

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 23-0504

D.A. DAVIDSON & CO,

Plaintiff,

v.

DONALD SLAYBAUGH on behalf and for the benefit of THE WHITEFISH
MASONIC LODGE 64 and GRAND LODGE OF AF&AM OF MONTANA,

Defendants.

GRAND LODGE OF AF & AM OF MONTANA,

CrossPlaintiff/Appellee,

v.

DONALD SLAYBAUGH, on behalf of and for the benefit of THE WHITEFISH
LODGE 64,

CrossDefendant/Appellants.

DONALD SLAYBAUGH, on behalf of and for the benefit of THE WHITEFISH
LODGE 64,

CrossClaimant/Appellants,

v.

GRAND LODGE OF AF & AM OF MONTANA,

CrossDefendant/Appellee.

On Appeal from the Montana Eleventh Judicial District
Flathead County Cause No. DV-21-669D, Hon. Dan Wilson

**APPELLEES' BRIEF IN RESPONSE TO APPELLANT'S OPENING
BRIEF**

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STATEMENT OF THE ISSUES

Whether Appellant Donald Slaybaugh (“Slaybaugh”) has standing to challenge Appellee Grand Lodge of AF&AM of Montana’s (“Grand Lodge”) revocation of Whitefish Lodge #64’s (“WL64”) charter and alleged conversion of WL64’s assets.

STATEMENT OF THE CASE

This appeal concerns whether Slaybaugh has standing to bring claims on behalf of WL64 or individually. The District Court agreed with Grand Lodge that Slaybaugh lacked standing because he failed to cite any authority to substantiate his claim that he had authority to sue on behalf of WL64 and failed to identify any injury personal to himself. Grand Lodge now asks this Court to affirm the District Court, in full, on appeal, because Slaybaugh lacks standing.

The undisputed facts of this case are straightforward. The Grand Lodge is a voluntary association covered and governed by its Constitution (the “Code”). App. E:13 (§ 350). Membership is voluntary; to join, a member must agree to be bound by the Code. App. E:52-56. Grand Lodge alone has authority to charter constituent lodges and revoke their charters. App. E:13 (§§ 310, 320). Between annual communications, Grand Lodge delegates its authority to the Grand Master, except the authority to charter or revoke the charter of constituent lodges. App. E:13-14 (§§ 350, 420, 430).

Slaybaugh is a member of the A.F. & A.M. of Montana and was formerly a member of WL64. App. Q:2. In January of 2020, Slaybaugh notified the Grand Master that WL64 had authorized an improper donation to a religious school attended by the daughter of one of WL64’s officers, which violated the Grand Lodge’s practices. App. F and App. G. On hearing this information, and in accordance with his obligation to investigate allegations of violations of the Code, the Grand Master attended a meeting at WL64 on January 19, 2020. App. G. At the

meeting with WL64's then-members, the Grand Master suggested that a letter be sent to all members regarding the specifics of the donation and another vote be had. *Id.* In response to this suggestion, then-acting Master of WL64 sent an email to the members declaring that the donation was to be made while also stepping down as Master and dimitting from the lodge. App. F. As a result of this disobedience of the Grand Master's direction, the Grand Master issued charges to WL64 and arrested its Charter and restrained WL64 from conducting any business. App. G.

Following an investigation by Grand Lodge, a report was read at the 2020 COVID related Emergency Communication which found that WL64 was no longer a functioning lodge and recommended that its charter be revoked. App. M; and App. J. The Report stated that all officers of WL64, and some other members, had dimitted from, i.e. removed their membership from, WL64. App. J. The Grand Lodge Officer's along with the Members of the Jurisprudence and Finance Committees voted unanimously in favor of revoking WL64's charter. App. M. Pursuant to the Code, the act by Grand Lodge to revoke the charter was "conclusive upon the lodge and its members" and all of the lodges assets "of any kind" are required to be transmitted to Grand Lodge within three months. App. E:41 (§ 22070).

Following revocation, Grand Lodge asserted permanent control over the funds held at D.A. Davidson. App. N. Slaybaugh, disregarding Grand Lodge's clear authority, contested the transfer of the funds. Following nearly a year of discussions, D.A. Davidson felt compelled to file the underlying interpleader action. Both Slaybaugh and Grand Lodge answered the interpleaders and asserted crossclaims against the other. App. O; App. L; and App. P.

On August 5, 2022, Grand Lodge filed its second motion for summary judgment, asserting that Slaybaugh lacked standing in any capacity. On May 9, 2023, the District Court entered summary judgment in favor of Grand Lodge and dismissed Slaybaugh's claims. App. Q. Slaybaugh now appeals. Grand Lodge respectfully

requests that this Court affirm the Order of the District Court and for such other relief this Court deems just and proper.

STATEMENT OF THE FACTS

A. The Grand Lodge Has Exclusive Authority to Issue and Revoke Charters.

Grand Lodge is a Montana not-for-profit corporation. App. O:4. The governing document the Constitution. (the “Code”). App. E. The Code provides that Grand Lodge is the supreme Masonic power and is vested with all legislative, executive, and judicial powers limited only by the provisions of its own Constitution and Statutes. App. E:13 (§ 310). Grand Lodge alone has authority to charter or grant dispensations for a Masonic lodge in this jurisdiction. App. E:13 (§ 310). A lodge chartered by or under a dispensation from Grand Lodge, such as the former Whitefish Lodge #64 (“WL64”), is a “constituent lodge.” App. E:10 (§ 20).

