

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

HAROLD GENE DAVIS and DELIA M.
DAVIS, husband and wife,

Appellants,

v.

PLEASANT FOREST CAMPING CLUB, a
Washington nonprofit corporation; BOARD
OF DIRECTORS PLEASANT FOREST
CAMPING CLUB, ART MARIEN, FRANK
PESKIN, GERTHA MCFARLAND, BOB
MALLEY, MICHAEL WHITE, and BILL
MINER,

Respondents,

No. 42287-5-II

UNPUBLISHED OPINION

Penoyar, J. — The Pleasant Forest Camping Club terminated Harold “Gene” and Delia Davis’s membership. The Davises sued, alleging a breach of contract and a violation of their civil rights. The trial court granted summary judgment in the Club’s favor.

The Davises appeal, arguing that there is an issue of material fact as to whether the termination proceedings violated notice and voting provisions of Club bylaws. They also argue that the trial court erred by entering final judgment without deciding all claims and by awarding attorney fees without conducting a lodestar analysis. Because the Davises have failed to demonstrate how the Club’s failure to strictly comply with its bylaws defeats the general rule against court interference in the internal affairs of voluntary associations, or how the termination proceedings violated due process, we affirm. Furthermore, the trial court did not err by entering final judgment because it decided that the Club had adequate grounds for terminating the Davises’ membership and thus did not need to analyze the Davises’ claim that the sole reason for their

termination was to deprive them of their access to court. Further, the Davises failed to plead any other claim with sufficient specificity such that the trial court erred by entering final judgment. However, because the trial court failed to issue findings of fact and conclusions of law regarding the attorney fees award, we remand with instructions to conduct a proper lodestar analysis.

FACTS

I. Background

Pleasant Forest Camping Club is a non-profit corporation operating a campground for recreational vehicles. Pursuant to its Articles of Incorporation, the Club adopted bylaws, rules, regulations, and covenants. As outlined in the bylaws, a Board of Directors (Board) governs the Club.

Voluntary membership in the Club is “the purchased privilege to use and share in the Club and its facilities.” Clerk’s Papers (CP) at 41. Members in good standing are those who are in compliance with all Club bylaws, rules, and regulations. Any membership may be terminated for violation of Club bylaws or the rules and regulations. As provided in the Club’s rules and regulations, “[b]eing a nuisance is especially prohibited.” CP at 61. This includes “belligerence” and “obnoxiousness.” CP at 61.

According to the bylaws, the termination process may follow various routes but they all culminate in a vote by the Board or by a vote of the general membership. All routes provide for notice to the party being expelled, along with an opportunity for the subject member(s) to be heard. A member may appeal a terminated membership, a process during which the member may have access to legal counsel.

Gene and Delia Davis joined the Club in 2000. Gene¹ was elected to the Board in 2005.

In 2007, Gene became embroiled in a dispute over whether a neighbor, Mike White, should be allowed to bring an 11-foot-wide trailer onto Club property. The width of this trailer allegedly ran afoul of Club bylaws. Tensions ran high.

On May 19, certain Club members circulated a petition calling for the termination of Gene's membership, citing intimidation, provocation, and the creation of "constant confrontation." CP at 173. Various Club members attempted to gather signatures for the petition by going from lot to lot. The petition for a special meeting allegedly failed to obtain valid signatures from the required 25 percent or more of the membership. After receiving the petition, the Board met on July 5 and voted unanimously to call a special meeting of the membership to vote on the Davises' membership. That same day, the Board distributed a letter informing the membership of a special meeting for the purpose of voting on the termination of Gene's membership to be held on August 11. The letter cited complaints of continuous harassment, intimidation, and threats. A ballot and ballot envelope accompanied each letter sent out. In response, Gene sent an open letter to Club members defending his actions as a Board member, arguing that the controversies in which he had been involved stemmed only from his attempts to secure compliance with Club bylaws.

