

No. 42287-5-II  
COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

CLERK OF COURT  
JANUARY 16, 2010  
BY \_\_\_\_\_

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HAROLD GENE DAVIS and DELIA M. DAVIS,

Appellants,

vs.

PLEASANT FOREST CAMPING CLUB,

Respondents.

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APPELLANT'S OPENING BRIEF

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ORIGINAL

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## **I. INTRODUCTION**

Appellants Harold “Gene” and Delia Davis request this court reverse the summary judgment dismissal of their claims against Pleasant Forest Camping Club (“the Club”).

## **II. ASSIGNMENTS OF ERROR**

1. The superior court erred in granting the Club’s motion for summary judgment.
2. The superior court erred in entering final judgment without deciding all claims.
3. The superior court erred in granting attorney fees without a lodestar analysis.

### **Issues Pertaining to Assignments of Error**

Did the Club violate the procedural requirements set forth in its bylaws when it terminated the Davises’ membership? (Assignment of Error 1.)

Was there evidence in the record of the Club’s procedural violations sufficient to defeat summary judgment? (Assignment of Error 1.)

Did the Club wrongfully deprive the Davises of a valuable property right without notice of specific charges or an opportunity to defend

themselves? (Assignment of Error 1.)

Did the superior court improperly enter final judgment without deciding all of the claims in the Davises' complaint? (Assignment of Error 2.)

Did the superior court improperly award attorney fees without engaging in a lodestar analysis and without entering findings of fact and conclusions of law? (Assignment of Error 3.)

### III. STATEMENT OF THE CASE

#### A. The Davises Join Pleasant Forest Camping Club.

Pleasant Forest Camping Club is a non-profit corporation operating a campground for recreational vehicles. (CP at 29.) Pursuant to its articles of incorporation, the Club adopted bylaws, rules and regulations, which were last amended in October, 2004.<sup>1</sup> (CP at 13.)

Gene and Delia Davis joined the Club in 2000, purchasing two membership lots. (CP at 13.) Initially, the Davises had good relationships with their neighbors, including Michael White, their neighbor across the street. (CP at 191.) Mr. White even encouraged Gene to run for the board of directors of the Club. (CP at 191.) Gene ran, and was elected on May

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<sup>1</sup> The Club's articles of incorporation can be found in CP at 29-33. The Club's bylaws can be found in CP at 34-69.

23, 2005. (CP at 13.)

**B. Gene Fights to Uphold the Club Charter and Bylaws.**

In April, 2007, Mr. White sought the board's approval to bring an 11-foot wide Woodland Park Model Home into the club. (CP at 13, 228.) The board discussed extensively whether Park Model Trailers should be allowed in the Club. (CP at 228-29.) The board considered the Club charter and bylaws, as well as statutes, regulations, and informational brochures. (CP at 228-29.) The board voted unanimously that Park Model Trailers in excess of 8 ½ feet wide were prohibited by the Club's charter, bylaws, and rules. (CP at 228-29.) The board was concerned that Park Model Trailers were permanent residences, in conflict with the camping focus of the Club. (CP at 229.)

Mr. White brought the Park Model Trailer onto his membership lot despite the decision of the board. (CP at 191.) Gene tried to stand in the way, insisting that it was against the bylaws, but ultimately had to give up. (CP at 191.) Public opinion began to turn against Gene. (CP at 191-92.)

Mr. White and other supporters of Park Model Trailers were elected to three open board positions. (CP at 232.) A new president, Art Marien, was appointed. (CP at 232.) The new board again took up the discussion of Park Model Trailers. (CP at 232.) Gene insisted that the Park

Model Trailer violated the bylaws, but the board was divided on the issue. (CP at 232-33.) The board voted to put the issue to a membership vote. (CP at 233.) In a split decision, the board voted to allow Mr. White to occupy his Park Model Trailer until the members voted. (CP at 233.) Gene insisted that the Park Model Trailer could not be allowed under the bylaws and threatened to sue the board to enforce the bylaws. (CP at 233.)

At the next board meeting, just weeks later, Mr. Marien unilaterally approved the Park Model Trailer without a vote of the board or the membership. (CP at 236.) Mr. Marien also requested Gene step down from the board until there could be a membership vote to remove him. (CP at 237.) Gene refused, but did leave the meeting at Mr. Marien's request. (CP at 237.)

**C. The Club Turns Against Gene.**

Some Club members initiated a petition calling for termination of Gene's membership in the club. (CP at 13.) At least three members actively campaigned for Gene's termination, carrying the petition from lot to lot and soliciting signatures. (CP at 115.)

The board distributed a letter, dated July 5, notifying the members of a special meeting for the purpose of voting on the termination of Gene's membership. (CP at 72.) Official ballots were enclosed with the letters.

