

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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|--------------------------|---|-------------------------------------|
| JOHN DOE, |) | Case No.: 20-3482 |
| |) | |
| Plaintiff-Appellant, |) | On Appeal from the United States |
| |) | District Court for the Northern |
| vs. |) | District of Ohio, Eastern Division, |
| |) | Case No.: 1:20 CV 669 |
| |) | |
| OBERLIN COLLEGE, et al., |) | |
| |) | |
| Defendants-Appellees. |) | |

**PLAINTIFF/APPELLANT’S BRIEF IN OPPOSITION TO DEFENDANT-
APPELLEES’ MOTION TO DISMISS APPEAL AS MOOT**

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BRIEF IN OPPOSITION

I. MR. DOE’S CLAIMS ARE NOT MOOTED BY THE FACT THAT A THREE-PERSON HEARING PANEL CONCLUDED THAT HE DID NOT VIOLATE OBERLIN COLLEGE’S SEXUAL MISCONDUCT POLICY AS HIS VERIFIED COMPLAINT SOUGHT MONEY DAMAGES IN ADDITION TO INJUNCTIVE RELIEF

The Defendants fail to disclose in their motion to dismiss that in addition to seeking injunctive relief, Mr. Doe’s Verified Complaint also sought monetary damages.¹ The caption of Mr. Doe’s Verified Complaint clearly states in bold that he was seeking preliminary and permanent injunctive relief, and *money damages* against the Defendants.²

Mr. Doe asserted in his Verified Complaint that as a direct and proximate cause of the Defendants’ conduct he endured extreme emotional and psychological suffering,³ emotional distress,⁴ loss of educational and career opportunities,⁵ damages to his reputation,⁶ and other non-economic and economic damages.⁷ Moreover, in his prayer for relief, Mr. Doe requested monetary damages in an

¹ Verified Complaint, R.1-1, Page ID#: 7-258.

² Verified Complaint, R.1-1, Page ID#: 7.

³ Verified Complaint, R.1-1, Page ID#: 70.

⁴ Verified Complaint, R.1-1, Page ID#: 71.

⁵ Verified Complaint, R.1-1, Page ID#: 78.

⁶ Verified Complaint, R.1-1, Page ID#: 74.

⁷ Verified Complaint, R.1-1, Page ID#: 74.

amount to be determined at trial, prejudgment interest, attorneys fees, expenses, and costs.⁸

The fact that the district court denied his request for injunctive relief and the Oberlin College Defendants were able to complete their investigation into allegations that he violated the College's sexual misconduct policy and proceed to an adjudication hearing against him does not moot the harm and damages that he suffered as a direct and proximate result of Defendants' tortious conduct in investigating, and prosecuting him over a period of approximately five (5) months. Nor does the fact that a three-person panel ultimately found that he did not violate the College's sexual misconduct policy moot his causes of action for money damages as he was harmed and damaged by the Defendants' decision to pursue said actions against him despite the fact the allegations against him failed to rise to the level of any threshold that would justify their decision to do so.

Accordingly, a case and controversy continues to exist between the parties as to whether the Oberlin College Defendants should be required to compensate Mr. Doe financially for the harm and damages that they caused him, and if so, the amount of said compensation. Because money damages continue to be at issue, this Honorable Court can grant effectual and meaningful relief that would affect the parties' legal interests by deciding the merits of Mr. Doe's appeal.

⁸ Verified Complaint, R.1-1, Page ID#: 81-77.

As such, this Honorable Court must deny the Defendants’ motion to dismiss Mr. Doe’s appeal and proceed with the adjudication of the merits of his appeal and assignments of error.

