

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**CAROLE POWELL,
Plaintiff,**

v.

**Case No. 13-135532-CZ
Hon. James M. Alexander**

**KAREN KRONK, ET AL,
Defendants.**

OPINION AND ORDER FOLLOWING BENCH TRIAL

This matter is before the Court on Plaintiff’s First Amended Complaint. This case stems from a dispute over the management of a non-profit corporation called K-9 Stray Rescue League. Plaintiff is the founder and former board member of K-9. Defendants are (and were at the time of the allegations in the pleadings) board members of K-9.

Essentially, Plaintiff claims that she created and grew K-9 into a “successful, well-respected organization” by contributing “significant portions of her time and hundreds of thousands of dollars.” To protect these investments, Plaintiff claims that K-9’s governing documents safeguarded her position as a board member, officer, and executive director.

Over time, however, Plaintiff claims that the Defendants used their positions to “mov[e] K-9 away from its original and stated mission.” Plaintiff claims that Defendants then “improperly and illegally removed [her] as a board member, officer and executive director.”

The Court conducted a two-day bench trial on April 6 and 7, 2015. At trial, the Court heard the testimony of Plaintiff Carole Powell, and Defendants Karen Kronk, Michael Gresham, Kelly Barker, and Lori Stevenson. Following trial, the parties were directed to obtain the

transcript and file proposed findings of fact and conclusions of law. Final briefs were filed on June 26, 2015.

The Court has considered the trial testimony and reviewed the exhibits and post-trial submissions of the parties. Based on the foregoing, the Court issues this Opinion and Order as its findings of fact and conclusions of law, pursuant to MCR 2.517.

I. Introduction

According to the parties Proposed Joint Final Pretrial Order,¹ the parties identified the following contested facts to be decided at trial:

1. Whether the Bylaws in place in June 2012 preserved a permanent position on the Board and Executive Director position for Plaintiff.
2. Whether Plaintiff resigned her position as Executive Director of K-9.
3. Whether Defendants met without notice to Plaintiff and outside of her presence, as a Board and voted to remove her from her Board, Officer and Executive Director positions at K-9.
4. Whether Defendants properly met without notice of Plaintiff and outside of her presence, as a Board and voted to issue written reprimands to Powell.
5. Did Powell resign from the board and/or the executive director position?
6. Do the bylaws grant the board authority to remove Plaintiff from her positions with the organization?
7. Did Plaintiff engage in conduct deemed detrimental to the organization, thus warranting her removal?
8. Whether K-9 is a thriving and successful organization under Defendants' direction.
9. Whether Plaintiff had the ability under the Bylaws to appoint her replacement as Executive Director of K-9.
10. Whether Plaintiff and Defendants were all members of the Board of Directors of K-9 in June 2012.

The parties also identified the following issues of law to be decided:

1. Whether the Bylaws in place in June 2012 were consistent with, and allowable

¹ On February 19, 2015, the Court entered an "Order Scheduling Trial," which provided (in relevant part): "The parties must prepare a Joint Final Pretrial Order according to the Court's Final Pretrial Order entered contemporaneously with this Order. The parties must specifically identify **all** contested issues and facts for resolution at trial. Any potential issues or facts not so identified are waived."

- under the Non-Profit Corporation Act, MCL § 450.2511 *et seq.*
2. Whether Plaintiff can avail herself of declaratory relief under MCR 2.605.
 3. Whether Plaintiff is entitled to attorney fees and costs if successful in prosecuting her declaratory relief claims.
 4. Whether specific language in the Bylaws protecting Plaintiff's position as Executive Director and Board Member prevented Defendants from removing her from either position.
 5. Whether Defendants had the ability under the Bylaws to meet outside of the presence of Plaintiff and vote to remove her from her positions as Executive Director and Board Member.
 6. Whether Plaintiff maintains her seat on the Board, after she exercises her right to choose her replacement as Executive Director.
 7. Whether the authority conferred under the bylaws is consistent with the Non-Profit Corporation Act.
 8. Whether Plaintiff can avail herself of declaratory relief inasmuch as she has already been removed from the organization.
 9. Whether Plaintiff is entitled to attorney fees.

