

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 14, 2007

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP861

Cir. Ct. No. 2005CV832

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**RICHARD FEUTZ, BRANDON ROHLOFF, MIKE HANSEN,
DAWN HANSEN, RUSS KREBS, ROY HENNING AND
BRIAN SEEFELDT,**

PLAINTIFFS-RESPONDENTS-CROSS-APPELLANTS,

v.

HARTFORD COMMUNITY SERVICE, INC.,

DEFENDANT-APPELLANT-CROSS-RESPONDENT.

APPEAL and CROSS-APPEAL from an order of the circuit court for Washington County: PATRICK J. FARAGHER, Judge. *Affirmed.*

Before Snyder, P.J., Nettesheim and Anderson, JJ.

¶1 NETTESHEIM, J. In this appeal and cross-appeal, we examine the interplay of WIS. STAT. § 181.1401(1)(b) (2005-06)¹ with a nonstock corporation's bylaws in a corporate dissolution setting. Hartford Community Service, Inc. (Hartford) appeals from an order granting summary judgment declaring void Hartford's dissolution by its board of directors. The trial court ruled that the board of directors' vote to dissolve the corporation was a nullity because, under the statute and bylaws, the vote also should have been put to the members. We affirm on the appeal because Hartford's bylaws provide for a voting membership and, under § 181.1401(1)(b), dissolution is authorized when both the board and two-thirds of the members with voting rights approve it.

¶2 The cross-appeal is brought by Richard Feutz, Brandon Rohloff, Mike Hansen, Dawn Hansen, Russ Krebs, Roy Henning and Brian Seefeldt, members of Hartford who twice moved the trial court for an order requiring the board of directors to conduct a special meeting to reconsider the dissolution and to elect new directors. The trial court declined to rule on the merits of these motions because: (1) the court's grant of summary judgment had nullified the dissolution, and the court presumed the directors would abide by its ruling; and (2) the members' motions introduced a foreign issue that went beyond the relief sought in the members' complaint. We uphold the court's ruling and add a further ground for affirmance—the members have since commenced a separate action against Hartford seeking the same relief on the same issue.

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

BACKGROUND

¶3 The facts are not in dispute. Hartford is a Wisconsin nonstock corporation organized in 1998 under WIS. STAT. ch. 181 to promote and carry out community service projects. One of Hartford's main projects was an annual "haunted house" event, the proceeds of which helped fund numerous local programs. Faced with too few members sharing in the considerable task of producing and staging the event, Hartford's directors stated at an August 18, 2005 board meeting that they "deem[ed] it necessary and proper" to dissolve Hartford per Article 10 of its bylaws and voted unanimously to do so. On August 25, Hartford held a membership meeting and explained the board's decision to dissolve the corporation. The meeting agenda gave no notice that dissolution either had been voted on by the board or would be taken up at the meeting. The members did not ask at the August 25 meeting for the board to reconsider its decision.

¶4 In October 2005, the directors filed articles of dissolution with the state, representing that member approval was not required. The members responded with this action shortly thereafter seeking: (1) a judicial declaration that the dissolution was a nullity, and (2) a temporary injunction enjoining Hartford from disposing of its assets or taking any steps to dissolve the corporation pending the lawsuit.

¶5 At the injunction hearing on December 21, 2005, the members relied on Article 2 of the corporate bylaws which grants "[o]ne vote per paid membership at all membership meetings," and Article 3 of the bylaws which sets out the meeting requirements of the membership and the matters which the membership may address at those meetings. Hartford countered with Article 10 of

the bylaws, titled “Dissolution,” which sets out certain things the board must do once three-fourths of the board “deems it necessary and proper to dissolve.” Hartford also contended that WIS. STAT. § 181.1401(1)(b)2. did not allow the members to vote on the dissolution question since the statute confers the right to “members with voting rights, *if any*.” (Emphasis added.) The trial court agreed with the members and granted a temporary injunction against the dissolution. The court then set a briefing schedule for the members’ still-to-be-filed motion for summary judgment. The members filed the motion on January 23, 2005, and the parties submitted memoranda in support of their competing positions.

¶6 While the summary judgment motion was pending, the members asked the board to call a special meeting to elect new directors pursuant to WIS. STAT. § 181.0702. The board refused on grounds that the statute permits only members to demand a meeting and all memberships had lapsed with Hartford’s dissolution. The members then filed a motion asking the trial court to order the directors to call a meeting pursuant to WIS. STAT. § 181.0160.

