

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CHARLES B. THOMAS, JR.)	No. 65709-7-I
)	
Appellant,)	DIVISION ONE
v.)	
)	
PRINCE HALL GRAND LODGE,)	UNPUBLISHED OPINION
F. & A.M. OF WASHINGTON AND)	
JURISDICTION, and KENNETH B.)	
ANTHONY, individually and in his)	
official capacity as Grand Master,)	
)	
Respondents.)	FILED: February 21, 2012

Schindler, J. — Charles B. Thomas, Jr. contends the court erred in dismissing his complaint for injunctive relief and damages against the Prince Hall Grand Lodge of Free & Accepted Masons of Washington (Grand Lodge) for failure to exhaust administrative remedies. Thomas claims that he exhausted administrative remedies. In the alternative, he contends an appeal would be futile. We disagree, and affirm dismissal of the complaint on the grounds that Thomas did not exhaust the internal appeal process of the Grand Lodge.

FACTS

The Grand Lodge Constitution and Bylaws

The Grand Lodge is a voluntary nonprofit fraternal association incorporated in Washington. As a condition of membership in the Grand Lodge, a member must agree to abide by the Grand Lodge Constitution and the Grand Lodge Bylaws.

Under the Grand Lodge Constitution, the membership has the ultimate authority over the legislative, judicial, and executive decisions of the Grand Lodge. The Grand Lodge Constitution states, in pertinent part:

This Grand Lodge is the only source of authority and exercises exclusive jurisdiction in all matters pertaining to Ancient Craft Free Masonry within the State of Washington and Jurisdiction; it has supreme, inherent and absolute legislative, judicial and executive Masonic authority and power It is subject only to the Ancient Landmarks, and from its decisions in relation to them or any Masonic subject there is no appeal.

Grand Lodge Const. art. XI.

The Grand Lodge Constitution also states that the membership has the power to make all laws, determine all matters of controversy or grievances, and decide all appeals by members. The Constitution provides, in pertinent part:

This Grand Lodge has and claims all the original essential powers and privileges belonging to Ancient Craft Free Masonry, and especially:

. . . .
. . . To make and enforce all laws and regulations for the government of the fraternity and to alter, amend and repeal the same at will; and its enactments, edicts and decisions upon all questions shall be the supreme Masonic law of its jurisdiction and shall be strictly obeyed by all lodges and Masons.

. . . To make and adopt general laws and regulations . . . and has the final decision and determination of all matters of controversy or grievances which may be brought up by appeal or otherwise from its subordinate lodges or from the Masters thereof.

. . . .
. . . This Grand Lodge has the power to hear and determine all appeals from subordinate lodges, to order the records in any case in a subordinate lodge and hear and determine the matters therein; and as an appellate and supreme tribunal, it has power to set aside, modify, reverse or affirm the verdicts, sentences, decisions and judgments of subordinate

lodges and the rulings and decisions of Worshipful Masters, and has power upon trial of cases coming up by appeal, to acquit, reprimand; suspend or expel any Mason from the Masonic Order for violation of the moral law, the edicts, laws or regulations of this Grand Lodge, or for any unmasonic conduct. The sentences, decisions and judgments of this Grand Lodge in such cases are final, conclusive and binding upon the accused and the lodges, and upon all persons concerned.

Grand Lodge Const. art. XII, § 12.01:03, :04, :14.

The Grand Lodge Constitution defines the power of the Grand Master, the Grand Lodge's highest-ranking executive officer. The Grand Lodge Constitution provides that "[w]hen the Grand Lodge is not in session," the Grand Master "shall decide all questions of usage, order and Masonic law, . . . and his decisions are final and conclusive, subject to the approval of the Grand Lodge in session." Grand Lodge Const. art. XIII.

Each July, the Grand Lodge holds the Annual Communication to elect the Grand Master, to approve or disapprove the Grand Master's actions for the previous year, and to hear appeals by members from "Lodge or Worshipful Master decisions."

