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IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 15, 2023 Session

QUINN TAYLOR v. IONOGEN, LLC ET AL.

Appeal from the Chancery Court for Knox County
No. 202809-2 Clarence E. Pridemore, Jr., Chancellor

No. E2022-01146-COA-R3-CV

The defendant limited liability company terminated the plaintiff's employment as Chief Financial Officer and Chief Operating Officer and revoked his 120 voting and common membership units in the company. The plaintiff brought a claim against individuals belonging to the company's board of managers, alleging that the defendant board members had breached their fiduciary duty of good faith and fair dealing by revoking his 120 membership units. The plaintiff sought no less than $120,000.00 in compensatory damages, the value of the 120 membership units as of May 5, 2021, and $480,000.00 in punitive damages. On July 13, 2022, the board of managers adopted a corporate resolution ratifying the plaintiff's ownership of 120 membership units in an effort to resolve the plaintiff's claim against the individual board members. Consequently, the defendant board members filed a motion for partial judgment on the pleadings, contending that the plaintiff's claim against them was rendered moot by the corporate resolution. The trial court granted the defendant board members' motion and dismissed the plaintiff's claim against them based on the doctrine of mootness. On appeal, the plaintiff posits that the board members failed to provide sufficient evidence to establish that they had rendered his claim moot. Upon reviewing the record, we conclude that the defendant board members failed to present sufficient evidence to establish that the corporate resolution fully redressed the plaintiff's claim for relief against them. We therefore reverse and remand to the trial court for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed; Case Remanded

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which JOHN W. MCCLARTY and KRISTI M. DAVIS, JJ., joined.

Gregory Brown, Daniel A. Sanders, and G. Alan Rawls, Knoxville, Tennessee, for the appellant, Quinn Taylor.

W. Edward Shipe, Luke D. Durham, Avery C. Lovingfoss, and R. Cuyler Haskins, Knoxville, Tennessee, for the appellees, Bergein Overholt, Tracy Thompson, Doug Yoakley, Dale Keasling, and Wesley Stowers.

OPINION

I. Factual and Procedural Background

The plaintiff, Quinn Taylor, initiated this action in the Knox County Chancery Court ("trial court") after he was terminated from his positions as Chief Financial Officer ("CFO") and Chief Operating Officer ("COO") of Ionogen, LLC ("Ionogen"), a "bio-tech medical manufacturing company headquartered in Knoxville, Tennessee."[1] On July 1, 2021, Mr. Taylor filed an "Application for Order to Permit Inspection or Copying of Records of a Limited Liability Company Pursuant to Tenn. Code Ann. § 48-249-308(d)" ("Application") in the trial court. Mr. Taylor attached to the Application as an exhibit a letter entitled, "Settlement Communication Subject to Rule 408," sent by his counsel to Ionogen on June 9, 2021. Therein, Mr. Taylor's counsel responded to Ionogen's written notice of termination, which had been provided to Mr. Taylor on May 26, 2021. In the settlement communication, Mr. Taylor's counsel relayed that her firm had been retained by Mr. Taylor to (1) respond to the termination notice; (2) demand records on behalf of Mr. Taylor pursuant to Tennessee Code Annotated § 48-249-308; and (3) seek payment of the wages and other funds Ionogen purportedly owed to Mr. Taylor in the amount of $69,741.94.

In addition to these requests, Mr. Taylor's counsel contended that the substance of the termination notice was "inaccurate or patently false." Mr. Taylor's counsel contested as "ludicrous" Ionogen's reasons for terminating Mr. Taylor as CFO and COO, which included allegations that he had failed to adequately perform his duties and provide the board with consistent reporting and data. In the Application, Mr. Taylor averred that Ionogen had refused to produce the requested records in response to the attached settlement communication. As a consequence, Mr. Taylor requested that the trial court grant the Application and enter an order requiring Ionogen to produce the requested records within five business days of the order's entry and to pay all of Mr. Taylor's costs and attorney's fees incurred in seeking the order.

