IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER OWEN, AN INDIVIDUAL, AND KATHRYN OWEN, AN INDIVIDUAL,
Appellants,
vs.
ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS, AN UNINCORPORATED ASSOCIATION; LARRY BOUNTY, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; TERRY BOUNTY, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; ELAINE BROWN, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; MARY ANN CAVALIER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; NANCY KEMP, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; BRENDA MORRIS, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; JAN MURPHY, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; JOHN ORWICK, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS

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JANETTE M. BLOOM
CLERK OF SUPREME COURT
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CHIEF DEPUTY CLERK

06-20124

VEGAS; LYNNE ORWICK, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; CAREN PAEZ, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; BORIS PAGAN, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; ERIC PALMER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; CHRISTINA PALMER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; JERRY PENDLETON, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; JAMES PORTER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; JOANN PORTER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; JEAN RYSER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; LAURA RYSER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; RON RYSER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB

OF GREATER LAS VEGAS; SHELLY RYSER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; SALLY STARKWEATHER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; BARRY STEVENS, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; JANE STEVENS, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; BONNIE WELDEN, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; AND MATT WELDEN, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS,
Respondents.

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No. 43651

CAVALIER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; NANCY KEMP, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; BRENDA MORRIS, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; JAN MURPHY, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; CAREN PAEZ, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; BORIS PAGAN, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; ERIC PALMER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; CHRISTINA PALMER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; JERRY PENDLETON, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; JAMES PORTER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; JOANN PORTER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF

GREATER LAS VEGAS; JEAN RYSER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; JERRY RYSER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; RON RYSER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; SHELLY RYSER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; SALLY STARKWEATHER, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; BARRY STEVENS, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; JANE STEVENS, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; BONNIE WELDEN, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS; AND MATT WELDEN, INDIVIDUALLY AND AS A MEMBER OF THE ENGLISH SPRINGER SPANIEL CLUB OF GREATER LAS VEGAS,
Respondents.

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

These are consolidated appeals from a district court order denying injunctive relief and from an order awarding attorney fees. Eighth Judicial District Court, Clark County; Ronald D. Parraguirre, Judge.

Appellants Christopher Owen and Kathryn Owen appeal the district court's orders denying injunctive relief via partial summary judgment and awarding attorney fees to the respondents, English Springer Spaniel Club of Greater Las Vegas and its members (collectively, "the Club"). Because the parties are familiar with the facts, we will not recount them in this order except as is necessary for our disposition.

Summary judgment

This court reviews a district court's order granting summary judgment de novo.[1] Summary judgment is only appropriate when, after reviewing the record in a light most favorable to the non-moving party, there remain no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law.[2] On appeal from summary judgment, this court may be required to determine whether the district court correctly perceived and applied the law.[3]

The Club is a private association.

Appellants argue that the district court erred in denying them injunctive relief via summary judgment because there are genuine issues

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[1]Wood v. Safeway, Inc., 121 Nev. ___, ___, 121 P.3d 1026, 1029 (2005).

[2]Id.

[3]Evans v. Samuels, 119 Nev. 378, 380, 75 P.3d 361, 363 (2003).

of material fact regarding whether the Club is a private, public, or quasi-public association. The Club's nature is critical, appellants assert, because it determines the permissible level of judicial intervention into the Club's affairs, disputes, and internal procedures. We conclude that the district court did not err in determining that there is no genuine issue of material fact regarding the Club's nature—it is a private association.

First, we note that appellants' argument rests on inapposite authority. Although the appellants cite numerous cases for factors indicative of a public association, these specific factors were considered in the context of a club allegedly committing race or gender discrimination, which potentially violated state or federal civil rights or public accommodations law.[4] This is not the situation here. Instead, the