The Grand Lodge Bylaws also reiterate that the membership has ultimate authority over all the Grand Lodge, and sets forth the process for an appeal. Under the Bylaws, "Sections 207.01 through 207.10" govern an appeal from "Worshipful Master decisions." Section 207.01 provides, in pertinent part:

Appeals shall be submitted to the Grand Lodge for review of judgments, orders, verdicts, decisions or sentences of a lodge in any disciplinary proceedings of the lodge or the rulings or decisions of Masters, . . . and the accused . . . has the right to and may appeal to the Grand Lodge from any judgment, order, verdict, decision or sentence rendered or adjudged by the lodge.

Grand Lodge Bylaws title 207, § 207.01. The Bylaws state that an appeal to the Grand

Lodge must be filed at least 30 days before the next Annual Communication. Grand Lodge Bylaws, § 207.02

The Grand Lodge Constitution requires members to exhaust the internal remedies “in a manner provided by the Constitution, laws and regulations of this Grand Lodge” before filing a lawsuit. The Grand Lodge Constitution states, in pertinent part:

No lodge, or any member thereof, under the jurisdiction of this Grand Lodge, shall resort to civil courts to establish any right or to redress any grievances arising out of the membership in the Order or connected therewith until it or he shall have exhausted the remedies within the Order and in a manner provided by the Constitution, laws and regulations of this Grand Lodge.

Grand Lodge Const. art. XV, § 15.08.

Suspension

Charles B. Thomas, Jr. has been a member of the Grand Lodge for almost 30 years. From 2006 until 2008, Kenneth B. Anthony served as the Chairman of the Grand Lodge Entertainment Committee (GEC). At the Annual Communication in July 2008, the Grand Lodge members elected Anthony to serve as the Grand Master.

On March 7, 2009, Thomas sent a letter to the Comptroller Board alleging that Grand Master Anthony and the GEC had mismanaged funds and did not comply with the Masonic Code. Grand Master Anthony and Thomas attended the Comptroller Board meeting on March 21. When Grand Master Anthony asked Thomas about the source of the allegations in his letter, Thomas refused to provide that information.

Immediately after the meeting, Grand Master Anthony suspended Thomas from the Grand Lodge. The letter of suspension states that Thomas is “indefinitely suspended from Masonry and the practice thereof” for “acts of contumacy towards the

Grand Master during the Comptroller Board meeting of March 21.”

In a letter dated March 26, Thomas’s attorney asserts Grand Master Anthony improperly suspended Thomas in retaliation and without a trial. Following receipt of the letter, the Grand Lodge notified Thomas that at the “direction of the MWGM Kenneth B. Anthony,” a Masonic trial by commission was scheduled for May 16.

William E. Spenser, Sr., a former Chairman of the Grand Lodge Jurisprudence Committee, represented Thomas at the trial. The commission found Thomas guilty of contumacy and insubordination “toward the Most Worshipful Grand Master” in “violation of the Past Masters oath, obligation, and creed.” In a letter dated June 3, Grand Master Anthony informed Thomas that he was suspended until December 19.

Pursuant to our Masonic Code, Title 205, Section 205.02, in addition to the recommendation as submitted to me by the Commission, I, MW Grand Master Kenneth B. Anthony, do hereby assign an additional 182 days to commence on June 21, 2009, to you to serve as your full and complete suspension for the Masonic violations of which you were found guilty.

Effectively, your date of reinstatement will be December 19, 2009.

Thomas did not appeal to the Grand Lodge membership at the Annual Communication the commission findings or Grand Master Anthony’s decision to suspend him.

At the Annual Communication in July, the members voted to approve the decisions of the Grand Master for the previous year, including the decision to suspend Thomas.