In her Proposed Findings of Fact and Conclusions of Law, Plaintiff acknowledges that placing her back in the organization with Defendants "will certainly lead to further issues between these parties." As a result, Plaintiff offers three alternative requests for relief. First, she requests that she be reinstated as a Board Member and Executive Director, Defendants be removed, and she appoint two other Board members within 7 days. This way, K-9 could continue on its original mission.

In the alternative, Plaintiff requests that the Court dissolve K-9, deeding over all of its assets to a similar organization. If this is not possible, then Plaintiff suggests allowing Oakland, Lapeer or Genesee County animal shelters to use the facility and assets.

In their Proposed Findings of Fact and Conclusions of Law, Defendants argue that the organization is being effectively run. They request that the Court find that: (1) Plaintiff resigned her positions, which was effective, (2) the position of Executive Director is dissolved; and (3) Plaintiff is not entitled to attorney fees.

II. Findings of Fact

Plaintiff formed the K-9 Stray Rescue League in 1990. (TT I, at 13; P. Ex. 1). She was the sole founder. (TT I, at 13). Plaintiff later sought 501(c)(3) status for K-9, which was obtained in 1995. (TT I, at 15). K-9's mission was to save as many dogs on county euthanasia lists as possible. (TT I, at 22). It originally served just Oakland and Lapeer counties, but it eventually expanded beyond those counties. (TT I, at 22).

K-9 would take these dogs, spay or neuter them, and attempt to find adoptive homes. (TT I, at 23-24). Initially, K-9 did not charge an adoption fee; it just sought to find homes for these dogs. (TT I, at 24). But there came a time when the rescue started charging an adoption fee in order to have funds to save a larger number of animals. (TT I, at 24-25).

Around the time that she formed K-9 in 1990, Plaintiff purchased property at 2120 Metamora Road in Oxford to use as its facility. (TT I, at 15-16). This is K-9's physical location to this day. But when she first purchased the property, it needed many improvements in order to be used. (TT I, at 15-16). As a result, Plaintiff initially boarded the animals in K-9's care at a different facility. (TT I, at 15-16).

After substantial improvements, in 2004, the 2120 address obtained a license to operate as an animal-protection shelter through the Michigan Department of Agriculture. (TT I, at 16-17). Shortly after obtaining this license, Plaintiff deeded the property over to K-9. (TT I, at 19). Plaintiff then began transferring the animals to the new facility.

Originally, Plaintiff was the only person with a role at K-9. (TT I, at 18). She never took a salary from K-9, but did take a tax deduction for the property donation. (TT I, at 19). But as it grew, K-9 needed more volunteers and employees to run. (TT I, at 18-19).

Defendants Stevenson and Barker became involved in K-9 around 2002 or 2003. (TT I, at

21). Ms. Stevenson and Barker helped Plaintiff make decisions at that time, but they held no official role in the company. (TT I, at 21). Ms. Stevenson and Barker became official board members in 2008 or 2009. (TT I, at 31-32; TT II, at 69). And Defendant Kronk became an official board member in 2008. (TT I, at 31, 136). Defendant Gresham became an official board member in fall of 2011. (TT I, at 34, TT II, at 33). Plaintiff chose each of these individuals to serve on the Board because each added something of value to the organization. (TT I, at 77-78).

In May 2011, Plaintiff sent Defendants an email indicating that she was looking to retire and transfer over her duties in the next two months. (D. Ex. E). But, for unknown reasons, Plaintiff did not retire at that time.

Around the same time that she donated the property and obtained K-9's license in 2008, Plaintiff sought to draft K-9's Bylaws. (TT I, at 27). Work on the Bylaws originally began in 2004, and the most recent update was September 15, 2011. (TT I, at 26-27, 39-41, 139; P Ex. 2). The members of K-9 at the time these Bylaws and the Policies and Procedures were adopted were Plaintiff and the four Defendants. (TT I, at 40; P. Ex. 2; D. Ex. A). All members signed these documents, and Plaintiff agreed to the terms. (TT I, at 87).

Article IV, Paragraph C of the Bylaws provides that "The Executive Director – Carole Powell – will maintain a permanent seat on the Board of Directors until she deems it necessary to resign at which time she will appoint a new Executive Director who will maintain the same rights." (P. Ex. 2). Plaintiff testified that the intention of this provision was to give her some protection because she invested a lot of money into the organization. (TT I, at 41-42).

