

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 9, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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

**Appeal No. 2025AP693
STATE OF WISCONSIN**

Cir. Ct. No. 2024CV190

**IN COURT OF APPEALS
DISTRICT III**

SUSAN M. BAIRD AND CYNTHIA A. MERRITT,

PLAINTIFFS-RESPONDENTS,

V.

JOHN B. MERRITT,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Marinette County:
JAMES A. MORRISON, Judge. *Affirmed.*

Before Stark, P.J., Hruz, and Gill, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. John B. Merritt appeals from a circuit court order adopting an operating agreement to govern ownership of a family cabin (the cabin)

located at the Wausaukee Club in Athelstane, Wisconsin. The cabin is owned, as tenants in common, by John and his sisters, Susan M. Baird and Cynthia A. Merritt.¹ John challenges a single provision in that operating agreement, which states that when John's membership in the Wausaukee Club (the club) eventually transfers, his successor must be selected by a majority vote of the siblings. For the reasons that follow, we reject John's arguments and affirm the circuit court's order.

BACKGROUND

¶2 The facts in this case are largely undisputed. In 1999, Thomas Merritt, the parties' father, transferred ownership of the cabin to his four children, in equal shares as tenants in common.² Pursuant to its bylaws, the club owns the land on which the cabins sit, the members lease the sites from the club, and the cabins are considered personal property rather than real estate. Thomas also transferred his membership in the club to John. Although Sue and Cindy are each considered associate members, they have fewer rights and benefits than a full member under the club's bylaws.

¶3 After the transfer of ownership, disputes arose among the parties regarding the use of the cabin, modifications, and repairs. According to the complaint, when issues would arise, John told Sue and Cindy that he was "in charge" and that he had the "final say regarding when the [c]abin can and can't be

¹ Because some of the parties share a surname, we will refer to the parties by their first names—John, Sue, and Cindy—throughout the remainder of this opinion.

² In 2015, the parties' fourth sibling gifted ownership of her interest to them in equal shares.

used” based on his status as a club member. According to John, he and Sue and Cindy, “and our families, do not get along, and it is very difficult to share the cabin at the same time given this fact.”

¶4 As a result, Sue and Cindy filed this lawsuit, seeking declaratory and injunctive relief against John “to confirm that each sibling possesse[d] identical cabin ownership rights and obligations and to enjoin John from unilaterally altering the cabin.” Sue and Cindy also sought an injunction prohibiting John from barring them access to the cabin or making changes to the cabin without their agreement. John filed a counterclaim for a declaratory judgment, which sought, among other things, a declaration that he did not need to secure Sue and Cindy’s consent to make “repairs and alterations to the cabin to accommodate his disability” and that the circuit court should impose a schedule for when the parties could use the cabin.

¶5 Sue and Cindy moved for a temporary injunction, which sought to maintain the status quo in the face of John’s plan to proceed with permanent alterations to the cabin. The circuit court held a nonevidentiary hearing on the motion.³ Immediately prior to the hearing, the parties’ lawyers asked to speak to the circuit court judge in chambers regarding how to resolve this dispute. The court ultimately proposed that the parties attempt to reach a consensus on a comprehensive cabin operating agreement. If, however, the parties could not come to an agreement, the parties would each submit proposed operating

³ In the weeks prior to the hearing on the temporary injunction, the parties also filed cross-motions for declaratory judgment.

agreements, and the court, in its discretion, would then select one of those proposals as the binding operating agreement.

¶6 The parties agreed to the circuit court's proposal, and the court put the following on the record:

You guys are going to go back. You are going to negotiate with each other, understanding what the terms are, and you're going to come up with an arrangement that makes sense to you that you can all agree upon.

If anybody disagrees, you will each provide to me your proposal, and that proposal will be how you divide, and it better follow those rules because if your proposal does not follow that basic innate fairness, I'm not going to accept it, and if I get three really dumb proposals, I'll give you my really brilliant proposals, okay? So go negotiate and figure out what you want to do.

....

Now, the lawyers said they want a couple weeks to get this done. That's fine. Happy to do that. However, I will decide what you can't decide, and the principles that will motivate me are the following, just to be clear.