The authority vested in Grand Lodge by the Constitution and Code includes the following:

- A. To enforce discipline upon Masons and lodges;
- B. To decide all controversies between any of the lodges or between one of them and a member or members of another lodge and review all matter of controversy or discipline which may have arisen in any lodge and over which the lodge has not retained original jurisdiction;
- C. To charge fees to and levy assessments upon lodges;
- D. To revoke the charter of a lodge; and
- E. To take possession of a lodge’s funds and property of every kind within three months of the suspension or revocation of the lodge’s charter.

App. E:13, 34-35, 41 (§§ 320; 330; 360; 6010; 6020; 22050; and 22070).

Membership in the Grand Lodge is voluntary. When a member joins, he or she agrees to be bound by the Code, and a lodge may forfeit its charter by disobedience of any provisions of the Constitution or Code or disregard of the lawful

authority of the Grand Master. App. E:41 (§ 2260) (forfeiture of a lodges charter); App. E:56-61 (§§ 37010 through 39020) (setting out qualifications and application process for degrees of Masonry and lodge affiliation); App. E:55 (§ 35040(C)) (membership in a lodge may be terminated by, among other things, voluntary withdrawal therefrom after giving proper notice); App. E:54 (§34060) (member in good standing, against whom no charges are pending, may withdraw at any time by requesting a dimit”).

B. The Grand Master Acts on behalf of Grand Lodge During the Intervals Between the Annual Communications.

Grand Lodge is required to meet once annually at what is called the “annual communication.” App. E:14 (§ 410). However, “should a national, state or other emergency preclude any annual communication, the Grand Master may call a communication of the Grand Lodge Officers together with the members of the Committees on Jurisprudence and Finance, and conduct such business as may be necessary....” App. E:14 (§ 430).

During the intervals between the annual communications of Grand Lodge, the Grand Master possesses “all its executive powers except granting of charters.” App. E:13 (§ 350.) Only the Grand Lodge, itself, at an annual communication can reverse or modify the decisions of the Grand Master. App. E:13 (§ 350.) It is mandatory that the Grand Master immediately investigate any matter in violation of the Code, and make “such orders in respect to the case as may be required and report to Grand Lodge at the next annual communication.” App. E:13 (§ 350.) The Grand Master has the following specifically enumerated authority under the Constitution and Code:

- a) To grant dispensations for the formation of new lodges or holding elections for lodge officers at times other than prescribed times;

- b) To convene any lodge, preside therein, inspect its proceedings and compel its conformity to Masonic usage;
- c) To arrest the charter of dispensation of any lodge and suspend the operations thereof for a period not beyond the next annual communication and restore the charter at any time;
- d) To suspend the Master of any chartered lodge from the exercise of the powers and duties of his office for a period not beyond the next annual communication and may reinstate the Master at any time prior to the next annual communication;
- e) To penalize a lodge for balloting without jurisdiction;
- f) To approve a lodge's proposed articles of incorporation;
- g) To allow meetings of suspended lodges for limited purposes;
- h) To suspend any officer of a lodge against whom Masonic charges have been preferred;
- i) To transfer the trial of an accused from a lodge having jurisdiction to another lodge; and
- j) To direct a lodge to conduct a Masonic trial of a member of a lodge under dispensation or not a member of an adjacent lodge.

App. E:18-21 (§§ 1030; 1040; 1050; 1060); App. E:41 (§§22040; 22060); and App. E:43 (§24030) (emphasis added).

C. The Grand Master Properly Arrested WL64's Charter, and the Grand Lodge Subsequently Properly Revoked It.

The events resulting in the revocation of WL64's charter began when Slaybaugh informed the Grand Master that WL64 was making donations to a religious school in violation of Grand Lodge practice (which prohibits donations to religious institutions). App. G; and App. F.

In response to Slaybaugh's accusation, on January 19, 2020, Grand Master Fletcher attended a meeting of the membership of WL64. App. G. At the meeting he raised the improper donation and "further suggested that a letter could be sent to all member of Whitefish Lodge #64, informing them clearly of the donation's

conditions, and proposed that a further vote be had.” *Id.* Following the meeting, the elected officers and several members of Whitefish requested dimits,” (signaling their intent to resign). *Id.*

On January 20, 2020 Slaybaugh emailed Grand Master Fletcher, describing the January 19, 2020 meeting of WL64 which Grand Master Fletcher attended as “improper” and “corrupt.” App. F:1. Slaybaugh also forwarded to Grand Master Fletcher, an email from then Worshipful Master of WL64, James Blystone, stating that WL64 would make improper donation contrary to Grand Master Fletcher’s Orders. *Id.* Mr. Blystone’s email further stated that he would resign his membership after the donation had been made. *Id.*

On January 23, 2020, the Grand Master issued charges to WL64, arrested its charter, and took control of WL64’s records and assets pending investigation. App. I. Following the arrest of the charter, every single officer of WL64 leadership demitted from the lodge. App. J. In discovery, two of the reasons given for standing were that he was a member, and that other former members of the lodge had given him authority. App. A:4-5. However, that statement is directly contradicted by an email “declaration” from the past Master of Whitefish Lodge sent shortly before Whitefish Lodge’s Charter was revoked, specifically stating that all signatories on Whitefish Lodge’s accounts were to be removed, unless the signatory was a current Officer of the Lodge (“Effective immediately only elected officers (WM, SW, JW) are the only individuals authorized to direct the lodge's investment account. All other lodge members need to be removed from any signing authority on the account. The secretary/treasurer will have monthly summaries available for all brothers for review upon request.”). App. F:2.