Later in the same section, Article IV, Paragraph F, the Bylaws provide that "[a]ny Board Member may voluntarily withdraw **or** may be suspended / expelled by a majority vote of the Board of Directors for violation of the Bylaws and/or Policies and Procedures or conduct deemed

detrimental to the organization.” (P Ex. 2).

Notice of meetings was always provided via email and usually from the Secretary, Ms. Kronk. (TT I, at 43). The first meeting after the September 2011 Updated Bylaws was scheduled for February 2012. (TT I, at 43). Because she had a flood in her home and saw nothing important on the agenda, however, Plaintiff only came to drop off the financial reports and left. (TT I, at 44). Although she was able to come to this meeting, Plaintiff decided not to attend. (TT I, at 94).

Plaintiff testified that three items were added to the February 2012 agenda that she wasn't aware of. First, the Board discussed terminating an active volunteer. (TT I, at 45). And second, the Board wanted a new evaluation process for incoming animals. (TT I, at 45-46). Plaintiff testified that she didn't learn of these additions until she received a copy of the meeting minutes in March 2012. (TT I, at 47). Plaintiff was against these changes. (TT I, at 48). And this, apparently, was the beginning of the end.

In response to receiving the March 2012 meeting minutes, Plaintiff sent a lengthy email to Defendants diagnosing them as narcissists. (TT I, at 95; D. Ex. C). This email was dated March 8, 2012, and in it, she noted that she would not obtain any more dogs for the rescue, but she was retaining her “Treasurer” and Board positions. (D. Ex. C).

Plaintiff initially testified that she didn't obtain any other animals for the shelter after this time. (TT I, at 55). But Plaintiff later admitted that she obtained dogs from Macomb County Animal Control on March 28, 2012. (TT I, at 97). And Plaintiff claims that she followed K-9's Policies by contacting Ms. Stevenson by phone on her way to pick up the dogs. (TT I, at 98). But Ms. Stevenson testified that she told Plaintiff that there was no room for the dogs. (TT II, at 78).

On March 29, 2012, the Board delivered a written reprimand to Plaintiff for her failure to

get authorization before securing dogs. (TT I, at 52; P. Ex. 3). It was signed by the remaining four Board Members. The written reprimand also noted that Plaintiff had resigned from her responsibilities of securing dogs for K-9. (P. Ex. 3). This passage is apparently in response to Plaintiff's March 8, 2012 email. (D. Ex. C).

The next board meeting was scheduling for April 2012, which Plaintiff attended. (TT I, at 55). There was no specific discussion of Plaintiff's reprimand at this meeting, but the Board did talk about their differences. (TT I, at 55).

Plaintiff received a second written reprimand dated May 21, 2012. (P. Ex. 4). The reprimand was based on Plaintiff's obtaining three dogs from Roscommon County Animal Control without Board authorization on May 19. (P. Ex. 4). The four remaining Board members signed the reprimand. (P. Ex. 4). Plaintiff admitted that she did obtain the three dogs. (TT I, at 57-58). Plaintiff first claimed that she was unaware that she was supposed to check with Ms. Stevenson before securing dogs, but later admitted that she knew that was a requirement since September 2011. (TT I, at 58-59).

The Court has had the opportunity to observe the Plaintiff's demeanor and assess her credibility. Based on the same, the Court specifically finds that Plaintiff was well aware that she was required to check with Ms. Stevenson before securing dogs since September 2011. Despite her knowledge, Plaintiff chose to ignore this requirement. To the extent that Plaintiff claims that she was unaware of this requirement, her testimony lacks credibility. In fact, the Court's overall impression of Plaintiff's testimony is that it, at times, lacked credibility.

The Court finds that Plaintiff acted as if K-9's adopted Bylaws and Policies and Procedures did not apply to her – despite rules regarding the acquisition of dogs being a core of K-9's very existence. In other words, without acquiring new dogs, K-9 does not exist. And

despite the acquisition rules that form the foundation of K-9's existence, Plaintiff acted as she had since the beginning – without respect to said rules. (TT I, at 142).