The special meeting occurred on August 11. New ballots were distributed at the door. After informing the members present that the mailed ballots would not be counted, the president and White made statements that they had been harassed and felt intimidated by Gene Davis. No other complaints were read. Gene did not testify; in fact, he chose not to attend. At the close of the meeting, volunteers counted the new ballots, which tallied 66 in favor of termination versus 9

¹ For clarity, we refer to the Davises by their first names. No disrespect is intended.

against.

That same day, the Board sent the Davises a notice of membership termination. The Davises appealed. The Club then held an appeals hearing during which the Davises were represented by counsel. At the hearing, the Davises presented evidence in support of their request that the Board reverse the termination decision. The Board affirmed.

II. Procedural History

After the Board denied their appeal, the Davises sued the Club and members of the Board for breach of contract and violation of civil rights. The Club moved for summary judgment, arguing that because the Club acted in accordance with its bylaws in the termination proceedings, there was no issue of material fact before the trial court. The trial court denied the Club's motion because it could not determine whether there was a justifiable basis for terminating the Davises' membership.

The Club then filed a second motion for summary judgment, submitting additional declarations to establish that adequate grounds had existed for the Davises' termination. Concluding that there were sufficient facts to support the termination, the trial court proceeded to the question of whether the Davises had presented any factual information indicating the Club violated its bylaws in the termination proceedings. The trial court noted that the Davises had raised questions about "who was allowed to vote, whether the right people voted, [and] whether there was a majority of the people voting who cast votes in favor of termination" but concluded that the Davises "present[ed] no factual information to indicate that the procedures were in fact flawed by . . . allowing the camping club to proceed in a way that was not prescribed by the bylaws." Report of Proceedings (RP) (Apr. 22, 2011) at 17–18. The trial court granted the

Club's motion for summary judgment and awarded it costs and attorney fees in the sum of \$17,078.61.

The Davises moved for reconsideration of the summary judgment order. The court denied the motion. The Davises appeal.

ANALYSIS

I. Summary Judgment

The Davises argue that the termination proceedings were conducted in contravention of Club bylaws, including deficiencies in the petition process, technical issues with the calling of the special meeting, and violations of notice requirements and voting procedures. Because we refrain from interfering with the internal affairs of voluntary associations; the Club's bylaws are ambiguous in key places; and the Board substantially complied with Club bylaws, such that there was no significant breach of the Davises' contract with the Club, the Davises' claim fails.

A. Standard of Review

We review de novo a trial court's summary judgment order. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). When there are no genuine issues of material fact—after viewing the evidence in the light most favorable to the nonmoving party—the moving party is entitled to judgment as a matter of law. CR 56(c); *Ranger Ins. Co.*, 164 Wn.2d at 552. A genuine issue of material fact exists where reasonable minds could reach different conclusions. *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 601, 200 P.3d 695 (2009).

The moving party bears the initial burden of showing there are no genuine issues of material fact. *Pac. Nw. Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 350, 144 P.3d 276 (2006). To establish the existence of a genuine issue of material fact, the nonmoving party

may not rely on speculation or argumentative assertions that unresolved factual issues remain; instead, it must set forth specific facts that sufficiently rebut the moving party's contentions. *Michael*, 165 Wn.2d at 601-02. Should the nonmoving party fail to meet this burden, summary judgment is appropriate. *Pac. Nw. Shooting Park Ass'n*, 158 Wn.2d at 351.

B. Breach of Contract

The relationship between a club and its members is one of contract. *See Garvey v. Seattle Tennis Club*, 60 Wn. App. 930, 933, 808 P.2d 1155 (1991). When a club wrongfully expels one of its members, it breaches the contract terms setting out appropriate procedures for expulsion. *See Garvey*, 60 Wn. App. at 933-34. At the same time, a minor or insubstantial breach of the contract's terms will not support a cause of action since courts generally refrain from interfering in the internal affairs of voluntary associations. *See Anderson v. Enter. Lodge No. 2*, 80 Wn. App. 41, 46, 906 P.2d 962 (1995) (citing *Grand Aerie, Fraternal Order of Eagles v. Nat'l Bank of Wash.*, 13 Wn.2d 131, 135, 124 P.2d 203 (1942)). Courts will not interfere with the decision to expel a member "except to ascertain whether the proceedings were regular, in good faith, and not in violation of the laws of the [organization] or the laws of the state." *Grand Aerie*, 13 Wn.2d at 135.