(CP at 72.) As grounds for termination, the letter stated:

Over this past year, Mr. Davis has caused many members much stress, mental anguish and most importantly a great fear for their safety. We have had numerous complaints of continuous harassment, intimidation, threats as well as many other violations of our by-laws....

(CP at 72.) No other details of the complaints and alleged violations were provided. (CP at 72.)

In response to the notice of the special meeting, Gene sent an open letter to the Club members defending his actions as a board member in seeking to ensure compliance with the bylaws. (CP at 178.) He pointed out that the allegations in the notice letter were not backed up by facts and that he had not been presented with any facts. *Id.*

The special meeting was held on August 11, 2007. (CP at 73.) At the meeting, President Art Marien announced that the ballots originally sent out to the members would not be counted and there would be no discussion from the members present prior to the vote. (CP at 73.) Mr. Marien told the members that he felt threatened, harassed, and intimidated because Gene threatened to sue over the Park Model Trailer decision. (CP at 73.) Michael White stated that he and his family were harassed and intimidated and that Gene had cost him a lot of money on the Park Model Trailer controversy. (CP at 73.) No other grievances were presented to the

members in attendance. (CP at 73.) The Club never provided Gene with copies of any grievances against him. (CP at 119, 274.)

At the meeting, new ballots were distributed to all present (CP at 73), including some non-members (CP at 136-40). The original ballots were not counted. (CP at 78-79; RP, October 8, 2010, at 8.) The vote of those actually present at the meeting was 57 in favor of termination out of 66 votes cast. (CP at 78.)

The Davises appealed the termination of their membership. (CP at 14.) The Davises were represented by counsel at the appeal (CP at 79), but they had still not been presented with any of the complaints alleged in the July 5 notice letter (CP at 119, 274). The board unanimously rejected the appeal and upheld the termination. (CP at 74.)

The board did not provide the Davises with copies of any written grievances until discovery in this lawsuit, long after the vote and the appeal. (CP at 274.) Many of those grievances had not even been made until after the termination vote. (*See* CP at 165-67.)

**D. Proceedings Before the Superior Court.**

The Davises brought this lawsuit against the Club and members of the board, claiming breach of contract and violation of civil rights. The Davises claimed that the Club breached the membership contract by

approving the Park Model Trailer in violation of the bylaws and by subsequently terminating his membership in retaliation for Gene's attempts to get the Club to follow the bylaws. (CP at 9.) The Davises claimed that the complaints raised in the termination process were merely a pretext for terminating his membership to remove his standing to challenge the violation of the bylaws in court. (CP at 9-10.)

The Club brought a motion for summary judgment, arguing in essence that the only issue before the court was whether the Club followed proper procedures in accordance with its bylaws, which the Club argued it had. (CP at 92-97, 122-26.) The Club did not address the Park Model Trailer or the Davises' civil rights claim.

The court denied the Club's motion, holding that there was insufficient evidence to determine whether the Club had a justifiable basis for terminating the Davises' membership. (CP at 152-53.) The court declined to rule on the issue of whether the Club followed proper procedures under the bylaws. *Id.* The court did not address the Park Model Trailer or the Davises' civil rights claim.

Just prior to trial, the Club brought a second motion for summary judgment, presenting new evidence and arguing the Club followed proper procedures and had a justifiable basis for termination. (CP at 158-62.) The

Davises presented evidence and argument of improper procedures and disputing the basis for termination. (CP at 180-259.)

The court granted the Club's motion, holding that the Club had a justifiable basis for termination and that the Davises had failed to produce sufficient evidence of improper procedures. (RP, April 22, 2011, at 15-18.) The court again did not address the Park Model Trailer or the Davises' civil rights claim. Nevertheless, the court entered a final judgment in favor of the Club dismissing all claims. (CP at 268-70.)

The Club moved for attorney fees based on the membership contract and the bylaws of the Club, submitting a cost bill detailing attorney fees incurred. (CP at 260-67.) The court granted the motion, awarding the Club \$17,078.61 in costs and fees. (CP at 268-70.) The court did not apply a lodestar or enter any findings.

The Davises filed a motion for reconsideration of the summary judgment order, arguing that the documents the court relied on as evidence of a justifiable basis for termination were disputed; that many of the grievances were not before the membership or the board at the time of the vote; that some of the grievances did not allege violations of the bylaws. (CP at 271-93.) They also argued that there were facts in the record that showed that the Club had not followed the procedures set forth in the

bylaws. *Id.* They pointed out that the court had not addressed the breach of contract regarding the Park Model Trailers or the civil rights claim. *Id.*

The court denied reconsideration, reiterating its previous finding that there were written complaints before the board on August 11 that constituted a valid basis for the termination. (CP at 306.) The Davises appeal the judgment against them.