Three tenants in common, equal ownership, equal rights, equal responsibilities, equal sharing of common expenses. No major expense unless there is agreement of two out of three of you, but [the changes to the cabin needed to accommodate John's disability] are clear that [they] have to be done.

¶7 The circuit court also emphasized to John that his status as a club member did not provide him with superior ownership rights in the cabin. The court explained to John,

I know you're the member, but all that means, unfortunately for you, is you have a fiduciary duty to your sisters to see to it that you treat them fairly, and the way we resolve a fiduciary duty is you've got to do what's in their best interests rather than in your best interest, frankly. So being the member, you might think it gave you power, but actually the truth of the matter is it gave you more responsibility than benefit, if the truth be told, so be aware of that.

John acknowledged on the record that he understood that he was a fiduciary and “not in charge.”

¶8 The parties were unable to reach consensus on the terms of an operating agreement. Therefore, pursuant to the circuit court’s instruction and the parties’ agreement, the siblings submitted proposed operating agreements for the court to review. The two proposals submitted included provisions addressing communication with the club, a schedule for use of the cabin, cabin administration, changes to the cabin, membership succession, voting rights, and how to resolve future disputes and make amendments to the agreement.

¶9 Relevant here, John submitted his proposal first and included the following language:

[E]xcept as specifically altered by this order, the rights and responsibilities of the Member ([John]) and Associate Members ([Sue and Cindy]) set forth in the Wausaukee Club Bylaws—including but not limited to [John’s] sole right to nominate the next Member to succeed him as the Member of the Wausaukee Club—shall not be superseded, modified, or altered in any way.

When Sue and Cindy submitted their joint proposal, they also then included a provision regarding membership succession, which provided as follows:

22. If John Merritt decides to no longer be the Wausaukee Club member associated with the cabin, or if John Merritt is unable to be the member associated with the cabin, the co-owners collectively shall nominate a co-owner to be considered by the Club for Membership. The nomination shall be by agreement of the co-owners who constitute a majority percentage of the ownership.

Going forward, we will refer to this provision as “paragraph 22.”

¶10 In a subsequent letter to the circuit court, Sue and Cindy explained that according to John’s submission,

he has the “sole right” to nominate the next member to communicate with the Wausaukee Club on behalf of the cabin’s co-owners. But that is false. Article III, Section 5 of the [Club’s] Bylaws states that cabin owners nominating a new member must arrange for at least one of the Club’s existing 35 members to sign the nomination—not that the current member has the “sole right” to nominate the next member for the Board’s consideration.

(Citations omitted.) For his part, John submitted his own letter addressing this issue, explaining that “[m]embership transfer was not addressed at the motions hearing” and that “[t]he Court need not include in its order a provision governing an issue never brought before it ... because membership transfer ... does not relate to property rights issues currently before the Court.” His letter then outlined his understanding of the club’s bylaws addressing membership succession.

¶11 The circuit court ultimately entered an order explaining that it had “reviewed each agreement to be certain that the proposed agreement was consistent with the guidelines set forth by the Court” and that “[a]fter having done that[,] the Court determined that either of the agreements appeared to the Court to be workable but that [Sue and Cindy’s proposal] appeared to the Court to be somewhat clearer and for that reason and that reason alone the Court has selected” Sue and Cindy’s proposed operating agreement “as its Decision and Order in this matter.” The court signed Sue and Cindy’s proposed operating agreement.

¶12 John filed a motion for reconsideration of the circuit court’s order, which challenged only the language in paragraph 22 addressing membership succession and argued that the provision deprived John of his club membership rights that he acquired from his father. The court denied reconsideration by written order and without a hearing. According to the court, John had “raise[d] an entirely inappropriate ground for reconsideration” because

[t]he entire basis of the lawsuit was the extent of those membership rights which w[ere] provided to [John] and his

sisters as Tenants in Common, Jointly and Equally, by their father. If the Court were to accept [John's] argument at this time[,] ... [i]t would totally negate the settlement for [John] now to be able to return to the very basis for the lawsuit in the first place. By entering into the Settlement Agreement ... [John] waived the right to claim that the Settlement Agreement deprived him of the ownership interest which he claims he received. That was the settlement.