Courts afford great deference to a voluntary association's interpretation of its own bylaws. Our Supreme Court has held that it is not for the jury to interpret the bylaws of an organization and, further, that courts should not interfere with the interpretation placed upon the bylaws by an organization's officers and agents unless such interpretation is arbitrary and unreasonable. *See Couie v. Local Union No. 1849 United Bhd. of Carpenters & Joiners of Am.*, 51 Wn.2d 108, 115, 316 P.2d 473 (1957). While questions of whether a voluntary association has followed its

bylaws may sometimes be judicially cognizable, *see Anderson*, 80 Wn. App. at 47, this “procedural deficiency” exception to the general rule against interference typically is applied with considerable judicial restraint. In *Anderson*, for instance, the court noted that an organization’s confusing and sometimes contradictory rules made it difficult to determine whether the organization had exceeded its authority. 80 Wn. App. at 47. Deciding that the organization’s interpretation was neither arbitrary nor unreasonable, the court there held that the exception did not apply. *Anderson*, 80 Wn. App. at 47.

The Davises fail to show how the Board’s interpretation of Club termination procedures was arbitrary and unreasonable or that the Club’s actions were a substantial breach of its contract with the Davises. According to Club bylaws, the termination process must involve an investigation by the Clubs’ Grievance or Mediation Committee, a special meeting of the Board to discuss the termination, and written notice of the proposed termination to the member. A member may be terminated by a majority vote of the Board or by a vote of the general membership—garnering 50 percent approval of those voting and eligible to vote—held at the special meeting.

While some of these steps are significant parts of the Davises contract with the Club, others are not. For instance, the right not to be expelled without a vote of the Board or the members is important; the right to have an investigation by a Grievance or Mediation Committee, at least on the record we have, is not. To require compliance with the minutia of the bylaws would be to interfere with the internal operations of the Club to prevent insignificant and unrecompensable breaches of the Club’s contract with its members.

Here, after receiving the petition calling for termination of the Davises' membership and hearing numerous complaints from members, the Board voted unanimously to call a special meeting of the membership for the purpose of voting on the Davises' membership. The Board provided all members, including the Davises, with notice of the meeting.² The Davises then sent an open letter to Club members defending Gene's actions. Members present at the meeting voted 66 to 9 in favor of termination; ballots cast by mail—opened after this litigation began—supported termination by a vote of 89 to 16.³ By unanimously voting to call for a special meeting, providing notice of the meeting, and facilitating a membership vote on termination, the Board substantially complied with the significant parts of the prescribed termination process and the Club's contract with the Davises.

Despite this, the Davises allege technical deficiencies in the termination proceedings. For instance, they argue that neither the Board nor the Club's president may call for a special meeting to hold a vote of the members on termination—only the members may do so through the petition process. However, the bylaws are unclear as to whether this is the *only* process for initiating a special meeting during which the membership will vote on termination. For example,

² The notice explained that the Board had received complaints from members over Gene's actions and called for a special meeting "solely for the purpose of voting for the termination of Gene Davis' club membership." CP at 72.