#### **IV. SUMMARY OF ARGUMENT**

The superior court erred in granting summary judgment to the Club. The Club utterly failed to follow the procedural requirements in its own bylaws for terminating membership. The special meeting at which the members voted on termination was not properly called under the bylaws.

The meeting was not properly called by petition. The petition calling for the termination vote did not garner enough signatures to call the meeting. The petition failed to allege any violations of the Club rules or bylaws, which are the only valid cause for termination of membership. The proponents of the petition violated the Club's prohibition of campaigning. Even if the petition had been valid, the notice of the special meeting was based on action of the board, not on the language of the petition.

The meeting was not properly called by the board or the president. Neither the board nor the president has the power under the bylaws to call

for a membership vote on termination. The procedures governing termination only allow the board to call for a vote of the board, after lengthy proceedings that the board chose not to use.

Even if properly called, the meeting was invalidated by last-minute changes to the meeting without prior notice to the members. The rejection of absentee ballots violated the bylaws and the absolute right of the members to vote by mail on any matter before the membership for vote.

Even though the Club could have cured these procedural defects by re-initiating termination proceedings in accordance with the bylaws, it never did so. The appeal hearing before the board after the improper termination could not cure the prior procedural defects.

In addition, the superior court erred in entering final judgment without addressing the other claims in the Davises' complaint. The superior court also erred in awarding attorney fees without engaging in a lodestar analysis and entering findings of fact and conclusions of law.

This court should reverse the judgment entered by the superior court and remand for further proceedings on all claims. If the Davises prevail on this appeal, they request an award of attorney fees on review.

## V. ARGUMENT

### A. This Court Reviews Summary Judgment De Novo.

This court reviews an order granting summary judgment de novo and engages in the same inquiry as the trial court. *Schmitt v. Langenour*, 162 Wn. App. 397, 404, 256 P.3d 1235 (2011). Summary judgment can only be granted where there is no genuine issue as to any material fact and the issues can be resolved as a matter of law. CR 56(c). A material fact is one that affects the outcome of the litigation, in whole or in part. *Schmitt*, 162 Wn. App. at 404. The court views all facts and inferences in favor of the nonmoving party. *Id.* There is a genuine issue of material fact if reasonable minds could reach different conclusions from the facts before the court. *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 601, 200 P.3d 695 (2009). “[A] court must deny summary judgment when a party raises a material factual dispute.” *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 485-86, 78 P.3d 1274 (2003).

### B. The Superior Court Erred in Dismissing the Davises’ Claim for Wrongful Termination.

The superior court dismissed the Davises’ wrongful termination claim on the erroneous grounds that the Davises had failed to produce evidence that the Club had not followed its own procedures. (RP, April 22,

2011, at 17.) While Mr. Davis, as a pro se plaintiff, may not have been adept at bringing his facts to the court's attention, he did present factual information to support his claims. The presence of those facts in the record should have precluded summary judgment.

Generally, the courts are reluctant to get involved in the internal affairs of private associations. *Anderson v. Enterprise Lodge No. 2*, 80 Wn. App. 41, 46, 906 P.2d 962 (1995). However, courts *will* intervene in order to determine whether a club has violated its own rules. *Id.* at 46-47; *Garvey v. Seattle Tennis Club*, 60 Wn. App. 930, 933, 808 P.2d 1155 (1991). An action terminating membership contrary to the procedure required in the bylaws is invalid and void. *Jackson v. Am. Yorkshire Club*, 340 F.Supp. 628, 633 (N.D. Iowa, 1971).

“The relationship between a social club and its members is one of contract.” *Garvey*, 60 Wn. App. at 933-34. A club's bylaws are an enforceable part of that contract. *Spokoyny v. Wash. State Youth Soccer Ass'n*, 128 Wash. App. 794, 801, 117 P.3d 1141 (2005). A member may only be expelled for reasons stated in the club's constitution and by-laws. *Allen v. Office Emp. Int'l Union*, 53 Wn.2d 1, 5, 329 P.2d 205 (1958). Termination of membership contrary to the reasons or procedures set forth in the bylaws is a breach of the membership contract.

Termination of the Davises' membership stands or falls on the validity of the August 11 special meeting and the vote of the general membership. Because that meeting and vote were not valid, termination of the Davises' membership was a breach of contract for which the Davises are entitled to relief. The meeting and vote were invalid because the Club failed to follow its own procedures set forth in the bylaws and because the Club deprived the Davises of a valuable property right without notice of the charges against them or an opportunity to defend those charges.

