

No. 1-18-1527

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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URIEL SCOTT,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	No. 16 CH 15174
MARC GRENS, JONATHAN SOLOMON,	)	
BRIAN LIPKE, and RED LEAF CHICAGO,	)	
LLC, d/b/a Digital Mint,	)	Honorable
	)	Neil Cohen,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Presiding Justice McBride and Justice Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court correctly dismissed plaintiff’s claim pursuant to section 2-619 where any potential claim plaintiff had was rendered moot.

¶ 2 Plaintiff Uriel Scott appeals the circuit court’s order dismissing his declaratory judgment action pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)), and denial of his motion for reconsideration. For the reasons that follow, we affirm.

¶ 3 Scott filed a complaint against defendants Marc Grens, Jonathan Solomon, Brian Lipke, and Red Leaf Chicago, LLC, d/b/a Digital Mint, which operates a network of vending machines which are capable of buying and selling digital currencies, including Bitcoin. Scott alleged that he and Grens, Solomon, and Lipke were founding members and managers of Digital Mint, until his employment as a manager was terminated by a supermajority vote of the members in May 2016. Scott alleged that the members executed various amended operating agreements governing Digital Mint. On July 16, 2016, the Fifth Amended and Restated Operating Agreement (Fifth Operating Agreement) was executed and added the following noncompete clause:

“3.06 Potential Conflicts. Any Member (including Managers) may engage in other business ventures that do not otherwise compete with the business of the Company, as described in Section 2.03. Unless otherwise approved by a simple majority of the Managers, a Member has a duty to the Company not to engage in business interests that are in competition with the business of the Company. In addition to any other legal or equitable remedies available to the Company and/or Members, to the extent that a Member engages in an activity that is in competition with the business of the Company, the Company and its other Members shall have the right by virtue of this Agreement, to share or participate equally in such other investments or activities of the Member or the income or proceeds derived therefrom.”

¶ 4 Scott did not execute the Fifth Operating Agreement, even though he had executed prior operating agreements.

¶ 5 Scott alleged that in September 2016, he received a “Demand to Cease and Desist from Violations of the Fifth Operating Agreement” (Cease and Desist Letter). The letter indicated that

defendants had learned that Scott was attempting to purchase kiosk hardware and software from Digital Mint's supplier, in direct competition with Digital Mint. The Cease and Desist Letter demanded that Scott cease any action that might violate section 3.06 and threatened legal action if he failed to comply.

¶ 6 Scott filed the declaratory judgment action on November 18, 2016, seeking a declaration that the noncompete clause was unenforceable on grounds that it was overbroad as it contained no geographical or time limitations. Scott asserted in his complaint that he "intends to engage in a business venture that would compete with the expansive business purposes articulated" in the Fifth Operating Agreement. He asserted that "[a]n actual controversy exists between the parties regarding Scott's entitlement to pursue any and all business interests."

¶ 7 Defendants filed a motion to dismiss pursuant to section 2-619 arguing that no actual controversy remained between the parties and the complaint was therefore moot. In support, defendants attached the affidavit of Solomon, in which he averred that on January 15, 2018, a supermajority of the members voted to expel Scott from membership of Digital Mint pursuant to provisions of the Fifth Operating Agreement. Defendants argued that the noncompete clause applied only to members and, as such, could not be enforced against Scott.

¶ 8 Before the circuit court, Scott did not dispute that Digital Mint was governed by the Fifth Operating Agreement, that he was no longer a member of Digital Mint, and that section 3.06 could not be enforced against him as a nonmember. However, Scott asserted that the case was not moot because an actual controversy existed when he filed the complaint. He further contended that the court must rule on the enforceability of section 3.06 in order to ascertain potential liabilities of the parties, that is, whether Scott possessed a claim against defendants for damages related to his abstention from competitive business activities following receipt of the

Cease and Desist Letter and before his membership was terminated, or, alternatively, whether Scott could be liable to defendants for any income he accrued from competitive business activities before he was expelled as a member.

¶ 9 The circuit court granted the motion to dismiss in a written memorandum and order. The court found that there was no factual dispute surrounding the termination of Scott's membership in Digital Mint. The court further held that because Scott was no longer a member, section 3.06 was unenforceable against him, and the enforceability of section 3.06 was the sole issue that Scott raised in his complaint. The circuit court concluded that it could not issue an "advisory opinion for the purpose of guiding [Scott's] possible future litigation against Defendants," as a declaratory judgment action is proper only for determining current, actual controversies. Accordingly, the circuit court dismissed Scott's complaint as moot.