¶7 On March 8, 2006, the trial court issued a decision granting summary judgment in favor of the members nullifying the dissolution. As to the members’ request that the court order a meeting pursuant to WIS. STAT. § 181.0160, the court ruled that the request was “premature” because the court assumed that the board would honor the summary judgment ruling nullifying the dissolution. Following the trial court’s written decision, the members brought another motion seeking an order directing the board to hold a special meeting to elect new directors. At the hearing on this motion, the court questioned its jurisdiction to rule on the request in light of the fact that the court had nullified the dissolution. The court also observed that the members’ request had not been made

by a formal amendment to their complaint. The next day, the members filed a new and separate action against Hartford seeking the same relief.²

¶8 Hartford appeals from the grant of summary judgment. Their parallel case still pending, the members cross-appeal from the trial court's refusal to rule on the merits of their motions for a special meeting.

APPEAL

Standard of Review

¶9 We review de novo the grant of summary judgment, employing the same methodology as the trial court. See *Green Springs Farms v. Kersten*, 136 Wis. 2d 304, 314-15, 401 N.W.2d 816 (1987). Summary judgment is proper when there are no issues of material fact and one party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

¶10 The parties do not contend on appeal that there are any issues of material fact.³ Whether the members are entitled to judgment as a matter of law depends upon the construction and application of various sections of WIS. STAT. ch. 181 and Hartford's bylaws. Both present questions of law that also are subject to our de novo review. *Truttschel v. Martin*, 208 Wis. 2d 361, 364-65, 560

² That case, Washington county case number 2006CV000280, is pending before the Honorable Andrew T. Gonring, with a trial date of May 2, 2007.

³ In its brief opposing the members' motion for summary judgment, Hartford stated that issues of material fact exist. It did not develop the argument, however, focusing instead on construction of the statute and bylaws, as it does here on appeal. We deem the argument abandoned. See *Reiman Assocs. v. R/A Adver.*, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981).

N.W.2d 315 (Ct. App. 1997) (statute); *Keane v. St. Francis Hosp.*, 186 Wis. 2d 637, 649, 522 N.W.2d 517 (Ct. App. 1994) (bylaws).

Discussion

¶11 The members contend that they have voting rights pursuant to the bylaws and WIS. STAT. § 181.1401(1)(b), which requires dissolution to be authorized by both the board and the members with voting rights. The trial court agreed. Hartford asserts: (1) the ruling was error because the statute does not apply; but (2) even if it does, the bylaws give members no right to vote specifically on dissolution and the statute requires approval only of “members with voting rights, if any.” Hartford posits that “if any” means the right to vote “on the particular matter.” To resolve this dispute, we examine the statute and Hartford’s bylaws.

¶12 WISCONSIN STAT. § 181.1401(1)(b) provides in relevant part:

(b) ... unless this chapter, the articles of incorporation or the bylaws require a greater vote or voting by class, dissolution is authorized if it is approved by *all* of the following:

1. Unless the articles of incorporation or bylaws provide otherwise, the board.
2. The members with voting rights, *if any*, by two-thirds of the votes cast or a majority of the voting power, whichever is less.

Id. (emphasis added).

¶13 Hartford’s Articles of Incorporation provide that they are executed “for [the] purpose of forming a Wisconsin corporation under Chapter 181 of the Wisconsin Statutes” and that “[m]embership provisions will be as set forth in the

bylaws.” The articles in the bylaws addressing membership and dissolution provide in relevant part:

Article 2. DUES

....

Members who have paid their dues shall be deemed active and may receive the following:

....

- B. One vote per paid membership at all membership meetings of [Hartford]
- C. The right to bring member concerns to the attention of the board by ... requesting official action.

....

Article 3. GENERAL MEMBERSHIP MEETINGS

The annual membership meeting ... shall be ... for the purpose of finalizing bills and payments for the current calendar year, approving donations, and annual elections. The [Hartford] membership shall, in addition, meet a minimum of one (1) other time(s) throughout the year, at dates and times to be set by the board of directors, to carry on any other necessary business as may be designated by the board....

Article 10. DISSOLUTION

In the event that the board, by vote of three-quarters of the board of directors, deems it necessary and proper to dissolve the organization, the board shall proceed as follows:

- A. The board shall see to it that any assets of the organization are first used to pay the debts and obligations of [Hartford].
- B. Any remaining monetary assets shall be donated and distributed to such local charitable or civic organizations, as the board shall deem appropriate. Preference shall be given to any such groups whose purpose is substantially similar to that of [Hartford].

