App.3d 632, 638.

{¶ 12} In the present case, the amended complaint alleges that in June 2007 Antioch University's Board of Trustees declared a state of financial exigency and announced plans to suspend its operation of Antioch College effective July 1, 2008. The appellants did not file the present action for permanent injunctive relief until March 10, 2008. Nor did their amended complaint include a request for preliminary injunctive relief. If they had acted more expeditiously,[3] and if their substantive arguments were proven to be meritorious, they might have obtained a prohibitory injunction stopping Antioch University from closing Antioch College and terminating their employment *before* operations were suspended. The availability of such a remedy in the ordinary

[3]We note that the appellants filed an earlier lawsuit against Antioch University but voluntarily dismissed it in November 2007.

course of law seemingly would preclude the appellants' resort to an extraordinary remedy such as a mandatory injunction seeking to undo that which had been done. In any event, neither party has briefed this specific issue, which is not without some difficulty and which requires some speculation on our part. As a result, we will proceed on the basis that the appellants' amended complaint is not moot and will address the merits of their arguments. Because the trial court dismissed the amended complaint pursuant to Civ.R. 12(B)(1) and Civ.R. 12(B)(6), we turn first to the standards governing dismissal under those rules.

{¶ 13} "Appellate review of a trial court's decision to dismiss a case pursuant to Civ.R. 12(B)(1) and (B)(6) is de novo." *Crestmont Cleveland Partnership v. Ohio Dept. of Health* (2000), 139 Ohio App.3d 928, 936 (citations omitted). De novo review means "that we apply the same standards as the trial court." *GNFH, Inc. v. W. Am. Ins. Co.,* 172 Ohio App.3d 127, 133, 2007-Ohio-2722, at ¶16. "To dismiss a complaint under Civ. R. 12(B)(1), we must determine whether a plaintiff has alleged any cause of action that the court has authority to decide. * * * Dismissal of a claim pursuant to Civ. R. 12(B)(6) is appropriate only where it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. * * * " *Crestmont,* 139 Ohio App.3d at 936 (citations omitted).

{¶ 14} As a means of analysis, we turn first to the appellants' second assignment of error. There they claim the trial court erred in finding that they were seeking specific performance of a personal-service contract. In other words, the appellants challenge the trial court's determination, based on its reading of the amended complaint, that they were trying to compel Antioch University to reemploy

them. The trial court held that they were not entitled to specific performance of a contract for personal services.

{¶ 15} On appeal, the appellants do not dispute that the Faculty Personnel Policies and Procedures manual constituted their contract with Antioch University. Indeed, their amended complaint expressly makes such an allegation. The appellants also concede that "Ohio courts do not typically grant specific performance of the provisions of a contract for personal services." Their sole argument is that the amended complaint did not seek an order requiring Antioch University to reemploy them. Rather, the appellants contend they merely sought an order requiring Antioch University "to specifically perform its contractual obligation to seek alternative means to alleviate the College's financial problems, rather than resorting to the most drastic means of closing the College[.]" The appellants posit that any less drastic means could include their loss of employment. Therefore, they insist that the amended complaint did not seek specific performance of a contract for personal services.

{¶ 16} Upon review, we find the appellants' argument to be without merit. The relevant language in the Faculty Personnel Policies and Procedures manual is found in a section captioned, "Termination or Reduction of Faculty." It provides that "[a]fter tenure, reappointment will be automatic unless there is: * * * 'necessary and justifiable budget curtailment[.]'" Paragraph 55 defines "necessary and justifiable budget curtailment" as "a state of financial exigency declared by the Board of Trustees * * * when it has been determined by exercising sound business judgment that conditions exist which can be alleviated only by significantly reducing faculty * * * salary expenditures and expenses at Antioch College for a prolonged and indefinite period of

time." In turn, paragraph 56 defines "financial exigency" as "a situation where an imminent financial crisis exists which threatens the survival of the College and cannot be alleviated by less drastic means."

{¶ 17} Read in context, paragraph 56's reference to "less drastic means" plainly refers to a solution less drastic than *terminating or reducing faculty* to decrease salary expenses pursuant to a declared financial exigency. But any money-saving approach less drastic than terminating or reducing tenured faculty necessarily would require retaining those employees. Therefore, insofar as the appellants seek an injunction requiring Antioch University to use "less drastic means" to alleviate the financial crisis at Antioch College, they necessarily seek specific performance of a contract for personal services. In short, they are attempting to compel Antioch University to rehire them and to solve its financial problems in some other way.