**1. Termination of the Davises' membership was void because the Club failed to follow its own procedures set forth in the bylaws.**

The procedures required to terminate membership in the Club are set forth in Article VI, Section II of the bylaws. (CP at 45-46.) The bylaws provide two alternative procedures by which either the board or the members may call for termination of a member.

The board, after investigation by a committee (including a 30-day opportunity to cure the violation), may vote in executive session to propose termination. The board must then provide the member written notice at least 30 days prior to a special meeting of the board for a final vote. Discussion, presumably including an opportunity for the member to

present a defense, takes place in executive session.<sup>2</sup>

The members may also call for termination of a member through the petition process. The petition may call for a vote of the board or of the general membership, at a special meeting called for that purpose.<sup>3</sup>

A membership may only be terminated for cause. Article VI, Section II, subsection (a) (CP at 45) provides: “Any membership may be terminated or suspended for violation of these Bylaws and or the Rules, Regulations and Covenants of the Pleasant Forest Camping Club....” Even a petition and vote of the members must be for cause for a violation of the bylaws or rules, not simply because a member has become unpopular.

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<sup>2</sup> Article VI, Section II, subsection (b) (CP at 45) provides:

The termination process will include, but not be limited to the following:

- 1) Investigation by the Grievance or Mediation Committee of the member and the alleged or recurring violation; and
- 2) Written notice of the proposed termination (previously voted on and approved by the Board of Directors during Executive session) to the member, by registered mail, at least 30 days in advance of a special meeting of the Board of Directors called for this purpose of which discussion will occur in an Executive Session.

<sup>3</sup> Article VI, Section II, subsection (c) (CP at 45) provides:

Termination could be accomplished by a majority vote of the Board of Directors or a vote of the general membership initiated by the petition process (Requiring more than 50% approval of those responding and eligible to vote and voting in favor of termination) at a special meeting called for that specific purpose, after which no other business may be discussed or transacted.

The August 11 special meeting for a vote on termination of Gene Davis's membership was not properly called under the Club's procedures. The letter notifying the members of the meeting recited that the meeting was called pursuant to a petition as well as at the call of the president. (CP at 72.) The Club also argued before the superior court that the meeting had been called by the board. (CP at 161.) However, none of these arguments holds up when measured against the termination procedures provided in the bylaws. Because the meeting was held in violation of the bylaws, any action taken in the meeting was invalid.

The meeting was not properly called by petition. It was not properly called by the board or the president. Even if properly called, the meeting was invalidated by last-minute changes that violated notice and voting procedures. These procedural defects rendered the membership vote invalid and void, and the appeal hearing before the board could not cure this void act.

- a. The August 11 special meeting was not properly called by petition.

The petition process is described in multiple sections of the

bylaws.<sup>4</sup> A petition must be posted in a convenient public location and available to the entire membership. It must be complete and not have words added after it has been posted. Campaigning is prohibited. (CP at 51.) Each membership is entitled to one signature (co-owners of a single membership get only one signature), with no more than two signatures if multiple memberships are owned. In order to call for termination of a member, the petition must obtain signatures from at least 25 percent of the total membership.<sup>5</sup>

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<sup>4</sup> Article III, Section XV (CP at 42) provides:

“Petition” this is a document that is placed in convenient location for all to see and to gather signatures if agreeable to the petitions subject matter. A petition must be complete and should not have verbiage or subject matter added after the fact. Once published it may not be added to in any manner other than the addition of signatures. Members must also provide a printed version of their name and campsite number. One signature per membership, two signatures maximum regardless of memberships owned.

Article VIII, Section III (CP at 50) provides (emphasis in original):

A written request by the membership with at least 25% of the total membership having signed the petition for a special call to order. The *entire membership* must have access to the petition. Each signature represents one membership or vote, two signatures for one membership still count as one signature or vote, per the Bylaws voting restrictions, and no more than two memberships or two votes are allowed. Petitions must be posted in convenient locations such as the Clubhouse (prohibited in Bar) or in a mailed circular to all members. As a courtesy to the membership, notice of an impending petition with the name of the contact person in the newsletter is encouraged.

<sup>5</sup> The bylaws are ambiguous, arguably requiring the petition to garner 50% approval in order to call for termination, rather than the 25% required to call other special meetings. (CP at 45.) However, this petition did not even obtain 25% support.

