ATTORNEYS FOR APPELLANT

Kathleen Ann DeLaney
Christopher S. Stake
Indianapolis, Indiana

ATTORNEYS FOR AMICI CURIAE

Theodore E. Rokita
Attorney General of Indiana

Thomas M. Fisher
Kian Hudson
Julia C. Payne
Office of the Attorney General
Indianapolis, Indiana

Stephen Michael Judge
Paul Edgar Harold
Constitutional Law Scholars
South Bend, Indiana

Jeffrey Marshall Barron
Kara M. Kapke
Jeanine Kerridge
Gregory R. Nevins
Lambda Legal Defense and
Education Fund, Inc., Southern
Regional Office
Decatur, Georgia

ATTORNEYS FOR APPELLEE

John S. (Jay) Mercer
Greenfield, Indiana

Daniel H. Blomberg (pro hac vice)
Joseph C. Davis (pro hac vice)
Luke W. Goodrich (pro hac vice)
Christopher Pagliarella (pro hac vice)
Washington, DC

IN THE
COURT OF APPEALS OF INDIANA

Joshua Payne-Elliott,
Appellant-Defendant,

v.

Roman Catholic Archdiocese of Indianapolis, Inc.,
Appellee-Plaintiff.

November 23, 2021

Court of Appeals Case No. 21A-CP-936

Appeal from the Marion Superior Court

The Honorable Lance D. Hamner, Special Judge

Trial Court Cause No. 49D01-1907-PL-27728

Tavitas, Judge.

Case Summary

[1] Joshua Payne-Elliott appeals from the trial court's dismissal, with prejudice, of his complaint for damages against the Roman Catholic Archdiocese of Indianapolis, Inc. (the "Archdiocese"). The trial court dismissed Payne-Elliott's complaint, stemming from an employment dispute, for lack of subject matter jurisdiction, pursuant to Indiana Trial Rule 12(B)(1), and for failure to state a claim upon which relief can be granted, pursuant to Indiana Trial Rule 12(B)(6).

[2] The State of Indiana and constitutional scholars have tendered briefs, as amici curiae, in support of the Archdiocese; and Lambda Legal Defense & Education Fund, Inc., has proffered an amicus brief in support of Payne-Elliott.[1]

[3] Without reaching the merits of Payne-Elliott's claims and the Archdiocese's various affirmative defenses, we find that the trial court committed reversible error in: (1) summarily dismissing Payne-Elliott's complaint for lack of subject matter jurisdiction pursuant to Indiana Trial Rule 12(B)(1); (2) failing to treat the Archdiocese's motion to dismiss for failure to state a claim upon which relief can be granted, pursuant to Trial Rule 12(B)(6), as a motion for summary judgment; and (3) dismissing Payne-Elliott's complaint with prejudice. For these reasons, we reverse and remand for further proceedings.

Issues

[4] Payne-Elliott's appeal implicates the following dispositive issues:

I. Whether the trial court erred in dismissing the complaint for lack of subject matter jurisdiction.

II. Whether the trial court erred in dismissing the complaint for failure to state a claim upon which relief may be granted.

We, *sua sponte*, address the following issue:

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[1] We thank the parties and amici curiae for their helpful briefs.

III. Whether the trial court erred in dismissing the case with prejudice.

Facts

[5] Cathedral High School ("Cathedral"), located in Indianapolis, is a Catholic school. At the time of Cathedral's founding in 1918, it was owned by the Archdiocese; however, the Brothers of Holy Cross now maintain ownership. At all relevant times, the Archdiocese continued to recognize Cathedral as an Archdiocese-affiliated Catholic church.

[6] In 2006, Cathedral extended a teaching contract to Payne-Elliott, a language and social studies teacher. Cathedral and Payne-Elliott were the only parties to the teaching contract. Over the ensuing decade, Cathedral renewed Payne-Elliott's teaching contract annually. In 2017, Payne-Elliott married his same-sex partner, who is a teacher at Brebeuf Jesuit Preparatory School ("Brebeuf"). Cathedral last renewed Payne-Elliott's teaching contract on May 21, 2019, for the 2019-2020 academic year.

