IN THE SUPREME COURT OF IOWA

Supreme Court No. 22–1601

Greene County No. LACV022075

HUNTER THREE FARMS, LLC,

Plaintiff–Appellant,

vs.

RICHARD HUNTER,
individually and as a member of Hunter Three Farms, LLC,

Defendant–Appellee.

APPEAL FROM THE IOWA DISTRICT COURT FOR
GREENE COUNTY
THE HONORABLE DEREK JOHNSON, JUDGE

APPELLANT'S RESISTANCE TO APPLICATION FOR FURTHER REVIEW

Court of Appeals decision January 24, 2024

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND RULES

STATEMENT OPPOSING FURTHER REVIEW

The Court should deny further review. The court of appeals engaged in sound statutory interpretation and articulated a logical holding that does not conflict with any of this Court's own holdings. This case does not involve any changing legal principles; to the contrary, it perpetuates longstanding principles. In sum, there is nothing new in the court of appeals' decision that warrants granting further review that was not already present in this case when the Court transferred it to the court of appeals.

STATEMENT OF FACTS

The court of appeals cited facts in its majority opinion adequate to support its well-reasoned judgment. The argument below cites a few additional facts to provide additional context for the Court's decision whether to grant further review.

ARGUMENT

I. THE COURT SHOULD DENY THE APPLICATION FOR FURTHER REVIEW BECAUSE THE COURT OF APPEALS APPLIED A SENSIBLE RULE THAT IS IN HARMONY WITH RELATED LAW.

"Further review by the supreme court is not a matter of

right, but of judicial discretion. An application for further review will not be granted in normal circumstances." Iowa R. App. P. 6.1103(1)(b). The instant case is one where the court of appeals engaged in statutory construction in the mold of one of this Court's landmark decisions. The court of appeals applied a sensible rule to govern LLCs that is drawn directly from both corporate and partnership law. Although the Applicant worries that the court of appeals's holding is ripe for abuse, his own favored rule is actually the one that encourages abuse. For these reasons, the Court should refrain from granting further review.

A. Methodology Is Not Subject to Further Review.

In applying for further review, Richard makes much of the court of appeals's method of construing Iowa's LLC statute. Appl. pp. 5–10. He does this, presumably, in an effort to show that the court of appeals's decision is in conflict with this Court's decisions. *See* Iowa R. App. P. 6.1103(1)(*b*)(1). But supreme court precedent does not require later or lower courts to follow a certain judicial philosophy. *State v. Short*, 851 N.W.2d 474, 520 (Iowa 2014) (Mansfield, J., dissenting). Some

judges think tools of interpretation are to be employed only after determining a statute is ambiguous, *e.g.*, *Caminetti v. United States*, 242 U.S. 470, 485 (1917) (per Day, J.) ("Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise."); others apply them freely because every application of text to fact requires interpretation, *e.g.*, *Marbury v. Madison*, 5 U.S. 137, 177 (1803) (per Marshall, C.J.) ("Those who apply the rule to particular cases must of necessity expound and interpret that rule."). The fact that Justice Day took an approach contrary to that espoused by Chief Justice Marshall over a hundred years earlier is evidence that methodology is not binding.

At any rate, in the case at hand, both the majority and dissenting opinions at the court of appeals engaged in statutory construction. The majority considered (1) the whole-text canon, such as in *State v. Doe*, 903 N.W.2d 347, 351 (Iowa 2022), (2) the surplusage canon, such as in *State v. Thompson*, 954 N.W.2d 402, 409 (Iowa 2021), and (3) the consequences of a particular construction as the General Assembly has instructed in Iowa Code section 4.6(5). Court of Appeals Op. 11–13. The

dissent looked to the general/specific canon, Op. of Langholz, J., at 23. *See State v. Hess*, 983 N.W.2d 279, 287 (Iowa 2022). Either way, the tools of construction—including the lay of the land around the LLC law—were on the table.

By extension, the court of appeals did not go astray when it looked to the broader context of LLC law to construe Iowa's LLC statute. *See* Court of Appeals Op. 14. After all, the LLC statute itself invites courts to do just that. Iowa Code § 489.107 (2023).[1] What is more, this Court also looked to the lay of the land when it interpreted a different provision of the LLC statute: the standard for judicial dissolution based on impracticability. *See Barkalow v. Clark*, 959 N.W.2d 410, 420 (Iowa 2021) (interpreting Iowa Code § 489.701(1)(*d*)(2) (2017)). The Court took text that had not been interpreted before and then looked at what standards other jurisdictions had developed to apply under that text. *Id.* Ultimately, the Court reached its conclusion by analyzing standards that were not provided in the LLC statute. *See id.* at 420–22 (analyzing deadlock and profitability

[1]This section is now renumbered Iowa Code section 489.111 (2024).

as measures of what is "reasonably practicable").

In light of this Court's landmark analysis in *Barkalow v. Clark*, the court of appeals did nothing that conflicts with this court's own decisions, either concerning statutory interpretation, the LLC statue, or both. Context, the text as a whole, and the consequences of a particular interpretation all inform sound statutory construction.