{¶ 18} To avoid this inescapable conclusion, the appellants assert that the Faculty Personnel Policies and Procedures manual requires Antioch University to alleviate its financial crisis by using less drastic means than suspending the operation of Antioch College. As noted above, they propose that any such means might require their termination. But this argument misinterprets the pertinent language. The manual requires Antioch University, when possible, to remedy a financial exigency by less drastic means than terminating the appellants' employment. Again, such a means by definition would require retaining the appellants. Otherwise, it would not be less drastic than terminating them. Thus, we find no error in the trial court's conclusion that the amended complaint sought specific performance of a personal-service contract.

{¶ 19} The appellants admit that, in the absent of a statute entitling a former

employee to reinstatement, Ohio courts do not decree specific performance of such contracts. See *Masetta v. National Bronze & Aluminum Foundry Co.* (1953), 159 Ohio St. 306, paragraph two of the syllabus ("A court of equity will not, by means of mandatory injunction, decree specific performance of a labor contract existing between an employer and its employees so as to require the employer to continue any such employee in its service or to rehire such employee i[f] discharged."); *Sokolowsky v. Antioch College* (June 11, 1975), Greene App. No. 863; *Felch v. Findlay College* (1963), 119 Ohio App. 357. Because the appellants essentially sought an injunction requiring Antioch University to rehire them—i.e., specific performance of a personal-service contract—the trial court did not err in dismissing their complaint for failure to state a claim upon which relief could be granted.[4] The second assignment of error is overruled.

{¶ 20} In their third assignment of error, the appellants contend the trial court erred in finding that they have an adequate remedy in the form of money damages. The appellants assert that money damages are insufficient to compensate them for the loss of their tenured positions as a result of Antioch University's alleged breach of the Faculty Personnel Policies and Procedures manual. In support, they argue that Antioch College "has been a leader in higher education in Ohio and its continued existence is

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[4]Our determination that the trial court properly dismissed the appellants' complaint under Civ.R. 12(B)(6) is not intended to foreclose the possibility of any plaintiff ever stating a claim for specific performance of a personal-service contract. Although such relief ordinarily is unavailable, an exception arises when an employee's services have some "unique and peculiar" value. See *Felch*, 119 Ohio App.3d at 359. Other exceptions may exist as well. For present purposes, we conclude only that the appellants in this case failed to state a claim for specific performance.

vitally important to not only its faculty, but also to the students, alumni, and the Yellow Springs community." They also insist, without elaboration, that their tenured positions had an intrinsic value beyond the salary they received.

{¶ 21} Upon review, we are unpersuaded by the appellants' argument. We addressed the same situation in *Sokolowsky*, holding that a tenured Antioch College faculty member could not obtain a permanent injunction seeking specific performance of his employment contract. We reached this conclusion for several reasons, including the fact that money damages constituted an adequate remedy if the faculty member proved a breach of contract. We see no reason to depart from this portion of *Sokolowsky*, which the appellants' third assignment of error fails even to address.

{¶ 22} Finally, we are unpersuaded by the appellants' reliance on *Sashti, Inc. v. Glunt Indus., Inc*. (N.D. Ohio 2001), 140 F.Supp.2d 813, and *Ohio Dominican College v. Krone* (1990), 54 Ohio App.3d 29, to support their argument. *Sashti* involved a contract for the sale of special goods that no other vendor could provide. The court held that the plaintiff stated a claim for specific performance because the goods were unique and because a statute provided for specific performance. *Sashti* is distinguishable because no similar statute provides for specific performance in the present case and because a tenured Antioch professor's loss of employment is compensable with money damages. *Sokolowsky*, supra; see, also, *Cooke v. Dodge* (N.Y. Sup. 1937), 164 Misc. 78, 81, 299 N.Y.S. 257, 261 (dismissing a tenured teacher's complaint for injunctive relief for failure to state a claim where, "even if it be assumed that the plaintiff has a valid agreement and a valid tenure of office and is subsequently and unlawfully discharged or prevented from performing it, he has an

adequate remedy at law for the recovery of his damages"), modified on other grounds and affirmed, as modified, *Cooke v. Dodge* (N.Y.A.D. 1938), 254 A.D. 808, 4 N.Y.S.2d 768.