The court further emphasized that the parties' lawyers had agreed to the procedure that the court had presented and then followed when it reached its decision, but John "now wants to come back and re-litigate the issue." John appeals.

DISCUSSION

¶13 On appeal, John renews his challenge to paragraph 22 of the operating agreement from his motion for reconsideration. He argues that the club's bylaws state "that only club members may nominate a successive member"; that his sisters, as tenants in common, "are not Wausaukee Club Members"; and that they are, therefore, not "eligible to nominate." The entire basis for John's appeal in this case comes down to what he sees as the circuit court acting outside the bounds of that which it had the power to control. He claims that the court's order modified the contract that existed between himself and the club—the club's bylaws and lease of the land on which the cabin sits—and that his "status" as a club member "carries important legal rights which the Circuit Court lacked the prerogative to disrupt." For the reasons that follow, we reject John's arguments and affirm the circuit court's decision in this case.

¶14 Initially we must address the parties' disagreement regarding our standard of review. John argues that we are to review this case independently from the circuit court, citing both the standard of review for summary judgment motions and stipulations in support of his position. See *Olson v. Town of Cottage*

Grove, 2008 WI 51, ¶¶32-37, 309 Wis. 2d 365, 749 N.W.2d 211 (reviewing the circuit court’s decision on summary judgment de novo); **Stone v. Acuity**, 2008 WI 30, ¶21, 308 Wis. 2d 558, 747 N.W.2d 149 (stating that the interpretation of a stipulation is a question of law). In contrast, Sue and Cindy assert that John is “incorrect[]” that this case is subject to de novo review because this “appeal does not arise from a summary judgment ruling.”

¶15 We agree with Sue and Cindy that the standard of review applied in **Olson** is inapplicable here. As our supreme court explained in that case,

Determining whether a suit is or is not ripe is a legal inquiry separate and distinct from determining whether to grant or deny declaratory relief on the merits. The circuit court here determined that Olson’s suit was not ripe; as a result, it did not *expressly* deny declaratory relief, either on ripeness grounds or on the merits. Instead, it granted summary judgment to the Town as a matter of law because the suit was not ripe. Therefore, the appropriate standard of review here is de novo because the circuit court’s decision turned upon a question of law.

Olson, 309 Wis. 2d 365, ¶32 & n.5. The instant case was not resolved on an issue of law. Instead, the circuit court’s order was a decision on the merits granting declaratory relief based on the parties’ stipulation to a process by which the circuit court would exercise its discretion and select one of the parties’ proposed operating agreements as binding. See *id.*, ¶24 (noting that the court of appeals applied de novo review “because the circuit court’s decision hinged upon a question of law,” but acknowledging that a decision to grant or deny declaratory relief is traditionally within the circuit court’s discretion). Further, this case does not involve the *interpretation* of the terms of the stipulation between the parties such that de novo review would apply. See **Stone**, 308 Wis. 2d 558, ¶21.

¶16 Therefore, we review the circuit court’s order in this case for an erroneous exercise of discretion. See **Milwaukee Dist. Council 48 v. Milwaukee**

County, 2001 WI 65, ¶36, 244 Wis. 2d 333, 627 N.W.2d 866 (“A decision to grant or deny declaratory relief falls within the discretion of the circuit court,” and “[t]he circuit court’s decision to grant declaratory relief will not be overturned unless the circuit court erroneously exercised its discretion.”). We will uphold a discretionary act if the court “examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982). “We look for reasons to sustain a [circuit] court’s discretionary decision.” *State v. Wiskerchen*, 2019 WI 1, ¶18, 385 Wis. 2d 120, 921 N.W.2d 730 (citation omitted).