Due to the COVID-19 pandemic, the 2020 annual communication was called by the Grand Master as an emergency communication. App. K:6; and App. G. The

report on WL64 was read to the members of Grand Lodge present at the communication, and Grand Lodge voted to revoke WL64's charter. App. J.

D. Slaybaugh Sued Grand Lodge, Asserting that WL64 Was Injured by the Improper Revocation of Its Charter.

On July 27, 2021, Slaybaugh filed crossclaims against Grand Lodge, seeking to recover to enforce WL64's purported rights against Grand Lodge and asserting WL64 suffered damages as a result of Grand Lodge's improper revocation of its charter. Slaybaugh contends that prior to revocation WL64 was entitled to notice of charges, a trial, and an appeal of that trial. App. L:19-28. On that basis, Slaybaugh asserted five crossclaims against Grand Lodge.

Count I (Declaratory Judgment) seeks a declaration that WL64's charter was improperly revoked and that "[WL64] entitled to the proceeds in DA Davidson."

Count II (Breach of Contract) alleges the Code is a contract between the Grand Lodge and WL64, Grand Lodge breached the contract by failing to follow its procedures when revoking WL64's charter, and "[a]s a result, [WL64] has suffered damages."

Count III (Negligence) alleges that Grand Lodge owed a duty of care to WL64 to follow the code, Grand Lodge breached its duty by failing to follow its procedures when revoking WL64's charter, and "[a]s a result, [WL64] has suffered damages."

Count IV (Conversion) alleges that Grand Lodge has interfered with WL64's control and dominion of its funds, and "[a]s a result, [WL64] has suffered damages."

Count V (Tortious Interference with Contractual and Business Relations) alleges that Grand Lodge intentionally and willfully interfered with WL64's agreement and business relationship with DA Davidson by exerting control over its account, and "[a]s a result, [WL64] has suffered damages."

App. L:42-56

In discovery, Slaybaugh was asked to describe his authority to represent WL64 in asserting claims against Grand Lodge. App. A. In Response to

Interrogatory Nos. 1 and 2, Slaybaugh provided four bases for his alleged authority to act on behalf of WL64: (1) that he was a member of Whitefish Lodge; (2) that he was appointed by the Grand Master to be the Whitefish Lodge Instructor; (3) that other former members of Whitefish Lodge #64 have given him authority to represent them; and (4) that he was the signatory on the Whitefish Lodge's Bank Account. App. A:4 and 5.

On August 5, 2022, Grand Lodge filed its second Motion for Summary Judgment asserting that Slaybaugh lacks standing to sue on behalf of WL64. App. R. The District Court granted Grand Lodge's Motion. App. Q. Slaybaugh now appeals. App. S.

STANDARD OF REVIEW

The Montana Supreme Court conducts “a de novo review of a district court's ruling on motions for summary judgment, using the same M. R. Civ. P. 56 criteria as the district court.” *McAtee v. Morrison & Frampton, PLLP*, 2021 MT 227, ¶ 11, 405 Mont. 269, 273, 512 P.3d 235, 238. Summary judgment should be granted when the undisputed facts entitle the moving party to judgment as a matter of law. *Cap. One, NA v. Guthrie*, 2017 MT 75, ¶ 11, 387 Mont. 147, 150, 392 P.3d 158, 161M. R. Civ. P. 56(c)(3)). “The moving party has the burden of establishing the absence of a genuine issue of material fact and entitlement to judgment as a matter of law.” *Id.* “Once established the non-moving party must then present substantial evidence that raises a genuine issue of material fact essential to one or more elements of the case.” *Id.* To show that factual issues preclude summary judgment, the opposing party must, in proper form and by more than mere denial, speculation, or pleading allegation, “set out specific facts” showing the existence of a genuine issue of material fact. *Speer v. Dep't of Corr.*, 2020 MT 45, ¶ 17, 399 Mont. 67, 78, 458 P.3d 1016, 1023 (citing M. R. Civ. P. 56(e).) If there is no genuine factual dispute, the determination of a party's standing to maintain an action is a question of law and the

proper interpretation of contracts present questions of law. *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 28, 360 Mont. 207, 219, 255 P.3d 80, 90; *Montana Health Network, Inc. v. Great Falls Orthopedic Assocs.*, 2015 MT 186, ¶ 12, 379 Mont. 513, 353 P.3d 483, 485.

The Court need not agree with the District Court’s reasoning to affirm summary judgment. As this Court’s precedent makes clear, this Court “may affirm a judgment for any reason supported by law and the record that does not expand the relief granted by the lower court.” *Peeler v. Rocky Mountain Log Homes Canada, Inc.*, 2018 MT 297, ¶ 28, 393 Mont. 396, 413, 431 P.3d 911, 922.

SUMMARY OF THE ARGUMENT

Slaybaugh lacks standing to sue Grand Lodge for revocation of WL64’s charter and alleged conversion of WL64’s assets. Accordingly, the Court should affirm the District Court.

First, as the District Court correctly found, Slaybaugh lacks standing to sue on behalf of WL64 or himself individually. It is black letter law that a party has standing only to assert claims based on its own legal rights. As the District Court correctly found, Slaybaugh improperly attempts to assert WL64’s rights without pointing to any document or other legal authority that gives him the right to raise WL64’s rights. As the District Court further found, Slaybaugh also lacks standing individually because he lacks any personal interest in the lodge or its assets.