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[4]See Roberts v. United States Jaycees, 468 U.S. 609 (1984) (holding that compelling the Jaycees to accept women as regular members under the Minnesota Human Rights Act did not violate male members' freedom of intimate association or freedom of expressive association); U.S. v. Lansdowne Swim Club, 894 F.2d 83 (3d Cir. 1990) (holding that swim club that had engaged in pattern or practice of racial discrimination was not a private club exempt from the Civil Rights Act of 1964); Rogers v. International Ass'n of Lions Clubs, 636 F. Supp. 1476 (E.D. Mich. 1986) (holding that local club could bring action under Michigan's Elliott-Larsen Act for loss of its charter after admitting a woman to membership because local club was place of public accommodation within the scope of the statute and not within the private club exemption); U.S. v. Trustees of Fraternal Order of Eagles, 472 F. Supp. 1174 (E.D. Wis. 1979) (denying fraternal order's trustee's motion to dismiss action to enjoin them from discriminating on the basis of race, color or national origin because there was a factual issue as to whether the defendants were a private club exempt from the public accommodations provision of the 1964 Civil Rights Act); Franklin Lodge of Elks v. Marcoux, 825 A.2d 480 (N.H. 2003) (holding that local chapter of national benevolent membership organization was not a distinctly private entity, but was subject to statute prohibiting discriminatory conduct in places of public accommodation, and members had committed intentional discriminatory conduct against

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appellants here contend that their exclusion from the Club was arbitrary and capricious and deprived them of due process. They do not claim race or gender discrimination. Thus, although the issue of whether the Club is private, public, or quasi-public is relevant, the factors indicative of a public club or association found in these distinguishable cases cited by appellants are not relevant.

Second, we conclude that the district court also cited inapposite legal authority in granting partial summary judgment: Boy

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female applicants); N.Y.S. Club Ass'n v. City of New York, 505 N.E.2d 915 (N.Y. 1987) (holding that city law prohibiting discrimination by clubs which provided benefits to business entities and to persons other than their own members did not violate club members' constitutional rights to privacy, free speech, and association); U.S. Power Squad. v. State Human R. App. Bd., 452 N.E.2d 1199 (N.Y. 1983) (holding nonprofit foreign corporation whose purposes included promotion of safety and skill in boating was subject to Human Rights Law since activities were equivalent of systematically offering a service or accommodation to the public and did not fall into private club exception and confirming order favoring women who filed complaints alleging sex discrimination with respect to membership in organization); Lahmann v. Fraternal Order of Eagles, 43 P.3d 1130 (Or. Ct. App. 2002) (holding that summary judgment was precluded because genuine issue of material fact existed as to whether fraternal order was a place of public accommodation which was prohibited from denying membership to women under Public Accommodations Act); Human Rights Com'n v. Ben. and Pro. Order, 839 A.2d 576 (Vt. 2003) (holding that whether fraternal lodge could be considered a place of public accommodation under Fair Housing and Public Accommodations Act precluded summary judgment for lodge in rejected female applicants' action for sex discrimination); Eagles v. Grand Aerie of Fraternal Order, 59 P.3d 655 (Wash. 2002) (holding that defendant organization was not distinctly private and was subject to the Washington Law Against Discrimination, after chapters of fraternal organization and their female members challenged organization's refusal to admit new female members).

Scouts of America v. Dale.[5] In Boy Scouts, the United States Supreme Court held that applying a state's public accommodations law and requiring the Boy Scouts to admit an avowed homosexual and gay rights activist as an assistant scoutmaster violated the organization's First Amendment right to expressive association.[6] The Supreme Court determined that the Boy Scouts engaged in protected expressive activity by seeking to transmit its system of values, which was inconsistent with homosexual conduct.[7] Here, the Club's purpose of promoting quality in the breeding of purebred English Springer Spaniels and conducting shows and trials does not constitute protected expressive activity that would somehow permit excluding the Owens under the First Amendment. Thus, we conclude that Boy Scouts does not serve as an appropriate legal basis for the court's summary judgment.

Third, we conclude that although the district court cited inapposite authority in granting summary judgment, it still reached the proper result. Generally, clubs are free to set their own rules concerning the admission or exclusion of members, and courts will not compel admission, even though the exclusion may have been malicious.[8] There is

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[5]530 U.S. 640 (2000).

[6]Id. at 653-56.

[7]Id.