On May 18, 2022, Mr. Taylor filed in the trial court a "First Amended Complaint" ("the Complaint"), making certain claims against Ionogen and its Board of Managers. Therein, Mr. Taylor described the history of his relationship with Ionogen, the termination of his employment, and the grounds for his claims. According to Mr. Taylor, Ionogen hired

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[1] The referenced description of the nature of Ionogen's business is derived from the trial court filings of Mr. Taylor and the individual defendants, Bergein Overholt, Tracy Thompson, Doug Yoakley, Dale Keasling, and Wesley Stowers.

him as its CFO and COO with an annual base salary of $120,000.00 on May 26, 2020. Mr. Taylor also stated that Ionogen's Chief Executive Officer ("CEO"), John Shanahan, had increased Mr. Taylor's salary to $168,000.00 per year in January 2021 but that this salary increase was deferred due to the company's cash flow problems. Mr. Taylor averred that Ionogen guaranteed to him a signing bonus of $70,000.00 to be paid in two installments. Mr. Taylor further stated that Ionogen had guaranteed to him a signing bonus of seventy units of equity, likewise to be granted in two installments. Forty units were issued upon the commencement of his employment with the remaining thirty units to be granted within the first year of his employment. According to Mr. Taylor, Ionogen issued the remaining thirty units to him, plus an additional fifty units, in late April 2021. Mr. Taylor averred that as of May 5, 2021, he had obtained a total of 120 voting and common membership units in Ionogen.

With respect to Ionogen's Board of Managers ("the Board"), Mr. Taylor explained that as of May 5, 2021, he was one of "seven managing members of the Ionogen board of managers," which included Mr. Shanahan and defendants Bergein Overholt, Tracy Thompson, Doug Yoakley, Dale Keasling, and Wesley Stowers (collectively, "Defendant Board Members"). Mr. Taylor alleged that on May 11, 2021, Mr. Shanahan and Defendant Board Members met in the absence of Mr. Taylor and without notice to him to discuss reduction in staff and the potential of dissolving Mr. Taylor's roles as CFO and COO as a cost-cutting measure due to Ionogen's continued cash flow problems. According to Mr. Taylor, Mr. Shanahan later informed Mr. Taylor of the meeting and told him to "take some time off" and return to Ionogen "only after being contacted by Tracy Thompson." Mr. Taylor averred that at that point, Mr. Thompson had informed Mr. Shanahan and Mr. Taylor that Ionogen would likely maintain Mr. Taylor's roles as CFO and COO and desired for him to remain with the company.

According to Mr. Taylor, he was never again contacted by Mr. Thompson. However, Mr. Taylor explained that he had met with Mr. Shanahan on May 17, 2021, at which point he gathered his personal belongings from his office. Mr. Taylor did not hear from anyone at Ionogen again until May 26, 2021, when he was provided written notice that his employment as CFO and COO had been terminated. This date coincided with Mr. Taylor's one-year anniversary of employment as CFO and COO.

In the Complaint, Mr. Taylor challenged the veracity of many of the statements presented in the termination notice, including that his effective termination date had been May 10, 2021; that his salary had been $120,000.00; that he had not been a "W-2 employee" and therefore not entitled to compensation for accrued paid time off; that he was not owed the second installment of his signing bonus; and that his membership units were subject to a one-year vesting period, requiring him to have been employed at Ionogen for one year before his units fully vested. Mr. Taylor further averred that Ionogen had refused to tender the funds Mr. Taylor declared were owed to him and had claimed that his membership units had reverted back to the company. By reason of these events, Mr. Taylor

propounded that Defendant Board Members had conspired to force him out of his positions with Ionogen and deny his rights as a member of the company in breach of their fiduciary duty of good faith and fair dealing.