II. MR. DOE’S VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND MONEY DAMAGES

Mr. Doe filed a Verified Complaint seeking preliminary and permanent injunctive relief and *money damages* against Oberlin College, Oberlin College Board of Trustees, Oberlin College’s Director of the Office of Equity, Diversity, and Inclusion and Title Title IX Coordinator (Rebecca Mosely), and Oberlin College Doe Defendants 1-10 (hereinafter collectively referred to as “the Oberlin College Defendants”).⁹

Mr. Doe’s Verified Complaint set forth the following causes of action against the Oberlin College Defendants: 1) Violation of Title IX of the Education Amendments of 1972 – erroneous outcome and selective enforcement; 2) Violation of 42 U.S.C. § 1983; 3) Breach of Contract; 4) Breach of the Covenant of Good Faith and Fair Dealing; 5) Negligence; and 6) Promissory Estoppel.¹⁰

All of Mr. Doe’s causes of action against the Oberlin College Defendants were based on underlying unconstitutional gender-based discriminatory policies and procedures set forth in Oberlin College’s Sexual Misconduct Policy and the

⁹ Verified Complaint, R.1-1, Page ID#: 7-258.

¹⁰ Verified Complaint, R.1-1, PageID#: 7-258.

named Defendant's implementation of said policies and procedures against him in response to false and wildly inconsistent allegations of sexual misconduct asserted by Jane Roe, a female student at Oberlin College.¹¹

Mr. Doe asserted in his Complaint that Jane Roe's allegations against him failed to rise to the level of any threshold that would justify the Oberlin College Defendants' decision to pursue a formal investigation into her allegations and ultimately subject him to a hearing process where he would not only face the penalty of expulsion from the College, but a permanent disciplinary record on his academic transcript.¹²

The Oberlin College Defendants' original assessment of Jane Roe's allegations led them to conclude that her allegations against Mr. Doe should be resolved informally, without an investigation, and without any disciplinary action being taken against him.¹³ Defendant Mosely even informed Mr. Doe on at least two (2) occasions that the allegations made against him by Jane Roe would be handled by way of informal resolution, meaning no adverse would be taken against him as result of said allegations.¹⁴ Based on Defendant Mosely's representations, Mr. Doe agreed to an informal resolution of Jane Roe's allegations against him.¹⁵

¹¹ Verified Complaint, R.1-1, Page ID#: 8.

¹² Verified Complaint, R.1-1, Page ID#: 8-9.

¹³ Verified Complaint, R.1-1, Page ID#: 9.

¹⁴ Verified Complaint, R.1-1, Page ID#: 10.

¹⁵ Verified Complaint, R.1-1, Page ID#: 11.

Thereafter, Mr. Doe voiced a complaint that Jane Roe violated Oberlin College's Sexual Misconduct Policy by telling Oberlin College students that he was a "rapist" and disclosing that she lodged a Title IX complaint against him.¹⁶ On information and belief, after Defendant Mosely disclosed to Jane Roe that Mr. Doe lodged a complaint against her, Jane Roe retaliated by demanding that the College commence formal resolution proceedings against Mr. Doe.¹⁷ The Oberlin College Defendants catered to Jane Roe's demand and commenced a formal investigation and adjudicatory process against Mr. Doe.¹⁸

Mr. Doe's Title IX erroneous outcome claim is based on the College erroneously determining that its Title IX investigation should proceed past the "Initial Title IX Assessment" and/or that it should not be handled through the "informal resolution process."¹⁹

Mr. Doe's Title IX selective enforcement claim is based on the College's decision to only open an investigation into whether he violated its sexual misconduct policy by allegedly engaging in sexual contact and/or conduct with Jane Roe while she was "drunk", but not opening an investigation into Jane Roe as to whether she violated the sexual misconduct policy by engaging in sexual contact

¹⁶ Verified Complaint, R.1-1, Page ID#: 11.

¹⁷ Verified Complaint, R.1-1, Page ID#: 11.

¹⁸ Verified Complaint, R.1-1, Page ID#: 9-11.

¹⁹ Verified Complaint, R.1-1, PageID #: 66-70.

and/or conduct with him based on her alleged disclosure to Oberlin College officials that she and Mr. Doe were both drunk when they began “hooking up” during one of the reported incidents.²⁰

Mr. Doe’s selective enforcement claim is also based on the Defendants’ refusal to investigate his complaint that Jane Roe violated the College’s sexual misconduct policy by informing other students that he was being investigated for violating the policy and by demanding the Defendants reverse their decision to handle her allegations through the informal resolution process and to proceed formally against Mr. Doe upon learning that Mr. Doe accused her of violating the policy.²¹

In Mr. Doe’s 42 U.S.C. § 1983 Fourteenth Amendment procedural due process claim against the Oberlin College Defendants, he asserted that the Defendants were state actors during their investigation into Jane Roe’s allegations and were therefore required to honor the rights and guarantees set forth in the United States Constitution during their investigation and adjudication.²²

Mr. Doe’s breach of contract claim against the Defendants is based on the Defendants’ failure to act in accordance with Oberlin College’s sexual misconduct

²⁰ Verified Complaint, R.1-1, PageID #: 70-71.