B. The Court of Appeals Did Not Change Iowa LLC Law.

The court of appeals looked to partnership law as a trusty guide. Court of Appeals Op. at 14–18. And well it should. *See Elf Atochem N.A., Inc. v. Jaffari*, 727 A.2d 286, 290 (Del. 1999) (comparing members of an LLC to a limited partnership). From this well of wisdom, the court of appeals drew the principle that a majority of disinterested partners can approve a suit against a conflicted minority partner. Court of Appeals Op. 17.

Corporate law is a further source of sound guidance. *See Elf Atochem N. Am., Inc.*, 727 A.2d at 290 (describing the nature of an LLC as a combination of corporation and partnership). Specifically, the ability to bring a "derivative suit is a corporate concept grafted onto the limited liability company form." *Id.* at

293. Accordingly, the Court should take its cues from corporate law when considering whether an LLC must take derivative action instead of direct action. *See id.*; *see also Barkalow*, 959 N.W.2d at 418–19 (looking to corporate law to interpret the standard for oppression under Iowa's LLC statute). What we find there is that corporate law does not require a derivative suit if a majority of disinterested directors approve a lawsuit. Iowa Code § 490.862(1), (3). Even more specifically, this action may be taken only if the majority of disinterested directors is at least a majority of two. *Id.* § 490.862(3).

Given the nature of the LLC—a hybrid of a partnership and a corporation—the disinterested partner rule is right at home in LLC law. If two parents share a certain genetic trait, it comes as no surprise when their children bear the same trait. As the bodies of partnership law and corporate law both contain the disinterested party rule, it is no surprise—and entirely becoming—that the body of LLC law should contain the same rule. The consequence of the court of appeals's construction is a new body of law in harmony with the bodies of law that produced it. *See* Iowa Code § 4.6(5) (directing courts to consider

the consequences of a particular statutory construction).

Even more specifically, in this particular case, the majority of disinterested members is a majority of at least two, clearing the bar set by the original body of corporate law. The court of appeals's decision does not change any legal principles that govern LLCs in Iowa; to the contrary, it perpetuates them. *See* Iowa R. App. P. 6.1103(1)(*b*)(3). For this reason, the Court need not grant further review the court of appeals's decision.

C. The Court of Appeals's Decision Solves Practical Problems.

Although Richard laments practical problems that might arise from the court of appeals's decision, those problems are the product of his own imagination. Richard hypothesizes that the court of appeals's decision will encourage majority voting blocs in LLCs to "freeze out" their minority members—just as he alleges his own fellow member–managers have done in Hunter Three. But Richard's concern is misplaced for two reasons. First, Richard has not been "frozen out" of Hunter Three within the meaning of Iowa Code § 489.701(1)(*d*)(3)(b). No court has adjudicated Richard as "frozen out," and a motion for summary

judgment to that effect is now pending in district court. *See* Greene County Case No. 022106. Second, the "freezing out" that Richard describes in his Application is already prohibited by the LLC Act, and a process is already in place to redress "freezing out." Iowa Code § 489.701(1)(*d*)(3)(b). Thus, this case does not present problems that are of great importance anywhere but in Richard's own fears, or at worst, anywhere outside of this ongoing family dispute.

Besides, other issues no less thorny plague Richard's preferred rule. If Richard himself were to enter into a contract with a third party, Hunter Three failed to satisfy its obligations to the third party, and the third party sued Hunter Three, could Richard thwart Hunter Three's efforts to defend the lawsuit? That is not a hypothetical; it is reality. *See* Supreme Court Case No. 23–1221. Plaintiffs sued Hunter Three contending it had breached a contract to pay them money alleged owed under a contract they entered into with Richard on behalf of Hunter Three. Although the district court concluded the plaintiff missed the statute of limitations, Hunter Three still had to defend the suit. Could Richard thwart Hunter Three's defense if he so

pleased? If the roles were reversed, could he stop Hunter Three from recovering from a third party? The court of appeals settled on and applied the sensible rule that a majority of disinterested members may act in the present circumstances. The Court need not disturb that principle.

CONCLUSION

The court of appeals conducted statutory interpretation according to the model established by this Court. It articulated a sensible rule that comports with the long-standing legal principles upon which LLCs are founded. No criteria for further review are met besides the ones that were already met when the Court transferred this case to the court of appeals. The Court should deny further review.

ORAL ARGUMENT

Further review is unnecessary and the Application therefor should be denied. But if the Court decides to grant it, Hunter Three respectfully requests to be heard in oral argument.

CERTIFICATE OF COST

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/s/ Adam J. Babinat

CERTIFICATE OF COMPLIANCE

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/s/ Adam J. Babinat

CERTIFICATE OF FILING AND SERVICE

I, Adam J. Babinat, hereby certify that on the 23d day of February, 2024, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal via EDMS.

/s/ Adam J. Babinat