Mr. Taylor asserted three claims within the Complaint: (1) application for an order to produce records pursuant to Tennessee Code Annotated § 48-249-308(d) against Ionogen, (2) breach of contract by Ionogen, and (3) breach of fiduciary duty of good faith and fair dealing by Defendant Board Members. In addition to an order requiring Ionogen to copy and produce the records requested by him, Mr. Taylor also requested compensatory damages against Ionogen in the amount of $62,741.94 plus 10% interest for his unpaid signing bonus and an amount "no less than $120,000.00" for the value of his membership units as of May 5, 2021. With respect to damages sought against Defendant Board Members, Mr. Taylor requested compensatory damages of "no less than $120,000.00" for the value of his membership units as of May 5, 2021, and punitive damages "not to exceed $480,000.00." In support, Mr. Taylor attached as exhibits the settlement communication, the termination notice, and a follow-up request for more records that he had sent on April 28, 2022.[2]

On July 15, 2022, Defendant Board Members filed an answer, admitting that Mr. Taylor was currently a member of Ionogen and that he owned 120 voting and common membership units in Ionogen. For proof, they attached as an exhibit a corporate resolution entitled, "Resolution of the Board of Managers of Ionogen, LLC" ("corporate resolution"), and dated July 13, 2022. Through the corporate resolution, the Board resolved that it was in the best interest of Ionogen "to confirm, ratify, and approve the issuance" of the 120 membership units to Mr. Taylor "in order to have the lawsuit dismissed." The Board further resolved that the "previous grant of the Units to Taylor [wa]s hereby ratified and approved by the Board" and that the Board recognized Mr. Taylor as a member of Ionogen. Defendant Board Members also admitted that a meeting had taken place, during which the board members discussed terminating Mr. Taylor's employment due to his performance and as a cost-cutting measure.

Defendant Board Members denied all other averments presented in the Complaint and postulated that the Complaint's Count III, the only claim against them, had been rendered moot by the attached corporate resolution confirming Mr. Taylor's membership interest. Lastly, they raised several affirmative defenses, including: (1) failure to state a claim upon which relief could be granted pursuant to Tennessee Rule of Civil Procedure 12.02(6); (2) speculative damages; (3) "waiver, estoppel, ratification, laches, unjust enrichment, and unclean hands"; (4) the "business judgment rule"; (5) the "doctrine of majority approval"; (6) failure to exercise due diligence; (7) the parol evidence rule; (8)

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[2] On April 28, 2022, Mr. Taylor's counsel sent Ionogen a request for additional specified documents and any documents that had not been produced in response to the settlement communication.

the "doctrines of payment and accord and satisfaction"; (9) failure to mitigate damages; (10) the "doctrine of illegality"; and (11) the Statute of Frauds.

Defendant Board Members concomitantly filed a motion for partial judgment on the pleadings, pursuant to Tennessee Rules of Civil Procedure 12.02 and 12.03, requesting that the trial court dismiss Count III of the Complaint as moot. Defendant Board Members asserted that they had dismissed Mr. Taylor from his positions as CFO and COO due to his failure to "keep the company financially healthy and fiscally responsible, failure to report critical data to the Board of Directors, and multiple mistakes and actions that prevented material information being delivered to the Board of Directors." Defendant Board Members further explained that rather than dispute Mr. Taylor's legal action against them, they determined it to be in Ionogen's best interest to execute the corporate resolution, ratifying and approving the previous grant of 120 units to Mr. Taylor and recognizing him as a member of Ionogen. Moreover, they contended that Mr. Taylor's sole claim against them under Count III was that they had allegedly deprived him of the value of his 120 membership units. According to their position, the corporate resolution rendered Mr. Taylor "whole" with the legal controversy having been resolved.

Mr. Taylor filed a response opposing Defendant Board Members' motion for partial judgment on the pleadings on August 9, 2022, urging that the motion failed to prove that the corporate resolution rendered Mr. Taylor's claim for damages moot. Mr. Taylor argued that Defendant Board Members had "inaccurately portray[ed]" Mr. Taylor's "demand for relief as a claim to 120 voting and common membership units in Ionogen," when he in fact sought damages in the amount of $120,000.00—the value of the 120 membership units at the time Defendant Board Members "wrongfully divested him of his rights as a member of Ionogen." Mr. Taylor further indicated that if Defendant Board Members had offered him the $120,000.00 as demanded in the Complaint, "that would be a different story altogether."

Mr. Taylor emphasized that Defendant Board Members had failed to present proof that 120 membership units in Ionogen maintained a value of $120,000.00 as of July 13, 2022. Even assuming such a value of $120,000.00, Mr. Taylor insisted that the corporate resolution did not compensate him for the "year-long loss of the units' value and attendant rights." According to Mr. Taylor, the Defendant Board Members' motion was "tantamount to a thief trying to avoid civil liability for stealing someone's car by returning it to the original owner a year later."