³ The Davises argue that the Board's decision to hold an in-person vote at the special meeting—instead of counting the ballots mailed out with the notice letter—violated notice procedures for special meetings. What the Davises fail to acknowledge, however, is that the notice of the meeting stated that "[t]his meeting is solely for the purpose of voting for the termination of Gene Davis' club membership." CP at 72. The Board could have reasonably concluded that this process was within their general power to call special meetings for membership votes on an issue.

the bylaws state that the Board has general power to call for a special meeting, the notice of which must indicate the purpose of the meeting and explain whether a vote of the membership will be required. Specific to the Davises' claim, the bylaws simply indicate that "[t]ermination *could* be accomplished by a majority vote of the Board of Directors or a vote of the general membership initiated by the petition process. . . ." CP at 45 (emphasis added).⁴

The Davises also argue that even if the Board had properly called the meeting, several additional procedural defects warranted a new meeting. In fact, the Davises assert that "[t]here is no evidence that any [of the proper] steps were taken." Appellant's Br. at 21. But they misunderstand their burden here. In order to withstand summary judgment, *they* must proffer material facts tending to show that the Board significantly breached the contract with the Davises.⁵ *See Michael*, 165 Wn.2d at 601–02. The Davises' argumentative assertion fails to satisfy their burden.

The Davises merely allege technical issues with the termination process. As has been recited in another jurisdiction, "[t]he great weight of authority holds that a lack of technical formality in the expulsion proceedings is not in and of itself a basis for court review, wherein a club's regulations . . . were not strictly followed. . . . [A]bsolute technical accuracy is not

⁴ The Davises also argue that the petition circulated by members calling for Gene's termination violated Club bylaws. This claim likely has merit. Nonetheless, because the Board called for the special meeting on termination—the meeting was not called by petition—this issue is moot.

⁵ For example, the Davises presented no evidence showing that the Board failed to initiate a proper Grievance or Mediation Committee investigation.

required.” *Kirk v. Jefferson County Med. Soc’y*, 577 S.W.2d 419, 422 (Ky. Ct. App. 1978); *see also Kitt v. Ohio Operating Eng’rs Joint Apprenticeship & Training Comm.*, 499 N.E.2d 887, 889 (Ohio Ct. App. 1985) (“We believe it is clear that as to a private group or association . . . the law does not require technical accuracy in their proceedings.”). Here, the Davises fail to show that there is a genuine issue of material fact as to whether the Board’s interpretation of its bylaws was a significant breach of the Club’s contract with the Davises that warranted judicial intervention into the Club’s internal affairs.

Furthermore, even if the Club’s initial termination proceedings violated the Club’s bylaws, the appeals hearing cured any alleged defects. The Davises cite *Garvey* and a case from Indiana for the proposition that appeals hearings are not an appropriate venue to cure alleged procedural defects. But *Garvey* did not hold that a club must go back and follow *all* procedural requirements. Instead, the court in *Garvey* simply noted that there is “substantial authority that a private club has the power to remedy procedural errors committed at initial proceedings in subsequent actions.” 60 Wn. App. at 934. In *Garvey*, after the member’s initial termination proceeding was allegedly tainted by the club’s failure to give the member notice or a hearing, the club “re-tried” the member in accordance with club rules, resulting in a unanimous vote for expulsion. 60 Wn. App. at 932. Contrary to the Davises’ assertion, the court thus had no occasion to consider whether an appeals hearing could have remedied procedural errors. Here,

the Davises were afforded a full appeals hearing during which they were represented by counsel and had the opportunity to present their grounds for appeal. The appeals hearing cured any alleged procedural defects.⁶

C. Due Process

Next, the Davises argue that they were deprived of their right to due process in the termination proceedings. The Davises assert that their membership created a valuable property right that was wrongfully terminated without proper notice or an opportunity to be heard. Because citizens generally are not protected by the Fourteenth Amendment against actions by private entities, the Davises' due process claim fails.

Under the Fourteenth Amendment, due process requires the opportunity to be heard ““at a meaningful time and in a meaningful manner.”” *Matthews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965)). But due process is protection against state action and its relevance in disputes between a voluntary private social club and its members is suspect. *Garvey*, 60 Wn. App. at 935 (quoting *Hartung v. Audubon Country Club, Inc.*, 785 S.W.2d 501, 503 n.1 (Ky. Ct. App. 1990)). Tellingly, in *Garvey*, the court held that constitutional due process did not apply to a case of termination from a voluntary association because the plaintiff's claim was of a private and social nature. 60 Wn. App. at 935.

