

STATE OF MICHIGAN
COURT OF APPEALS

METRO WIRE & CABLE COMPANY,

Plaintiff-Appellant/
Cross-Appellee,

v

MARK STEVEN BOGGESS,

Defendant-Appellee/
Cross-Appellant.

UNPUBLISHED
October 15, 1996

No. 179853
LC No. 94-3064-CK

Before: Hood, P.J., and Holbrook, Jr., and G. S. Buth,* JJ.

PER CURIAM.

Plaintiff appeals from an order converting a preliminary injunction to a permanent injunction in this action alleging a breach of an employment contract. Defendant cross-appeals from the same order.

The preliminary injunction entered by the court on August 5, 1994, enjoined defendant from engaging in certain acts “for the remainder of the two-year period June 3, 1994 through June 2, 1996.” By stipulation of the parties, the preliminary injunction was converted to a permanent injunction which was entered by the court on October 7, 1994. Because the two-year period set out in the injunction has now expired, we conclude that this appeal must be dismissed as moot. See, e.g., *Curtis Industries, Inc v Livingston*, 30 F3d 96 (CA 8, 1994).

As a general rule, a case becomes moot when the parties lack a legally cognizable interest in the outcome of the case. While the question whether to enjoin defendant Boggess from working for a competitor of plaintiff’s is now moot, an exception to the general rule is recognized under circumstances where the underlying conduct is “capable of repetition, yet evades review.” *Mead v Batchlor*, 435 Mich 480, 487; 460 NW2d 493 (1990). The exception applies where the following two factors exist: (1) the challenged action was incapable of being fully litigated before its expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again. See *Weinstein v Bradford*, 423 US 147, 149; 96 S Ct 347; 46 L Ed 2d 350 (1975). Because the

* Circuit judge, sitting on the Court of Appeals by assignment.

injunction in this case has expired, defendant can no longer be held in breach of his employment agreement with plaintiff. See *Vencor, Inc v Webb*, 33 F3d 840 (CA 7, 1994). Thus, the issues presented in this appeal are not capable of recurrence, and therefore the case is moot.

Plaintiff did not seek damages at law in the court below, therefore, we detect no reason to remand this matter to the trial court for further proceedings.

Appeal dismissed as moot.

/s/ Harold Hood

/s/ Donald E. Holbrook, Jr.

/s/ George S. Buth