{¶ 23} As for *Krone*, it involved a tenured college professor who was terminated from Ohio Dominican College. After finding that her termination was in breach of contract, and without any discussion of the right to specific performance of a personal-service contract, the Tenth District ordered the trial court "to institute appellant's reinstatement or, in the alternative, to determine the amount of damages." *Krone*, 54 Ohio App.3d at 35. In the end, the professor was awarded money damages to compensate her for the breach of contract. See *Ohio Dominican College v. Krone* (Jan. 23, 1992), Franklin App. No. 90AP-1164. We see no reason why the appellants cannot be compensated similarly if Antioch University terminated their employment in breach of contract.[5] The final paragraph of their amended complaint alleges the existence of irreparable harm and the absence of an adequate remedy at law. But the appellants have not identified, and we cannot envision, a set of facts supporting this legal conclusion. Accordingly, the third assignment of error is overruled.

{¶ 24} We turn next to the appellants' first assignment of error. There they contend the trial court erred in finding that the relief they sought required judicial intervention in the management and operation of Antioch College.

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[5]In reaching this conclusion, we note the absence of any allegation by the appellants that Antioch University, as a whole, is in a dire financial situation. The appellants' complaint alleges that Antioch University operates five educational facilities other than Antioch College in Ohio, New Hampshire, California, and Washington. The complaint alleges the declaration of a financial exigency only at Antioch College.

{¶ 25} This assignment of error concerns the trial court's determination that it lacked subject-matter jurisdiction to compel Antioch University's Board of Trustees to implement a less drastic means to alleviate the financial problems at Antioch College. The trial court reasoned that granting the requested injunctive relief would require it to substitute its judgement for that of the trustees regarding the best course of action for the school. The trial court also opined that it lacked the authority, hence the jurisdiction, to interfere in the school's on-going management and operation. In support, it cited the Faculty Personnel Policies and Procedures manual, case law addressing the business-judgment rule, and our prior ruling in *Sokolowsky*. The appellants argue, however, that they merely asked the trial court to determine whether Antioch University had breached its contractual obligation to use a less drastic means to solve the financial exigency. They insist that the trial court had subject-matter jurisdiction to do so.

{¶ 26} Upon review, we conclude that the trial court improperly dismissed the appellants' complaint under Civ.R. 12(B)(1). For present purposes, the parties have agreed that the Faculty Personnel Policies and Procedures manual constitutes a contract between them. As set forth above, that contract obligated Antioch University, when possible, to remedy a financial exigency by less drastic means than terminating the appellants' employment. The amended complaint alleged that Antioch University breached this contractual obligation by spurning less drastic means of resolving the financial crisis.

{¶ 27} In short, the amended complaint presented a routine breach-of-contract claim with a request for specific performance and injunctive relief. The trial court

undoubtedly had subject-matter jurisdiction over this type of action. *Vinson v. Diamond Triumph Auto Glass, Inc*. 149 Ohio App.3d 605, 607, 2002-Ohio-5596 ("When a litigant files a Civ.R. 12 motion to dismiss for lack of subject-matter jurisdiction, the trial court must determine whether the complaint contains allegations of a cause of action that the trial court has authority to decide."). A common pleas court has subject-matter jurisdiction to hear and decide complaints for injunctive relief. *Nasal v. Burge*, Miami App. No. 08-CA-40, 2009-Ohio-1775, ¶13. In addition, it is axiomatic that a common pleas court has the power to hear a breach-of-contract action between private parties. "Being courts of general jurisdiction, the common pleas courts have subject-matter jurisdiction in all civil and criminal actions on claims for relief that arise in the county in which the court sits, except for those actions in which subject-matter jurisdiction is conferred by statute on another court exclusively." *Acclaim Sys., Inc. v. Lohutko*, Montgomery App. No. 22569, 2009-Ohio-1405, ¶9. Therefore, the trial court had the authority, or subject-matter jurisdiction, to hear and decide the appellants' amended complaint.