A motion hearing was conducted on August 10, 2022. On August 17, 2022, the trial court entered an order granting Defendant Board Members' motion for partial judgment on the pleadings. Directing entry of the order pursuant to Tennessee Rule of Civil Procedure 54.02, the court found that its order resolved all disputes between Mr. Taylor and

Defendant Board Members and that there was no just reason to delay entry of a judgment dismissing the claim against Defendant Board Members.[3] Mr. Taylor timely appealed.

II. Issues Presented

Mr. Taylor presents the following issues for this Court's review, which we have restated as follows:

1. Whether the trial court erred in dismissing Mr. Taylor's claim for damages as moot predicated upon Defendant Board Members' voluntary cessation of their tortious conduct.

2. Whether the trial court erred in dismissing Mr. Taylor's claim for damages as moot inasmuch as Defendant Board Members had failed to meet their burden of establishing that they fully redressed Mr. Taylor's claim by reinstating his membership units.

Defendant Board Members present the following additional issue:

3. Whether this Court should independently consider Defendant Board Members' corporate resolution reinstating Mr. Taylor's membership units and determine that the claim pursuant to Count III is moot even if it disagrees "procedurally with the lower court's decision to consider the resolution in ruling on a motion for judgment on the pleadings."

III. Standard of Review

This Court has previously explained the standard of review for an order addressing a motion for judgment on the pleadings pursuant to Tennessee Rule of Civil Procedure 12.03:

> When reviewing orders granting a Tenn. R. Civ. P. 12.03 motion, we use the same standard of review we use to review orders granting a Tenn. R. Civ. P. 12.02(6) motion to dismiss for failure to state a claim. *Waller v. Bryan*, 16 S.W.3d 770, 773 (Tenn. Ct. App. 1999). Accordingly, we must review the trial court's decision de novo without a presumption of correctness, *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997), and we must construe the complaint liberally in favor of the non-moving party and take all the factual allegations in the complaint as true. We should uphold

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[3] The trial court's order dismissing Count III did not affect Mr. Taylor's claims against Ionogen in Count I and Count II, and these claims are not at issue on appeal.

> granting the motion only when it appears that the plaintiff can prove no set of facts in support of a claim that will entitle him or her to relief.

Young v. Barrow, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003). Whether the trial court erred by granting a motion for dismissal on the basis of mootness is a question of law that we review *de novo* with no presumption of correctness. *State ex rel. DeSelm v. Jordan*, 296 S.W.3d 530, 533 (Tenn. Ct. App. 2008).

IV. Doctrine of Mootness

In its order granting Defendant Board Members' motion for partial judgment on the pleadings with respect to Count III of the Complaint, the trial court determined that the motion should be granted "[b]ased upon the arguments of counsel and upon the record in this case." Although the court did not explain its decision in any further detail in the order, the Defendant Board Members' motion incorporated one legal argument: Mr. Taylor's claim against them had been rendered moot by the corporate resolution ratifying and approving Mr. Taylor's initial grant of 120 voting and common membership units. Mootness was the sole issue addressed by the parties in their filings with the trial court. We can therefore conclude that the trial court determined this argument to be convincing and accordingly ruled that Mr. Taylor's claim against Defendant Board Members could not succeed premised upon the doctrine of mootness.

In considering the explanatory sufficiency of the court's order, we note that this Court has previously elucidated that a trial court's failure to provide a legal basis for granting a Rule 12 motion may hinder our ability to review the dismissal on appeal, stating:

> Although we acknowledge that a trial court is not required to enter findings of fact and conclusions of law pursuant to Tennessee Rule of Civil Procedure 52.01 when ruling on a motion to dismiss, a trial court's failure to provide any legal basis for its dismissal of a Rule 12.02 motion to dismiss can hamper this Court's ability to review the dismissal on appeal. *See Buckingham v. Tennessee Dep't of Corr.*, No. E2020-01541-COA-R3-CV, 2021 WL 2156445, at *3 (Tenn. Ct. App. May 27, 2021) ("[A]ppellate review is hampered because the trial court's order does not apply any legal standard or contain legal conclusions regarding the sufficiency of the complaint or provide any reasoning for the dismissal."). This Court has previously vacated a trial court's judgment of dismissal based on Tennessee Rule of Civil Procedure 12.02 when it failed to provide a sufficient explanation for the dismissal. *See Buckingham*, 2021 WL 2156445, at *3; *Huggins v. McKee*, No. E2014-00726-COA-R3-CV, 2015 WL 866437, at *5 (Tenn. Ct. App. Feb. 27, 2015).