²¹ Verified Complaint, R.1-1, PageID #: 70-71.

²² Verified Complaint, R.1-1, PageID #: 71-75.

policy and in failing to comply with the policy in investigating and resolving Jane Roe's allegations against him.²³

Mr. Doe's breach of the covenant of good faith and fair dealing is based on the Defendants' decision to reverse its decision to proceed informally against him in response to Jane Roe's allegations and to proceed with a formal investigation and hearing process.²⁴

As it relates to his negligence cause of action against the Defendants, Mr. Doe alleged that the Defendants owed him a duty of care, arising from the obligations delineated in Oberlin College's policies and directives issued by the U.S. Department of Education's Office for Civil Rights, including a duty of reasonable care to allow him an equal opportunity to present information and witnesses in support of his defense and a duty to conduct an impartial and thorough investigation into the allegations of sexual misconduct against him.²⁵

Mr. Doe's promissory estoppel claim was based on his reliance on express and implied promises and representations made by Oberlin College, including the representations and promise that Oberlin College would ensure his right to a fair process if a sexual misconduct allegation was made against him.²⁶

²³ Verified Complaint, R.1-1, PageID #: 75-77.

²⁴ Verified Complaint, R.1-1, PageID #: 77-78.

²⁵ Verified Complaint, R.1-1, PageID #: 78-79.

²⁶ Verified Complaint, R.1-1, PageID #: 79-80.

Mr. Doe filed his Complaint and sought immediate injunctive relief to prevent the Oberlin College Defendants from proceeding with a fundamentally unfair sexual misconduct investigation and hearing process that historically has been rife with unconstitutional, gender-based discriminatory policies and procedures, as evidenced by its prior self-reported 100% conviction rate of male students accused of violating its sexual misconduct policy.²⁷

In support of his request for injunctive relief during the pendency of a college/university's Title IX sexual misconduct investigation and disciplinary process, Mr. Doe cited a district court decision from *Doe v. University of Michigan*, 18-1776 (E.D. Michigan 2020) that held: 1) a college student accused of violating a college's sexual misconduct policy had standing to sue the college under 42 U.S.C. § 1983 and Title IX **prior to the college conducting a formal hearing** against him and **prior** to any sanctions and discipline being imposed against him; 2) a college student's causes of action against a college **are ripe prior to the college conducting a formal hearing** against him and **prior** to any sanctions and discipline being imposed against him because his injury involved the deprivation of one of the most basic due process rights – the hearing itself; and 3) if portions of a college's sexual misconduct policy are unconstitutional, a college student is entitled to judgment as a matter of law on his claims **prior to the college**

²⁷ Verified Complaint, R.1-1, Page ID#: 12.

conducting a formal hearing against him and **prior** to any sanctions and discipline being imposed against him.²⁸

The fact that the district court denied the portion of Mr. Doe's Verified Complaint that requested preliminary and permanent injunctive relief and that the Oberlin College Defendants were able to complete their investigation into Jane Roe's allegations against him, and proceed to a formal hearing where a three-person panel ultimately found that he did not violate the College's sexual misconduct policy does not moot his appeal in this matter, as all of his causes of action also sought money damages against the Defendants based on their decision to pursue a formal investigation and disciplinary proceedings against him without any credible evidence that he violated the College's sexual misconduct policy.