Indeed, Slaybaugh’s own cases make clear that neither he nor WL64 suffered a judicially cognizable injury. Courts typically do not exercise jurisdiction over intra-association disputes. To obtain jurisdiction, a litigant must show either that he or she has a property right at stake or the association failed to follow its own rules, giving deference to the association’s interpretation of its rules. Slaybaugh cannot make this showing here because he has no personal property interest in WL64’s bank account, and the undisputed facts establish that Grand Lodge followed its own rules

for revocation of a charter and assumption of the extinct lodge’s assets.

While Slaybaugh failed to raise any legitimate basis for his purported authority to act on behalf of WL64 or raise his own rights in the District Court, he now attempts to raise Rule 23.1, *by his own admission*, for the first time on this appeal. According to Slaybaugh’s Opening Brief, Rule 23.1 authorizes him to sue on behalf of WL64, and it can be raised for the first time on appeal because it relates to “standing.”

Slaybaugh is incorrect. The general rule is that issues may not be raised on appeal for the first time. *Becker v. Rosebud Operating Servs., Inc.*, 2008 MT 285, ¶ 17, 345 Mont. 368, 372–73, 191 P.3d 435, 439 (citing *Day v. Payne*, 280 Mont. 273, 276, 929 P.2d 864, 866 (1996)) (internal citation omitted). The “standing” exception on which he relies prevents a party from waiving the right to challenge a court’s exercise of jurisdiction. *Baxter Homeowners Ass’n, Inc. v. Angel*, 2013 MT 83, ¶ 14, 369 Mont. 398, 403, 298 P.3d 1145, 1148, does not suggest otherwise. It holds only that “parties cannot waive objections to standing.” *Id*; see also *In re Est. of Goick*, 275 Mont. 13, 18, 909 P.2d 1165, 1168 (1996), *overruled on other grounds by Lockhead v. Weinstein*, 2003 MT 360, 319 Mont. 62, 81 P.3d 1284 (“objections to standing cannot be waived.”) (emphasis added). It does not permit a party to raise entirely grounds for jurisdiction the lower court was never asked to exercise.

ARGUMENT

A. Slaybaugh’s Claim that WL64 Has Standing to Sue Grand Lodge Is Not Before this Court.

Slaybaugh begins the argument section in his opening briefing asserting that WL64 has standing to bring suit both for its own injury and on behalf of its members. App. T:19. But whether WL64 has standing to bring claims challenging revocation of its charter and the alleged conversion of its assets is not before this Court. Standing requires that the *party bringing suit* have a sufficient interest in the

outcome of the controversy. *Geil v. Missoula Irr. Dist.*, 2002 MT 269, ¶ 27, 312 Mont. 320, 328, 59 P.3d 398, 403. As this Court explained in *Geil*: “The question of standing raises an issue as to whether a *litigant* is entitled to have the court decide the merits of a dispute or particular issues.” *Id.* (emphasis added). “In deciding whether a litigant has standing, we must determine whether the litigant whose standing is challenged is *a proper party to request an adjudication of a particular issue* and not whether the issue itself is justiciable.” *Id.* (emphasis added).

B. Slaybaugh Lacks Standing to Bring Claims on Behalf of WL64.

Slaybaugh is the plaintiff in this case and thus must establish that he has standing to sue. *Geil v. Missoula Irr. Dist.*, 2002 MT 269, 312 Mont. 320, 328, 59 P.3d 398, 403 (holding that the party bringing a claim bears the burden of establishing standing to sue). Slaybaugh argues that his status as a former fiduciary or member of WL64 gave him standing to sue on WL64’s behalf. As the District Court correctly found, however, Slaybaugh cited no legal authority that supported his claim that his status as a former fiduciary or member of WL64 gave him the right to sue on WL64’s behalf.

On appeal, Slaybaugh asserts for the first time, that Rule 23.1 gives him the requisite authority. Slaybaugh’s failure from Rule 23.1 in the lower Court precludes him from raising it now, and as the District Court correctly found, his status as a former member and fiduciary of WL64 does not authorize him to sue on WL64’s behalf.

1. Slaybaugh’s Alleged Status as a Fiduciary with Respect to WL64’s Bank Account Does Not Authorize Him to Bring Suit Contesting Revocation of WL64’s Charter.

As an initial matter, Slaybaugh’s claim that he is a fiduciary with respect to WL64’s account is directly contradicted by the record evidence. On January 19, 2020, shortly before Whitefish Lodge’s Charter was revoked, the then-Grand Master

of WL64 sent an email specifically stating that all signatories on WL64's accounts were to be removed unless the signatory was a current Officer of the Lodge: "Effective immediately only elected officers (WM, SW, JW) are the only individuals authorized to direct the lodge's investment account. All other lodge members need to be removed from any signing authority on the account. The secretary/treasurer will have monthly summaries available for all brothers for review upon request." App. F:1-3. Appellant was not an elected Officer serving as the Worshipful Master "WM," Senior Warden "SW," or Junior Warden "JW" of WL64 as of that date. Therefore, as of January 19, 2020, he was not an authorized signatory or fiduciary of WL 64's account.

Even so, as a fiduciary or signatory of the account, Slaybaugh was merely an agent of WL64. Thus, he had only that authority conferred upon him by the WL64. Mont. Code Ann. § 28-10-401. Slaybaugh has never explained how allegedly being an agent and fiduciary for the purpose of a bank account grants him standing to sue on behalf of WL64 to contest Grand Lodge's authority to revoke WL64's charter. His affidavit simply claims that "[w]hen the account was opened at D.A. Davidson, WL64 appointed me to be the named representative ... and to act as its fiduciary in terms of overseeing the investment of the funds." App. U:3. Authority to initiate suit with respect to revocation is an entirely separate matter.