The petition calling for termination of Gene Davis's membership failed to obtain valid signatures from 25 percent of the membership. The Club offered as evidence a copy of the petition, with 78 signatures.<sup>6</sup> (CP at 173-76.) The declaration of Loni Symmons, Club secretary, did not explain how the signatures were counted or verified (CP at 163), but the Club indicated in its second motion for summary judgment that only 50 signatures were valid (CP at 160, line 21-22).<sup>7</sup> The Davises presented evidence that there were over 240 memberships, with 206 eligible votes at the time. (CP at 241.) Fifty signatures is less than 25 percent of either 206 or 240, so the petition failed. The special meeting could not have validly been called on the basis of the petition. To the extent there is uncertainty or insufficient evidence on this point, it is a question of material fact that should have been left for the fact finder at trial.

In addition to the failure to garner enough signatures, the petition was invalid in its form. It was incomplete because it failed to allege any

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<sup>6</sup> The lines on the petition are mis-numbered. (See CP at 173-74 (skipping line 14 as well as from line 20 to 30).) So even though the last signature appears on line 88, a simple count reveals there are only 78 signatures.

<sup>7</sup> The invalid signatures may have been duplicates, some may not have been members at all, and some may have violated the one signature per membership rule. There are numerous instances of two signatures for a single membership lot, as well as signatures without any membership indicated. (See CP at 173-76.)

violations of the bylaws or rules on the part of Gene Davis. Termination of a membership must be for cause, for violation of the bylaws or rules. (CP at 45.) In order for a petition and any resulting vote of the members to be for cause, that cause must be stated in the petition itself.

The petition against Gene did not allege any violations of rules or bylaws. (*See* CP at 173.) It made no reference to any specific acts. It made conclusory, veiled references to “undue strictness,” “ignoring the desires of those who elected him to office,” and “manipulated unjustifiable behavior.” (CP at 173.) None of these constitute violations of any rules or bylaws of the Club. The petition was not based on any valid cause for termination under the bylaws.

The proponents of the petition also violated the Club’s prohibition against campaigning. “Campaigning” is defined in Article II, Section XVI (CP at 42) as “[t]he act of soliciting votes for or against a particular candidate or issue.” Campaigning is strictly limited by Article VIII, Section V, subsection (c) (CP at 51). Negative campaigning is absolutely prohibited. Further, members may not ask other members for endorsements or request their votes for or against a candidate or issue. Petitions may be posted in convenient public places or mailed to all members, nothing more. (CP at 50.)

The Davises presented testimony that at least three members violated this prohibition by actively campaigning for Gene's termination, carrying the petition from lot to lot and soliciting signatures. (CP at 115.) This improper campaigning violated the petition process, rendering the petition invalid.

Finally, the letter giving notice of the special meeting was not even based on the petition. When a special meeting of the members is called by petition, the secretary of the Club automatically notifies the members of the special meeting, without any board action.<sup>8</sup> The rules governing petitions state that no verbiage is to be added to the petition after it is posted. (CP at 42.) The information the secretary provides in the notice of the special meeting should be drawn directly from the petition.

Instead, the board intervened and composed new language for the notice. This new language ignored everything in the original petition and raised new allegations. (*See* CP at 72.) It cannot be said that the notice letter was issued based on the petition. It was based instead on actions of the board that, as will be shown below, failed to conform to the Club's

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<sup>8</sup> Article VIII, Section II, subsection (d) (CP at 50) provides: "Once the call to order is qualified by one of the three accepted methods, the Secretary of the Corporation will notify all members by a mailing notice. . . . The notice will indicate the purpose of the meeting and explain whether a vote of the membership will be required. . . ."

required procedures.

The August 11 special meeting was not properly called by petition. The petition failed to garner the 25 percent support required in the bylaws. The petition did not allege any violations of rules or bylaws, which are the only valid basis for termination. The proponents of the petition violated the Club's prohibition against campaigning. The notice letter was based on action by the board, not on the language of the petition. The special meeting was not properly called under the bylaws, rendering the termination vote invalid.

- b. The August 11 special meeting was not properly called by the board or the president.

Under the termination procedures provided in the bylaws, neither the board nor the president can call for a vote of the members on termination; only the members by petition may do so. (CP at 45.) The board, under proper procedures, may call for a vote of the board on termination. (CP at 45.) The president has no power at all to call for a vote on termination.<sup>9</sup> (CP at 45.) Since the August 11 special meeting was for the purpose of a vote of the members on termination (CP at 72), it could

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<sup>9</sup> The Club president may ordinarily call a special meeting of the members (CP at 50), but nothing in the termination procedures allows the president to call for a vote to terminate a member (CP at 45-46).

not possibly have been properly called by the board or the president.

Even if it could have been called by the board, the board would have to follow the procedures set forth in the bylaws. The board must first notify the member of a violation and provide 30 days for the member to correct the violation. (CP at 59.) The Grievance or Mediation Committee must investigate the violation. (CP at 45.) If the member does not come into compliance, the board may then take disciplinary action. (CP at 56.) The board may propose termination by majority vote in executive session. (CP at 45.) The board must then provide the member 30 days notice of a special meeting of the directors for the purpose of a board vote on terminating membership. (CP at 45.)

