

RENDERED: AUGUST 8, 2008; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-000284-MR

DR. JOSEPH MURRAY HAYSE

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE WILLIAM L. GRAHAM, JUDGE  
ACTION NO. 79-CI-00437

BOARD OF TRUSTEES OF THE  
UNIVERSITY OF KENTUCKY,  
DEAN JOHN B. STEPHENSON,  
CHARLES T. WETHINGTON, JR.  
DAVID DURANT, ROBERT HEMENWAY,  
JAMES ALBISETTI, DAVID SPAETH,  
JAMES FORCE, KEVIN KIERNAN, MINA  
MILLER AND ARTURO SANDOVAL

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON, LAMBERT AND THOMPSON, JUDGES.

CAPERTON, JUDGE: Appellant, Dr. Joseph Hayse files this appeal from the ruling of the Hon. Roger L. Crittenden of the Franklin Circuit Court. Specifically, Hayse appeals the circuit court's determination that neither the Board of Trustees of the University of Kentucky nor Dean John B. Stephenson was in contempt of the injunction issued by the court on December 15, 1992, as well as the court's dismissal of this matter on the ground of laches. Upon review, we affirm the order of the trial court.

At the outset, we note that this case has a long and complex procedural history. Hayse initiated this action in the Franklin Circuit Court in March of 1979, for the purpose of challenging the University's denial of his 1978 application for a promotion with tenure. Thereafter, an appeal was taken to the Kentucky Supreme Court, then remanded to the circuit court for consideration of prospective injunctive relief in the form of an *ab initio* review of Hayse's application for tenure. Ultimately, Hayse was denied tenure and moved the trial court to hold the University in contempt for violations of the injunction. The trial court found the University was not in contempt and Hayse appeals. Factually, we rely upon the history provided by the Kentucky Supreme Court in *Board of Trustees of the University of Kentucky v. Hayse*, 782 S.W.2d 609 (Ky. 1989):

This case has a long history. In 1971, Hayse was employed as an instructor in the University of Kentucky Honors Program. Hayse had been recruited by Dr. Robert O. Evans, Director of the Honors Program, while Hayse was a Ph.D. candidate in Comparative Literature at the University of Wisconsin. In June 1976, Hayse was promoted to Assistant Professor and remained in such

position through June 1978. During the academic year of 1976-77, through his Director, Dr. Evans, Hayse submitted an application for promotion to the level of Associate Professor, with tenure. Stephenson, as Dean of Undergraduate Studies, had supervisory authority over the Honors Program. Hayes claims his employment was terminated in violation of First Amendment rights to freedom of association and Fifth Amendment guarantees of due process because of a raging internal dispute between Stephenson and Evans involving differences over the Honors Program.

Hayse was recommended for tenure by his Department Chairman, Dr. Evans. This recommendation was forwarded to Stephenson, who rejected his application. Hayse was then given a one-year terminal appointment in which to seek another position. Hayse made a second application for tenure during the 1977-78 academic year and his application was again endorsed by Dr. Evans but was again denied by Dean Stephenson.

The University's Regulations did not authorize the Dean to reject appointment to the rank of Associate Professor. His authority was limited to reviewing the proposal, adding his endorsement or commentary, and forwarding everything through channels, ultimately to the Board of Trustees, which had the exclusive final authority to approve or disapprove the application. The University and Stephenson dispute this interpretation of the Regulations, claiming the procedure was altered by custom and application. But this dispute was resolved by the Court of Appeals in its Opinion on the first appeal of this case. This 1982 Court of Appeals Opinion states in pertinent part:

“The university further contends that as a matter of practice and custom all recommendations for promotion are passed on for higher review only in the event they are approved by the dean of the college. This is not the procedure established by the regulations which have been adopted and custom cannot be allowed to supersede the duly adopted procedures.”

Shortly after receiving this second rejection, Hayse met with Stephenson and pointed out to him that under University regulations Stephenson did not have the sole power to reject his application. In response to Hayse's objection, Stephenson appointed a three-person committee to assist him in reconsidering Hayse's application. This committee also recommended against tenure. Hayse again protested, indicating Stephenson was still not following University regulations. Subsequently, and in response to Hayse's continuing objections, Stephenson forwarded Hayse's file to two different committees, a Vice-President, and ultimately, President Otis Singletary, all of whom sustained the denial of tenure. The application and supporting documents were never forwarded to the Board of Trustees to consider Hayse's application as the Regulations prescribed.