- C. Any remaining non-monetary assets (props, scenery, costumes, etc.) shall be donated, sold, or distributed to such groups as the board shall deem appropriate.
- D. The board shall see to it that all records and archives of [Hartford] shall be entrusted to the Hartford Historical Society, or some other appropriate group or person for future reference.
- E. The board shall do all things necessary under the laws and statutes of the United States, and the State of Wisconsin, to properly terminate the affairs of the organization.

¶14 Hartford first contends that WIS. STAT. § 181.1401(1)(b) does not even come into play. It argues that the August 18 board vote on the motion that it was “necessary and proper” to dissolve “was not [a vote] on recommending to dissolve” but “a vote condition precedent to dissolution.” Once the board deemed it necessary and proper to dissolve, Hartford claims it had only to comply with the five items listed in Article 10.

¶15 Hartford alternatively submits that if the statute does apply, the trial court erroneously read into it a right to vote on dissolution that the members do not have. Hartford reasons as follows. WISCONSIN STAT. § 181.1401(1)(b) allows dissolution if approved by (1) the board and (2) “members with voting rights, *if any.*” (Emphasis added.) Under the articles of incorporation, membership provisions are as set forth in the bylaws, and Articles 2 and 3 of the bylaws grant members only permissive voting rights (they “may receive ... [o]ne vote”) limited to finalizing bills and payments, approving donations, and annual elections. All authority to dissolve the corporation, Hartford insists, resides in the board by virtue of Article 10.

¶16 The members disagree, contending that because the bylaws generally confer voting rights on the membership, WIS. STAT. § 181.1401(1)(b) mandates member approval to dissolve. The members argue that this is the only sensible reading because the next subsection, § 181.1401(2), is entitled “Corporation *without* members with voting rights.” (Emphasis added.) The trial court evidently concurred with the members’ reading because at the injunction hearing it stated, without elaborating, that it “[did not] believe that ‘if any’ would apply here.”

¶17 WISCONSIN STAT. § 181.1401(1)(b) provides that dissolution is authorized if approved by “all” of the following: the board, and a specified number of the “members with voting rights, *if any*.”⁴ (Emphasis added.) Distilled to its essence, the dispute between the parties is whether “if any” modifies only “voting rights” or all of “members with voting rights”—in other words, whether member voting rights depend on the nature of the matter being voted on or whether members with general voting rights also must vote on dissolution.

¶18 A statute is not ambiguous simply because the parties disagree on its meaning. *Teschendorf v. State Farm Ins. Cos.*, 2006 WI 89, ¶19, 293 Wis. 2d 123, 717 N.W.2d 258. Rather, we parse the statutory language to determine whether well-informed persons *should* have become confused, that is, whether the language *reasonably* gives rise to different meanings. *Bruno v. Milwaukee County*, 2003 WI 28, ¶21, 260 Wis. 2d 633, 660 N.W.2d 656 (citation omitted; emphasis added). The question is not whether the parties are reasonable but whether their contrary interpretations are. *Id.* at ¶22.

⁴ In circumstances not relevant here, a third party’s written approval also is required. WIS. STAT. § 181.1401(1)(b)3.

¶19 We start by giving the language its ordinary meaning. *See State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. Ascertaining a statute’s plain meaning requires more than focus on a portion of a sentence. *See Teschendorf*, 293 Wis. 2d 123, ¶12. We must look to the role of the relevant language in the entire statute. *Id.* Therefore, we interpret the statute in context, in relation to the language of surrounding or closely related statutes, and in a manner that avoids absurd or unreasonable results. *State ex rel. Kalal*, 271 Wis. 2d 633 at ¶46.

¶20 To determine the existence and nature of member voting rights, we look to the bylaws. Our reading of them largely tracks that of the trial court. Article 2 endows members with general voting rights, and Article 3 enumerates matters routinely addressed at the annual general membership meeting and directs the membership to meet at least once more each year “to carry on any other necessary business as may be designated by the board.”⁵ Moreover, we read Article 3 as bestowing on the members a broad grant of power to address “other necessary business” besides the matters spelled out. We do not read Articles 2 and 3 as an exclusive listing of topics upon which the members may vote, but as conferring general voting rights upon the members.