Crenshaw v. Kado, No. E2020-00282-COA-R3-CV, 2021 WL 2473820, at *6 (Tenn. Ct. App. June 17, 2021) (analyzing the trial court's "bare-bones" order, the record, and the statements of counsel during oral argument to infer the trial court's reasoning for granting the defendants' motion to dismiss); *see Hampton v. Hawker Powersource, Inc.*, No. E2022-00258-COA-R3-CV, 2023 WL 3002492, at *6 (Tenn. Ct. App. Apr. 19, 2023) (reviewing a trial court's order granting a Rule 12 motion despite the court's failure to explain its conclusion when the motion to dismiss rested on only one legal argument and the court stated that it found the motion to be "'well taken'").

We emphasize that a trial court ideally should provide its reasoning for dismissal based upon a Rule 12 motion. Nevertheless, given that Defendant Board Members raised a single issue predicated upon one argument in their motion, we can readily determine the basis for the trial court's decision to grant their motion and accordingly review the issues raised by Mr. Taylor.

In their motion for partial judgment on the pleadings, Defendant Board Members advanced the position that relief sought under Count III was rendered moot due to the corporate resolution executed on July 13, 2022, resolving "that the previous grant of the Units to Taylor is hereby ratified and approved by the Board and the Board recognizes that Taylor is a member of the Company." On appeal, Mr. Taylor offers two bases as to why the corporate resolution did not fully redress the claim under Count III: (1) voluntary cessation of unlawful conduct does not render moot an action for damages as a matter of law and (2) Defendant Board Members failed to carry their burden to produce sufficient facts that the corporate resolution completely redressed the claim for damages against them. Upon our review of the record and relevant law, we agree with Mr. Taylor that Defendant Board Members did not meet their burden of proving sufficient facts to demonstrate that the corporate resolution rendered Mr. Taylor's claim for relief moot.

This Court has previously explained the doctrine of mootness as follows:

> The courts, being careful stewards of their power, have developed various justiciability principles to serve as guidelines for determining whether providing judicial relief in a particular case is warranted. To be justiciable, a case must involve presently existing rights, live issues that are within a court's power to resolve, and parties who have a legally cognizable interest in the resolution of these issues. A case is not justiciable if it does not involve a genuine, existing controversy requiring the adjudication of presently existing rights. *State v. Brown & Williamson Tobacco Co.*, 18 S.W.3d 186, 193 (Tenn. 2000); *State ex rel. Lewis v. State*, 208 Tenn. 534, 537, 347 S.W.2d 47, 48 (1961); *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d 615, 616 (Tenn. Ct. App. 1998).

> The requirements for litigation to continue are essentially the same as the requirements for litigation to begin. *Charter Lakeside Behavioral Health Sys. v. Tennessee Health Facilities Comm'n*, M1998-00985-COA-R3-CV, 2001 WL 72342, at *5 (Tenn. Ct. App. Jan. 30, 2001) (No Tenn. R. App. P. 11 application filed). Thus, cases must remain justiciable throughout the entire course of the litigation, including the appeal. *State v. Ely*, 48 S.W.3d 710, 716 n.3 (Tenn. 2001); *Cashion v. Robertson*, 955 S.W.2d 60, 62-63 (Tenn. Ct. App. 1997). A moot case is one that has lost its justiciability because it no longer presents a present, live controversy. *McCanless v. Klein*, 182 Tenn. 631, 637, 188 S.W.2d 745, 747 (1945); *County of Shelby v. McWherter*, 936 S.W.2d 923, 931 (Tenn. Ct. App. 1996); *McIntyre v. Traughber*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994). Thus, a case will be considered moot if it no longer serves as a means to provide some sort of judicial relief to the prevailing party. *Knott v. Stewart County*, 185 Tenn. 623, 626, 207 S.W.2d 337, 338-39 (1948); *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d at 616; *Massengill v. Massengill*, 36 Tenn. App. 385, 388-89, 255 S.W.2d 1018, 1019 (1952).