On May 5, 1978, Hayse was notified of his failure to receive tenure with the explanation that he did not meet the research and publication requirements. Hayse disputed this and contended that his dismissal resulted from the ongoing dispute between Dr. Evans, his direct supervisor, and Stephenson, the Dean of Undergraduate Studies. He also alleged that the University failed to follow its own regulations governing tenure.

On March 27, 1978, Hayse filed an action in Franklin Circuit Court against the Board of Trustees of the University of Kentucky and Dean Stephenson alleging that he was wrongfully denied tenure. He demanded damages and reinstatement at the rank of Associate Professor. In May 1981, Hayse amended his Complaint by adding allegations of constitutional rights violations of the First, Fifth and Fourteenth Amendments to the United States Constitution and Section 2 of the Kentucky Constitution. The Board of Trustees and Stephenson denied the allegations, pled sovereign immunity, and argued both that Hayse's constitutional rights were not violated and that Stephenson acted appropriately in denying tenure.

On May 27, 1981, the Franklin Circuit Court granted Summary Judgment in favor of the Board and

Stephenson. The first appeal, *supra*, followed. The Court of Appeals reversed, holding that the University had failed to follow its own regulations, and, citing *Mount Healthy City Board of Education v. Doyle*, 429 U.S. 274 (1977), remanded the case to the trial court for the purpose of giving Hayse the opportunity to prove “that constitutionally protected conduct was a substantial or motivating factor in the rejection of his promotion *unless the University can then convince* the trier of fact that *Hayse's promotion would have been denied anyway*, even if there had been no consideration of impermissible facts.” [Emphasis added.]

Subsequent to this remand by the Court of Appeals, Hayse filed a second amended complaint adding a claim under 42 U.S.C. §1983 based on the *same* constitutional rights violations he had previously alleged in the Amended Complaint filed in 1981 before the first appeal. This theory of liability was based on the same facts held to state a cause of action for constitutional violations as per the *Mount Healthy City Board of Education* case, *supra*, on the original appeal.

The case then proceeded to trial on January 29, 1986, with the jury returning a verdict in favor of Hayse awarding him \$61,760 in compensatory damages for loss of earnings, damage to professional reputation, and damages for embarrassment, humiliation and emotional distress. These are the elements of damages in the instructions, and they have not been challenged on this appeal. The trial court then ordered Hayse reinstated at the rank of Associate Professor with tenure.

Following the trial, the Board of Trustees and Stephenson filed a Motion for Judgment Notwithstanding the Verdict, which the trial court sustained, holding that the evidence at trial was insufficient to support the jury's verdict and that there was no evidence upon which reasonable minds could conclude that impermissible considerations were a motivating factor in the denial of tenure to Hayse. The problem is that this was substantially the *same* evidence which Hayse had

represented that he would produce when he prevailed on his first appeal.

The Court of Appeals rendered its Opinion on this second appeal on December 11, 1987, as modified April 1, 1988. It held, in pertinent part, that the trial court erred in granting Judgment notwithstanding the Verdict. Further, it held the amended complaint was not, as claimed, in violation of the statute of limitations. But then it reached the same result as the trial court, denying compensation, by deciding the Board of Trustees and Stephenson were protected by sovereign immunity from monetary damages. Finally, the Court of Appeals reversed the trial court's decision that Hayse was not entitled to injunctive relief mandating reinstatement to Associate Professor with tenure, holding that sovereign immunity does not apply to prospective injunctive relief against state officials.

Thus the Court of Appeals agreed with Hayse that the trial court erred in deciding the evidence was insufficient to prove the facts alleged as a cause of action on the first appeal, but nevertheless, on grounds of sovereign immunity, sustained the result denying monetary damages, and then ordered that Hayse be reinstated as an Associate Professor with tenure...

After setting forth the facts of the case as outlined herein above, the Supreme Court ultimately upheld the damages verdict. However, with respect to Hayse's claim for prospective injunctive relief, the Supreme Court held that Hayse was not entitled to automatic reinstatement, but was instead entitled to an *ab initio* review of his application for a promotion with tenure by the appropriate individuals at the University.