¶21 As noted, Hartford relies on Article 10, which provides that if by a three-quarters vote the board deems dissolution necessary and proper, the board then must proceed to undertake five actions related to asset disposal and legal termination of Hartford’s affairs. Colloquially stated, we read Article 10 as a “to-

⁵ We also note that Article 9 provides that members “must” vote on bylaw amendments.

do” list should the board deem dissolution “necessary and proper.” We do not read it as reserving a vote on dissolution to the board alone.

¶22 Our conclusion is strengthened when we read WIS. STAT. § 181.1401(1), which refers to “members with voting rights, if any,” in conjunction with § 181.1401(2), which is titled “Corporation without members with voting rights.”⁶ Together, these two subsections prescribe how dissolution is authorized for corporations with “members with voting rights” (subsec. (1)) and those “without members” with voting rights (subsec. (2)). Subsection (1) allows the bylaws to alter the proportion of member votes needed to dissolve, but not to dispense with membership approval entirely. The legislature could have provided that option by inserting in § 181.1401(1)(b)2. the phrase “unless the articles of incorporation or bylaws provide otherwise” just as it did in § 181.1401(1)(b)1., permitting the articles or bylaws to eliminate board approval of dissolution. We decline to read that privilege into the statute. Furthermore, if Hartford is contending that it generally, or on this issue, is a corporation without members with voting rights, it should have proceeded in accordance with WIS. § 181.1401(2). It did not.

⁶ WISCONSIN STAT. § 181.1401(2) provides:

(2) CORPORATION WITHOUT MEMBERS WITH VOTING RIGHTS. If the corporation does not have members with voting rights, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any board of directors’ meeting at which such approval is to be obtained in accordance with s. 181.0822 (3). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

¶23 Hartford next contends that by stating “if any” does not apply, the trial court impermissibly “ignor[ed]” and “disregard[ed]” statutory language, rendering it superfluous. We disagree. Read in the context of its full comments, we understand the court to mean that “if any” did not apply because the members *had* voting rights under the bylaws and their approval therefore was required.

¶24 Hartford asks us to defer to the interpretation it gives its own bylaws—i.e., that Article 10 endows the board with sole authority on dissolution even if Hartford has voting members for some purposes—because its interpretation is reasonable and not “subversive of personal or property rights.” *See United Auto.-Aircraft & Agric. Implement Workers v. Woychik*, 5 Wis. 2d 528, 534, 93 N.W.2d 336 (1958). The bylaws and articles of incorporation created a binding contract between Hartford and its members. *See O’Leary v. Board of Dirs., Howard Young Med. Ctr., Inc.*, 89 Wis. 2d 156, 169, 278 N.W.2d 217 (Ct. App. 1979). We interpret contracts to determine and implement the parties’ intent. *United States Fire Ins. Co. v. Ace Baking Co.*, 164 Wis. 2d 499, 502, 476 N.W.2d 280 (Ct. App. 1991). We construe clear contractual provisions as they stand and any ambiguities against the drafter. *Id.* at 502-03.

¶25 Considering our interpretation of the statute and the bylaws, Hartford’s argument must fail because it attempts to structure dissolution approval in a way not permitted by statute. *See Driver v. Driver*, 119 Wis. 2d 65, 73, 349 N.W.2d 97 (Ct. App. 1984). Even if unanimously assented to, corporate bylaws that are inconsistent with the governing statute are void. *Security Sav. & Trust Co. v. Coos Bay Lumber & Coal Co.*, 219 Wis. 647, 653, 263 N.W. 187 (1935). Hartford, as drafter of the bylaws, must bear the consequences for not more plainly communicating the intent it asserts here.

¶26 In sum, we conclude that the general voting right conferred by Articles 2 and 3 triggers WIS. STAT. § 181.1401(1)(b). We do not read the statute or bylaws to provide, implicitly or otherwise, that member voting rights depend on the matter to be decided. We conclude that the members' reading of the bylaws and the statute is the reasonable one. We affirm the grant of summary judgment.

CROSS-APPEAL

¶27 The members twice moved for an order directing the board to conduct a special meeting of the membership to elect new directors. The first motion came before the trial court's summary judgment ruling and the second came after. The court addressed the first motion in its summary judgment decision, observing that the request was "premature" in light of the fact that the court had nullified the dissolution and that the board presumably would abide by the decision. In response to the second motion, the trial court questioned whether it had the authority or jurisdiction to issue such an order, given that the court had already concluded the case by the grant of summary judgment in the members' favor.