Lawsuit

On July 27, Thomas filed a complaint for injunctive relief and damages. Thomas

alleged that the Grand Lodge and Grand Master Anthony retaliated against him after he raised “legitimate and proper concerns about the fiscal management of the Grand Lodge and its Grand Entertainment Committee.” Thomas sought reinstatement and damages for defamation, negligent and intentional infliction of emotional distress, and outrage. After Thomas filed his lawsuit, Grand Master Anthony informed him that the “suspension will continue until the civil matter between you and this Grand Lodge is resolved.”

Motion To Dismiss

The Grand Lodge filed a CR 12(b)(6) motion to dismiss the complaint on the grounds that Thomas “fail[ed] to follow Masonic rules of appeal and exhaust his internal remedies.” The Grand Lodge argued that the Masonic Code required Thomas to appeal his suspension at the 2009 Annual Communication before filing a civil lawsuit. The Grand Lodge asserted that there was no dispute that Thomas did not file an appeal at the 2009 Annual Communication. In support, the Grand Lodge attached portions of the Masonic Code and excerpts from the minutes of the 2009 Annual Communication.

In response, Thomas argued that he had no right under the Masonic Code to appeal his suspension by the Grand Master to the Annual Communication. In support, Thomas filed declarations from former Grand Master Kenneth Swanigan and Spenser as a former Chairman of the Grand Lodge Jurisprudence Committee. According to Swanigan and Spenser, because Thomas was “suspended from Masonry,” he could not “go through the normal grievance and appeal procedure.” Swanigan also expressed

the opinion that Bylaw Section 207.01, which permits appeal from “rulings or decisions of Masters,” does not “extend to Mr. Thomas’ circumstances.” Thomas also claimed that exhausting the internal appeal procedures of the Grand Lodge would be futile because Grand Master Anthony would prevent a fair appeal.

The trial court granted the motion to dismiss for failure to exhaust the internal appeal procedure of the Grand Lodge. The court entered an order dismissing the complaint with prejudice.

In a motion to reconsider, Thomas argued that the court erred in dismissing his claims for defamation, negligent and intentional infliction of emotional distress, and outrage. The court denied the motion to reconsider. The order denying the motion for reconsideration states, in pertinent part:

This is the type of case courts are reluctant to be involved in. The rule is that administrative rules must be completed. It is only when these processes have been completed that the court will entertain jurisdiction, if at all. 28 W2d at p.544. The court’s entire ruling of June 11, 2010 is affirmed, including, the dismissal of negligence, outrage and emotional distress claims.^[1]

Reinstatement

At the Annual Communication in July 2010, the members elected Charles Walker III as the Grand Master. On April 7, 2011, Grand Master Walker sent a letter to “Worshipful Masters; Wardens; Present and Past Grand Lodge Officers; Past Grand Masters; and (all) Brethren” reinstating Thomas.

[A]fter reviewing the facts, evidence, and the Chairman of Jurisprudence’s Interpretation of the Masonic Code of the Most Worshipful Prince Hall Grand Lodge . . . concerning the suspension of Mr. Charles B. Thomas, there is no sound Masonic, Legal, or Moral Justification to continue the Suspension.

¹ (Emphasis in original.)

The letter states that by order of Grand Master Walker, Thomas shall “be immediately reinstated and restored to his previous rank, style, rights and privileges” in the Grand Lodge.

ANALYSIS

On appeal, Thomas argues the trial court erred in dismissing his claims for defamation, negligent and intentional infliction of emotional distress, and outrage on the grounds that he did not exhaust the internal appeal procedures of the Grand Lodge. Thomas contends there are no administrative remedies “for my economic losses, nor my emotional and physical distress.” In the alternative, Thomas claims exhausting the internal appeal procedure would be futile.

Because the trial court considered matters outside the pleadings, we review the CR 12(b)(6) motion to dismiss as a motion for summary judgment. Beaman v. Yakima Valley Disposal, Inc., 116 Wn.2d 697, 701 n.3, 807 P.2d 849 (1991). We review summary judgment de novo. Hubbard v. Spokane County, 146 Wn.2d 699, 706, 50 P.3d 602 (2002). Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c).