Thereafter, in compliance with the Supreme Court opinion, the trial court entered judgment and issued an injunction on December 15, 1992. This

injunction specified the terms, criteria, and procedure for the *ab initio* review of his application for promotion with tenure. Pursuant to the mandate of the injunction, and significantly for purposes of the issues now pending before us, a process of reconstructing Hayse's dossier began. With respect to the dossier, the injunction mandates that Hayse's "complete dossier" be removed from the court record and furnished to the University to be used as the official file and dossier for the *ab initio* consideration of Hayse's application.

Our review of the injunction indicates that the trial court was apparently under the belief that Hayse's "complete" dossier was already a part of the record. The injunction states, "It further appearing that Plaintiff's complete dossier in support of his application for promotion to Associate Professor, with tenure, has been part of the record of this action since the completion of the trial in February, 1986 ...." However, as has now been made clear, any such assumption was incorrect.

In reviewing this matter, we find that the record contains numerous correspondences between Hayse's counsel, Hon. William Jacobs, and former University General Counsel, Hon. John C. Darsie, now deceased, with respect to attempts to compile the dossier necessary for review. These letters, which are part of the court record, have not been challenged by either Hayse or his counsel.

A review of these letters reveals that on January 19, 1993, Darsie traveled to the circuit clerk's office for the purpose of obtaining Hayse's dossier from the court record. At that point, it became evident that the court record was

incomplete. This led to an ongoing correspondence between Darsie and Jacobs with respect to creating a compilation of the documents necessary to be included in the dossier. The correspondence between counsel indicates that this effort continued over the course of the next several months.

In reviewing these letters, we note repeated requests from Darsie to Jacobs to verify the completeness of the dossier prior to such time as it was removed from the court record. Indeed, a time was scheduled for Hayse to review the dossier for the purpose of verifying its completeness. That review was conducted, and various supplementations were made pursuant to Jacobs' request.

On July 27, 1993, Darsie advised Jacobs that the Board of Trustees would act on Hayse's application at its August 17, 1993, regular meeting. Jacobs was invited to address any questions about the *ab initio* review prior to the Board's meeting on August 17. We cannot find anything in the record to suggest that any complaints were made by Jacobs at that time. Hayse's dossier was reviewed and the Board of Trustees denied his application.

Thereafter, on October 5, 1993, the University filed its "Compliance with Injunction". Hayse took issue with the Compliance by filing a Motion for a Show Cause Order in January of 1999.<sup>1</sup> In the interim on August 15, 1994, approximately one year after the Notice of Compliance was filed, Hayse filed an action in the U.S. District Court for the Eastern District of Kentucky claiming constitutional defects in the *ab initio* review of his application for promotion and

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<sup>1</sup> We note that Hayse filed his Motion for Show Cause more than five years after the University filed its Compliance with Injunction.

tenure. Based on the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971), the U.S. District Court dismissed that action. On April 7, 1997, the U.S. Court of Appeals affirmed, in *Hayse v. Wethington*, 110 F.3d 18 (6<sup>th</sup> Cir. 1997).

Following the affirmation by the U.S. Court of Appeals, Hayse filed a May 5, 1997 motion for leave to file a fourth amended complaint before the state court asserting the same claims<sup>2</sup> that were dismissed in the federal action. While the state court sustained the motion to allow the amended complaint to be filed, the additional causes of actions set forth therein were subsequently dismissed on grounds of *res judicata*. Hayse then filed a KRCP 59.05 motion to vacate the order of dismissal. As a result, the trial court amended its prior order and clarified that the dismissal was only as to the claims in the fourth amended complaint.

However, in so doing, the court stated:

The within action shall continue to pend on the docket, and nothing shall be deemed to foreclose Plaintiff from pursuing such remedies as he may have, including, but not limited to, contempt of court.

Thereafter, on January 25, 1999, Hayse filed a motion with the trial court for a show cause order, setting forth various alleged violations of the injunction. The trial court reviewed and overruled the motion on the ground of laches, finding there was no reason for a five year delay in bringing same. The court felt that the delay unduly prejudiced the University, as many of the individuals involved had either left the University or died. Hayse appealed the

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<sup>2</sup> The complaint alleged constitutional defects in the ab initio review process concerning his application for promotion with tenure.

dismissal to our Court, and an unpublished decision was rendered by this Court in 2002.