⁶ Neither did the Indiana case, *Terrell v. Palomino Horse Breeders of Am.*, 414 N.E.2d 332 (Ind. Ct. App. 1980), hold that a valid appeals process would not substitute for a new hearing. In any event, the Indiana Supreme Court overruled that case. See *Ind. High Sch. Athletic Ass'n, Inc. v. Reyes*, 694 N.E.2d 249, 256 (Ind. 1997).

The Davises cite a Washington Supreme Court case⁷ for the proposition that it is the duty of the courts to protect the property rights of members of organizations when they are endangered without specific charges or the opportunity to be heard. The case is inapposite. In *Boilermakers*, the court decided that the acts of the defendants in suspending the plaintiffs from a union were conducted “wholly without notice or hearing.” 33 Wn.2d at 61–62. Here, on the other hand, the Davises responded to the notice of the proposed termination meeting with an open letter to Club members defending their actions. After the termination vote, the Davises had the opportunity to present to the Board why it should reverse the termination. The Davises contend that they were never given notice of *specific* charges against them. However, the Board intimated in its notice letter that the Davises were the subject of complaints of continuous harassment, intimidation, and threats, and that these complaints were the basis for a special meeting with a vote on termination. This is much different than being subjected to termination “wholly without notice.” *Boilermakers*, 33 Wn.2d at 61.

Furthermore, *Boilermakers* is distinguishable in terms of the property right at issue. In *Boilermakers*, membership in the union was tied to the plaintiffs’ livelihood. 33 Wn.2d at 45. In *Garvey*, the court articulated the difference between membership in a social club and a union: “We distinguish here the rights of a member of an organization which is related to earning one’s livelihood or professional advancement from the rights of a member of a private, social club. The former has constitutional overtones that the latter does not.” 60 Wn. App. at 935 n.5 (quoting *Everglades Protective Syndicate v. Makinney*, 391 So.2d 262, 265 (Fla. Dist. Ct. App. 1980).

⁷ *Wash. Local Lodge No. 104, Int’l Bhd. of Boilermakers, Iron Ship Builders & Helpers of Am. v. Int’l Bhd. of Boilermakers, Iron Ship Builders & Helpers of Am.* (“Boilermakers”), 33 Wn.2d 1, 203 P.2d 1019 (1949).

Here, membership in the Club is the “purchased privilege to use and share in the Club and its facilities.” CP at 41. The Davises’ due process claim is without merit.

II. Final Judgment

The Davises also assert that the trial court erred by entering a final judgment and dismissing their case without deciding all claims. The Davises contend that, in addition to alleging a breach of contract for wrongful termination, their complaint also alleged a breach of contract by the Club in allowing the 11-foot-wide trailer in violation of the bylaws, and a violation of civil rights for the termination of their membership for the sole purpose of depriving them of their access to court. The trial court, the Davises argue, entered a final judgment based only on the Davises’ wrongful termination claim. Because the complaint did not clearly allege the breach of contract claim relating to the trailer and because the trial court concluded that Gene’s disruptive behavior constituted adequate grounds for the Board’s termination, this contention likewise fails.

First, the Davises’ breach of contract claim regarding the trailer lacked clarity at the pleadings stage. In their complaint, the Davises alleged, “By violating the by-laws of the [Club] and retaliating against Mr. and Ms. Davis for his complaining regarding the violation of the by-laws, [the Club] and its board of directors have breached their contract with Mr. and Ms. Davis.” CP at 9. It is far from clear that the Davises were alleging multiple breaches here. Clearly, this litigation has proceeded under the assumption that this was a case about wrongful termination. *See* Appellant’s Reply Br. at 1 (“This case is about whether the Club followed the procedures set forth in its bylaws for termination of membership.”). The trial court was not required to read between the lines to determine that this case involved a claim beyond that of wrongful termination.