It is well established that a party must exhaust internal appeal procedures before filing a lawsuit. Orion Corp. v. State, 103 Wn.2d 441, 456-57, 693 P.2d 1369 (1985).

The supreme court described the reasons for requiring exhaustion of remedies as follows:

- (1) [I]nsure against premature interruption of the administrative process,
- (2) allow the agency to develop the necessary factual background on which to base a decision,
- (3) allow the exercise of agency expertise,
- (4) provide a more efficient process and allow the agency to correct its own mistake, and
- (5) insure that individuals are not encouraged to ignore

administrative procedures by resort to the courts.

Orion Corp., 103 Wn.2d at 456-57.

Courts will not interfere with the decision to suspend or expel a member of a private voluntary association like the Grand Lodge “except to ascertain whether the proceedings were regular, in good faith, and not in violation of the laws of the order or the laws of the state.” Grand Aerie, Fraternal Order of Eagles v. Nat’l Bank of Wash., Kent Branch, 13 Wn.2d 131, 135, 124 P.2d 203 (1942).

In cases of this kind courts never interfere, except to ascertain whether or not the proceeding was pursuant to the rules and laws of the society, whether or not the proceeding was in good faith, and whether or not there was anything in the proceeding in violation of the laws of the land.

Grand Aerie, 13 Wn.2d at 135² (quoting Kelly v. Grand Circle Women of Woodcraft, 40 Wash. 691, 695, 82 Pac. 1007 (1905)). Accordingly, a court “will not entertain claims if a member has failed to avail himself of . . . [the association’s] internal remedies.” Anderson v. Enterprise Lodge No. 2, 80 Wn. App. 41, 49, 906 P.2d 962 (1995) (citing Couie v. Local Union No. 1849 United Bhd. of Carpenters & Joiners of Am., 51 Wn.2d 108, 114, 316 P.2d 473 (1957)).

Here, the Constitution of the Grand Lodge unambiguously requires Thomas to exhaust the remedies provided “by the Constitution, laws and regulations of this Grand Lodge” before filing a civil lawsuit. Grand Lodge Const. art. XV, § 15.08. The uncontroverted record establishes that Thomas did not appeal the decision of Grand Master Anthony to suspend him from the Grand Lodge to the Annual Communication.

First, Thomas claims there is no requirement to exhaust the internal appeal

² (Internal quotation marks and citation omitted.)

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procedures for his claims of defamation, negligent infliction of emotional distress, intentional infliction of emotional distress, or outrage. Because the tort claims are based on allegations that the Grand Lodge improperly suspended Thomas, we disagree. The

complaint alleged, in pertinent part:

The Grand Master, in disseminating false charges of Thomas' alleged acts of contumacy, and suspension therefore, were not privileged, were malicious and retaliatory in nature, and constituted defamation per se. Such actions caused Thomas' irreparable harm to his respected status and reputation as a loyal and dedicated Mason, and member of the Grand Lodge

. . . Defendants' actions constituted the negligent and intentional infliction of emotional distress, and the tort of outrage.

. . . The defendants' actions caused Thomas general and special damages, including without limitation physical and mental pain and suffering, in such sums as shall be proved at the time of trial.

. . . Thomas has suffered and will continue to suffer substantial and irreparable harm, which is not readily calculable in damages, justifying the entry of such injunctive relief against the defendants as this Court deems just and proper, in order to restrain such further actions and course of conduct by defendants.

Next, Thomas asserts that he exhausted the Grand Lodge's internal appeal process. Thomas claims that the Bylaws only allow a member to appeal a suspension imposed by a "Master," and not the Grand Master. The Grand Lodge interprets the Bylaws as applying to the decision of the Grand Master to suspend a member. The Grand Lodge asserts that Thomas could have appealed his suspension at the 2009 Annual Communication, and that he continues to have the right to file an appeal.