In 2002, the Court of Appeals determined that Hayse's fourth amended complaint was not barred by the doctrine of *res judicata*, but was, however, precluded on other grounds not relevant to this appeal. More importantly for our purposes, our court disagreed with the trial court's overruling of Hayse's motion by finding that it was not barred by laches. This court reasoned that, although Hayse did not file his show cause motion until over five years after the University filed its statement of compliance, litigation was pending in the federal court concerning the allegations arising from the *ab initio* review. After the federal court abstained from hearing the case, Hayse filed his motion in state court within the following month.

Accordingly, this court then held that laches did not bar the motion, finding that the mere passage of time is insufficient to invoke that defense. As a result, we remanded back to the trial court, with instructions to issue an order directing the University to show cause as to why it should not be held in contempt for violating the injunction, and if such violation occurred, to provide Hayse with an adequate remedy.

As a result of that decision, this matter was remanded to the Franklin Circuit Court. Upon remand, Hayse filed a March 10, 2004 motion, requesting the trial court to schedule a status or pretrial conference to address the instructions handed down from the Court of Appeals. On March 17, 2004, in open court, the

trial court instructed the parties to outline the issues to be addressed on remand, and specifically instructed Hayse to set forth an exhaustive list of his allegations to support his charges of contempt.

The University, pursuant to the March 17, 2004, court instructions, reasserted all points it had previously made in its response to the show cause motion filed by Hayse in 1999. In so doing, the University argued that the trial court should not only consider the defenses and arguments raised in the 1999 response, but that the court should also readdress the defense of laches. In support of that argument, the University asserted that the 2002 Court of Appeals opinion merely found that the laches requirements were not met as of the time of that opinion, but did not hold that the University was precluded from further asserting and developing that defense in the future.

To that end, the University correctly notes that the Kentucky Supreme Court denied discretionary review of the Court of Appeals decision on April 17, 2003. Approximately one year later, Hayse requested a status conference before the trial court. In the interim, the University's former General Counsel, Paul VanBooven, who had been responsible for ensuring compliance with the injunction when the Board of Trustees met in 1993, passed away.

After the University filed its Response to Plaintiff's Motion for Show Cause Order and Date for Hearing, Hayse filed a May 3, 2004, Proposed Agenda for Status/Pre-trial Conference. Thereafter, on July 13, 2004, the trial court issued an Agreed Order for Mediation. No settlement was reached by the parties at the

October 25, 2004 mediation, and on October 31, 2005, Hayse filed his own Motion for Summary Judgment of Contempt as a Matter of Law. In that motion, Hayse asserted the same ten injunction violations that he now argues before this court. Hayse also requested loss of earnings by reason of having been denied due process, asserting that because the University was in contempt, he should be allowed to try to the jury the question of the amount of his compensatory damages, including lost earnings and benefits.

Shortly thereafter, on January 4, 2006, the University obtained the affidavit of Dr. David Durant, who was responsible for conducting the first-level of *ab initio* review as mandated by the trial court's December 15, 1992, injunction. In that affidavit, Durant stated that his review consisted of a list of items from Hayse's tenure dossier labeled "materials consulted". Durant indicated that he was aware that Hayse is now asserting that certain items were missing from the dossier. However, Durant could not, due to the passage of twelve years time, recall whether or not these items were initially included, nor could he recall whether his list of "materials included" was meant to be a complete record of all items contained in Hayse's 1993 tenure dossier.

Durant further stated that "[r]egardless of whether my June 2, 1993, recommendations list of materials consulted was meant to be a complete record, I recall that Joseph Hayse's 1993 tenure dossier contained the information necessary to evaluate the level of scholarship activity required of him for promotion and tenure ...." Therefore, Durant stated that the items that Hayse contends were not

included in his 1993 tenure dossier ultimately would not have affected his recommendation regarding Hayse's application for promotion and tenure, because they would not mitigate the deficiencies in his scholarly research.