¶ 10 Scott filed a motion for reconsideration. He argued that the circuit court misapplied the law and ignored the fact that the parties had unresolved issues regarding the enforceability of the noncompete provision during the period of time when Scott was still a member and received the Cease and Desist Letter.

¶ 11 The circuit court denied the motion to reconsider, finding that it was irrelevant that the case was not moot when the complaint was first filed. The court held that it did not misapply the law and Scott merely repeated arguments he raised against the motion to dismiss. Scott then filed a timely appeal.

¶ 12 On appeal, Scott asserts that it is undisputed that he had a valid cause of action when his complaint was initially filed. He further argues that the court should determine the enforceability of the noncompete provision because an actual controversy still exists, *i.e.*, whether defendants may be liable for any damages Scott suffered in forgoing business opportunities due to the Cease

and Desist Letter, or, alternatively, whether Scott could be liable to defendants for income he accrued from competing business activities before being expelled as a member. He contends that adjudicating the enforceability of section 3.06 will dictate the parties' behavior going forward.

¶ 13 A motion to dismiss brought pursuant to section 2-619(a)(9) of the Code permits involuntary dismissal of an action when “the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim.” (735 ILCS 5/2-619(a)(9) (West 2016)). We review *de novo* the trial court's decision to grant or deny a motion under this section. *R.L. Vollintine Construction, Inc. v. Illinois Capital Development Bd.*, 2014 IL App (4th) 130824, ¶ 23. In this endeavor, we must interpret the pleadings and any supporting documents in the light most favorable to the plaintiff. *Id.*

¶ 14 A successful action for declaratory relief requires the following: “(1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests.” *Beahringer v. Page*, 204 Ill. 2d 363, 372 (2003). See 735 ILCS 5/2-701 (West 2016). The purpose of the declaratory judgment process is to allow courts to “address a controversy after a dispute arises but before steps are taken that give rise to a claim for damages or other relief.” *BMO Harris Bank, N.A. v. Jackson Towers Condominium Association, Inc.*, 2018 IL App (1st) 170781, ¶ 24. This permits the parties to have their existing rights determined and learn the consequences of future actions. *Id.*

¶ 15 Here, Scott's declaratory judgment complaint sought only a determination that the noncompete provision was unenforceable under the law. It is undisputed that the noncompete provision in the Fifth Operating Agreement does not apply to Scott because his membership in Digital Mint was terminated. As such, he no longer has a tangible legal interest in whether the noncompete provision is enforceable. Accordingly, his complaint was rendered moot when a

supermajority of the members of Digital Mint terminated his membership because there was no longer an actual controversy between the parties capable of judicial determination. It is well established that a “claim must contain an actual controversy capable of judicial determination.” *Byer Clinic & Chiropractic, Ltd. v. State Farm Fire & Casualty Co.*, 2013 IL App (1st) 113038, ¶ 17. The “actual controversy” requirement means that “the underlying facts and issues of the case are not moot or premature, so as to require the court to pass judgment on mere abstract propositions of law, render an advisory opinion, or give legal advice as to future events.” (Emphasis and internal quotation marks omitted.) *Behringer v. Page*, 204 Ill. 2d 363, 374-75 (1977).

¶ 16 Further, the fact that Scott’s complaint when initially filed may have presented an actual controversy does not prevent the court from later determining that the claims presented therein have become moot. See *Wheatley v. Board of Education of Twp. High School Dist. 205*, 99 Ill. 2d 481, 484-85 (1984) (finding that trial court properly dismissed plaintiff teachers’ action challenging honorable dismissal as moot where, one month after it was filed, plaintiffs accepted school board’s offer of employment, granting the plaintiffs the essential relief they requested in complaint); *Yu v. International Business Machines Corp.*, 314 Ill. App. 3d 892, 897-98 (2000) (plaintiff’s case was rendered moot and properly dismissed under section 2-619 where plaintiff accepted a free software upgrade offered by defendant which made his patient scheduling software year 2000 compliant and effectively granted the relief plaintiff sought in complaint).