[8]See Trautwein v. Harbourt, 123 A.2d 30, 37 (N.J. Super. Ct. App. Div. 1956), noted in Williams v. Black Rock Yacht Club, 877 A.2d 849, 855 (Conn. Ct. App. 2005), cert. denied, 886 A.2d 424 (Conn. 2005). Trautwein states:

> [T]here is no abstract right to be admitted to membership in a voluntary association, and a court will not compel the admission of a person to

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an exception carved out for quasi-public organizations: a quasi-public organization's "power to exclude must be reasonably and lawfully exercised in furtherance of the public welfare related to its public characteristics."[9] We conclude that the Club does not constitute a quasi-public association that qualifies for this exception.

In Matthews v. Bay Head Improvement Ass'n, the Supreme Court of New Jersey held that a nonprofit incorporated association, which had a virtual monopoly over a beachfront, was a quasi-public association, considering its purpose, relationship with the governing municipality, and communal characteristic and activities.[10] The court noted that the association's purpose was to police and maintain the beachfront; to promote the best interests of the governing municipality; and to do any and all things which may further those interests.[11] Furthermore, the municipality's council agreed to cooperate with the association, and the municipality provided free office space to the association, exempted

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> membership in such an organization who has not been elected according to its rules and by-laws. The general rule is that there is no legal remedy for exclusion of such an individual from admission into a voluntary association, no matter how arbitrary or unjust the exclusion.

123 A.2d at 37 (citations omitted; internal quotation marks omitted); see also 6 Am. Jur. 2d Associations and Clubs §§ 18, 19 (1999); 7 C.J.S. Associations §§ 46, 47 (2004).

[9]7 C.J.S. Associations § 46 (2004) (citing Matthews v. Bay Head Imp. Ass'n, 471 A.2d 355 (N.J. 1984)).

[10]471 A.2d at 367-68.

[11]Id.

association property from realty taxes, covered the association's activities with its liability insurance, appropriated public funds for the association's benefit, and partly funded the installation of several stone jetties on the beach.[12]

Here, the Club's purpose revolves around promoting quality in the breeding of purebred English Springer Spaniels and conducting shows and trials. This purpose does not further the public welfare or involve governmental activities or functions. Neither is there any indication in the record that the Club's purposes or functions intertwine with any government entity. Thus, we conclude that the Club is a private association, as a matter of law. Given that the Club is a private association, due process does not apply.

The Club's rejection of appellants' membership applications comported with the Club's constitution and bylaws.

Appellants argue that summary judgment was improper because there are disputed issues of material fact regarding the Club's rejection of their membership applications. Specifically, appellants challenge the procedures used to reject them, claiming that under the Club's bylaws, they were entitled to notice and a hearing. Appellants further contend that the Club improperly rejected their membership because the Club members disliked Christopher Owen, and Kathryn by association was denied membership.

The Club argues that the appellants were not entitled to notice and a hearing because this is a procedure applicable only to a member facing expulsion, not a prospective member being excluded. The Club also contends that proper procedures were followed. We agree.

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[12]Id.

Here, no factual issues exist as to whether Christopher Owen's membership had lapsed because of non-payment of dues—it had. Accordingly, he and Kathryn were prospective members seeking admission, not members facing expulsion who were entitled to notice and a hearing.[13] "'[T]here is no abstract right to be admitted to membership in a voluntary association . . . and a court will not compel the admission of a person to membership in such an organization who has not been elected according to its rules and by-laws.'"[14] This rule prevails even if the exclusion stems in substantial part from the malice of certain members towards the applicants.[15]

For an applicant to be admitted to the Club, the Club's bylaws require a secret ballot and the affirmative vote of 3/4ths of the members present at a club meeting. Even assuming Kathryn and Christopher have standing to contest a violation of the Club's by-laws, the record indicates that a secret ballot was held per the bylaws, but the appellants failed to garner the required number of votes in favor of membership. Their exclusion stands even if it was substantially rooted in the animosity of Club members. Accordingly, we conclude that the district court did not err in granting summary judgment in favor of the Club.