On January 9, 2006, the University's cross-motion for summary judgment was filed. Oral arguments were held before the trial court on June 19, 2006. On July 11, 2006, the trial court issued an Order in response to the parties' respective motions for summary judgment, and ultimately granted summary judgment to the University. In so doing, the court found against Hayse, apparently because of laches, noting that Dr. Durant's affidavit provided sufficient evidence that the University had been prejudiced by Hayse's delay in bringing this action. The Court further stated that most of the individuals involved in the tenure review process ordered by the Court were no longer at the University and therefore unable to testify to the actions taken by the University in its attempts to comply with the injunction.

However, and significantly for our purposes, while laches was certainly a basis for the court's dismissal, it was not the only one. The court further stated that upon review of the respective motions for summary judgment and exhibits attached thereto, it was apparent that the University acted in good faith in attempting to comply with the injunction. Indeed, the Court found that the letters from University counsel to Hayse's counsel evidenced a desire to provide Hayse with "every advantage during the tenure review process."

The trial court viewed Hayse's chief complaint as the University not providing everyone in the tenure review with copies of the annual Faculty Performance Reviews and Distribution of Effort Agreements for the years Hayse was employed. Nevertheless, the court stated that "the record is replete with conclusions drawn by those reviewing his file that he was an excellent teacher and had excellent reviews by his students." Thus, the court concluded that the materials provided to the University were "more than adequate" for a review of Hayse's work, and that there was "substantial evidence" to indicate that the University complied with the mandates of the injunction, even without the Distribution of Effort Agreements.

Following the court's order of summary judgment, Hayse filed a motion to alter, amend, or vacate pursuant to CR 59.05. Specifically, Hayse requested that the Hon. Roger L. Crittenden, now retired, be appointed to rule on the motion, as he was the same judge who issued the order of dismissal which Hayse was seeking to vacate and also the judge who drafted the injunction which Hayse claims was violated in his motion for contempt.

The parties were heard by the court on January 4, 2007. Hayse's motion was ultimately denied on January 8, 2007 via an Order which expressly found that the record provided to the court indicated substantial compliance on the part of the University, and finding that the University had "complied with the intent of the injunction". Further, the Order stated that Hayse had been "afforded due process during the review".

On February 1, 2007, Hayse filed his notice of appeal, concerning both the July 11, 2006, order denying Hayse's motion for summary judgment and granting the cross-motion for summary judgment filed by the University, as well as the denial of his CR 59.05 Motion. It is from that appeal that we now review this matter, in light of the very convoluted and complex history as outlined above.

Hayse raises two primary issues before this court, which we will address in their respective order. First, we address Hayse's assertion that there is still a pending contract claim to be resolved by the trial court. Following careful examination of the record, we disagree.

As long ago as 1989, contempt has been treated as the sole issue in this matter. Indeed, in 1999, upon issuing its judgment, the trial court treated contempt as the only remaining issue. As we noted clearly in our 2002 opinion, the initial Supreme Court opinion in this matter resolved any claims arising as to Hayse's initial denial of tenure, and any relief to which he was entitled in that regard was granted. The Supreme Court's decision in that regard is the law of the case in this matter.

The law of the case doctrine prohibits the relitigation of an issue decided in a previous appeal. As our Supreme Court noted in *Ellison v. Commonwealth*, 994 S.W.2d 939, 940 (Ky. 1999), "[a] final decision of this Court, whether right or wrong, is the law of the case and is conclusive of the questions therein resolved. It is binding upon the parties, the trial court, and the Court of Appeals. It may not be reconsidered by prosecuting an appeal from a judgment

entered in conformity therewith.” As the Supreme Court clearly resolved this issue at the time that it issued its opinion, we find their opinion to be the law of the case in this matter, and decline to address the issue further in the context of this appeal.

We therefore now address whether or not the trial court abused its discretion in concluding that the University was not in contempt of its injunction and, by extension, whether or not the trial court’s dismissal of this action should be affirmed.

Hayse argues that our standard of review with respect to this issue should be *de novo*, pursuant to *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996), wherein we held that an appellate court has no obligation to defer to the trial court when factual findings are not at issue. The University, however, asserts that the correct standard of review should instead be under abuse of discretion, as set forth in *Smith v. City of Loyall*, 702 S.W.2d 838 (Ky. App. 1986). We agree with the University and affirm.

In the matter sub judice, both parties have filed motions for summary judgment, in which they concede that no material facts exist. Indeed, the question before the court is whether or not the University was in contempt of the court’s order. That is an issue that is uniquely the province of the court that drafted the injunction at issue.