Easley v. Britt, No. M1998-00971-COA-R3-CV, 2001 WL 1231516, at *2 (Tenn. Ct. App. Oct. 16, 2001) (emphasis added). "Generally, the party asserting mootness has the burden of showing that the case lost its controversial character." *Wortham v. Kroger Ltd. P'ship I*, No. W2019-00496-COA-R3-CV, 2020 WL 4037649, at *15 (Tenn. Ct. App. July 16, 2020).

We note first that we agree with Mr. Taylor that claims for damages are "largely able to avoid mootness challenges." *See Ermold v. Davis*, 855 F.3d 715, 719 (6th Cir. 2017) (citing 13C Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3553.3 (3d ed. 2017)). The Sixth Circuit of the United States Court of Appeals has instructed:

> Damages claims "are retrospective in nature—they compensate for past harm. By definition, then, such claims cannot be moot." *CMR D.N. Corp. v. City of Philadelphia*, 703 F.3d 612, 622 (3d Cir. 2013) (internal quotation marks omitted). The Supreme Court has held that a damages claim is not rendered moot because a related injunctive-relief claim becomes moot. *See Powell v. McCormack*, 395 U.S. 486, 498, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969) (holding that a claim for back pay survived even after the ongoing harm an injunction sought to remedy was removed); *Bd. of Pardons v. Allen*, 482 U.S. 369, 370 n.1, 107 S. Ct. 2415, 96 L. Ed. 2d 303 (1987) (concluding that paroled prisoners seeking injunctive relief regarding their prison's parole procedures could proceed on a damages claim even after they were released on parole); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 478 n.1, 109 S. Ct. 706, 102 L. Ed. 2d 854 (1989) (noting that the expiration of

> Richmond's affirmative-action ordinance did not moot a damages claim relating to a contract denial under the ordinance). We have similarly held that although "the repeal or amendment of a law moots challenges to the original law . . . [t]he existence of [a] damages claim preserves the plaintiffs' backward-looking right to challenge the original law and to preserve a live case or controversy over that dispute." *Midwest Media Prop., L.L.C. v. Symmes Twp.*, 503 F.3d 456, 460-61 (6th Cir. 2007). *See also Ohio Citizen Action v. City of Englewood*, 671 F.3d 564, 581 (6th Cir. 2012) ("However, if the plaintiff's complaint includes a claim for damages, that claim 'preserves the plaintiff['s] backward-looking right to challenge the original law and to preserve a live case or controversy over that dispute.'") (quoting *Midwest Media*, 503 F.3d at 461); *Prime Media, Inc. v. City of Brentwood*, 398 F.3d 814, 824 (6th Cir. 2005) (holding that a court's order invalidating part of a city billboard ordinance did not moot a claim for damages arising from that invalidated portion of the ordinance). Even "a claim for nominal damages . . . is normally sufficient to establish standing [and] defeat mootness. . . ." *Lynch v. Leis*, 382 F.3d 642, 646 n.2 (6th Cir. 2004).

Ermold, 855 F.3d at 719. In citing the Sixth Circuit, we note that the "justiciability doctrines recognized by Tennessee courts mirror the justiciability doctrines employed by the United States Supreme Court and the federal courts" and that "Tennessee courts have consistently found federal precedents to be helpful in addressing issues of justiciability and have adopted many of the significant components of federal jurisprudence." *See Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 203, n.3 (Tenn. 2009); *see also Summers Hardware & Supply Co., Inc. v. Steele*, 794 S.W.2d 358, 362 (Tenn. Ct. App. 1990) ("Cases from other jurisdictions, including federal cases, are always instructive, sometimes persuasive, but never controlling in our decisions."). Moreover, this Court has previously cited with approval precedent established by the federal court system that a claim for damages may generally avoid dismissal based upon the doctrine of mootness. *See Consol. Waste Sys., LLC v. Metro. Gov't of Nashville & Davidson Cnty.*, No. M2002-02582-COA-R3-CV, 2005 WL 1541860, at *1 n.1 (Tenn. Ct. App. June 30, 2005) (citing federal case law favorably for the proposition that "[a] viable claim for damages saves a case from dismissal as moot in appeals involving challenges to legislation that has been amended").