[7] On May 24, 2019, Cathedral President Robert Bridges informed Payne-Elliott that the Archbishop of the Archdiocese would soon require Cathedral to "adopt and enforce morals clause language used in teacher contracts at Archdiocesan schools" in order for Cathedral to retain its status as a recognized Catholic institution. Payne-Elliott's App. Vol. II p. 53. The Archdiocese issued the

same directive to both Cathedral and Brebeuf.[2] The morals clause language provides as follows:

> The Archdiocese recognizes that many teachers who contribute positively to the mission of the Church in forming young people through our Catholic schools are not practicing Catholics. For faculty members of other faith traditions, there remains an expectation that, regardless of their personal religious affiliations and beliefs, they will become knowledgeable of Catholic Church teachings, will be credible witnesses of the Catholic faith and will be models of Christian values. Catholic schools are ministries of the Catholic Church, and faculty members are vital to sharing the mission of the Church. Teachers are expected to be role models and are expressly charged with leading their students toward Christian maturity and with teaching the word of God. As role models for students, the personal conduct of every teacher and staff member must convey and be supportive of the teachings of the Catholic Church.
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> * * * * * *
>
> Determining whether a faculty member is conducting him/herself in accordance with the teachings of the Catholic Church is an internal Church/School matter and is at the discretion of the pastor, administrator, and/or Archbishop.

Id. at 73-74.

[2] "[T]he Archdiocese gave Cathedral High School the same directive on the same timetable as the Brebeuf Jesuit directive, but Cathedral obtained an extension of the deadline due to Payne-Elliott chaperoning a school sponsored trip which ended on June 21, 2019." Payne-Elliott's App. Vol. II pp. 30-31.

[8] In a letter dated June 20, 2019, Brebeuf declined to terminate Payne-Elliott's spouse's employment. On June 21, 2019, the Archbishop decreed that Brebeuf could no longer designate itself as "Catholic"; the Archdiocese no longer recognized Brebeuf as a Catholic institution; and Brebeuf would be omitted from The Official Catholic Directory. *Id*. at 30.

[9] On June 23, 2019, Cathedral terminated Payne-Elliott's teaching contract. That same day, Cathedral issued a letter ("Letter") to parents, teachers, and staff that outlined the situation. On July 10, 2019, Payne-Elliott filed a complaint alleging that the Archdiocese intentionally interfered with his contractual relationship and with his employment relationship with Cathedral.

[10] In his complaint, Payne-Elliott alleged as follows: (1) he is a homosexual male, who has been in a same-sex marriage since 2017; (2) he was under a teaching contract at Cathedral in the 2019-2020 calendar year; (3) the Archdiocese issued a directive, wherein Cathedral was required to adopt and enforce morals clause language used in teacher contracts at Archdiocese-recognized schools, was required to discontinue its employment of any teacher in a public, same-sex marriage, and could forfeit being formally recognized as a Catholic school in the Archdiocese by failing to comply with the directive; and (4) Cathedral subsequently terminated Payne-Elliott's employment.

[11] The Archdiocese timely filed its answer on May 11, 2020. The parties attached identical exhibits to their respective pleadings, namely: (1) Payne-Elliott's teaching contract for the 2019-2020 academic year; (2) the Archdiocese's

June 21, 2019 decree to Brebeuf; and (3) Cathedral's Letter outlining its decision to terminate Payne-Elliott's employment.

[12] The Honorable Stephen R. Heimann was appointed to preside as special judge on August 15, 2019. On August 21, 2019, the Archdiocese filed a motion to dismiss the case for lack of subject matter jurisdiction, pursuant to Indiana Trial Rule 12(B)(1); and for failure to state a claim upon which relief may be granted, pursuant to Indiana Trial Rule 12(B)(6). Specifically, the Archdiocese: (1) argued that Payne-Elliott "failed [in his complaint] to allege an essential element of his claims for intentional interference with a contractual or employment relationship—namely, that the Archdiocese's actions were 'without justification'"; and (2) identified three First Amendment grounds that allegedly barred Payne-Elliott's claims— freedom of association, the doctrine of church autonomy, and the ministerial exception.[3] *Id*. at 49.

[13] The Archdiocese attached the following materials as exhibits to its motion to dismiss: (1) Cathedral's 2018-2019 employee handbook containing a "morals clause"; (2) the Archdiocese's job description for full-time and part-time teachers; and (3) the teaching contract form used by Catholic schools affiliated

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[3] The freedom of association "is a constitutional right which is included in the bundle of First Amendment rights made applicable to the States by the due process clause of the Fourteenth Amendment." *Lindquist v. Lindquist*, 999 N.E.2d 907, 913 (Ind. Ct. App. 2013). Generally, the church autonomy doctrine deals with a church's First Amendment right to autonomy in making decisions regarding its own internal affairs including matters of faith, doctrine, and internal governance. *Indiana Area Found. of United Methodist Church, Inc. v. Snyder*, 953 N.E.2d 1174, 1178 (Ind. Ct. App. 2011). "The ministerial exception cases rely on a long line of Supreme Court cases affirming the church autonomy doctrine, which protects the fundamental right of churches to decide for themselves matters of church government, faith, and doctrine." *Id*. at 1180.

with the Archdiocese. The trial court did not exclude any of the Archdiocese's submitted exhibits. Payne-Elliott filed his response to the motion to dismiss on September 16, 2019; and the Archdiocese filed its reply on September 25, 2019.