The Court is left with the firm impression that Plaintiff felt that K-9 was **her organization** and she could do whatever she wanted – even if it meant disregarding the very rules that she voted to adopt. In the end, Plaintiff repeatedly violated the very rules that founded the organization's existence.

One example, despite K-9's September 2011 Policies providing that only “Members of the Management Team” had the authority to secure new dogs, Plaintiff would send a volunteer, Teresa Michalak, to secure dogs with K-9's license. (TT I, at 81-85). Ms. Michalak was not a member of the management team, and therefore, was unable to do so. Plaintiff didn't discuss this with the other Board Members because she “didn't feel it necessary.” (TT I, at 84-85).

Another example is that Plaintiff would accept dogs into K-9 and board them at Arbee Kennel, which apparently cost money that K-9 didn't have. (TT I, at 158). And Plaintiff continued to do this even after the Board agreed to stop using Arbee in 2010. (D. Ex. Q). There was another formal vote to discontinue Arbee's use in August 2011. (TT I, at 159, 189-190; D. Exs. F, G, H, I, J).

Another example, in her Treasurer position, Plaintiff was responsible for K-9's finances, but often times, she provided very little financial information to the Board – even when she was specifically directed to do so. (TT II, 16-18; D. Ex. O). In fact, Plaintiff admitted in one email that she has “an aversion to dealing with receipts.” (D. Ex. C). Simply, Plaintiff did not appear to be able to appropriately manage K-9's finances. (TT II, at 40-42).

The next board meeting was scheduled for June 21, 2012. (TT I, at 61). Although the meeting was supposed to take place in the K-9's facility, Plaintiff claims that a “pre-meeting”

took place in the parking lot. (TT I, at 62). All parties were present that day, and Plaintiff brought Lynn Moran, who she wished to replace her as Executive Director. (TT I, at 62). Plaintiff chose Ms. Moran because she was K-9's biggest donor. (TT I, at 63).

Plaintiff claimed that she wanted to introduce Ms. Moran as her Executive Director replacement, but she wanted to maintain her position on the board and retain the position of treasurer. (TT I, at 64). But Plaintiff testified that Ms. Moran was not allowed to attend the meeting because she was not a Board Member. (TT I, at 64).

Plaintiff admitted that she did not actually attend the June 21 meeting – leaving before it began. Plaintiff also testified that Mr. Gresham confronted her as she was leaving the June 21 meeting, asking if she has resigned. (TT I, at 68-69). She testified that she told him that she resigned and assigned her Executive Director replacement (Ms. Moran), but she was keeping her Board and Treasurer positions. (TT I, at 68-69).

The next day, June 22, 2012, Defendants issued a third written notice to Plaintiff. This one purports to remove her from her Board of Director, Treasurer, and Executive Director positions. (P. Ex. 5). All Defendants signed this notice. (P. Ex. 5). And the June 22 notice states that the four Defendants met on June 19, 2012 and made these decisions. (P. Ex. 5). Plaintiff claimed that she knew nothing of the June 19 meeting until the June 22 written notice. (TT I, at 69).

Plaintiff claimed that none of the Defendants mentioned the June 19 meeting at the June 21 parking lot “pre-meeting.” (TT I, at 68). She also claims that none of the Defendants notified her that these decisions were made. (TT I, at 68).

Ms. Kronk testified that Plaintiff resigned as Executive Director in the driveway before the June 21 meeting occurred. (TT I, at 179). Mr. Gresham and Ms. Stevenson testified the same

way. (TT II, at 46; TT II, at 75). But Ms. Barker testified that she did not hear what Plaintiff said. (TT II, at 63).

Defendants apparently also drafted a June 19, 2012 written notice that was substantially similar to the June 22 written notice, but they never sent a copy to Plaintiff. (TT I, at 69-71; P. Ex. 6).

Ms. Kronk testified that the June 19 meeting was not a formal meeting. Rather, she, Ms. Stevenson, and Mr. Gresham happened to be at the facility that day preparing dogs for surgery. (TT I, at 172). At one point, they called Ms. Barker on the telephone and discussed the agenda for the June 21 meeting. (TT I, at 173). Mr. Gresham testified that the June 19 discussion was informal and in response to Plaintiff's failure to communicate with the remainder of the Board. (TT II, at 45).