With these justiciability principles in mind, we nevertheless will review whether Defendant Board Members provided sufficient evidence to prove that they fully redressed Mr. Taylor's Count III claim such that it became moot. In so considering, we compare the relief sought by Mr. Taylor in the Complaint to the change in circumstance brought about by the Board's adoption of the corporate resolution, which Defendant Board Members posit remedied Mr. Taylor's claim. *See McIntyre v. Traughber*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994) ("The central question in a mootness inquiry is whether changes in the circumstances existing at the beginning of the litigation have forestalled the need for

meaningful relief."); *Easley*, 2001 WL 1231516, at *2 ("Thus, a case will be considered moot if it no longer serves as a means to provide some sort of judicial relief to the prevailing party."). For instance, in *Easley*, this Court concluded that the prisoner petitioner's case was no longer justiciable when his requested relief of re-classification to minimum security had been exceeded, and thereby rendered moot, by his release from prison. *Id.* In the instant Complaint, Mr. Taylor sought compensatory damages of no less than $120,000.00, the value of his membership units as of May 5, 2021, and punitive damages not to exceed $480,000.00 against Defendant Board Members. In contrast to Mr. Taylor's requested relief, the corporate resolution "ratified and approved" the previous grant of 120 membership units to Mr. Taylor more than a year later on July 13, 2022.

The corporate resolution is silent, however, as to the value of the 120 membership units as of July 13, 2022. Neither the corporate resolution nor Defendant Board Members' answer to the Complaint clarify whether the 120 membership units retained the same value they held on May 5, 2021. Defendant Board Members did not present any evidence to demonstrate the membership units' value as of July 13, 2022, the date the corporate resolution was adopted. Without sufficient evidence of such value, we are unable to conclude that a grant of 120 membership units fully redressed a claim for $120,000.00 in compensatory damages, not to mention Mr. Taylor's claim for $480,000.00 in punitive damages. Ergo, Defendant Board Members failed to establish that the corporate resolution and its July 13, 2022 grant of 120 membership units rendered the Count III claim incapable of serving as a means to provide Mr. Taylor with any sort of judicial relief.

We find instructive this Court's opinion in *Ivy v. Tenn. Dep't of Corr.*, No. M2007-02606-COA-R3-CV, 2008 WL 5169563 (Tenn. Ct. App. Dec. 9, 2008). In *Ivy*, an inmate was convicted by the prison disciplinary board of "possession of security threat group material." *Id.* at *1. The inmate filed a petition for writ of certiorari to challenge the legality of his administrative conviction. *Id.* The chancery court dismissed his petition, but this dismissal was reversed on appeal, and the case was remanded. *Id.* In the interim, the inmate was released from prison, and the Tennessee Department of Correction consequently filed a motion to dismiss his petition based upon the doctrine of mootness. *Id.* The trial court granted the motion to dismiss, and the inmate appealed to this Court again, arguing that he had "sought relief related to matters other than his sentence," namely, that he wished to have his name removed from the FBI's database designating him as a "Gang Member." *Id.* at *1-4. This Court vacated the trial court's order of dismissal and remanded the case for the trial court to determine "whether the petitioner sought relief other than that related to his sentence." *Id.* at *1.

In arriving at this conclusion, this Court explained:

> [W]hile we are charged with doing a *de novo* review of the trial court's finding that Ivy's petition is moot, we are unable to look at his petition to determine whether his case "no longer serves as a means to provide some

> sort of judicial relief to the prevailing party." . . . If, in fact, Ivy requested relief other than that related to his personal freedom, his case would not be rendered moot by his release.