[14] On May 1, 2020, in an order containing extensive findings, the trial court denied the motion to dismiss without a hearing and stated, in part, the following: "Without further discovery and with all reasonable inferences in Payne-Elliott's favor, it is possible that Payne-Elliott could prove that at the time of his termination, the Archdiocese was not justified in taking the action that it had taken and could have reversed those actions." Payne-Elliott's App. Vol. II p. 168. Notably, the trial court explicitly refused to treat the motion to dismiss as a motion for summary judgment by declining to consider any affidavits or other evidentiary materials that were submitted to the trial court along with the motion to dismiss.

[15] On May 11, 2020, the Archdiocese filed a motion for reconsideration of the order denying the Archdiocese's motion to dismiss, a brief in support, and an affidavit from "canon-law expert" Father Joseph L. Newton. *Id*. at 192. The Archdiocese tendered Father Newton's affidavit to "clarify that the Archbishop [wa]s the highest ecclesiastical authority" over the matters at issue. *Id*.; *id*. at 192, 208-213 (Father Newton's affidavit). The trial court did not issue a ruling on the motion for reconsideration, which was deemed denied five days later by operation of Indiana Trial Rule 53.4(B).

[16] The Archdiocese moved to certify the order denying the motion to dismiss for interlocutory appeal on May 29, 2020. Payne-Elliott filed his response in opposition on June 8, 2020; and the Archdiocese filed a reply on June 5, 2020. The trial court denied the motion for certification on June 29, 2020. In so doing, the court found:

> The primary underlying issue at this point is whether Payne-Elliott should be permitted to conduct discovery before this court enters a dispositive order determining that the case should be dismissed or determining that the case may proceed. The Archdiocese argues that it is clearly a violation of its Constitutional rights for the Court to inquire into its "internal" religious-based decisions. It has autonomy over itself. The Archdiocese is of the opinion that it can act in this area without any legal consequences, in large part because of the Autonomy Doctrine and because of the Ministerial Exception Doctrine. However, as has been noted by this Court, there are exceptions to these general doctrines. Furthermore, these exceptions have been growing in recent years. The facts from this case will be determinative as to whether this case fits under an exception to the general rules. Therefore, evidence needs to be garnered through discovery in order to determine those facts.

Payne-Elliott's App. Vol. III p. 14.

[17] On August 17, 2020, the Archdiocese filed a verified petition for writ of mandamus and writ of prohibition before our Indiana Supreme Court, wherein the Archdiocese requested: (1) dismissal of the case or Special Judge Heimann's recusal; and (2) an emergency writ staying discovery. Our Supreme Court granted the emergency writ staying discovery on August 21, 2020. On August 24, 2020, the trial court conducted a hearing on the Archdiocese's

motion for Special Judge Heimann's recusal. On September 25, 2020, Special Judge Heimann voluntarily recused himself and certified that circumstances warranted the Supreme Court's appointment of a successor special judge under Indiana Trial Rule 79(H)(3).

[18] On December 10, 2020, our Supreme Court denied the Archdiocese's petition for writ of mandamus and writ of prohibition and found, in part, as follows:

> Because [the Archdiocese] bore the burden of persuading a majority of this Court that a writ of mandamus and prohibition should issue and because it has neither done so nor persuaded a majority to hold a hearing, the petition for a writ of mandamus and prohibition is deemed DENIED. This deemed denial disposes of this original action but does not preclude [the Archdiocese] from filing another original action should future circumstances warrant.
>
> This disposition is final. No petitions for rehearing or motions to reconsider shall be filed in this original action.
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> Due to Judge Heimann's recusal and T.R. 79(H)(3) certification, the Court hereby appoints the Hon. Lance D. Hamner to serve as special judge . . . . This order vests in Judge Hamner jurisdiction over that case, including authority to consider new and pending issues and reconsider previous orders in the case.

See State ex rel. Roman Catholic Archdiocese of Indianapolis, Inc., v. Marion Super. Ct. et al., 160 N.E.3d 182, 182-83 (Ind. 2020) (citations and footnote omitted).

