

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1878**

Andrew Ellis, et al.,
Appellants,

vs.

The Estate of Gerald E. Burkstrand,
Respondent,

Owen Seeley, et al.,
Respondents.

**Filed August 25, 2009
Affirmed
Collins, Judge**

Hennepin County District Court
File No. 27-CV-06-3313

Dennis Schertz, Schertz Law Office, 530 Helen Street North, Hudson, WI 54016 (for appellants)

C. Todd Koebele, John Paul J. Gatto, Murnane Brandt, 30 East Seventh Street, Suite 3200, St. Paul, MN 55101 (for respondent estate of Burkstrand)

Britton D. Weimer, Jones, Satre & Weimer, 820 Wells Fargo Plaza, 7900 Xerxes Avenue South, Bloomington, MN 55431 (for respondents Seeley, Reiners, Cycle Corps)

Considered and decided by Minge, Presiding Judge; Worke, Judge; and Collins,
Judge.

UNPUBLISHED OPINION

COLLINS, Judge

Appellants Andrew and Harriett Ellis challenge the district court's grant of summary judgment to respondents, arguing that there are genuine issues of material fact related to Andrew Ellis's wrongful expulsion from the Zuhrah Cycle Corps. We affirm.

FACTS

Andrew Ellis had been a member of the Zuhrah Cycle Corps (Zuhrah Corps) for approximately 44 years. The Zuhrah Corps is a subsidiary of the Zuhrah Shrine, a temple of the Imperial Council of the Ancient Order of the Nobles of the Mystic Shrine for North America (imperial council). Because of dissension within the Zuhrah Corps, Ellis and some other members left to form a new cycle corps within the Osman Shrine. In doing so, they informed the Osman Shrine that they "vowed not to return to Zuhrah." On November 25, 2003, Ellis submitted a letter to the Zuhrah Corps stating that he was "declining to continue on" and wished to be placed "on reserved status." Ellis was subsequently notified that he had been suspended from the Zuhrah Corps for failing to meet an unrelated membership obligation.¹ At the next Zuhrah Corps meeting, members voted unanimously to expel Ellis from the Zuhrah Corps based on his conduct and involvement in the Osman Cycle Corps (Osman Corps).

Ellis and his wife, Harriet Ellis, sued respondents Zuhrah Corps and the named individual members for wrongful expulsion and defamation, seeking emotional distress

¹ It appears the Zuhrah Corps permits members to be suspended while remaining on the membership roll.

damages and Ellis's reinstatement in the Zuhrah Corps. The district court granted respondents' motion to dismiss without prejudice because Ellis had not exhausted his remedies within the shrine organization.

Ellis then proceeded against the named individual respondents under article 30 of the imperial council bylaws, making the same allegations as those in the civil complaint and asserting that respondents' actions constituted "conduct unbecoming of a Noble of the Mystic Shrine, violat[ion of] Shrine Law and their oaths, and fail[ure] to comply with the By-Laws of the Corps." A Zuhrah Shrine grievance committee was formed. It heard testimony and reviewed documents submitted by the parties, then dismissed the complaint for lack of probable cause.²

Ellis appealed and was granted a hearing before the Imperial Grievances and Appeals Committee (the appeals committee). The appeals committee took testimony and reviewed hundreds of pages of documents that had been filed by the parties before denying Ellis's appeal, stating that:

(1) [the appeal] is barred by the Shrine statute of limitations because he did not bring his claim within two years from the date of the alleged incident; (2) the initial complaint was moot because of Noble Ellis' November 25, 2003 letter of resignation; and (3) because there is no evidence of conspiracy as alleged by Noble Ellis.

The district court granted Ellis's motion to vacate its previous order and reinstate the civil complaint. The district court subsequently granted respondents' motions for

² Harriet Ellis was precluded from participating as a party because she was not a Shriner.

summary judgment, finding that (1) the article 30 process satisfied fairness requirements and (2) the defamation claim lacked requisite particularity. This appeal followed.