¶17 We conclude that the circuit court did not erroneously exercise its discretion when it approved the operating agreement proposed by Sue and Cindy because that approval did not violate the law and its decision was reasonable under the facts of this case.⁴ It is undisputed that John, Sue, and Cindy own the cabin on

⁴ We also note that Sue and Cindy initially argue in their response brief that we should reject John’s appeal in this case on the basis of the doctrines of waiver and estoppel. See *State v. Ndina*, 2009 WI 21, ¶29, 315 Wis. 2d 653, 761 N.W.2d 612; *Milas v. Labor Ass’n of Wis.*, 214 Wis. 2d 1, 11-12, 571 N.W.2d 656 (1997). Sue and Cindy argue that waiver and estoppel principles foreclose John’s appeal because John “waived his right to challenge the result of the resolution process to which he agreed.” They also contend that they relied on John’s agreement to the stipulated procedure, and they “invested substantial time and resources negotiating with John, drafting the agreement, and marshaling submissions to the court—all efforts rendered necessary by John’s consent to the resolution process.”

Citing *Sanders v. Sanders*, 2008 WI 63, ¶¶34-36, 310 Wis. 2d 175, 750 N.W.2d 806, and *Brunton v. Nuvel Credit Corp.*, 2010 WI 50, ¶¶35-36, 325 Wis. 2d 135, 785 N.W.2d 302, John argues that he did not waive his appeal rights because he was not aware that the circuit court was going to “alter [his] membership rights” in the club and because he never “agreed to place his membership rights in jeopardy” and therefore “stated nothing for the sisters to rely on.”

(continued)

the club’s property as tenants in common, which means that each “has an undivided interest in the whole property for the duration of the tenancy.” See WIS. STAT. § 700.17(3) (2023-24);⁵ see also WIS. STAT. § 700.20 (“The extent of the undivided interests of tenants in common for the duration of the tenancy is determined by the intent expressed in the document of title, instrument of transfer or bill of sale; if no intent is expressed in the document, instrument or bill of sale, tenants in common are presumed to own equal undivided interests for the duration of the tenancy.”). The court properly recognized the legal effect of this ownership interest when it told the parties about the principles that would motivate its decision: “Three tenants in common, equal ownership, equal rights, equal responsibilities, equal sharing of common expenses.” With those principles in mind, the court chose the operating agreement that most clearly reflected that shared ownership, including paragraph 22.

¶18 Importantly, John does not argue that his proposed operating agreement should have been accepted by the circuit court, nor does he seek to amend any specific language. Instead, for several reasons, he argues that paragraph 22 “of the order should be reversed.”

¶19 First, John argues that Sue and Cindy “slipped a passage into the order the Court signed that changed the bylaw procedure for nominating members

We need not resolve these issues, however, because we decide this case in favor of Sue and Cindy on the merits. See *Barrows v. American Fam. Ins.*, 2014 WI App 11, ¶9, 352 Wis. 2d 436, 842 N.W.2d 508 (2013) (“An appellate court need not address every issue raised by the parties when one issue is dispositive.”); *State v. Erickson*, 227 Wis. 2d 758, 766, 596 N.W.2d 749 (1999) (“[T]he waiver rule is one of judicial administration and ... appellate courts have authority to ignore the waiver.”).

⁵ All references to the Wisconsin Statutes are to the 2023-24 version.

to the club,” which was erroneous because “throughout the course of the litigation, neither membership in the Wausaukee Club nor the terms of the bylaws, and contract were either raised or at issue.” We reject John’s assertion because the issue of John’s club membership was a central issue in this lawsuit. As Sue and Cindy argue on appeal, their complaint specifically stated that “John ... claims that he is ‘in charge,’ that he can ‘decide who can be at the cabin,’ and that he has the ‘final say regarding when the [c]abin can and can’t be used’” and that he “stakes his claim of superior rights on the fact that he is a Member of the Wausaukee Club.” Thus, as the circuit court properly recognized, “[t]he entire basis of the lawsuit was the extent of those membership rights which [were] provided to [John, Sue, and Cindy] as Tenants in Common, Jointly and Equally, by their father.”

¶20 Further, John agreed to the circuit court’s proposed procedure, wherein the court gave the parties the following directive: “Three tenants in common, equal ownership, equal rights, equal responsibilities, equal sharing of common expenses.” Then, as Sue and Cindy identify, John “was the first to propose a provision governing [club membership] succession for the circuit court” in his proposed operating agreement, which stated that John’s “sole right to nominate the next Member to succeed him as the Member of the Wausaukee Club ... shall not be superseded, modified, or altered in any way.” Sue and Cindy merely responded to John’s proposed language with their own proposal that provided for equal ownership, rights, and responsibilities, as the court instructed. Pursuant to paragraph 22, John has retained his right to membership in the club, but any change to that membership is an issue that will need to be addressed in the future between the owners of the cabin and was, therefore, properly considered by the parties in their submissions to the court.