III. LAW AND ARGUMENT

The Oberlin College Defendant's motion to dismiss Mr. Doe's appeal as moot must be denied because his Complaint sought *money damages* against the Defendants in addition to injunctive relief and the Defendants have failed to satisfy their heavy burden of demonstrating that his claims for money damages are mooted by the fact that a three-person hearing panel at Oberlin College concluded that he did not violate the College's sexual misconduct policy and that his

²⁸ Motion for Reconsideration, R.4, PageID #: 395-396.

accuser's allegations were not credible. "Where a claim for injunctive relief is moot, relief in the form of damages ... is not affected." *KNC Investments, LLC v. Lane's End Stallions, Inc.*, 579 Fed.Appx. 381, 384 (6th Cir. 2014)(citing *Gottfried v. Med. Planning Servs.*, 280 F.3d 684, 691 (6th Cir. 2002)(citing *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 393-94, 101 S.Ct. 1830, 68 L.Ed. 2d 175 (1981); *Powell v. McCormack*, 395 U.S. 486, 495-500, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969)).

"Claims for damages or other monetary relief automatically avoid mootness." *Hood v. Keller*, 229 Fed.Appx. 393, 400 (6th Cir. 2007)(citing 13A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure Jurisdiction 2d*, § 3533.3, at 262)). "When relief is possible, a lawsuit is not moot." *Global Relief Foundation, Inc. v. O'Neill*, 315 F.3d 748, 751 (7th Cir. 2002)(citing *Spencer v. Kemna*, 523 U.S. 1, 118, S.Ct. 978, 140 L.Ed.2d 43 (1998); *Hall v. Beals*, 396 U.S. 45, 90 S.Ct. 200, 24 L.Ed.2d 214 (1969)). "One application of this principle is suits seeking money damages ... cannot become moot unless the defendant satisfied the plaintiff's demand." *Id.*

"A plaintiff seeking both injunctive relief and money damages can continue to pursue the case, even after the request for an equitable remedy is rendered moot." *Spell v. Edwards*, 20-30358 (5th Cir. June 18, 2020)(citing Edwin Chemerinsky, *Federal Jurisdiction* § 2.5.2. (6th Ed. 2012)). "Courts distinguish between claims seeking declaratory and injunctive relief, which may be mooted by

the repeal of a statute, and claims seeking monetary relief, which generally are not mooted.” *Stevenson v. Blytheville School District #5*, 800 F.3d 955, 964 (8th Cir. 2015)(citing *Tini Bikinis-Saginaw, LLC v. Saginaw Charter Tp.*, 836 F.Supp.2d 504, 520 (E.D. Mich. 2011)). “We have previously held that even if a plaintiff’s injunctive relief claim has been mooted, the action is not moot if we conclude that he may at least be ‘entitled to nominal damages.’” *Rendelman v. Rouse*, 569 F.3d 182, 187 (4th Cir. 2009)(citing *Covenant Media of S. C., LLC v. City of North Charleston*, 493 F.3d 421, 429 n. 4 (4th Cir. 2007)).

“This Court has explained that although time may have rendered moot an appellant’s request for injunctive relief, the claim for actual money damages incurred ... remains a live claim.” *JSLG, Inc. v. City of Waco*, 504 Fed.Appx. 312, 319 (5th Cir. 2012)(citing *Henschen v. City of Houston, Tex.* 959 F.2d 584, 587-88 (5th Cir. 1992); *Opulent Lite Church v. City of Holly*, 697 F.3d 279 (5th Cir. 2012)(explaining that “[a] plaintiff seeking both injunctive relief and money damages can continue to pursue the case, even after the request for an equitable remedy is rendered moot”)(quoting Edwin Chemerinsky, *Federal Jurisdiction* § 2.5.2. (6th Ed. 2012)).

“The ‘heavy burden demonstrating mootness’ lies with the party claiming the case is moot.” *KNC Investments, LLC v. Lane’s End Stallions, Inc.*, 579 Fed.Appx. 381, 384 (6th Cir. 2014)(citing *Cleveland Branch, NAACP v. City of*

Parma, 263 F.3d 513, 530-31 (6th Cir. 2001)(citing *Cnty. of L.A. v. Davis*, 440 U.S. 625, 631, 99 S.Ct. 1379, 59 L.Ed.2d 642 (1979)).