[19] The Archdiocese filed a motion for judgment on the pleadings on January 26, 2021. As exhibits to its motion for judgment on the pleadings, the Archdiocese

attached the following materials: (1) Cathedral's 2018-2019 employee handbook; (2) the Archdiocese's job "ministry description" for a teacher; and (3) the 2018-2019 "Teaching Ministry Contract" schools affiliated with the Archdiocese. On January 28, 2021, the Archdiocese moved for a stay of discovery pending the trial court's ruling on the motion for judgment on the pleadings; the trial court denied the motion for stay. Payne-Elliott filed his response in opposition to the motion for judgment on the pleadings on March 1, 2021. The trial court did not rule on the motion for judgment on the pleadings.

[20] Instead, on May 7, 2021, the trial court issued an order on the motion to dismiss, wherein it acknowledged our Supreme Court's grant of authority to reconsider previously-issued orders. The trial court found, in part, as follows:

> The Court having received and reviewed all pleadings and memorand[a] in this matter hereby finds that the claims presented by Plaintiff Joshua Payne-Elliott against the Archdiocese fail pursuant to Rule 12(B)(1) of the Indiana Rules of Trial Procedure, for lack of subject matter jurisdiction and Rule 12(B)(6) of the Indiana Rules of Trial Procedure for failure to state a claim upon which relief can be granted.

Payne-Elliott's App. Vol. II p. 27. On May 18, 2021, the trial court entered a judgment of dismissal with prejudice. Payne-Elliott now appeals.

Analysis

I. Dismissal

A. Indiana Trial Rule 12(B)(1)

[21] Payne-Elliott maintains that the trial court erred in dismissing his case for lack of subject matter jurisdiction, pursuant to Indiana Trial Rule 12(B)(1).[4] Where disputed facts underlie a Trial Rule 12(B)(1) motion, and the trial court ruled on a paper record without conducting an evidentiary hearing, we review the facts and the law de novo. *Brodnik v. Cottage Rents LLC*, 165 N.E.3d 126, 130 (Ind. Ct. App. 2021) (citing *GKN Co. v. Magness*, 744 N.E.2d 397, 401 (Ind. 2001)).

[22] "Subject matter jurisdiction is the constitutional or statutory power of a court to hear and determine cases of the general class to which any particular proceeding belongs." *State v. Reinhart*, 112 N.E.3d 705, 711-12 (Ind. 2018). "When a court lacks subject matter jurisdiction, any action it takes is void." *Stewart v. McCray*, 135 N.E.3d 1012, 1026 (Ind. Ct. App. 2019). "In determining whether a court has subject matter jurisdiction, the only relevant inquiry is whether the petitioner's claim falls within the general scope of the

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[4] Trial Rule 12(B) sets forth a listing of issues of law or fact that can be preliminarily determined by motion. *Griffith v. Jones*, 602 N.E.2d 107, 110 (Ind. 1992). Trial Rule 12(B)(1) provides, in pertinent part, as follows:

> [ ] Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required; except that at the option of the pleader, the following defenses may be made by motion:
>
> (1) Lack of jurisdiction over the subject matter. . . .

authority conferred upon such court by the constitution or by statute." *Reinhart*, 112 N.E.3d at 711-12. Subject matter jurisdiction cannot be waived and may be raised by the parties or the court at any time, including on appeal. *Indiana Dep't of Envtl. Mgmt. v. Raybestos Prod. Co.*, 897 N.E.2d 469, 474 (Ind. 2008), *opinion corrected on reh'g*, 903 N.E.2d 471 (Ind. 2009).

[23] > A motion to dismiss for lack of subject matter jurisdiction presents a threshold question concerning the court's power to act. When confronted with a motion to dismiss based on a lack of subject matter jurisdiction, the trial court must decide upon the complaint, motion and any affidavits or other evidence submitted whether it possesses authority to further adjudicate the action. Unlike ruling on a motion for summary judgment, the trial court may weigh evidence and resolve factual disputes when ruling on a motion for subject matter jurisdiction.

McEnroy v. St. Meinrad Sch. of Theology, 713 N.E.2d 334, 336 (Ind. Ct. App. 1999) (internal citations omitted), *trans. denied*, 726 N.E.2d 313 (Ind. 1999), *cert. denied*, 529 U.S. 1068 (2000).

[24] Payne-Elliott maintains that the trial court erred in dismissing his case for lack of subject matter jurisdiction because "[his] claims do not implicate internal church governance, require the courts to resolve an ecclesiastical controversy, or otherwise excessively entangle the courts with religion." Payne-Elliott's Br. p. 18. The Archdiocese counters that, in issuing the directive to Cathedral, it "act[ed] in accordance with ecclesiastical directive[,]" deriving from canon law, which courts cannot review or question. Archdiocese's Br. pp. 18, 24.