In sum, Slaybaugh's claim that he is entitled to bring suit as a fiduciary of WL64 is both factually and legally unsupported.

2. Slaybaugh's Status as a Member Does Not Confer Authority on Him to Sue on WL64's Behalf with Respect to Revocation of Its Charter.

Similarly, Slaybaugh's status as a former member or representative of former members of WL64 is insufficient to confer on Slaybaugh the authority to bring suit in WL64's name to challenge the Grand Lodge's revocation of WL64's charter.

A constituent lodge member's authority to act is governed by the Constitution and Code. App. E (§ 10.) The Constitution and Code do not authorize members to sue on a constituent lodge's behalf with respect to revocation of a charter or otherwise. Section 22070 provides that "[t]he surrender or revocation of the charter of a lodge, when declared by Grand Lodge, shall be *conclusive* upon the lodge and its members; and all its funds, jewels, furniture, dues, and property of every kind including its life membership fund, shall be transmitted, within three months of the surrender or revocation, to the Grand Secretary." App. E (§ 22070) (emphasis added).

Although the Code is not a contract per se, it is interpreted like a contract, and therefore, the principles of contract interpretation apply. *Mary J. Baker Revocable Tr. v. Cenex Harvest States, Cooperatives, Inc.*, 2007 MT 159, 338 Mont. 41, 164 P.3d 851. ("Grants are to be interpreted in like manner with contracts in general"). Unless an organization's interpretation of its Code is arbitrary or unreasonable, courts generally defer to it. *Golden Lodge No. 13, Indep. Ord. of Odd Fellows v. Grand Lodge of Indep. Ord. of Odd Fellows of Colorado*, 80 P.3d 857, 859 (Colo. App. 2003); *Anderson v. Enter. Lodge No. 2*, 80 Wash. App. 41, 47, 906 P.2d 962, 966 (1995). Based on the plain and unambiguous language of the Code, the revocation was not only conclusive upon WL64's existence but also to Slaybaugh and any former members who purported to grant him authority to represent them in this matter. App. E (§ 22070). Therefore, Slaybaugh's contention in that being a member of the WL64 grants him authority to represent WL64, or that he has any ability to bring a claim individually or on behalf of other members fails as a matter of law.

Slaybaugh also relies on a slew of out of states cases to show that he (or WL64) suffered a judicially cognizable injury for the purposes of standing. These cases, however, do not help him. Instead, they explain exactly why Slaybaugh lacks

standing.

“Fraternal organizations make their own laws and regulations” and “courts generally refrain from interfering with the internal affairs of voluntary organizations.” *Golden Lodge No. 13, Indep. Ord. of Odd Fellows v. Grand Lodge of Indep. Ord. of Odd Fellows of Colorado*, 80 P.3d 857, 859 (Colo. App. 2003); *Anderson v. Enter. Lodge No. 2*, 80 Wash. App. 41, 47, 906 P.2d 962, 966 (1995).

As one New Jersey court eloquently explained:

Counsel for the complainant has argued with great earnestness and ability, both orally and in his brief, many things that might well have been urged upon the members of the Grand Lodge against the adoption of the resolution in question. Those arguments might or might not have swayed the judgment of that body; but as legal arguments addressed to a court they can be of no avail, for the reason that they are directed to matters of policy and not of law. It would be an outrageous thing if the framing of the policies of Masonry could be usurped by this court, because from that it would be but a step to usurping the same power with other like organizations, to the end that property rights would be jeopardized. The complainant has asked this court to substitute its judgment as to whether or not any other language but the English language should be allowed in the Masonic work, and the court refuses so to do.

Plemenik v. Prickitt, 97 N.J. Eq. 340, 342–43, 127 A. 342, 343 (1925); *see also U.S. Savings Bank of Newark, N.J. v. Schiller Lodge*, 117 N.J. Eq. 460, 461, 176 A. 330 (N.J. Ch. 1935) (“The power of an incorporated Grand Lodge to create, govern and abolish subordinate lodges does not rest in statutory grant, rather, Schiller Lodge No. 66, F. & A.M., existed by sanction, and expired by mandate, of the Grand Lodge. A creature cannot deny its creator.”)

Courts recognize a limited exception to this general rule of non-interference only when a claim involves: (1) a member’s property rights or (2) whether the organization's “proceedings were regular, in good faith, and not in violation of the laws of the order or the laws of the state.” *Golden Lodge No. 13*, 80 P.3d 857, 859;

Anderson, 906 P.2d at 966. In interpreting the laws of the order at issue in exception two, “courts interfere with the interpretation placed upon such a constitution by its officers and agents unless such interpretation is arbitrary and unreasonable.” *Anderson*, 906 P.2d at 966.

As in *Golden Lodge*, *Anderson*, and *U.S. Savings Bank of Newark*, this Court lacks jurisdiction to reverse Grand Lodge’s revocation of WL64’ charter because the revocation neither implicates Slaybaugh’s personal property interest nor violates Grand Lodge’s Constitution and Code. As discussed *supra* at Sections 22070 and 24080(B) under the Constitution and Code, no member has any interest in a lodge’s assets, and those assets revert to the Grand Lodge upon revocation.

