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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001241-MR

RANDALL S. CATES

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 16-CI-00740

UPHA MEMBERSHIP ORGANIZATION,
INC., D/B/A UNITED PROFESSIONAL
HORSEMEN'S ASSOCIATION

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, J. LAMBERT, AND THOMPSON, JUDGES.

LAMBERT, J., JUDGE: Randall S. Cates appeals the orders of the Fayette Circuit Court denying discovery requests by Cates and granting summary judgment to the United Professional Horsemen's Association (UPHA) and its Board members. We affirm.

Cates is a horse trainer based in Edmond, Oklahoma. In 2014 the United States Equestrian Federation (USEF) began an investigation of Cates after the mother of one of his then minor students made allegations that Cates had committed illicit acts with the minor over a three-year period. The USEF ultimately banned Cates for life in 2015. UPHA, as an “Alliance Partner” of USEF, instituted a similar ban for Cates later that same year.

On February 25, 2016, Cates filed suit against the UPHA in Fayette Circuit Court. Also named as defendants were the unknown members of the UPHA’s Board of Directors. During the early phase of the litigation, Cates sought, through discovery, to learn the number of, names of, and individual votes of the Board members, but the UPHA resisted. After a lengthy hearing, the circuit court ordered the requested information from the UPHA and examined it *in camera*, after which the circuit court revealed to Cates the number of members, and how votes were cast in the November 9, 2015, director’s meeting where the decision was made to ban him from UPHA membership. Otherwise, further requested information concerning the Board members was kept from Cates.

UPHA then renewed an earlier motion for summary judgment, and another hearing was held, after which the circuit court granted the motion for summary judgment, finding that Cates “failed to identify or raise a genuine issue of material fact with regard to his expulsion from the UPHA.” Cates appeals from the order granting same (entered August 23, 2016), as well as two orders dated July 7 and 11, 2016, respectively.

Cates first argues that the circuit court erred in denying discovery of the Board members' names and how their votes were cast. Cates aptly states the applicable standard of review: "Our standard of review in matters involving a trial court's rulings on evidentiary issues and discovery disputes is abuse of discretion. 'The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.'" *Manus, Inc. v. Terry Maxedon Hauling, Inc.*, 191 S.W.3d 4, 8 (Ky. App. 2006) (footnotes omitted). Cates urges that the information sought was discoverable pursuant to Kentucky Rule of Civil Procedure (CR) 26.02(1), which states, in pertinent part, that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . including . . . the identity and location of persons having knowledge of any discoverable matter." Cates asserts that the information sought was relevant and not privileged, thus the circuit court abused its discretion in denying him discovery in this regard.

We disagree. At the June 23, 2016, hearing on evidentiary matters, counsel for Cates conceded that the UPHA's by-laws did not provide for a hearing but only a 2/3 majority vote. The circuit court reminded counsel that, by becoming a member of the UPHA, Cates subjected himself to the organization's by-laws. But the circuit court was mindful that Cates was entitled to explore the issue of whether the 2/3 majority was properly reached. Thus the circuit court, prior to ruling on the issue of discovery of the Board members' identities and votes cast, examined all relevant material and revealed to Cates that, of the Board's 24

members (all of whom cast votes), 20 voted in favor of his ouster, 3 voted against it, and 1 member abstained. That was the crucial information sought: whether the motion to ban Cates was carried by a 2/3 majority, the amount needed according to the organization's by-laws. The circuit court expressed its satisfaction that the by-laws were properly followed (and that the number of votes cast significantly exceeded the necessary 2/3 majority – 83.3% versus the required 66.6%). We have examined the record under seal and agree. There were no irregularities in the voting process. Discovery of the number, names, and votes cast would not have raised genuine issues of material fact for Cates. “The trial court did not abuse its discretion in denying [Cates] the opportunity to take discovery on an irrelevant matter.” *Frank v. Estate of Enderle*, 253 S.W.3d 570, 578 (Ky. App. 2008) (citing *Manus, supra*).

Cates secondly argues that the UPHA violated its own by-laws by expelling him for life since the organization did not provide for lifetime suspension at the time it sought to ban Cates. Cates insists, therefore, that summary judgment was inappropriate. Again, we disagree.

“The standard of review on appeal of a summary judgment is whether the circuit judge correctly found that there were no issues as to any material fact and that the moving party was entitled to a judgment as a matter of law.” *Pearson ex rel. Trent v. Nat'l Feeding Systems, Inc.*, 90 S.W.3d 46, 49 (Ky. 2002). Summary judgment is only proper when “it would be impossible for the respondent to produce any evidence at the trial warranting a judgment in his favor.” *Steelvest, Inc., v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). In *Steelvest*, the word “‘impossible’ is used in a

practical sense, not in an absolute sense.” *Perkins v. Hausladen*, 828 S.W.2d 652, 654 (Ky. 1992). In ruling on a motion for summary judgment, the court is required to construe the record “in a light most favorable to the party opposing the motion . . . and all doubts are to be resolved in his favor.” *Steelvest*, 807 S.W.2d at 480. A party opposing a summary judgment motion cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must present affirmative evidence in order to defeat a properly supported motion for summary judgment. *Id.* at 481.