[25] The United States Supreme Court has long held that the First Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, requires civil courts to refrain from interfering in matters of church discipline, faith, practice, and religious law. Thus, civil courts are precluded from resolving disputes involving churches if "resolution of the disputes cannot be made without extensive inquiry . . . into religious law and polity . . . ." *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709, 96 S. Ct. 2372, 2380 [ ] (1976). The basic law in Indiana is that courts will not interfere with the internal affairs of a private organization unless a personal liberty or property right is jeopardized. "Thus, the articles of incorporation and by-laws of a not-for-profit corporation are generally considered to be a contract between the corporation and its members and among the members themselves."

We have held that "personnel decisions are protected from civil court interference where review by the civil courts would require the courts to interpret and apply religious doctrine or ecclesiastical law. Ecclesiastical matters include "a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Watson*, 80 U.S. at 733[ ]; *see also Serbian Eastern Orthodox Diocese*, 426 U.S. at 713, 96 S. Ct. at 2382[ ] (specifying ecclesiastical matters are "matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law").

The United States Supreme Court, however, has instructed that *the First Amendment does not prohibit courts from opening their doors to religious organizations*. Instead, a court can apply neutral principles of law to churches without violating the First Amendment. The First Amendment only prohibits the court from determining underlying questions of religious doctrine and practice. However, the application of neutral principles of law to a church defendant has occurred only in cases involving church

> property or in cases where a church defendant's actions could not have been religiously motivated.

McCray, 135 N.E.3d at 1026 (emphasis added) (internal citations omitted).

[26] *Brazauskas v. Fort Wayne-South Bend Diocese, Inc.*, 796 N.E.2d 286, 290 (Ind. 2003), involved the diocese's termination of a pastoral employee, who then sued the diocese on various grounds. Brazauskas subsequently applied for employment at the University of Notre Dame, which rejected her application because of her pending litigation against the diocese. Brazauskas added claims for tortious interference with a business relationship and blacklisting ("the latter claims") to her lawsuit against the diocese. The trial court denied the diocese's ensuing motion for summary judgment as to all of Brazauskas' claims.

[27] On appeal from the denial of summary judgment, this Court "noted sua sponte that the Diocese defendants should have challenged subject matter jurisdiction via motions to dismiss for lack of subject matter jurisdiction . . . rather than via summary judgment motions." *Id*. The trial court subsequently dismissed the latter claims for lack of subject matter jurisdiction, and this Court affirmed. On transfer, our Supreme Court rejected the diocese's argument that the trial court lacked subject matter jurisdiction over the latter claims.

> [T]he trial court erred in concluding that it lacked jurisdiction over this matter. *A court with general authority to hear matters like employment disputes is not ousted of subject matter or personal jurisdiction because the defendant pleads a religious defense. Rather, pleading an affirmative defense like the Free Exercise Clause may under certain facts entitle a party to summary judgment*.

Id. (emphasis added). Our Supreme Court thus reversed the dismissal of the case for lack of subject matter jurisdiction. Additionally, because the trial court did not exclude matters submitted outside the pleadings, the Supreme Court reviewed the case under the summary judgment standard. Finding that no genuine issue of material fact existed and that the diocese was entitled to judgment as a matter of law, the Supreme Court remanded for entry of summary judgment in favor of the diocese.

[28] In its brief in support of Payne-Elliott, amicus curiae Lambda Legal Defense & Education Fund argues as follows:

> 'The appropriate procedure for seeking dismissal of a suit by asserting a Free Exercise Clause defense' is for the court to determine if it is a case where 'the Free Exercise Clause *may under certain facts* entitle a party to summary judgment." *West v. Wadlington* (emphasis in original, quoting *Brazauskas v. Fort Wayne-South Bend Diocese, Inc.*, 796 N.E.2d 286, 290 (Ind. 2003)). These cases reflect the longstanding approach of rejecting religious employers' premature cries of complete immunity under the First Amendment.

Lambda Legal's Br. p. 14; *see id*. at 15 ("Indeed, without discovery and the ability to develop the factual record, it cannot be known whether the ministerial exception applies to Payne-Elliott's work as a teacher of world language and social studies to high school students"; "[a]lthough it is possible that the [ecclesiastical abstention] doctrine eventually may prevent recovery by the plaintiff, that is by no means apparent at this juncture and does not support dismissal of Payne-Elliott's complaint. Jurisdiction should continue unless it is

apparent that this dispute cannot be resolved under 'neutral principles of law.'").