And, also as in *Golden Lodge*, *Anderson*, and *U.S. Savings Bank of Newark*, this Court lacks jurisdiction to reverse Grand Lodge’s revocation of WL64’ charter because the revocation neither implicates Slaybaugh’s personal property interest nor violates Grand Lodge’s Constitution and Code. As discussed *supra* at Sections 22070 and 24080(B), under the Constitution and Code, no member has any interest in a lodge’s assets, and those assets revert to the Grand Lodge upon revocation. App. E (§§ 22070, 24080(B)).

The undisputed facts establish that Grand Lodge followed its Code according to its own interpretations of the Code when it revoked WL64’s charter. Grand Lodge’s position is that, while “charges” were preferred by then-acting Grand Master Fletcher, this was not required. The Code provides that “the Grand Master during the interval between annual communications of Grand Lodge possesses all its executive powers except the granting of charter.” App. E (§ 350).

That same section requires the Grand Master to “immediately investigate any matter in violation of our laws, make such orders in respect to the case as may be required and report to Grand Lodge at the next annual communication.” App. E (§ 350). Only Grand Lodge, itself, may reverse or modify an act of the Grand Master

at the following annual communication. App. E (§ 350). Again, this process was followed.

That is precisely what occurred *here*. Slaybaugh notified the Grand Master of improper lodge activities, and the Grand Lodge sent a representative to WL64 to notify it of Slaybaugh's charge and investigate its truth. App. F:1. Thereafter, following Grand Master Fletcher's initial investigation, and the subsequent investigation of a committee of his forming, Grand Lodge voted to take "further action" to revoke WL64's charter. App. G. At this point, nothing more was required.

And, while the June 26, 2020 annual communication was a meeting of the Grand Lodge at an "emergency communication" due to the COVID-19 pandemic, that fact is irrelevant. Where the Grand Lodge is convened in an emergency communication because of some "national, state or other emergency" which precludes any annual communication, the "Grand Master may call a communication of the Grand Lodge Officers together with the members of the Committees on Jurisprudence and Finance, and conduct *such business as may be necessary....*" App. E (§ 430). Thus, Slaybaugh's claims are simply not judicially cognizable because Grand Lodge's actions were not "arbitrary or unreasonable." See *Anderson*, 906 P.2d at 966. Grand Lodge followed its own reasonable interpretations of its own Code, the general rule of judicial deference to the decisions of Grand Lodge applies. And, because there is no actual evidence in the record that even remotely suggests that Grand Lodge acted for an improper purpose, fraud, or the like concerning the D.A. Davidson bank account, no exception to the general rule applies.

This is true despite Slaybaugh's remaining out-of-state cases which found that a court could reverse a charter revocation, those cases are materially distinguishable because they involved organizations subject to different rules. For example, in *Supreme Lodge of the World, Loyal Order of Moose, v. Los Angeles Lodge, No. 386*, the California Supreme Court held that the Supreme Dictator of the Supreme Lodge

of the World, Loyal Order of the Moose improperly revoke Los Angeles Lodge No. 386's charter when it did so without notice or hearing. 177 Cal. 132, 134, 169 P. 1040, 1041 (1917). There, however, the Supreme Lodge of the World's Articles of Incorporation required a "finding of guilt," which in turn implied the need for notice and hearing. *Id.* Here, no such finding is required.

Similarly, in *State Council of Tennessee, Junior Order of United American Mechanics v. Boyd*, No. M2000-01652-COA-R3CV, 2002 WL 54381, at *5, the Tennessee Court of Appeals reversed the State Council of Tennessee of the Junior Order of United American Mechanics's dissolution of Local 256. There, the practice of the organization permitted dissolution only after a local voted upon it. *Id.* As the Local had not voted to dissolve, the dissolution was found improper. *Id.*; *see also Cox v. United Bhd. of Carpenters & Joiners of Am.*, 190 Wash. 511, 516, 69 P.2d 148, 150 (1937) (reversing revocation of a local charter where "respondents neither alleged nor proved that such attempted revocation followed any proceedings taken in accordance with the Brotherhood's constitution, by-laws, or rules.") Again, here no such vote was required by the Constitution or Code.

Finally, *State Council v. Boyd*, as well as *Cox v. United Brotherhood and Washington Local* cited by Slaybaugh, are distinguishable because they involve labor unions. Unlike the case at bar, courts show far less deference to labor unions because they involve the "pocketbook" or "livelihood of their members." *Washington Loc. Lodge No. 104 of Int'l Bhd. of Boilermakers, Iron Ship Builders & Helpers of Am. v. Int'l Bhd. of Boilermakers, Iron Ship Builders & Helpers of Am.*, 28 Wash. 2d 536, 545–46, 183 P.2d 504, 509–10 (1947), *adhered to on reh'g sub nom. Washington Loc. Lodge No. 104 of Int'l Bhd. of Boilermakers, Iron Shipbuilders & Helpers of Am. v. Int'l Bhd. of Boilermakers, Iron Shipbuilders & Helpers of Am.*, 28 Wash. 2d 536, 189 P.2d 648 (1948).

Here, the Ancient Free & Accepted Masons of Montana is not a labor union

where the livelihoods and labor opportunities of its members are at stake. It is a non-profit volunteer fraternal organization. App. O:4. And, because it is strictly a volunteer organization, the Code is clear that members do not have any interest in the assets of a lodge. App. E (§ 24080(B) (“Members Not to Benefit from Lodge Assets”). Based on the holding in *Washington Local*, that is a key distinguishing factor as to why voluntary fraternal organizations are granted greater deference.