{¶ 28} We are not persuaded otherwise by the trial court's citation to the Faculty Personnel Policies and Procedures manual, case law addressing the business-judgment rule, and our prior ruling in *Sokolowsky*. The manual authorized Antioch University's Board of Trustees to exercise "sound business judgment" to determine whether a reduction in faculty was necessary to alleviate a financial crisis. Nowhere, however, does the manual state that the trustees' judgment is unreviewable. Similarly, the business-judgment rule merely creates a rebuttable presumption that corporate directors act in good faith and in the best interest their company when making

business decisions. It does not preclude judicial review of those decisions. *Gries Sports Ent. v. Cleveland Football Co.* (1986), 26 Ohio St.3d 15, 20. Even if the Faculty Personnel Policies and Procedures manual and the business-judgment rule did insulate the Antioch University Board of Trustees' decision from attack, those sources would not deprive the trial court of subject-matter jurisdiction. At most, they would provide Antioch University with a defense to the breach-of-contract action and request for injunctive relief. This appears to have been the situation in *Sokolowsky*, supra. In that case, we affirmed the trial court's dismissal of a tenured faculty member's complaint for injunctive relief on several grounds. In so doing, we reasoned:

{¶ 29} "The record here shows that because Antioch was facing a financial crisis, its Trustees decided to decrease the expenses incident to the employment of faculty and to reorganize its academic program.

{¶ 30} "It is not within the province of the Courts to enter upon the business of trying to direct and supervise the operation of private colleges. Because it would be too burdensome to the Courts to supervise the operation of Antioch College in accordance with reduced revenues, because Appellant has an adequate remedy at law by way of damages and because there is no mutuality of obligation or remedy between the parties hereto, we see no error in the action of the Common Pleas Court in refusing to enjoin Antioch from discharging the Appellant."

{¶ 31} Our ruling in *Sokolowsky* does not specify whether the trial court's dismissal was pursuant to Civ.R. 12(B)(1), but it does not appear to have been.[6] We

[6]The dismissal order in *Sokolowsky* "did not result from a full trial." *Sokolowsky*, at *1. We explained the situation in that case as follows: "A trial was

noted the trial court's holding "that the remedy of specific performance is not available to enforce the provisions of a continuing employment contract between a private college and a tenured member of its faculty." Thus, the trial court in *Sokolowsky* does not appear to have questioned its jurisdiction. It simply concluded that the faculty member had not demonstrated entitlement to the requested relief.

{¶ 32} In any event, the trial court's concerns in the present case about the propriety of interfering in Antioch's management and operations did not deprive it of subject-matter jurisdiction. Those concerns constituted only a potential reason to deny the appellants' request for specific performance. "Cases have been numerous in which a decree [for specific performance] has been refused on the ground that the performance required is one of long duration and its enforcement would involve long continued supervision by the court." Corbin on Contracts (Interim Ed.), vol. 12, section 117, p. 318. But "[i]t is perfectly clear that difficulty of supervision does not deprive the court of jurisdiction[.]" Id. at 326. Rather, "it is a matter to be weighed with a wise discretion as the court exercises its judicial power." Id. Therefore, the trial court erred in dismissing the appellants' amended complaint pursuant to Civ.R. 12(B)(1) based on a perceived need for it to interfere in Antioch College's on-going management and

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begun, exhibits and testimony were admitted and certain facts were stipulated. It appears that Antioch refused to renew Appellant's annual contract because of bad financial conditions and certain program changes at the College, but no evidence was taken on these reasons. It appears that, in essence, the Trial Court dismissed the Complaint because the facts alleged and stipulated or shown did not authorize an injunction, a breach of contract for personal services being assumed." Id. at *1-*2.

operation if injunctive relief and specific performance were ordered.[7] The appellants' first assignment of error nevertheless is overruled because the error is harmless, as based on our analysis of the appellants' second and third assignments of error, we conclude that the trial court properly dismissed the amended complaint under Civ.R. 12(B)(6). Accordingly, the judgment of the Greene County Common Pleas Court is affirmed.

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GRADY, J., and FROELICH, J., concur.

(Hon. William H. Wolff, Jr., retired from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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[7]The trial court's concerns about judicial intervention in and supervision of Antioch College's continued operation if specific performance and injunctive relief were granted at least arguably present grounds for dismissing the amended complaint under Civ.R. 12(B)(6). Cf. *Sokolowsky*, supra. We note, however, that the trial court cited its concerns about overseeing the school's operation solely in the context of its Civ.R. 12(B)(1) ruling. In any event, having already determined that the trial court properly dismissed the amended complaint under Civ.R. 12(B)(6) for other reasons, we need not decide whether its concerns about judicial oversight and management of Antioch College likewise would justify Civ.R. 12(B)(6) dismissal.