[29] We agree that the instant matter differs from *Brazauskas*, in which the issues were already ripe for resolution on summary judgment. As this Court has previously opined:

> Generally, the church autonomy doctrine deals with a church's First Amendment right to autonomy in making decisions regarding its own internal affairs including matters of faith, doctrine, and internal governance. *Brazauskas II*,[5] 796 N.E.2d at 293 (citing *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 655 (10th Cir. 2002)). Acknowledging this doctrine's limitations, however, the *Brazauskas II* court observed, "'The First Amendment does not immunize every legal claim against a religious institution and its members. *The analysis in each case is fact-sensitive and claim specific, requiring an assessment of every issue raised in terms of doctrinal and administrative intrusion and entanglement.*'" *Id*. at 293-94 (quoting *McKelvey v. Pierce*, 173 N.J. 26, 800 A.2d 840, 844 (2002)).

Indiana Area Found. of United Methodist Church, Inc. v. Snyder, 953 N.E.2d 1174, 1178 (Ind. Ct. App. 2011) (citing *Brazauskas*, 796 N.E.2d at 293).

[30] Here, the parties have yet to undertake the requisite "fact-sensitive and claim specific" analysis that must precede analysis of whether the First Amendment bars Payne-Elliott's claims against the Archdiocese. For instance, do genuine

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[5] "*Brazauskas II*" is a reference to the Supreme Court opinion cited herein.

issues of material fact exist regarding: (1) whether Payne-Elliott's job duties as a teacher at an Archdiocese-affiliated school rendered him a "minister"; or (2) the applicability of the ecclesiastical abstention doctrine?[6] At this juncture, discovery in this matter is ongoing, and we find that this matter is well shy of being ripe for summary disposition.

[31] We can, nonetheless, conclusively find the trial court was cloaked with general authority to hear matters involving employment contracts and disputes and erred in concluding otherwise. *See Brazauskas*, 796 N.E.2d at 290 ("A court with general authority to hear matters like employment disputes is not ousted of subject matter or personal jurisdiction because the defendant pleads a religious defense."). Because Payne-Elliott's employee dispute claims fall "within the general scope of the authority conferred upon [the trial] court by the constitution or by statute[,]" we are compelled to find that the trial court erred in finding that it lacked subject matter jurisdiction to hear such claims. *See*

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> Under the doctrine of ecclesiastical abstention, the First Amendment does not dictate that a state must follow a particular method of resolving church property disputes. The state may adopt any one of various approaches for settling church disputes so long as it involves no consideration of doctrinal matters. Ecclesiastical abstention does not divest courts of subject-matter jurisdiction, given that it does not render courts unable to hear types of cases in general, but only specific cases pervaded by religious issues. The courts nonetheless will inquire whether the church tribunal acted within the scope of its authority and observed its own organic forms and rules. When the court properly determines that it will become entangled in issues regarding the church's governance as well as matters of faith and doctrine, the court must dismiss the case for lack of subject-matter jurisdiction.

77 C.J.S. *Jurisdiction and Authority of Civil Courts* § 121 (footnotes omitted).

Reinhart, 112 N.E.3d at 711-12. Accordingly, we find the trial court erred in dismissing the complaint pursuant to Indiana Trial Rule 12(B)(1).

B. Indiana Trial Rule 12(B)(6)

[32] Payne-Elliott also alleges error from the dismissal of his case pursuant to Indiana Trial Rule 12(B)(6)[7] for failure to state a claim upon which relief can be granted. This Court reviews a 12(B)(6) dismissal de novo, giving no deference to the trial court's decision. *Bellwether Props., LLC v. Duke Energy Indiana, Inc.*, 87 N.E.3d 462, 466 (Ind. 2017). In reviewing the complaint, we take the alleged facts to be true and consider the allegations in the light most favorable to the nonmoving party, drawing every reasonable inference in that party's favor. *Id*.

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[7] Rule 12(B)(6) provides, in part, as follows:

> **(B) How presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required; except that at the option of the pleader, the following defenses may be made by motion:
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> * * * * *
>
> (6) Failure to state a claim upon which relief can be granted, which shall include failure to name the real party in interest under Rule 17. . . .

A. Treatment as a Summary Judgment Motion

[33] As an initial matter, we note that, because the Archdiocese attached "matters outside the pleading that were presented to and not excluded by the court,"[8] the trial court was compelled by Trial Rule 12(B) to regard the Archdiocese's motion to dismiss as a motion for summary judgment.

[34] Trial Rule 12(B) provides, in pertinent part, as follows:

> If, on a motion, asserting the defense number (6), to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, *the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56. In such case, all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.*

(Emphasis added). When a Trial Rule 12(B)(6) motion is treated as a motion for summary judgment, the court must grant the parties a reasonable opportunity to present summary judgment materials. *See West*, 933 N.E.2d at 1277 ("Where a trial court treats a motion to dismiss as one for summary judgment, the court must grant the parties a reasonable opportunity to present T.R. 56 materials.").