Secondly, the Davises' contention that the trial court failed to address their civil rights claim is without merit. The Davises allege that the Board conducted the membership termination proceedings for the sole purpose of depriving them of their access to a court. The trial court concluded that Gene's belligerence and disruptive behavior supported the Board's termination action. The trial court did not need to conduct a separate analysis when it had already made this dispositive determination.

III. Attorney Fees

The Davises maintain that the trial court erred by awarding attorney fees to the Club without conducting a lodestar analysis. Because the trial court made no findings of fact or conclusions of law on this matter, we remand for the purpose of determining the appropriate attorney fee award.⁸ *See Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632, 966 P.2d 305 (1998) (holding that findings of fact and conclusions of law are required to establish an adequate record on review to support an attorney fee award and remanding to the trial court for the entry of findings of fact and conclusions of law to establish the proper record).

The Club, citing CR 52(a)(5)(B), questions the application of *Mahler* in a summary judgment case. This argument fails; *Mahler* was a direct review of consolidated cases both decided on summary judgment. 135 Wn.2d at 407–08, 410–11.

Finally, the Club requests attorney fees on appeal, citing RAP 18.1. A contractual provision providing for attorney fees at trial supports an award of attorney fees on appeal. *See*

⁸ The Club contends that because the Davises did not object to the Club's motion for attorney fees, we should not entertain the issue. But *Mahler* is clear: "Courts should not simply accept unquestioningly fee affidavits from counsel." 135 Wn.2d at 434–35. The trial court here merely adopted the Club's proposed award less \$230.00, with no explanation of why it arrived at this figure.

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Schmitt v. Matthews, 12 Wn. App. 654, 664–65, 531 P.2d 309 (1975). Because Club bylaws provide for an award of attorney fees when the Club prevails in “legal action . . . to enforce the rights of the Club,” we grant the Club’s request. CP at 46.

We affirm summary judgment in favor of the Club and remand for entry of findings of fact and conclusions of law regarding the attorney fees award.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Penoyar, J.

I concur:

Johanson, A.C.J.

Quinn-Brintnall, J. (concurring) — While I am in full agreement with my colleagues, I write separately to clarify that the ability to enforce a covenant is a valuable property right enforceable in court. *Twin City Pipe Line Co. v. Harding Glass Co.*, 283 U.S. 353, 356, 51 S. Ct. 476, 75 L. Ed. 1112 (1931) (“The general rule is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts.”); *Terrien v. Zwit*, 467 Mich. 56, 71, 648 N.W.2d 602 (2002) (“A covenant is a contract created with the intention of enhancing the value of property, and, as such it is a ‘valuable property right.’”).

Here, as the majority opinion points out, the Davises’ complaint did not clearly allege a breach of contract claim relating to the Board’s decision to allow the Whites to bring a model home onto Club property. As such, the trial court did not err in entering a final judgment that failed to address that claim. However, had the Davises clearly alleged such a claim, I note that voluntary association cases, like *Garvey v. Seattle Tennis Club*, 60 Wn. App. 930, 808 P.2d 1155 (1991), would not control our analysis. Instead, we would look to restrictive covenant cases of the type frequently involving homeowners’ associations. *See, e.g., Jensen v. Lake Jane Estates*, 165 Wn. App. 100, 106, 267 P.3d 435 (2011) (“[W]e strive to interpret restrictive covenants in such a way that protects the homeowners’ collective interests and gives effect to the purposes intended by the drafters of those covenants to further the creation and maintenance of the planned community.”).

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But, again, as the Davises failed to cognizably pursue this claim at trial, that issue is not properly before this court. Accordingly, I concur with my colleagues.

QUINN-BRINTNALL, J.