The board itself understood this lengthy process and chose not to use it. (CP at 244.) There is no evidence that any of these steps were taken. The special meeting could not have been properly called by the board.

Even so, the board reacted to the improper petition by approving its own text for the notice letter, not based on the allegations in the petition. This notice letter, based on neither the petition nor on a valid act of the board, was the basis for the August 11 special meeting that purported to terminate the Davises' membership. Since the notice and the meeting were initiated through improper procedures, the meeting and the vote were

invalid. The actions of the board and the president, being invalid themselves, could not cure the invalidity of the petition.

- c. Last-minute changes, in violation of notice and voting procedures, invalidated the August 11 special meeting.

Even if the special meeting had been properly called, it was invalidated by last-minute changes that were made in violation of notice and voting requirements in the by-laws. Members are entitled to vote by mail in any matter that comes before the general membership.<sup>10</sup> In notifying the members of the special meeting, the Secretary must provide absentee ballots. The notice must be sent at least 20 days prior to the special meeting and must describe the purpose of the meeting and any vote

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<sup>10</sup> Article VI, Section I, subsection (d) (CP at 45) provides:

Voting rights are as follows. Each membership in "Good Standing" is entitled to a single vote in any manner that has come before the general membership for their consideration. This process may be accomplished in person or by mail, if by mail the Secretary of the Corporation will notify the entire membership at least 14 days prior to the meeting and provide a ballot for voting by mail. . . .

Article VIII, Section VIII, subsection (a) (CP at 52) provides:

Voting by those members eligible to do so will be accomplished by one of two methods, either in person or by absentee ballot. Mail in ballots must be received prior to any meeting in which votes will be cast to decide an issue or elect Directors to the Board. The Secretary of the Corporation shall ensure that absentee ballots are mailed out for receipt of members, with sufficient time for their return in accordance with paragraph (c) of this Section. One vote per membership.

to be taken, so the members can decide how to respond.<sup>11</sup> All business conducted in meetings of the membership, including special meetings, “must be advertised in the agenda and absentee voting provisions properly provided for.” (CP at 51.) A special meeting must be held exactly as described in the notice.<sup>12</sup>

The original notice for the August 11 special meeting provided for absentee voting. Members were entitled to rely on that original notice in deciding whether to attend and how to vote. Then, without any notice at all, the meeting was changed. Absentee ballots were rejected, in violation of those members’ voting rights. The meeting and vote that was actually held on August 11 did not conform to the notice that the members

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<sup>11</sup> Article VIII, Section III, subsection (d) (CP at 50-51) provides:

Once the call to order is qualified by one of the three accepted methods, the Secretary of the Corporation will notify all members by a mailing notice. The notice will give the membership at least twenty days (20) prior notice but not more than fifty days (50) before the meeting. The notice will indicate the purpose of the meeting and explain whether a vote of the membership will be required, with this knowledge the membership will be able to make an informed decision.

<sup>12</sup> Article VIII, Section III (CP at 50) provides:

A special meeting of the membership is just that, it is a meeting called to order for the purpose of a particular matter and subject. There could be a multitude of reasons for calling a “special meeting”; however, no business other than the subject matter will be discussed at the special meeting. A special meeting must be properly opened and closed and only matters published will be discussed at the special meeting. . . .

received. As such, it was invalid and the vote could be of no effect. The only proper cure under the bylaws would be to hold a new meeting with proper notice. The Club did not do so.

d. The appeal hearing could not cure a void act.

After being notified that the members had voted against them, the Davises took advantage of a provision in the bylaws allowing for an appeal hearing before the board.<sup>13</sup> The Club argued to the superior court that the appeal hearing was properly held, implying that the hearing could cure any prior improprieties. But even if the appeal hearing was entirely proper, it could not cure a void act. The only cure available to the Club was to start again from the beginning and conduct the termination proceedings in accordance with the bylaws. The appeal did not correct the previous errors, it merely attempted to ratify them. This is inconsistent with the bylaws and with the case law.

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<sup>13</sup> Article VI, Section II, subsection (d) (CP at 46) provides:

A termination will be recorded only after the conclusion of any appeal process afforded the Member through these Bylaws and Rules and Regulations of the Club in accordance with these Bylaws under access to legal counsel.

The Rules and Regulations (Article XIV), Section A, rule 5 (CP at 59) provides:

Any member, who disputes a ruling of the Club, has the right to appeal in writing within thirty (30) days, to the Board of Directors. The Board of Directors is responsible for making a final ruling after an appeal hearing.