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[8]The exhibits attached to the parties' pleadings were: (1) Cathedral's 2018-2019 employee handbook; (2) the Archdiocese's job description for full-time and part-time teachers; and (3) the 2018-2019 "Teaching Ministry Contract" form used by Catholic schools affiliated with the Archdiocese. Payne-Elliott's App. Vol. III p. 63.

[35] In *West*, the parties tendered matters outside the pleadings that the trial court did not exclude; however, as our Supreme Court found:

> there is nothing before us suggesting the trial court treated this matter as a motion for summary judgment. And thus there is nothing before us to suggest the trial court afforded the parties an opportunity to present Rule 56 materials in support of or in opposition to summary judgment. Instead, because the parties treated the Defendants' motion as one to dismiss for lack of subject matter jurisdiction, the trial court ruled accordingly . . . . [which] was error.

See id. at 1277 (quoting *Azhar v. Town of Fishers,* 744 N.E.2d 947, 950 (Ind. Ct. App. 2001)). Such is the case here.

[36] We can gather from the record that the trial court did not exclude the matters submitted outside the pleadings;[9] however, the record on appeal gives no indication that the trial court treated the Archdiocese's motion to dismiss as a motion for summary judgment and allowed the parties any opportunity to present Rule 56 materials.

[9] We can state with certainty that the trial court did not exclude the three exhibits attached to the Archdiocese's motion to dismiss; however, the brevity of the trial court's order of dismissal provides no insight regarding whether the trial court's review encompassed Father Newton's affidavit regarding canon law, which was tendered with the Archdiocese's motion for reconsideration during the previous Special Judge's tenure.

B. Notice Pleading/Face of the Complaint

[37] Even if the trial court properly treated the Archdiocese's motion as a motion to dismiss rather than a motion for summary judgment, we conclude that the trial court erred in dismissing Payne-Elliott's complaint for failure to state a claim pursuant to Trial Rule 12(B)(6). A complaint states a claim on which relief can be granted when it recounts sufficient facts that, if proved, would entitle the plaintiff to obtain relief from the defendant. *Bellwether*, 87 N.E.3d at 466 (citing *Nichols v. Amax Coal Co.*, 482 N.E.2d 776, 778 (Ind. Ct. App. 1985)).

[38] A motion to dismiss under Rule 12(B)(6) "tests the legal sufficiency of the [plaintiff's] claim, not the facts supporting it." *Bellwether*, 87 N.E.3d at 466. Dismissals are improper under 12(B)(6) "unless it appears to a certainty on the face of the complaint that the complaining party is not entitled to any relief." *Id*. (quoting *State v. Am. Fam. Voices, Inc.*, 898 N.E.2d 292, 296 (Ind. 2008)). Motions to dismiss are properly granted only "when the allegations present no possible set of facts upon which the complainant can recover." *Magic Circle Corp. v. Crowe Horwath, LLP*, 72 N.E.3d 919, 922-23 (Ind. Ct. App. 2017).

[39] Indiana adheres to a notice pleading system, governed by Trial Rule 8. Trial Rule 8(A) merely requires "(1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for the relief to which the pleader deems entitled. . . ."

> Under Indiana's notice pleading system, a pleading need not adopt a specific legal theory of recovery to be adhered to

> throughout the case. Indiana's notice pleading rules do not require the complaint to state all elements of a cause of action. Notice pleading merely requires pleading the operative facts so as to place the defendant on notice as to the evidence to be presented at trial. Therefore, under notice pleading the issue of whether a complaint sufficiently pleads a certain claim turns on whether the opposing party has been sufficiently notified concerning the claim so as to be able to prepare to meet it. A complaint's allegations are sufficient if they put a reasonable person on notice as to why a plaintiff sues.

Hall v. Shaw, 147 N.E.3d 394, 400 (Ind. Ct. App. 2020) (quoting *Shields v. Taylor, 976 N.E.2d 1237, 1244-45 (Ind. Ct. App. 2012)), trans. denied,* (cleaned up).

[40] Here, Payne-Elliott brought claims of intentional interference with a contract and intentional interference with an employment relationship against the Archdiocese. The elements of tortious interference with a contract are as follows: (1) the existence of a valid and enforceable contract; (2) the defendant's knowledge of the existence of the contract; (3) defendant's intentional inducement of breach of the contract; (4) the absence of justification; and (5) damages resulting from defendant's wrongful inducement of the breach. *Duty v. Boys and Girls Club of Porter Cnty.*, 23 N.E.3d 768, 774 (Ind. Ct. Ap. 2014) (internal citations omitted). To prevail on a claim of intentional interference with an employment relationship, the claimant is required to show: (1) the existence of a valid relationship; (2) the defendant's knowledge of the existence of the relationship; (3) the defendant's intentional interference with that relationship; (4) the absence of justification; and (5) damages resulting from

defendant's wrongful interference with the relationship. *City of Lawrence Utils. Serv. Bd. v. Curry*, 68 N.E.3d 581, 589 (Ind. 2017) (internal citations omitted).