As established in *Smith*, the trial court has inherent discretion in determining when to apply its contempt powers. *Crook v. Schumann*, 167 S.W.2d

836 (Ky. App. 1942). As we noted in *Smith*, the courts' discretionary power necessarily includes the power to refrain from imposing sanctions and fines in the face of compliance. Therefore, absent an abuse of discretion, we will not disturb the trial court's decision regarding contempt. The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Commonwealth v. English*, 993 S.W.2d 941 (Ky. 1999). We review with those standards in mind.

We note at the outset that Kentucky law is clear that an injunction must not be construed literally to the point of absurdity and that they must be honestly and fairly obeyed. *Wormald v. Macy*, 349 S.W.2d 199 (Ky. 1961), citing *Ginsberg v. Kentucky Utilities Co.*, 83 S.W.2d 497 (Ky. 1961). An injunction order is to be construed with reference to the nature of the proceeding and the purpose sought to be achieved as shown by the pleadings and the relief requested. In our review, it is important to consider the desired result the injunction was to achieve as well as the attending circumstances. *Macy* at 201.

In *Macy*, our Supreme Court stated that an injunction should be given the effect that it was intended to have. *Id.* at 201. Thus, in order to establish a violation of an injunction so as to justify a finding of contempt, a movant must establish two things: (1) That the alleged breach was a *substantial* violation of the injunction (emphasis added), and (2) The absence of a good faith effort to comply with the injunction's terms. *Cann v. Air Reduction Co.*, 338 S.W.2d 911, 912 (Ky. 1960).

Hayse cites *Thomas v. Lyons*, 586 S.W.2d 711 (Ky. 1979) for the proposition that nothing less than “full compliance” will satisfy a parties’ obligation when objective standards are set for compliance with the law. We do not find that case to be directly on point. That case, unlike the matter sub judice, dealt with an election statute drafted by the legislature, and noted that “substantial compliance” with the statute would amount to an unauthorized amendment of same. In the matter sub judice, the issue of the University’s compliance is being argued before the court that drafted the injunction at issue. Accordingly, we believe that court to be in the best position to render a judgment regarding same.

Hayse asserts that approximately six years have passed since we issued our opinion in 2002 and that the University has never shown why it should not be held in contempt of the injunction. We disagree. Clearly, pursuant to *Cann, supra*, it is Hayse’s burden to prove contempt, not the University’s burden to disprove it.

In the matter sub judice, we simply cannot find that Hayse has met that burden. We believe that the trial court that issued the injunction is in the best position to determine whether or not actions taken by the University amount to compliance. In this instance, the trial court clearly based its dismissal on at least four grounds, those being laches, either insubstantiality or irrelevance of the violations alleged by Hayse to the ultimate basis for denial of tenure, good faith attempts on the part of the University to comply with the injunction, and actual or substantial compliance with the injunction.

Hayse argues that the trial court failed to consider each of the ten alleged injunction violations individually. We believe it implicit in the trial court's order that those allegations of Hayse not addressed individually were insubstantial in light of the grounds on which the trial court based its' decision and orders. Upon review, we find none of the omissions alleged by Hayse related to the lack of scholarship that supported denial of his tenure in the *ab initio* review.

We find that the trial court did not abuse its discretion in finding that the University made both a good faith attempt to comply with the injunction and had substantially complied therewith. We need not reach the laches argument, nor whether laches specifically applies to the matter sub judice. While laches was one of several grounds for the trial court's dismissal, it clearly was not the only ground. More importantly, the trial court found that the University not only substantially complied with the terms of the injunction but had made a good faith attempt at doing so; either finding was sufficient under *Cann* to defeat a finding of contempt. Accordingly, any reliance on laches, even if in error, was harmless.

Lastly, in affirming the judgment of the trial court that the contract claim is *res judicata* and the University is not in contempt, we note that Hayse's motion under 59.05 must fail and any analysis thereunder would be superfluous.

For the foregoing reasons, we affirm the order entered by the trial court. Specifically, we believe that no pending contract claim exists, and that the trial court is in the best position to determine compliance, or lack thereof, with its

injunction. Therefore, the Order of the Hon. Roger L. Crittenden, Judge, Franklin Circuit Court, be and hereby is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEES:

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