¶21 Second, John argues that paragraph 22 alters his legal rights as a member of the club. According to John, the circuit court’s order “alters [his] legal rights of succession without justification,” and the court “lacked power to alter the bylaws,” which are a “contract[] between John Merritt and the Wausaukee Club.” See *Columbia Propane, L.P. v. Wisconsin Gas Co.*, 2003 WI 38, ¶12, 261 Wis. 2d 70, 661 N.W.2d 776 (“In constructing a contract, ‘courts cannot insert what has been omitted or rewrite a contract made by the parties.’” (citation omitted)).

¶22 We disagree with John’s foundational proposition that the operating agreement alters John’s rights. Initially, we note that John lists several “rights” that he enjoys as a club member that associate members do not, including “shar[ing] in club assets upon distribution, possess[ing] a right to purchase property on which cabins sit at liquidation or winding up, leas[ing] the land that holds the cabin, vot[ing] on important club issues ... and more.” Yet, as Sue and Cindy argue, “[p]aragraph 22 leaves every one of those benefits intact”: “The substantive rights of membership—and the mechanism for acquiring them—remain exactly as the bylaws dictate.”

¶23 John’s main assertion, however, is that “[o]nly members may nominate another member,” and, “[t]herefore, as his father did before, John Merritt is entitled to nominate his family members to succeed him, under the strict edict of the club’s bylaws, which require such nominations come from a full member.” The first problem with John’s claim is that he is not in the same position with regard to the cabin or the club as his father, by his father’s own design. Based on the information before this court, it does not appear that Thomas shared ownership of the cabin (beyond, perhaps, with his wife) at the time that he transferred his ownership to his four children and nominated John to succeed him

as a member of the club. Thus, John’s comparison of his rights to the rights of his father is inapt.

¶24 Further, we agree with Sue and Cindy that the club’s bylaws do not support John’s broad claim. Section 5 of the club’s bylaws, titled “Proposals for Membership,” simply states, in relevant part, that “[a]ll proposals for membership in the Club shall be signed by at least one Member who is not an officer or director and who is personally acquainted with the candidate proposed.” Thereafter, “[a]ll proposals for membership shall be referred to and acted upon by the Board of Directors, whose proceedings thereon shall be secret and confidential and whose action shall be final and conclusive.” Nowhere does this language mandate that John have the exclusive right to choose his successor, and John has otherwise failed to cite any provision or other evidence saying as much.

¶25 Instead, paragraph 22 is in complete compliance with section 5’s terms because it ensures John’s rights as a member until he is either unwilling or unable to maintain his membership, at which time the then-owners of the cabin, whomever they may be, “collectively shall nominate a co-owner to be considered by the Club for Membership,” which proposal may then be signed by any existing club member personally acquainted with the proposed candidate.⁶ Paragraph 22 does not state that a nonmember would sign the proposal for membership or that

⁶ John further claims there is “no assurance in this record that either of the two sisters is qualified” to be the member associated with the cabin. However, that argument is a nonstarter because paragraph 22 does not mandate that Sue or Cindy will be proposed as the new member, so whether the club’s board would accept either of them as a member has no bearing on this case. As Sue and Cindy explain, paragraph 22 “applies prospectively to whomever owns the cabin when John steps aside, a group that could include descendants or transferees not now before the Court.” And to the extent that no existing member is willing to sign on in support of one of the proposed nominees or the board rejects the proposed candidate, the then-owners of the cabin will simply need to nominate someone else.

the cabin owners would not abide by the club’s decision if the board rejects the proposed candidate. Thus, we agree with Sue and Cindy that “[p]aragraph 22 does not amend, dilute, or supersede any part of Section 5” of the club’s bylaws. As Sue and Cindy explain, paragraph 22 “simply outlines a procedure by which the cabin co-owners may select a candidate to enter the existing Section 5 membership process once John relinquishes his membership.”