[41] In his complaint, Payne-Elliott alleged as follows: (1) he is a homosexual male, who has been in a same-sex marriage since 2017; (2) he was under a teaching contract at Cathedral in the 2019-2020 calendar year; (3) the Archdiocese issued a directive, wherein Cathedral was required to adopt and enforce morals clause language used in teacher contracts at Archdiocese-recognized schools, was required to discontinue its employment of any teacher in a public, same-sex marriage, and could forfeit being formally recognized as a Catholic school in the Archdiocese by failing to comply with the directive; and (4) Cathedral subsequently terminated Payne-Elliott's employment.

[42] We find that Payne-Elliott's complaint satisfies Trial Rule 8's liberal pleading standard and has supplied the Archdiocese with sufficient notice to allow the Archdiocese to defend against Payne-Elliott's intentional interference claims. To the extent that the Archdiocese contends that: (1) Payne-Elliott's complaint "fails to adequately allege necessary elements of his tortious-interference claims—namely, [ ] absence of justification"; and (2) "a civil court could not assess whether these elements were met on the facts of this case without excessively entangling itself in religious questions," Archdiocese's Br. p. 45, our Supreme Court has held that "[a] motion to dismiss under Rule 12(B)(6) tests the legal sufficiency of the [plaintiff's] claim, *not the facts supporting it*." *Bellwether*, 87 N.E.3d at 466 (emphasis added).

[43] Moreover, at this very early juncture, this Court cannot say that "it appears to a certainty *on the face of the complaint*" that Payne-Elliott is not entitled to any relief. *Id.* (emphasis added). Nor can we say that the allegations present no possible set of facts upon which the complainant can recover. *See id.* (". . . [A] complaint does not fail to state a claim merely because a meritorious defense may be available.").

[44] For these reasons, we find that the trial court erred in dismissing Payne-Elliott's claim for failure to state a claim pursuant to Trial Rule 12(B)(6).

III. Dismissal with Prejudice

[45] Although we have already reversed the trial court's order of dismissal, we briefly address, *sua sponte*, another error committed by the trial court. The error stems from the trial court's dismissal of Payne-Elliott's complaint with prejudice. Here, the trial court dismissed Payne-Elliott's claims for, among other things, lack of subject matter jurisdiction, meaning that the trial court lacked the power to reach the merits. *Reinhart*, 112 N.E.3d at 711-12. The trial court dismissed the claims with prejudice, however, which reflects an adjudication on the merits. *Brodnik*, 165 N.E.3d at 128-29.

[46] "A dismissal under Trial Rule 12(B)(1) is not an adjudication on the merits nor is it res judicata. A plaintiff thus is free to refile the action in the same tribunal or another tribunal that has jurisdiction." *Perry v. Stitzer Buick GMC, Inc.*, 637 N.E.2d 1282, 1286 (Ind. 1994). Because dismissal for lack of subject matter jurisdiction cannot be "with prejudice," the trial court's entry of

dismissal with prejudice was improper. *See Hart v. Webster*, 894 N.E.2d 1032, 1037 (Ind. Ct. App. 2008) (citing *Perry*, 637 N.E.2d at 1286).

[47] The trial court also dismissed Payne-Elliott's complaint pursuant to Trial Rule 12(b)(6), which provides, in part, as follows:

> [ ] When a motion to dismiss is sustained for failure to state a claim under subdivision (B)(6) of this rule the pleading may be amended once as of right pursuant to Rule 15(A)[10] within ten [10] days after service of notice of the court's order sustaining the motion and thereafter with permission of the court pursuant to such rule. . . .

Even if the trial court had properly dismissed the case pursuant to Rule 12(B)(6), *and we have found that it did not*, Payne-Elliott was afforded ten days, from service of the trial court order, in which to amend his complaint before a dismissal with prejudice designation could attach.

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[10] Rule 15(A) provides:

> A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, and the action has not been placed upon the trial calendar, he may so amend it at any time within thirty [30] days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within twenty [20] days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Conclusion

[48] The trial court erred in granting the Archdiocese's motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted, pursuant to Indiana Trial Rules 12(B)(1) and 12(B)(6), respectively. The trial court also erred in dismissing Payne-Elliott's claims with prejudice. We reverse and remand for further proceedings.

[49] Reversed and remanded.

Mathias, J., and Weissman, J., concur.