C. Slaybaugh Failed to Preserve the Applicability of Rule 23.1 for Appeal.

Slaybaugh freely admits that he did not plead or argue Rule 23.1 in the District Court. App. T:30. The general rule in Montana is that “this Court will not address either an issue raised for the first time on appeal or a party's change in legal theory.” *Becker v. Rosebud Operating Servs., Inc.*, 2008 MT 285, ¶ 17, 345 Mont. 368, 372–73, 191 P.3d 435, 439 (citing *Day v. Payne*, 280 Mont. 273, 276, 929 P.2d 864, 866 (1996)) (internal citation omitted). The basis for the general rule is that “it is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider.” *Id.*

The failure to raise Rule 23.1 as a basis for standing presents no exception to this general rule. *Baxter Homeowners Ass'n, Inc. v. Angel*, 2013 MT 83, ¶ 14, 369 Mont. 398, 403, 298 P.3d 1145, 1148, does not suggest otherwise. It holds only that “parties cannot waive objections to standing.” *Id.*; see also *In re Est. of Goick*, 275 Mont. 13, 18, 909 P.2d 1165, 1168 (1996), *overruled on other grounds by Lockheed v. Weinstein*, 2003 MT 360, 319 Mont. 62, 81 P.3d 1284 (“objections to standing cannot be waived.”) (emphasis added). This is because the absence of standing goes to the Court’s authority to hear the dispute in the first instance. But undersigned counsel is aware of no case that extends *Baxter*’s holding to permit a plaintiff to raise entirely new bases for jurisdiction, otherwise absent, for the first time on appeal.

Perhaps for this reason, Slaybaugh also asserts that he sufficiently raised rule

23.1 by asserting he had standing to act on behalf of WL64 more generally. App. T:14. But Slaybaugh's contentions are not sufficient to preserve the applicability of Rule 23.1. As this Court discussed in *Larson v. First Interstate Bank of Kalispell*, Rule 23.1's pleading with particularity requirements control over Rule 9(a). *Larson v. First Interstate Bank of Kalispell*, 241 Mont. 350, 356, 786 P.2d 1176, 1180 (1990) ("In view of the wording of the foregoing code sections and Rule 23.1, it would have been better practice for the plaintiffs to have specifically pleaded the appropriate allegations to meet those provisions. They did not specifically do so."). While the *Larson* Court did overturn the District Court on appeal, it was not based on a finding that the limited partners did, in fact, have standing to bring a derivative claim. Rather, it was based on the factual allegations contained within the Complaint. *Larson*, 786 P.2d at 1181.

Here, no such factual allegations exist within Slaybaugh's Complaint. Slaybaugh alleges rights personal to him, not just WL64 or the actual association, the Grand Lodge of the AF & AM of Montana. Slaybaugh claims that it is he, not the former WL64, has the right to "ensure that GL follows the Code and that his lodge and its assets are not unfairly taken by GL" and that he has a right to "enforce the Code that both [GL and WL64] covenanted to follow." App. T:23 (emphasis added). Unlike *Larson*, those factual contentions are not sufficient to support, or even suggest, that Rule 23.1 is being utilized as the vehicle for bringing a claim in a representative capacity. Because this issue was fully litigated at the District Court level, Slaybaugh had both the opportunity, and obligation, to plead Rule 23.1 in his initial pleading with the District Court and did not. For that simple reason, this Court should not permit him to add new legal theories on appeal.

1. Rule 23.1 Does Not Does Authorize Slaybaugh to Bring Suit on Behalf of WL64.

Even if Slaybaugh had properly raised Rule 23.1, the District Court's

dismissal would have been proper. Rule 23.1 requires that a party's pleading must be "verified" and state with "particularity" the effort taken "by the plaintiff to obtain the desired action from the directors or comparable authority..." and "the reasons for not obtaining the action or not making the effort." M.R.C.P. 23.1(b)(1)-(3).

Slaybaugh pleaded unverified crossclaims against Grand Lodge, including a Declaratory action, Breach of Contract, Negligence, Conversion and Tortious Interference. App. L. Nowhere does Plaintiff mention rule 23.1 or any of its particular requirements, including what steps he took to obtain the desired results from the "directors or comparable authority" and the reasons for "not obtaining the action or not making the effort. *Id.* The first time Rule 23.1 is specifically raised, is in Slaybaugh's Opening Brief on Appeal. App. T:22.

Further, under Rule 23.1, a derivative claim by a shareholder or member of a corporation stems from a "right that the corporation or association may properly assert but has failed to enforce." M. R. Civ. P. 23.1(a). The association at issue is Grand Lodge of the AF & AM of Montana, not WL64. *See* App. E (§ 310) ("Grand Lodge is the supreme Masonic power and authority in this jurisdiction..."). Slaybaugh is not claiming he is asserting a right of GL, but rather one of GL's constituent lodges which no longer exists because its charter was revoked. App. M.