D E C I S I O N

Ellis maintains that summary judgment is precluded by three unresolved issues of material fact: (1) the culpability of one or more respondents for wrongfully expelling Ellis from the Zuhrah Corps, (2) the amount of damages caused by such wrongful expulsion, and (3) because he was wrongfully expelled, whether Ellis is entitled to reinstatement. Summary judgment is appropriate when the evidence demonstrates that there is “no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. “On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court erred in [its] application of the law.” *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

It is well-settled that “members must attempt to settle disputes within the hierarchy of the organization before [bringing them] to the courts.” *Peters v. Minn. Dep’t of Ladies of Grand Army of Republic, Inc.*, 239 Minn. 133, 135, 58 N.W.2d 58, 60 (1953). “The courts will not interfere with [the organization’s] rules or the construction put upon them by the appropriate body unless it clearly appears that they violate the law of the land or are so unreasonable or grossly unfair as to be contrary to public policy.” *Id.* at 135-36, 58 N.W.2d at 60. “The courts do not examine the evidence adduced at the hearing in a collateral proceeding such as this, save as it may have a bearing on the question whether

the whole trial was colorable and void.” *Nat’l Council of Knights & Ladies of Sec. v. Turovh*, 135 Minn. 455, 462, 161 N.W.225, 228 (1917).

Although Ellis specifies three genuine issues of material fact, all three issues were addressed by the appeals committee. The appeals committee determined that Ellis lacked evidence supporting his contention that respondents conspired to wrongfully expel Ellis or that wrongful expulsion occurred and, because Ellis had resigned from the Zuhrah Corps, the issues of damages and reinstatement were rendered moot. Because Ellis’s civil complaint hinges on a finding of wrongful expulsion, the appeals committee’s finding that there was no such wrongful expulsion, which is supported by Ellis’s November 25, 2003 letter stating that he would not return to Zuhrah, is determinative.

Ellis also argues that the district court wrongfully focused on the article 30 process rather than on respondents’ violation of the Zuhrah Corps’s bylaws. The Minnesota Supreme Court has recognized “the importance of adhering to the rule of exhaustion of intra-association remedies as a proper restraint upon judicial interference with the internal affairs of private associations.” *Rensch v. Gen. Drivers, Helpers & Truck Terminal Employees Local No. 120*, 268 Minn. 307, 313, 129 N.W.2d 341, 345-46 (1964). Where there is appellate review within the organization, the question is whether the process as a whole is adequate, recognizing that “[i]t is the purpose of the appeal to correct irregularities and errors, and it is to be presumed that the error [of an earlier decision] will be corrected or the irregularity cured by the appellate tribunal.” *Nat’l Council*, 135 Minn. at 459, 161 N.W. at 227.

Here, as noted by the district court, the Zuhrah Corps and imperial council bylaws, reviewed as a whole, provide “an extensive and detailed process for complaints against a member of the Temple.” This extensive process, as described in article 30, addresses pretrial, trial, and appellate procedures detailing deadlines, submission of materials, appointment of an impartial trial panel, service, testimony, notice of appeal, and payment for expenses. This thorough process provides a fair procedure that adequately addresses Ellis’s complaints against other Zuhrah Corps members. In fact, Ellis benefited from this process, as he was provided ample notice of hearing dates, rights to counsel, deadlines for submission of materials, and the right to present his case through witnesses and other evidence. Both the local grievance committee and the national appeals committee assured Ellis that they listened to testimony and reviewed the documents submitted by the parties before reaching a conclusion. Ellis’s generalized allegations that those who presided over the proceedings were biased are not supported by the evidence.

Moreover, when an organization’s tribunal has jurisdiction regarding the expulsion, and the trial is “fairly conducted in accordance with the laws of the society, [it] is conclusive on the merits and binding on the civil courts, whether the action or proceeding in the civil court is for restoration to membership *or damages for expulsion*.” *Dewar v. Minneapolis Lodge, No. 44*, 155 Minn. 98, 101-02, 192 N.W.358, 359 (1923) (emphasis added). Thus, the fact that the article 30 process does not provide for money damages does not preclude the article 30 process from concluding the matter.

Based on our review of the record, Ellis has not met his burden to demonstrate that the article 30 process was grossly unfair. And because we will not disturb the expulsion

of a member when the organization's procedures provide adequate remedies and have not been grossly unfair, we conclude that the district court's grant of summary judgment in deference to the decisions of the organization made through use of the article 30 proceedings was proper. Because Harriet Ellis's derivative emotional distress claim is dependent on Ellis's wrongful expulsion, dismissal of her claim was likewise not erroneous. And, having concluded that the district court's grant of summary judgment was proper, we do not address whether summary judgment was available on any other ground.

Affirmed.