Attorney fees

Appellants generally argue that the district court abused its discretion by awarding attorney fees to the Club. We conclude that

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[13]We conclude that appellants' argument that Christopher was effectively expelled lacks merit.

[14]Williams, 877 A.2d at 855 (emphasis deleted) (quoting Trautwein, 123 A.2d at 37).

[15]See 6 Am. Jur. 2d Associations and Clubs § 18.

although the district court properly determined that appellants' injunctive relief claim was frivolously brought and that the attorney fees appear reasonable, the appellants should have been provided an opportunity to dispute the amount of the award.

"The decision to award attorney's fees is within the sound discretion of the trial court."[16] "A district court's award of attorney fees will not be disturbed on appeal unless there is a manifest abuse of discretion."[17]

Appellants' contention that the district court erred in awarding attorney fees without allowing appellants an opportunity to review the billing statements of the Club's attorney has merit.[18] Contrary to the Club's argument, an affidavit averring to the reasonableness of the attorney fees does not suffice, and appellants should have been provided an opportunity to review at least redacted versions of the relevant billing statements.

Appellants' remaining contentions regarding attorney fees lack merit. First, under either the prior or current versions of NRS 18.010(2)(b), there is substantial evidence to support the district court's determination that the appellants brought their claims without reasonable grounds. As our analysis above demonstrates, the appellants' complaint

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[16]Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1353-54, 971 P.2d 383, 386 (1998).

[17]United Ins. Co. v. Chapman Indus., 120 Nev. 745, 748, 100 P.3d 664, 667 (2004).

[18]See Love v. Love, 114 Nev. 572, 582, 959 P.2d 523, 529 (1998) (stating that an award of attorney fees "based upon sealed billing statements unfairly . . . [precludes an opposing party] from disputing the amount and legitimacy of the award").

did not present complex legal questions and the law in this case is free from doubt.[19]

Second, we conclude that pursuant to NRCP 68, the Club served a valid single, unapportioned offer of judgment on the appellants, who rejected it. Specifically, we conclude that the Club's offer invokes the penalties of NRCP 68(f) because, per NRCP 68(c)(3), the damages claimed by the appellants were solely derivative of a single injury—the Club rejecting their membership applications—and each of the appellants was authorized to accept a settlement offer on behalf of the other.[20]

Finally, we conclude that appellants' contention that the district court abused its discretion by failing to discuss and apply the Beattie v. Thomas[21] factors in awarding attorney fees in this case lacks merit. As long as the record is clear that the factors have been considered, the district court's award will not be disturbed unless that consideration of the factors is arbitrary or capricious.[22] Here, the record is clear that the district court considered the Beattie factors in two of its minute orders, as well as in its order denying plaintiffs/appellants' motion for reconsideration and amendment to prior order granting

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[19]See Key Bank v. Donnels, 106 Nev. 49, 53, 787 P.2d 382, 385 (1990).

[20]Cf. Albios v. Horizon Communities, Inc., 122 Nev. ___, ___, 132 P.3d 1022, 1031 (2006) (holding that as a matter of law, one plaintiff spouse is presumed to have authority to settle the claims for both plaintiff spouses when a married couple jointly brings a claim under the same common theory of liability, concerning jointly owned property).

[21]99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

[22]Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 324, 890 P.2d 785, 789 (1995), superseded by statute as stated in RTTC Communications v. Saratoga Flier, 121 Nev. 34, 110 P.3d 24 (2005).

defendants/respondents' motion for attorney fees. Furthermore, substantial evidence indicates that the court's consideration of the factors was not arbitrary or capricious.

Thus, we conclude that the legal basis for the district court's award of attorney fees is sound. However, we remand for a new proceeding to determine the appropriate amount because of the improper procedure utilized by the district court in precluding appellants from reviewing the billing statements. Accordingly, we affirm the district court's summary judgment, reverse the district court's order awarding attorney fees, and remand this matter to the district court for proceedings consistent with this court.

It is so ORDERED.

_____, C.J.
Rose

_____, J.
Douglas

_____, J.
Becker

cc: Eighth Judicial District Court Dept. 3, District Judge
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