Id. at *5 (emphasis added). Therefore, release from prison might not have been sufficient to render moot the inmate's petition inasmuch as he may have requested additional relief unrelated to his sentence. Based upon the *Ivy* Court's rationale, partial relief does not render a cause of action moot.

In the case at bar, Mr. Taylor sought the value of his membership units as of May 5, 2021, prior to his termination as CFO and COO, which he alleged was no less than $120,000.00. Instead of granting Mr. Taylor his requested monetary recompense, Defendant Board Members granted to Mr. Taylor something he did not request. Without evidence of the value of 120 membership units as of July 13, 2022, we cannot conclude that Defendant Board Members established that they had fully remedied Mr. Taylor's claim for compensatory damages or that the trial court would have been unable to provide "some sort of judicial relief," particularly given Mr. Taylor's request for punitive damages. *See Easley*, 2001 WL 1231516, at *2.

On appeal, Defendant Board Members contend that the corporate resolution "fully redressed" Mr. Taylor's claim for damages, making him "whole." Defendant Board Members specifically assert:

> Mr. Taylor's real target is money rather than ownership. But cash is not what he alleged he was deprived of and an award of damages would necessarily have been measured by the underlying membership interests. Now, any further damage award would constitute an impermissible double-recovery and a windfall for Mr. Taylor.
>
> Mr. Taylor's only potential damages were for the value of the 120 membership units. The 120 membership units have now been granted to him. Count III is moot.

This argument is unavailing. Although we agree with Defendant Board Members that Mr. Taylor did not allege that he was deprived of money, we note that he did allege that he was deprived of the "value of his 120 membership units" as of a certain date (emphasis added). Furthermore, in the "Prayer for Relief" section of the Complaint, Mr. Taylor specifically identified the purported value of the 120 membership units at the time of his employment's termination in May 2021 by requesting compensatory damages "for no less than $120,000.00, the value of [his] membership units as of May 5, 2021" (emphasis added). Defendant Board Members, who bore the burden of proof, presented no evidence to establish that the 120 membership units "retroactively" granted to Mr. Taylor bore the same

value on July 13, 2022, as they did on May 5, 2021. Defendant Board Members do not address this potential disparity in value on appeal.[4]

Additionally, given the dearth of evidence relative to the value of the 120 membership units, we cannot agree with Defendant Board Members that "any further damage award" would result in a windfall to Mr. Taylor. Ultimately, we decline to ground our determination of a purely legal question upon Defendant Board Members' speculation as to what might result if this case is permitted to continue to trial. We therefore decline to consider the potential consequences of Defendant Board Members' litigation strategy in rendering our decision.

In concluding that Defendant Board Members failed to prove that Mr. Taylor's claim was rendered moot, we offer no evaluation of the merits of Mr. Taylor's claim against Defendant Board Members or his specific claim that 120 memberships units on July 13, 2022, were not valued the same as they were on May 5, 2021. Because Defendant Board Members presented insufficient evidence concerning the value of the membership units to the trial court, evidence regarding their value is lacking in the record. By failing to provide evidence that the corporate resolution fully redressed Mr. Taylor's claim for $120,000.000 in compensatory damages and $480,000.00 in punitive damages, Defendant Board Members failed to demonstrate that the trial court would have been unable to afford Mr. Taylor with any additional judicial relief. In other words, Defendant Board Members failed to demonstrate that the reversion of 120 membership units back to Mr. Taylor accomplished the complete relief sought by Mr. Taylor in Count III of the Complaint.

V. Conclusion

Having determined that Defendant Board Members failed to produce sufficient evidence to establish that Mr. Taylor's claim against them was rendered moot, we reverse the trial court's order granting Defendant Board Members' motion for partial judgment on the pleadings and remand for further proceedings consistent with this Opinion. Costs on appeal are assessed to the appellees, Bergein Overholt, Tracy Thompson, Doug Yoakley, Dale Keasling, and Wesley Stowers.

s/ Thomas R. Frierson, II
THOMAS R. FRIERSON, II, JUDGE

[4] On appeal, Defendant Board Members aver that Mr. Taylor "accepted the resolution and these 120 membership units" but do not cite to the record to support this claim. We have not found any indication in the record that Mr. Taylor accepted the corporate resolution and membership units.