¶ 17 However, Scott argues the court should nevertheless rule on the enforceability of the noncompete clause to ascertain whether he has a claim against defendants or defendants have a claim against him related to his competing business activities before his membership was terminated. This is essentially a request for a declaration of liability or nonliability as to past

conduct. “Normally, a declaration of nonliability for past conduct is not a function of the declaratory judgment statute[.]” *Howlett v. Scott*, 69 Ill. 2d 135, 143 (1977). Rather, “[t]he purpose of the declaratory judgment action is to give guidance for future conduct, not to provide relief related to past conduct.” *BMO Harris Bank, N.A. v. Jackson Towers Condominium Association, Inc.*, 2018 IL App (1st) 170781, ¶ 26. For example, in *BMO Harris Bank*, the bank paid delinquent presale assessments on a condominium that it purchased at a foreclosure sale, which precluded the bank from seeking declaratory relief that it was not liable for the assessments. *Id.*

¶ 18 For Scott, the “steps” have already been taken that would allegedly give rise to a claim for damages, that is, his competing business activity has already occurred. *BMO Harris Bank*, 2018 IL App (1st) 170781, ¶ 24. Scott’s complaint for declaratory relief specifically asserted that he sought a declaration as to the enforceability of the noncompete provision because he intended to pursue business activities that would conflict with the business purposes of Digital Mint. His complaint did not assert these other, potential issues regarding any liability for damages the parties may owe to each other, which he later referenced in arguing against the dismissal of his complaint.

¶ 19 For the court to now determine the enforceability of the noncompete clause in his declaratory judgment action would amount to the court issuing an advisory opinion as to some future, potential claims, which have not been asserted and are not before the court. “A declaratory judgment action is not intended to permit moot or hypothetical cases, or to enable parties to secure advisory opinions or legal advice from the court with respect to anticipated future difficulties[.]” (Internal quotation marks omitted.) *Byer Clinic & Chiropractic, Ltd. v. State Farm Fire & Casualty Co.*, 2013 IL App (1st) 113038, ¶ 17.

¶ 20 Scott's citation to *Roland Machine Co. v. Reed*, 339 Ill. App. 3d 1093, 1098-1102 (2003), is unhelpful to his cause. In *Roland*, the court found that the declaratory judgment action for a determination of rights under an existing contract for the sale of heavy machinery was not seeking a declaration of nonliability for past conduct; an actual dispute existed because the buyer was attempting to rescind the transaction but the seller had not re-taken possession. By contrast, Scott had already taken the action alleged to be in violation of the noncompete clause.

¶ 21 The same distinction can be drawn in the other case relied on by Scott, *Alderman Drugs, Inc. v. Metro. Life Ins. Co.*, 79 Ill. App. 3d 799, 804 (1979), where the court determined that an actual controversy existed in that the parties disputed whether the defendant's proposed amendment to a contract was in effect and whether plaintiffs could be forced to accept the amendment or quit.

¶ 22 Accordingly, we affirm the circuit court's judgment granting defendants' motion to dismiss the complaint pursuant to section 2-619.

¶ 23 Scott also argues on appeal that the circuit court erred in denying his motion to reconsider. Scott urges that the circuit court failed to consider his exposure to legal liability for competitive actions he took while a member and failed to consider any harm Scott sustained in forgoing competitive business activities while a member. Scott further argues that the circuit court ignored the fact that there are unresolved questions regarding enforceability of the noncompete clause and defendants should not be allowed to escape adjudication of this issue by expelling him from membership.

¶ 24 "The purpose of a motion to reconsider is to alert the court of newly discovered evidence that was unavailable at the time of the hearing, changes in the law, or errors in the court's application of the law." *Belluomini v. Zaryczny*, 2014 IL App (1st) 122664, ¶ 20. On appeal, we



generally review a circuit court’s ruling on a motion to reconsider under the abuse of discretion standard. *Id.* “However, where a motion to reconsider only asks the trial court to reevaluate its application of the law to the case as it existed at the time of judgment, the standard of review is *de novo.*” *Id.*

¶ 25           The circuit court was correct to deny Scott’s motion to reconsider the dismissal of his complaint. In his motion to reconsider, Scott merely reiterated his previous arguments that he raised against the motion to dismiss. As explained above, the circuit court did not err in its application of the law in ruling on the motion to dismiss.

¶ 26           Accordingly, we affirm the circuit court’s orders dismissing his declaratory judgment action and denying his motion for reconsideration.

¶ 27           Affirmed.