Courts will not interfere with the interpretation of internal rules and procedures by a private association unless the interpretation is arbitrary and unreasonable.

Anderson, 80 Wn. App. at 47 (citing Couie, 51 Wn.2d at 115). Because the Grand Lodge's interpretation of the Bylaws is reasonable, the trial court did not err in granting the motion to dismiss the lawsuit for failure to exhaust the internal appeal procedure.

In the alternative, Thomas argues that exhaustion of the internal procedures is futile. A litigant claiming that exhaustion of administrative remedies is futile has the

heavy burden of establishing a “rare factual situation[]” where the futility exception applies. Spokoiny v. Wash. State Youth Soccer Ass'n, 128 Wn. App. 794, 802, 117 P.3d 1141 (2005); see also Beard v. King County, 76 Wn. App. 863, 871, 889 P.2d 501 (1995) (exhaustion requirement excused only in rare factual situations); Bellevue 120th Assocs. v. City of Bellevue, 65 Wn. App. 594, 598, 829 P.2d 182 (1992) (same); Dils v. Dep't of Labor & Indus., 51 Wn. App. 216, 219, 752 P.2d 1357 (1988) (same). A subjective belief that an internal administration procedure is futile is insufficient to establish futility. Baldwin v. Sisters of Providence in Wash., Inc., 112 Wn.2d 127, 133, 769 P.2d 298 (1989); see also Dils, 51 Wn. App. at 219 (“Even remedies . . . thought to be unavailing should [be] pursued.”).

The record establishes that the Grand Lodge membership as a whole reviews an appeal at the Annual Communication, and Anthony is no longer the Grand Master. We conclude Thomas has not shown it is futile to file an appeal challenging the propriety of his suspension.

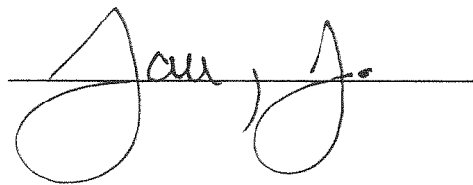
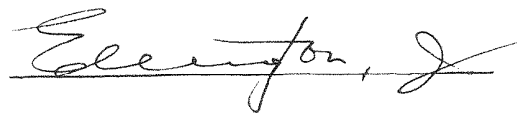
Thomas’s reliance on Fowlkes v. International Brotherhood of Electrical Workers, Local No. 76, 58 Wn. App. 759, 795 P.2d 137 (1990), and Orion is unpersuasive. In Fowlkes, the court concluded that Fowlkes exhausted internal remedies. Fowlkes, 58 Wn. App. at 772 (where union had no authority to require member to pursue internal remedies for more than four months, union member who had pursued those remedies for eight months had exhausted them). In Orion, the court held that the exhaustion of administrative remedies was futile because under the Shoreline Management Act and the local master plan, no permit allowing construction

would ever be issued. Orion, 103 Wn.2d at 459-60.

This case is more like Anderson. In Anderson, former members sued the parent lodge for breach of contract, injunctive relief, and damages for revoking the subordinate lodge charter and their membership benefits. Anderson, 80 Wn. App. at 43-45. The former members argued that filing an appeal was futile because a lodge official said that reinstatement was unlikely for the members who filed the lawsuit. Anderson, 80 Wn. App. at 45, 50. Because “there is no evidence that the internal appeal process in fact would have been unfair,” the court concluded that filing an appeal was not futile. Anderson, 80 Wn. App. at 50³ (citing Garvey v. Seattle Tennis Club, 60 Wn. App. 930, 936, 808 P.2d 1155 (1991)).

We affirm dismissal of the lawsuit against the Grand Lodge for failure to exhaust administrative remedies.⁴

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Jan J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Schweidler, J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Eberly, J.", written over a horizontal line.

³ (Emphasis in original.)

⁴ After exhausting the internal appeal procedures of the Grand Lodge, Thomas could proceed based on the limited grounds set forth in Grand Aerie.