Ryan v. Fast Lane, Inc., 360 S.W.3d 787, 789–90 (Ky. App. 2012).

Here, the trial court found that there were no factual issues to resolve, rather only questions of law, namely, whether the UPHA followed its by-laws in voting to remove Cates. The USEF afforded Cates due process in the suspension hearing afforded him, even though he continues to strenuously disagree with the outcome of those proceedings. USEF, the umbrella organization, held a two-day hearing, which Cates attended with legal representation, and was afforded the opportunity to testify (which he declined because of pending criminal charges) and to cross-examine the Federation’s witnesses as well as present witnesses and evidence of his own. USEF thereafter issued a 37-page detailed ruling with findings of fact and a decision. Cates filed a motion to reconsider, after which USEF issued a 7-page ruling denying the motion to reconsider.

USEF then notified its affiliate members and alliance partners of the ruling and asked those organizations to recognize its permanent suspension of Cates.¹ Its letter to UPHA, dated July 17, 2015, reminded UPHA of USEF By-law

¹ The record contains documents indicating that numerous other affiliates have adopted the USEF lifetime suspension of Cates.

205.3, which states: “A suspension or other disciplinary action imposed by the Federation in accordance with these by-laws shall be recognized by all Members and Affiliated Entities of the Federation upon notification of the Federation.” As an alliance partner, the UPHA held a meeting of its Board of Directors and, by 2/3 majority, voted to uphold the USEF lifetime ban. Cates was denied a personal appearance at the Board’s meeting, although he was permitted to submit his written statement and a written statement from his wife.² The trial court was satisfied that compliance with the by-laws was sufficient under Kentucky case law to uphold the ban. *See Hartung v. Audubon Country Club*, 785 S.W.2d 501 (Ky. App. 1990).

Cates next argues that the USEF “Safe Sport” policies, which provided the basis for the charges brought and enforced against Cates, had not been adopted by the UPHA. This, Cates contends, makes the UPHA suspension untenable. This argument was also rejected by the circuit court. The question before it, and again here, is whether the UPHA, as an alliance partner of USEF, acted within its by-laws by adhering to the decision of USEF to ban Cates. USEF had adopted the “Safe Sport” policies, adjudicated Cates had violated those policies, and instituted its lifetime ban, a sanction that USEF had available under

² Cates makes much of the fact that he could not attend the UPHA meeting because it was held during a horse show sanctioned by USEF. The record indicates that Cates sought permission from USEF for it to make an exception for the single purpose of attendance at the meeting, but the request was denied. However, the October 27, 2015, letter from USEF denying Cates attendance suggested that he seek approval from UPHA to appear “telephonically or by other electronic means such as Skype.” There is no indication that Cates pursued that type of appearance. Nor is there verification in the record of the allegation by Cates that the UPHA purposely held its meeting at an event which barred Cates’s physical presence. Rather the UPHA provided justification that it scheduled the meeting at an event where Board members would already be in attendance, thus ensuring that there would be compliance with its by-laws.

its by-laws. UPHA, in accordance with its by-laws, voted by a 2/3 majority to enforce among its membership, the USEF decision. The circuit court properly ruled against Cates on this issue. *Hartung, supra*.

Cates lastly argues that “the UPHA was acting in a quasi-judicial capacity, and therefore Cates was entitled to (and was denied) procedural due process of law and/or fundamental fairness.” In support of this argument, Cates cites *Hilltop Basic Res., Inc. v. County of Boone*, 180 S.W.3d 464 (Ky. 2005), which states:

The fundamental requirement of procedural due process is simply that all affected parties be given “the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976) (internal citation and quotation omitted). Procedural due process in the administrative or legislative setting has widely been understood to encompass “a hearing, the taking and weighing of evidence if such is offered, a finding of fact based upon a consideration of the evidence, the making of an order supported by substantial evidence, and, where the party's constitutional rights are involved, a judicial review of the administrative action.”

Hilltop, at 469 (citations omitted). Because UPHA’s counsel appeared at the Board meeting, Cates continues, he should have been allowed to be present to counter any evidence offered by Board counsel as well as present evidence of his own.

However, there is nothing in the record to indicate that the Board meeting engaged in fact-finding of any kind. Board members were provided the

statements of Cates and his wife prior to and again at the meeting; also provided were the findings of the USEF. UPHA Board members were apprised of both sides of the debate and voted thereafter. As the circuit court rightly stated at the August 5, 2016, hearing: “Plaintiff’s attendance at the hearing would not have mattered.” All of the fact-finding took place at the USEF proceedings, where Cates was afforded due process (a hearing, the taking and weighing of evidence, findings of fact, an order, and judicial review). *Hilltop, supra*.

Perhaps it was incumbent upon Cates to “present affirmative evidence in order to defeat a properly supported motion for summary judgment.” *Steelvest, supra* at 481. Cates failed in that burden. As the Fayette Court stated, “Concerns are not factual issues.” The circuit court properly granted UPHA’s motion for summary judgment.

Having found that summary judgment was proper, the orders pertaining to evidentiary issues are deemed moot. The orders of the Fayette Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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