In *Powell v. McCormack*, 395 U.S. 486, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969), the United States Supreme Court held that even though the plaintiff had been excluded from the 90th Congress, and the injunctive relief he sought was moot since he had been re-elected to the 91st Congress, his claim for damages for past salary withheld during the 90th Congress required a determination of the claim on the merits, and therefore, his case not moot. The plaintiff in *Powell* had been accused of deceiving the United States House of Representatives as to his travel expenses, the expenses of certain staff members, and of directing illegal payments to his wife. *Id.* at 490. In response to a report regarding said allegations, the House adopted a resolution that prohibited the plaintiff from taking his seat during the 90th Congress. *Id.* at 493. An amended resolution excluded the plaintiff from the House and declared his seat vacant. *Id.*

The plaintiff in *Powell* filed suit in the district court, naming five (5) members of the House as defendants. *Id.* at 494. In his complaint, the plaintiff alleged that the House's resolution violated the constitution because the resolution was inconsistent with the mandate that members of the House shall be elected by the people of each State. *Id.* The plaintiff further alleged that the Clerk of the House threatened to refuse to perform the service for plaintiff to which a duly

elected Congressman is entitled, that the Sergeant at Arms refused to pay him his salary, and that the Doorkeeper threatened to deny him admission to the House chamber. *Id.*

The plaintiff in *Powell* requested that the district court grant a permanent injunction restraining the respondents from executing the House resolution, and enjoining the Speaker from refusing to administer the oath, the Clerk from refusing to perform the duties due a Representative, the Sergeant at Arms from refusing to pay plaintiff his salary, and the Doorkeeper from refusing to admit the plaintiff to the Chamber. *Id.* The district court granted the defendants' motion to dismiss the plaintiff's complaint for want of subject matter jurisdiction. *Id.* The Court of Appeals affirmed. *Id.*

While the plaintiff's case was pending before the United States Supreme Court, the 90th Congress officially terminated, and the 91st Congress was seated. *Id.* The plaintiff was again elected and was seated by the 91st Congress. *Id.*

The defendants in *Powell* argued that events (the 90th Congress terminating and plaintiff being seated by the 91st Congress) which occurred subsequent to the United States Supreme Court granting certiorari required that plaintiff's appeal be dismissed as moot. *Id.* at 495. In response to the defendants' mootness argument, the United States Supreme Court stated "[w]here one of several issues presented becomes moot, the remaining live issues supply the constitutional requirement of a

case or controversy.” *Id.* at 497 (citing *United Public Workers v. Mitchell*, 330 U.S. 75, 86-94 (1947)). The Supreme Court then rejected the defendant’s mootness argument, noting that the plaintiff claimed in his Complaint that he had not been paid his salary by virtue of an allegedly unconstitutional House resolution, and that said claim was still unresolved and was hotly contested by clearly adverse parties.

Id.

Similarly, in the present matter, while Mr. Doe’s claims for injunctive relief became moot during the pendency of this appeal as a result of a three-person hearing panel at Oberlin College concluding that he did not violate the College’s sexual misconduct policy, his causes of action seeking money damages against the Oberlin College Defendants are not moot and remain hotly contested by the parties. Thus, the Oberlin College Defendant’s motion to dismiss Mr. Doe’s appeal as moot must be denied as there are remaining live issues between the parties that satisfy the constitutional requirement of a case or controversy i.e., whether Mr. Doe is entitled to money damages against the Defendants, and if so, how much compensation is he entitled to.

This Honorable Court should also note that all of the case law that the Defendants rely upon in support of their motion to dismiss involve cases in which a party only sought injunctive and/or declaratory relief and not money damages²⁹

and/or sought monetary damages pursuant to acts and/or statutes that specifically provided for injunctive relief, but not for compensatory damages.

WHEREFORE, the Plaintiff-Appellant, John Doe, respectfully asserts that this Honorable Court must deny the Defendants-Appellees' Motion to Dismiss his appeal as the Defendants have failed to satisfy their heavy burden that his claims for money damages are moot.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on August 31, 2020 the forgoing Appellant's Brief in Opposition to Appellees' Motion to Dismiss Appeal was served on all parties or their counsel of record through the CM/EDC system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

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