Ms. Kronk testified that the Defendants informally discussed that if they could not come to an agreement with Plaintiff about the future of K-9, they would be ready to remove her. (TT I, at 173, 175). And even though this was a last-minute, informal meeting, meeting minutes were prepared and signed by the four Defendants. (D. Ex. M).

Mr. Gresham testified that the Defendants planned on terminating Plaintiff's position at K-9 if she didn't show up to the June 21 Board Meeting. (TT II, at 47-48).

Considering all of the testimony and other evidence, the Court finds that Defendants voted to terminate Plaintiff's positions at K-9 on June 19, but they did not inform Plaintiff of this decision until June 22. And before Defendants got the opportunity to do so, Plaintiff resigned her Executive Director Position on June 21 – in the parking lot before the scheduled Board meeting.

In fact, the day before that meeting, Plaintiff authored a letter to the Michigan Attorney

General's office (dated June 20, 2012), in which, she claimed to have resigned from her permanent Executive Director position effective on that date. (D. Ex. S). In the same letter, however, Plaintiff claimed that she retained her Treasurer position. (D. Ex. S).

Because Plaintiff communicated her resignation to Defendants the day before they communicated their termination of her, the Court finds that Plaintiff's resignation preceded Defendants' termination.

The Court also finds that Defendants violated the Bylaws by voting to terminate Plaintiff's position in an unnoticed meeting. (P. Ex. 2, at Article VIII, Para. B – requiring 24-hour notice for all meetings). But this vote is without consequence because Plaintiff resigned before the result of the vote was communicated to her.

The Court also finds that Defendants' written reprimands to Plaintiff were the apparent result of unnoticed meetings that violated the Bylaws. While the Board generally has authority to address a member's violations of the Bylaws and Policies and Procedures, this cannot be accomplished through a direct violation of a specific provision of the Bylaws. And the Bylaws require 24-hour notice of all meetings. Plaintiff did not get notice of the meetings that resulted in the written reprimands. But, again, these meetings are without consequence because Plaintiff chose to resign.

In an effort to be complete, the Court will now address the parties' specific requests for fact finding.

1. Whether the Bylaws in place in June 2012 preserved a permanent position on the Board and Executive Director position for Plaintiff.

No. As discussed below, the Bylaws permit Plaintiff to resign or be removed for cause.

2. Whether Plaintiff resigned her position as Executive Director of K-9.

Yes. Plaintiff resigned her board position on June 20, 2012 and notified the other Board members of this decision on June 21, 2012.

3. Whether Defendants met without notice to Plaintiff and outside of her presence, as a Board and voted to remove her from her Board, Officer and Executive Director positions at K-9.

Yes. Defendants met without notice to Plaintiff and voted to reprimand her and remove her from her positions. While the meetings leading to these events violated the Bylaws, they have no consequence because Plaintiff elected to resign from K-9.

4. Whether Defendants properly met without notice of Plaintiff and outside of her presence, as a Board and voted to issue written reprimands to Powell.

No. Defendants violated the Bylaws when they met without notice to Plaintiff.

5. Did Powell resign from the board and/or the executive director position?

Yes. Plaintiff resigned from her Board and Executive Director positions. For the reasons explained below, the Bylaws treat these two positions (together with Treasurer responsibilities) as one in the same.

6. Do the bylaws grant the board authority to remove Plaintiff from her positions with the organization?

Yes. As discussed below, “any board member” may be removed by a majority vote for cause.

7. Did Plaintiff engage in conduct deemed detrimental to the organization, thus warranting her removal?

Yes. As explained above, Plaintiff violated several of K-9's adopted policies and procedures.

8. Whether K-9 is a thriving and successful organization under Defendants' direction.

Yes. All evidence indicates the rescue is doing very well.

9. Whether Plaintiff had the ability under the Bylaws to appoint her replacement as Executive Director of K-9.

Yes. She had the ability to do so if she resigned. But Plaintiff did not formally attempt to appoint any replacement. Although she showed up to the location of the June 21, 2012 meeting with Ms. Moran, they left before the meeting began. Plaintiff also fails to request this relief in her Proposed Findings of Fact and Conclusion of Law. Plaintiff, therefore, has abandoned her right to appoint any successor Executive Director.