¶26 Next, John contends that “[j]udicial modification of a contract”—i.e., the club’s bylaws and the lease of club property—“is especially troubling when only one party to the contract is a litigant and the modification is done at the behest of a nonparty to the contract.” Accordingly, he cites WIS. STAT. § 803.03(1), arguing that the statute “required the Club’s joinder as a matter of law” because the circuit court’s “decision certainly contravenes important provisions of the Wausaukee Club bylaws.” Citing *Lee v. Snyder*, 673 N.E.2d 1136, 1139 (Ill. App. Ct. 1996), John also argues that “Illinois law controls the transfer of membership in” the club because the club is an Illinois nonprofit corporation, and “courts hesitate to meddle in the affairs of private associations.”

¶27 We are not persuaded by John’s arguments. As we addressed above, the circuit court’s order does not conflict with or modify the club’s bylaws in any manner. Even if we did conclude that the club’s bylaws were somehow altered as a result of this lawsuit, John lacks standing to advance that alleged claim. See *State v. Horn*, 126 Wis. 2d 447, 453, 377 N.W.2d 176 (Ct. App. 1985) (“A party may not rest his legal claims or defenses upon the rights of third parties.”).

¶28 Further, the club has disclaimed any interest in the dispute. The club wrote the following to the family: “The Board’s understanding is that the cabin is owned equally among three siblings The Wausaukee Board has no desire to

be involved in these family issues nor do they think it is their role.” As a result, the club has never attempted to intervene in this case. See WIS. STAT. § 803.09 (“Intervention”); *City of Madison v. WERC*, 2000 WI 39, ¶12, 234 Wis. 2d 550, 610 N.W.2d 94 (“[A] non-party to a circuit court action may intervene in an appeal brought by another party, even after the time for filing a notice of appeal has passed.”). Moreover, and for these same reasons, WIS. STAT. § 803.03(1) is not implicated here because complete relief was available without the club’s participation, and, again, the club has never claimed an interest in this dispute.

¶29 John’s reliance on Illinois law is also inapt because, first, *Lee* involved a dispute between a member and a voluntary association, which is not the circumstance here. See *Lee*, 673 N.E.2d at 1137. And second, as discussed above, the circuit court’s order does not interfere with how the club enforces its bylaws. See *id.* at 1139.

¶30 Finally, John contends that the circuit court’s order is unnecessary. According to John, the “order decreeing how the operation of the cabin should proceed was sufficient to satisfy every aspect of the lawsuit that [Sue and Cindy] brought,” and the court—allegedly and despite the parties’ letters in the record arguing the issue prior to the court’s decision—was likely not aware of the difference between the proposed orders on the subject of membership succession. John again argues that “how the issue of membership succession came to the forefront is largely a mystery” and that Sue and Cindy “slipped the passage in,” but then in the next breath he solves the mystery when he asserts that he “had proposed something on the subject exactly the opposite.”

¶31 We agree with Sue and Cindy that paragraph 22 was important for future disputes regarding cabin ownership. Pursuant to article III, sections 1 and 3

of the club's bylaws, members "may own a cabin located on the Club premises as provided in Article IX hereof," but "[a]ssociates shall have no right to lease a cabin site or to build a cabin on the Club premises." In other words, there can be no cabin ownership without membership. However, the bylaws cap the number of members in the club at 35, meaning that where a cabin is owned by more than one individual, one of the owners *must* be a member but not all of the owners *can* be a member. This reading is supported by the letter that Thomas sent to the club's board of directors in May 1999, which said, "We have decided that we would like to transfer the ownership of our cabin at The Wausaukee Club to our four children. In order to complete this transfer, it will be necessary for *one of them* to become a member of the Club *in my place*." (Emphases added.) Because cabin ownership is intertwined with club membership, paragraph 22 aids the parties in reaching an inevitable future decision on that issue. Further, as Sue and Cindy assert, John's arguments on this issue are "largely a rehash of his meritless arguments stated elsewhere," which we have already addressed above and rejected.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