Generally, the courts allow private clubs to “re-try” a member in a new proceeding in order to remedy procedural errors committed at initial proceedings. *Garvey*, 60 Wn. App. at 934. In *Garvey*, the Seattle Tennis Club purported to expel the Garveys by a majority vote of the board without notice or a hearing. This purported expulsion violated the procedures set forth in the club’s bylaws. The club then initiated the proceedings anew, providing notice to the Garveys and their attorney of a meeting of the board to consider expulsion. At that meeting, the board voted unanimously to expel the Garveys. *Garvey*, 60 Wn. App. at 931-32.

The court held that this second set of proceedings, all in accordance with the bylaws, properly expelled the Garveys and were not affected by the errors in the first proceedings. *Garvey*, 60 Wn. App. at 934-35. Unlike here, the Seattle Tennis Club did not attempt to ratify its prior errors through an appeal hearing. Rather, it began the process anew and in accordance with all required procedures. It was only able to cure its error by following *all* procedural requirements, not just the final step.

Similarly, in *Terrell v. Palomino Horse Breeders of Am.*, 414 N.E.2d 332 (Ind. App. 1980), Mr. Terrell was suspended by the association without notice or a hearing, in violation of the association’s own rules. Three months later, the association gave Mr. Terrell notice of

charges and a hearing, which was eventually held six months after the initial suspension. *Terrell*, 414 N.E.2d at 334. The court held that the original suspension was invalid, *Id.* at 335, but the subsequent notice and hearing complied with the association's rules, *Id.* at 337. The initial procedural defect was cured by a new hearing that complied with the rules for initiating discipline, not an appeal process.

The courts have consistently required that all procedures be complied with, from the very beginning of the process. The Club failed to follow its procedures in calling the meeting, in holding the meeting, and in taking the vote. The Club did nothing to cure any of these infirmities. It did not call a new meeting. It did not send out a new notice. All the Club did was hold an appeal hearing, in which the board purported to affirm an act that was invalid from the very beginning. The procedures for an appeal hearing do not meet the requirements for initiating discipline, so the appeal hearing could not cure the prior procedural defects.

The Club was not entitled to summary judgment because the Club failed in so many ways to follow its own procedures, even under the Club's own evidence. To the extent some of the facts may have been disputed or uncertain, summary judgment was improper. This court should reverse and remand for trial.

**2. Termination of the Davises' membership was void because the Club failed to provide notice of the charges or an opportunity to defend.**

Courts also intervene in the affairs of private clubs when the acts of a club affect the property rights of members. *Anderson*, 80 Wn. App. at 46-47.

Speaking generally, it is not within the province of the courts to regulate the internal affairs of labor unions or other voluntary organizations, but it is within the powers of the courts, and indeed it is their duty, to protect the property rights of the members of such organizations, when they are threatened and endangered, without specific charges and opportunity to be heard.

*Wash. Local Lodge No. 104 of Int'l Broth. of Boilermakers, Iron Ship Builders & Helpers of Am. v. Int'l Broth. of Boilermakers, Iron Ship Builders & Helpers of Am.*, 33 Wn.2d 1, 74, 203 P.2d 1019 (1949) (“*Boilermakers*”).

Membership in the Club grants valuable property rights to the member. It is not merely a social club. Each member is entitled to exclusive use of the campsite assigned to their membership.<sup>14</sup> Though it is

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<sup>14</sup> Article II, Section V (CP at 41) provides: “Individual campsites and facilities assigned to a member shall entitle that member to the exclusive use of the Campsite assigned to the membership so long as that member is in ‘Good Standing’.”

Article VI, Section I (CP at 44) provides: “Members in ‘Good Standing’ . . . shall have the exclusive use of the campsite assigned to their membership by the Board of Directors.”

not full ownership, this right of exclusive use constitutes a valuable property right. The member has the right to exclude the whole world, even other Club members (but not the Club itself), from the member's campsite. As noted by the Washington Supreme Court in *Boilermakers*, the courts should protect this property right against deprivation without notice of specific charges and opportunity to be heard.

The Club never provided notice of specific charges prior to terminating the Davises' membership. The petition did not allege any violations of the bylaws or rules. The letter notifying the members of the special meeting alleged that specific grievances existed, but did not provide notice of the content of those grievances or the specific allegations made. The grievances were never provided to either the Davises or the members voting. Even at the appeal hearing, the Davises had not been presented with the specific complaints against them.