And, the lone case cited by Slaybaugh is wholly distinguishable and does nothing to further Slaybaugh's position. Slaybaugh contends that *Levant v. Whitely*, a D.C. Court of Appeals case, stands for the premise that Rule 23.1 "has been expressly recognized as a legal basis for standing for a member of a local fraternal lodge to assert claims against a grand lodge." App. T:24. However, that case does not stand for the proposition that a member of a constituent lodge can bring suit on its behalf. In *Levant*, the plaintiff's derivative claim related to the defendant's alleged handling of funds from the Grand Lodge "Jurisdictional Fund." *Levant v. Whitley*, 755 A.2d 1036, 1038 (D.C. 2000). The plaintiff brought on behalf of the **Grand**

Lodge itself, and not a constituent lodge. *See Levant*, 755 A.2d 1047 (D.C. 2000) (“Levant’s Complaint “alleges, in paragraph 38, that her ‘action to enjoin [Mr. Whitley] from extracting any further disbursements from the Grand Lodge Jurisdictional Fund is an action in the best interest of *Grand Lodge* financial management.”) (emphasis added).

The *Levant* Court also affirmed the lower court’s decision that judicial intervention on the issue of her removal as Grand Worthy Matron was inappropriate. *Id.*, 755 A.2d at 1039 (“We conclude that Ms. Levant has failed to establish an appropriate basis for judicial intervention in the dispute over her removal as GWM, which involves the internal affairs and leadership of a private voluntary organization.”).

Thus, *Levant* does not stand for the proposition that a derivative claim may be brought by “a member of a local fraternal lodge to assert claims against a grand lodge[,]” nor that a Court will insert itself into the internal affairs of a private volunteer fraternal organization such as the AF & AM of Montana.

D. Slaybaugh Lacks Individual Standing to Bring Claims Challenging the Revocation of WL 64’s Charter.

Slaybaugh neither alleged nor pointed to evidence that he suffered any personal injury from the Grand Lodge’s revocation of WL64’s Charter. Thus, the District Court correctly held he lacked standing to assert claims against the Grand Lodge on his own behalf.

Standing is one of several justiciability doctrines that limit Montana courts, like federal courts, to deciding only “cases” and “controversies.” *Id.*, ¶ 29. A court lacks the power to resolve a case brought by a party without standing—i.e., a personal stake in the outcome—because such a case presents no actual case or controversy. *Id.* The question of standing is whether the litigant is entitled to have the court decide the merits of the dispute. *Id.*, ¶ 30. Standing is determined as of the

time the action is brought. *Id.*

To meet the constitutional case-or-controversy requirement, a plaintiff must clearly allege a past, present, or threatened injury to his body, his property rights or his civil rights. *Heffernan*, ¶ 33. A party may not claim damages for property that they do not own. *Lewis v. Puget Sound Power & Light Co.*, 2001 MT 145, ¶ 17, 306 Mont. 37, 40, 29 P.3d 1028, 1031. As discussed by the *Lewis* Court, “the injury must be personal to the plaintiff[,]” and the “plaintiff must assert his own legal rights and not the legal rights or interests of third parties.” *Id.*, (citing *Carter v. Department of Transp.* (1995), 274 Mont. 39, 42, 905 P.2d 1102, 1104 and *Warth v. Seldin* (1975), 422 U.S. 490, 499, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343, 355 *respectively.*).

Slaybaugh does not allege that the revocation of WL64’s charter or Grand Lodge’s assumption of the D.A. Davidson account injured his body, property or civil rights. Therefore, he lacks standing.

1. Slaybaugh Does Not Allege, and Cannot Establish that Revocation of WR 64’s Charter Injured His Property or Civil Rights.

Slaybaugh’s crossclaim does not allege that he suffered loss of any as a result of Grand Lodge’s revocation of WL64’s charter. Count I seeks a declaration that WL64 is entitled to the funds in the D.A. Davidson Account, while the remaining four counts all allege that Grand Lodge acted improperly and that “[a]s a result, [WL64] has suffered damages.” App. L:8 (emphasis added). There is no similar allegation with respect to Slaybaugh individually.

Nor has Slaybaugh pointed to any evidence he was personally injured by the revocation. The Constitution and Code specifically provide that lodges exist at the pleasure of Grand Lodge, which alone has the power to bring a lodge into existence and equally has the power to revoke a lodge’s existence. App. E (§320(A)). Thus,

Slaybaugh had no right to WL64's continued existence and could not be injured by its revocation.

2. Slaybaugh Does Not Allege, and Cannot Establish that Grand Lodge's Assumption of the D.A. Davidson Account Injured His Property or Civil Rights.

Again, Slaybaugh's crossclaim does not allege that he suffered loss of his own as result of Grand Lodge's assumption of the D.A. Davidson account. Count I seeks a declaration that WL64 is entitled to the funds in the D.A. Davidson Account, while the remaining four counts all allege that Grand Lodge acted improperly and that "[a]s a result, [WL64] has suffered damages." App. L:8 (emphasis added).

Indeed, Slaybaugh could not allege that suffered loss of his own property right. The Code specifically provides that no assets of a lodge may inure to the benefit of a member. App. E (§24080(B)). As such, Slaybaugh can claim no beneficial interest in the funds. *Carter v. Department of Transp.* (1995), 274 Mont. 39, 42, 905 P.2d 1102, 1104.

CONCLUSION

In sum, the District Court correctly found, Slaybaugh lacks standing to sue Grand Lodge to reverse its revocation of WL64's charter, either on behalf of WL64 or individual. Therefore, the Court should affirm the District Court's grant of summary judgment in favor of Grand Lodge and against Slaybaugh.

DATED this 20th day of February, 2024.

By: /s/ David. J. HagEstad
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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Appellees' Brief in Response to Slaybaugh's Opening Brief is proportionately spaced in 14-point Times New Roman and contains 7,474 words excluding brief's cover, table of contents, table of authorities and certificate of compliance.

DATED this 20th day of February, 2024.

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