¶28 The members argue that the trial court's refusal to address the motions on the merits represents an erroneous exercise of discretion and a violation of supreme court rules.

¶29 Whether to order a corporate meeting is within the circuit court's discretion. *See* WIS. STAT. § 181.0160(1) (the court "may enter an order" if one or more stated conditions are met). Whether the circuit court properly exercised its discretion is a question of law, *Rumpff v. Rumpff*, 2004 WI App 197, ¶10, 276 Wis. 2d 606, 688 N.W.2d 699, as is whether a court has competency to exercise its

jurisdiction. See *Hartford Ins. Co. v. Wales*, 138 Wis.2d 508, 515-16, 406 N.W.2d 426 (1987).

¶30 We agree with the trial court’s hesitation to address the members’ first request. Having nullified the board’s dissolution, the court understandably assumed that the board would honor the summary judgment ruling. Admittedly, that assumption apparently proved to be incorrect in light of the members’ second motion, which came after the summary judgment ruling. But we nonetheless agree with the trial court’s rejection of this motion also. The court correctly observed that it had addressed all of the issues raised by the pleadings in the case and had litigated the matter to finality by the grant of summary judgment. The court did not see itself as a proper entity to superintend the day-to-day affairs of Hartford under some kind of continuing jurisdiction. We see no misuse of discretion in the trial court’s ruling declining to address the members’ new issue which went beyond the requested relief in their complaint.

¶31 The trial court also expressed concern that the members had not presented this issue in the form of an amendment to their complaint, but rather as a motion. The court viewed the motion as an attempt to amend the complaint, but questioned whether such was proper given the postjudgment state of the proceedings. We share all of these concerns and uphold the court’s discretionary determination to not reopen the case to address this “trailer” issue.

¶32 However, our affirmance is also premised on a subsequent development. On the heels of the trial court’s rejection of their second motion, the members commenced a new and separate action against Hartford seeking the very relief they sought in this case. WIS. STAT. § 802.06(2)(a)10. recognizes that a civil action may be defended on the grounds that there is “[a]nother action pending

between the same parties for the same cause.” While this is a pleading statute which speaks to defenses that may be raised in an answer, we see no reason why the principle underpinning this statute should not also apply at the appellate level under the circumstances of this case. The members’ complaint sought to nullify the dissolution. They succeeded. That concluded the matter. With the corporation still intact, the members and the directors were then free to continue the affairs of the corporation. If the members believed that the board was not appropriately discharging its duties, they could seek further judicial relief, an opportunity they have exercised via their new lawsuit.

¶34 We also register our disagreement with the members’ argument that the trial court “refused” to decide the motions. Thirty-six days after the first motion was filed, and just ten days after the second, the court ruled that the motion was not properly before it. In particular, we strongly reject, as bordering on the improper, the members’ effort to cast Judge Faragher’s ruling as a violation of two supreme court rules relating to dignified, unbiased and prompt disposition of cases. *See* SCR 60.04(1) and 70.36(1) (2006). SCR 60.04(1) is part of a body of rules addressing a judge’s conduct that “might erode public confidence in the integrity, independence and impartiality of the judiciary.” SCR 60, Preamble. Rule 70.36 is meant “to promote prompt judicial decisions and to alert the court administrator’s office that assistance is needed to help an overburdened judge.” *In re Dreyfus*, 182 Wis. 2d 121, 128, 513 N.W.2d 604 (1994). The court decided this matter professionally, deliberately and promptly—both times. Neither rule even remotely applies to the situation here.

CONCLUSION

¶35 Because it enjoyed its corporate form of government through WIS. STAT. ch. 181, Hartford is bound by the provisions of the law authorizing its existence. See *Village of Brown Deer v. City of Milwaukee*, 16 Wis. 2d 206, 213, 114 N.W.2d 493 (1962) (“Those who would enjoy the benefits that attend the corporate form of operation are obliged to conduct their affairs in accordance with the laws which authorized them.”). Hartford’s bylaws cannot alter statutory requirements. Hartford’s members are voting members under WIS. STAT. § 181.1401(1)(b), and member approval was required to authorize its dissolution. We affirm on the appeal.

¶36 We also affirm on the cross-appeal because we see no error in the trial court’s discretionary determination declining to rule on the members’ motions on the merits. Our affirmance is also based on the fact that there currently is pending another action between the same parties on the same issue.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