10. Whether Plaintiff and Defendants were all members of the Board of Directors of K-9 in June 2012.

Yes. All parties were Board Members in June 2012.

III. Conclusions of Law

Based on the foregoing findings of fact, the Court makes the following conclusions of law. As stated, the parties have identified the following specific issues of law to be decided.

1. Whether the Bylaws in place in June 2012 were consistent with, and allowable under the Non-Profit Corporation Act, MCL § 450.2511 *et seq.*

Although the parties identified this issue as contested, neither party presents any

argument or analysis. It is unclear how the parties believe that the Bylaws are inconsistent with the Non-Profit Corporation Act, and the Court will not guess.

2. Whether Plaintiff can avail herself of declaratory relief under MCR 2.605.

MCR 2.605(A)(1) provides: “In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.”

As stated in its December 10, 2014 Opinion re: Summary Disposition, Plaintiff claimed that Defendants violated K-9’s Bylaws when they removed her and seeks a declaration of the parties’ respective rights under said Bylaws. This is a valid claim.

3. Whether Plaintiff is entitled to attorney fees and costs if successful in prosecuting her declaratory relief claims.

Unnecessary to resolve for reasons explained below.

4. Whether specific language in the Bylaws protecting Plaintiff’s position as Executive Director and Board Member prevented Defendants from removing her from either position.

The parties next challenge whether the Board had the authority to remove Plaintiff from her positions.

The Court will interpret K-9’s Bylaws as it does any other contract. “A contract must be interpreted according to its plain and ordinary meaning.” *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008), citing *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998).

As often repeated by our Supreme Court, “courts must ... give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory.” *Knight Enterprises v Fairlane Car Wash*, 482 Mich 1006; 756 NW2d 88 (2008); quoting *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003).

Article IV, Paragraph C of the Bylaws provides that “The Executive Director – Carole Powell – will maintain a permanent seat on the Board of Directors until she deems it necessary to resign at which time she will appoint a new Executive Director who will maintain the same rights.” (P Ex. 2).

The “permanent seat” language in Paragraph C appears to refer to Plaintiff’s exclusion from voting or appointment – rather than removal. This is the only way to give effect to every paragraph in Article IV. Plaintiff did not have to be re-voted onto the Board because her position was permanent (unless removed under Paragraph F).

This conclusion is supported by looking to the surrounding Paragraphs, B and D. In Paragraph B, the Bylaws provide that the Board will consist of between 3 to 5 members. This sets the context for the next two paragraphs. Paragraph C then provides that Plaintiff’s seat is permanent.

The next Paragraph, D, continues the subject matter established in Paragraphs B and C – how these members are chosen. When the drafters of the Bylaws chose the phrase “All other Directors,” they did so building on the subject considered in the preceding paragraph. In other words, “All other directors” would not make sense without knowing how Plaintiff obtained her position. Paragraph D provides that “all other directors” will be appointed or elected – as opposed to the Bylaws specifically providing the position to an individual.

For these reasons and considering the provision in context, the Court finds that Paragraph C must have only referred to Plaintiff's right to be free from appointment or vote. The subject matter was introduced in Paragraph B and continued in Paragraph D (with respect to the remaining Board Members).

Paragraph E then provides the length of the term for "all other officers." This Paragraph only applies to "all other officers" because they are the only ones subject to "appointment." Plaintiff's position was not. This is consistent with the interpretation that Plaintiff's position was excluded from voting or appointment – rather than removal.

Paragraph F then provides "[a]ny Board Member may voluntarily withdraw **or** may be suspended / expelled by a majority vote of the Board of Directors for violation of the Bylaws and/or Policies and Procedures or conduct deemed detrimental to the organization." (P Ex. 2). "Any Board Member" includes Plaintiff. There is no limiting language in this provision.

When examining Paragraph F, the Court concludes that use of the first (**bolded**) "or" in the above provision creates two distinct ways that a board member may leave the rescue. First, "[a]ny Board Member may voluntarily withdraw." There is no limitation on this first option. And Plaintiff chose this option.