Without notice of specific complaints, it was impossible for the Davises to have a meaningful opportunity to defend themselves. Gene wrote an open letter to the members prior to the special meeting, but he was unable to address any specific allegations because there were none. Instead he attempted to defend his actions as a member of the board and to defend his character. Gene's character should not have been an issue,

rather the Club should have brought allegations of specific violations. The Davises should have been given the opportunity to present their version of the facts of those events.

The superior court, rather than considering whether the Davises had been given notice of specific charges, addressed instead the question of whether the Club had a reasonable basis for the termination decision. Even if this was the correct issue, the court erred in holding that the Club had the information before it at the time of the membership vote on August 11. The superior court based its decision on the grievances presented by the Club in its second motion for summary judgment. Half of those grievances were dated in September, after the membership vote. Certainly those were not before the Club. The other grievances, though dated earlier, were never presented to the Club members who made the termination decision. The only information before the members of the Club at the time of the vote was the short statement in the notice letter, which failed to provide notice of any specific charges of violations of the rules or bylaws.

The Davises did not receive notice of specific charges against them, and the Club members did not have a reasonable factual basis for the termination decision. Even at the appeal hearing, the Davises had not been

given notice of specific charges. They never had an opportunity to defend themselves. They were deprived of a valuable property right without notice of specific charges or an opportunity to be heard. This court should reverse summary judgment.

**C. The Superior Court Erred in Dismissing the Davises' Other Claims.**

The Davises' complaint, in addition to wrongful termination of their Club membership, also alleged breach of contract by the Club in allowing Park Model Trailers in violation of the bylaws, as well as violation of civil rights in terminating their membership for the sole purpose of depriving them of their right of access to the court by removing their standing. The Club did not raise these issues in its motions for summary judgment, and the court did not make any rulings on these claims. Nevertheless, the court entered a final judgment against the Davises based only on its grant of the Club's summary judgment motion on the wrongful termination claim. These other claims should have survived summary judgment. This court should reverse the final judgment and remand for further proceedings on these claims.

**D. The Superior Court Erred in Awarding Attorneys Fees Without a Lodestar Analysis.**

In awarding attorney fees, the courts should be guided by the

lodestar method. *Mahler v. Szucs*, 135 Wn.2d 398, 433, 957 P.2d 632 (1998). “Courts must take an active role in assessing the reasonableness of fee awards, rather than treating cost decisions as a litigation afterthought. Courts should not simply accept unquestioningly fee affidavits from counsel.” *Id.*, at 434-35. The court must make an adequate record of its lodestar analysis to allow for review. *Id.*, at 435. “[F]indings of fact and conclusions of law are required to establish such a record.” *Id.*

There is no evidence in the record that the superior court engaged in a proper lodestar analysis. The court did not enter any findings of fact or conclusions of law. The record is insufficient to allow this court to review the fee award. This court should remand for a proper lodestar analysis supported by findings of fact and conclusions of law.

**E. The Davises Request Attorney Fees on Appeal.**

The Club’s bylaws provide for an award of attorney fees to the Club when it prevails in litigation regarding the Club’s rights under the bylaws. Under RCW 4.34.330, this contractual provision for attorney fees must be reciprocal, allowing an award to whichever party prevails. Pursuant to RAP 18.1, the Davises request that, should they prevail on this appeal, this court award them their reasonable attorney fees on review.

**VI. CONCLUSION**

The Club utterly failed to follow its own procedures in terminating the membership of Gene and Delia Davis. The superior court erred in granting summary judgment to the Club when there was sufficient evidence in the record to demonstrate these procedural infirmities. The superior court also erred in entering final judgment without first resolving the Davises' other claims. This court should reverse the judgment and remand to the trial court for further proceedings on all claims.

Respectfully Submitted this 14<sup>th</sup> day of November, 2011.

CUSHMAN LAW OFFICES, P.S.



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Attorney for Gene and Delia Davis

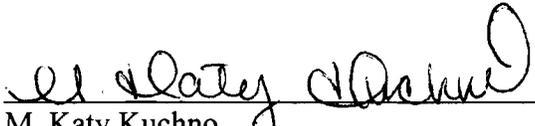
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**CERTIFICATE OF SERVICE**

I certify, under penalty of perjury under the laws of the State of Washington, that on November 14, 2011, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

original:	Court of Appeals Division II 950 Broadway, #300 Tacoma, WA 998402 253-593-2806	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Electronic Mail
copy:	Kenneth Ahlf 1230 Ruddell Rd SE, Suite 201 Lacey, WA 9503 <a href="mailto:ahlflaw@reachone.com">ahlflaw@reachone.com</a>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Electronic Mail

DATED this 14<sup>th</sup> day of November, 2011 in Olympia, Washington.

  
 M. Katy Kuchno  
 Paralegal to Jon E. Cushman  
 & Kevin Hochhalter