Or, second, "any Board Member . . . may be suspended / expelled by a majority vote of the Board of Directors for violation of the Bylaws and/or Policies and Procedures or conduct deemed detrimental to the organization." Removal under this provision requires a majority vote **and** (1) a violation of the Bylaws **or** Policies and Procedures, **or** (2) a finding of conduct deemed detrimental to the organization.

For the foregoing reasons, Plaintiff could either resign (she did) or be removed for cause (Defendants voted to do so, but did not communicate this until after Plaintiff resigned).

Next, Article IV, Paragraph G provides that “The Board will also be known as the Management Team.” Article VI, Paragraph A provides that the organization will have “four **officer responsibilities**.” (emphasis added). In other words, the Bylaws provide certain **areas of responsibility – and not** separate and distinct **positions**. The Bylaws do not provide that Plaintiff could resign from her Executive Director position and retain a position on the Board. Plaintiff admitted as much in her testimony. (TT II, at 56).

Paragraph B of the same Article refers to the election/appointment process as being that of the Board of Directors in Article IV. In other words, officer responsibilities are not positions separate from Board positions. Rather, having officer **responsibilities**, such as Treasurer for example, is dependent upon having a Board position.

As a result, when Plaintiff resigned her Executive Director / Board position, she also necessarily resigned her Treasurer responsibilities. She had no separate Treasurer position to retain.

Assuming arguendo that Plaintiff did not resign, the Court concludes that the Board was within its power to remove Plaintiff from K-9. As outlined above, Plaintiff repeatedly violated K-9’s Policies and Procedures. These repeated violations provided Defendants with authority to remove her from K-9.

5. Whether Defendants had the ability under the Bylaws to meet outside of the presence of Plaintiff and vote to remove her from her positions as Executive Director and Board Member.

The parties next dispute whether Defendants had the ability under the Bylaws to meet outside of Plaintiff’s presence. Under the Bylaws, “[t]he time and location of the meetings will be communicated no less than 24 hours prior to the start of the meeting.” As a result, once

appropriate notice was provided, the meeting could be held.

The June 21 Meeting was appropriately noticed, and Plaintiff chose to not appear. As a result, Defendants' actions in this meeting were authorized.

With respect to the June 19 meeting, however, because 24-hour notice was not provided, any action violated the Bylaws. But, as stated, Plaintiff resigned before being informed of the improper vote in the June 19 meeting.

6. Whether Plaintiff maintains her seat on the Board, after she exercises her right to choose her replacement as Executive Director.

For reasons explained above, once Plaintiff resigned or was removed from the Board, she no longer had any position in K-9. And she has since abandoned her right to appoint an Executive Director replacement.

7. Whether the authority conferred under the bylaws is consistent with the Non-Profit Corporation Act.

As stated, although the parties identified this issue as contested, neither party presents any argument or analysis. It is unclear how the parties believe that the Bylaws are inconsistent with the Non-Profit Corporation Act, and the Court will not guess.

8. Whether Plaintiff can avail herself of declaratory relief inasmuch as she has already been removed from the organization.

As stated, MCR 2.605(A)(1) provides: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought

or granted.”

As stated in its December 10, 2014 Opinion re: Summary Disposition, Plaintiff claimed that Defendants violated K-9’s Bylaws when they removed her and seeks a declaration of the parties’ respective rights under said Bylaws. This is a valid claim.

9. Whether Plaintiff is entitled to attorney fees.

Plaintiff identifies no authority in support of an award of attorney fees in a case which she was unsuccessful. As a result, she is not entitled to attorney fees.

IV. Summary/Conclusion

For all of the foregoing reasons, the Court finds that Plaintiff resigned her position without formally appointing any replacement Executive Director. When she resigned her position, she resigned all involvement in K-9 because the Bylaws provide that her Executive Director / Board Member positions and Treasurer responsibilities were all encompassed in a single position. Because she never sought to formally appoint any replacement and does not request to do so now, she abandoned any right to do so.

Plaintiff no longer has any position with or legal interest in K-9. And the present Board has the authority to act under or amend K-9’s Bylaws and/or Policies and Procedures as it sees fit. Because Defendants are the prevailing parties, Plaintiff is not entitled to attorney fees.

This Order is a Final Order that resolves the last pending claim and closes the case.

IT IS SO ORDERED.

August 3, 2015
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge