SUMMARY
January 16, 2025

2025COA5

No. 23CA1837, *Hogue v. Hogue* — Business Organizations — Limited Liability Partnerships — Colorado Uniform Limited Partnership Act of 1981 — Judicial Dissolution

A division of the court of appeals decides, as matters of first impression, two issues related to a court's authority for the judicial dissolution of a limited liability partnership under section 7-62-802 of the Colorado Uniform Limited Partnership Act of 1981 (ULPA), C.R.S. 2024. First, courts may look to the factors provided in *Gagne v. Gagne*, 2014 COA 127, ¶ 35, (*Gagne I*), concerning the analogous context of judicial dissolution of limited liability companies under section 7-80-810(2), C.R.S. 2024, because of the identical language in the two statutes. Second, based on the reasoning in *Gagne v. Gagne*, 2019 COA 42, ¶¶ 16, 41 (*Gagne II*), the division holds that a court's judicial dissolution of a limited liability partnership, and the choice of remedy upon winding down

the partnership's business, is an equitable proceeding we review for abuse of discretion.

In applying *Gagne II* under the applicable standard of review, the division holds that the district court did not err when it refused to partition the partnership's property and instead ordered a liquidation of its assets because partition contradicted the plain language of the partnership agreement, would have been unreasonable, and threatened further litigation. By reaching this conclusion, the division agrees that the district court properly rejected the defendant's unclean hands defense because it lacked evidentiary support and that any error was harmless. The division affirms the district court's judgment.

COLORADO COURT OF APPEALS **2025COA5**

Court of Appeals No. 23CA1837
Routt County District Court Nos. 21CV30091 & 21CV30092
Honorable Michael A. O'Hara III, Judge

Charles J. Hogue,

Plaintiff-Appellee,

v.

Michael L. Hogue,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division II
Opinion by JUDGE FOX
Johnson and Schock, JJ., concur

Announced January 16, 2025

Husch Blackwell LLP, Jeffrey D. Whitney, Tessa F. Carberry, Denver, Colorado, for Plaintiff-Appellee

Womble Bond Dickinson (US) LLP, Justin D. Cumming, Kendra N. Beckwith, Tyler J. Owen, Denver, Colorado, for Defendant-Appellant

¶ 1 Defendant, Michael (Mike) L. Hogue, appeals the district court's judgment in favor of plaintiff, Charles (Chuck) J. Hogue, dissolving and liquidating the assets of the Hogue Ranch Limited Partnership, a Colorado limited liability limited partnership (the Hogue Ranch Partnership or the Partnership). We affirm.

I. Background

¶ 2 This appeal arises from the judicial dissolution of two limited liability limited partnerships (LLLPs) — the Hogue Ranch Partnership, which owned the Hogue Ranch (or the Ranch), and the Squire Building Limited Partnership, LLLP, which owned a commercial building. The district court consolidated the two dissolution cases for trial, but this appeal only concerns the dissolution of the Hogue Ranch Partnership.

¶ 3 The Ranch covers 1,069 acres near Steamboat Springs, Colorado. Charles E. and Margaret E. Hogue (through trusts) and their children, Chuck Hogue, Frank P. Hogue, Mike Hogue, and John M. Hogue (collectively, the brothers), formed the Partnership in 1999.[1] The Hogue Ranch Partnership Agreement (the Agreement)

[1] Because of their shared surname, we respectfully refer to the members of the Hogue family by first name.

declared that the Partnership's purpose was "owning, developing, leasing, managing, farming, ranching and selling of such real property and personal property as the General Partners may purchase on behalf of the Partnership." Charles and Margaret, though their trusts, transferred ownership of the Ranch to the Partnership. The Agreement named trustees Charles and Margaret as the "Managing General Partners."

¶ 4 Charles died in 2005, leaving Margaret as the sole Managing General Partner. After Margaret died in 2016, the Agreement was amended in 2017 to make the brothers "General Partners." The Agreement detailed that "General Partners shall have the full and exclusive power on the Partnership's behalf to manage its business and affairs," but if the "multiple General Partners cannot agree, the General Partners have assigned final decision-making authority to the Managing General Partner." The 2017 amendment did not name a Managing General Partner.

¶ 5 Since the 1990s, Mike and his wife have lived on the Ranch, where they raise cattle and grow hay for their ranching company, Bear River Ranch, LLP (BRR). John's son, Justin, also lives on the

Ranch in exchange for feeding Mike's cattle when Mike travels out of state.

¶ 6 BRR operated on the Ranch under a 2018 lease with the Partnership (the Ranch Lease) in exchange for BRR paying property taxes and carrying liability insurance for the Ranch and BRR. The Ranch Lease expired on December 31, 2020. Mike also operated an "outdoor recreation business" on the Ranch called Three Quarter Circles, LLP (3QC), under a 2018 license agreement with the Partnership (the License Agreement) in exchange for a $300 annual fee. The License Agreement also expired on December 31, 2020.

¶ 7 Pursuant to a 2000 lease (the Ground Lease) that expired on January 1, 2020, Frank and his wife also live on the Ranch in exchange for one dollar a year plus payment of "taxes and insurance on improvements." After the Ranch Lease, the License Agreement, and the Ground Lease (collectively, the lease agreements) expired, Frank, Mike, their wives, and Justin continued to live and conduct business on the Ranch.

¶ 8 Over time, the brothers' relationship deteriorated, to the point where Frank and Mike only spoke with Chuck and John indirectly through counsel. In 2020, Chuck began sending letters to his

brothers, as General Partners, demanding changes to the Partnership and its leases.

¶ 9 In December 2020, Chuck refused to consent to the renewal of the License Agreement and Ranch Lease on their current terms, requesting more favorable terms for the Partnership. In July 2021, Chuck sent letters to the General Partners demanding to evict BRR, 3QC, and Frank, so new tenants and licensees could be found who would "pay market rent." In September 2021, Chuck informed the General Partners that he had received a proposal to list the Ranch for sale and demanded that the Partnership enter into a listing agreement to sell the property. Receiving no response, in October 2021, Chuck demanded that he be named the Managing General Partner so he could assume final decision-making authority for the Partnership. Mike and Frank ignored these demands.

¶ 10 In December 2021, Chuck sued Frank, Mike, and John, requesting a judicial dissolution of the Partnership and a winding

up of its assets.[2] After a bench trial, the district court issued findings of fact and conclusions of law (the Findings Order). The court determined that it was "not reasonably practicable to carry on the Hogue Ranch Partnership in conformity with [the Agreement]." The court applied the factors detailed in *Gagne v. Gagne*, 2014 COA 127, ¶ 35 (*Gagne I*), to make this determination.

¶ 11 In *Gagne I*, which involved limited liability companies (LLCs), a division of this court held that "[i]n determining whether it is reasonably practicable to carry on the business of a limited liability company" for the purposes of judicial dissolution under section 7-80-810(2), C.R.S. 2024, a court should weigh several factors. *Gagne I*, ¶¶ 28-35.

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[2] Chuck also asserted claims for breach of fiduciary duty and unjust enrichment, with a request for a full accounting, against Mike and Frank but he later voluntarily withdrew these claims. While John was a named defendant, the district court noted that he "declined to oppose" Chuck's request for relief, and John is not a party to this appeal. Frank and Mike were represented by the same counsel for this appeal, but on August 15, 2024, their attorneys moved to withdraw as counsel for Frank, which this court allowed. This left Frank to proceed pro se. Because Frank was not listed as a party to the opening brief and had not filed his own brief, this court gave him fourteen days to show cause explaining why he should not be dismissed from the case. Frank did not respond and is therefore dismissed from the appeal.

¶ 12 The factors include, but are not limited to,

> (1) whether the management of the entity is unable or unwilling reasonably to permit or promote the purposes for which the company was formed; (2) whether a member or manager has engaged in misconduct; (3) whether the members have clearly reached an inability to work with one another to pursue the company's goals; (4) whether there is deadlock between the members; (5) whether the operating agreement provides a means of navigating around any such deadlock; (6) whether, due to the company's financial position, there is still a business to operate; and (7) whether continuing the company is financially feasible.

Id. at ¶ 35.

¶ 13 Applying these factors, the district court first found that the General Partners were "unable or unwilling to permit or promote the purposes for which the company was formed" because Frank and Mike would not allow the Partnership to evict them. Mike, instead, carried out the Partnership's business purposes through BRR, while keeping the profits that the Partnership could have generated. Second, it found that Frank and Mike had engaged in misconduct when they refused to vacate the Ranch after their leases terminated and when Mike sublet part of the Ranch to Justin.

¶ 14 Third, the brothers did not trust each other and did not communicate, and the situation showed no signs of improving. Rather, the General Partners had "clearly reached an inability to work with one another to pursue the Hogue Ranch Partnership's goals." Fourth, there was deadlock among the General Partners concerning amending or renewing the Ground Lease, the Ranch Lease, and the Licensing Agreement and regarding evicting Frank, Mike, and Mike's businesses; selling the Ranch; and naming a Managing General Partner. Fifth, the court found that there was no way to navigate around this deadlock.

¶ 15 Sixth, the court found that, "due to the Hogue Ranch Partnership's financial position, there [wa]s no longer a business to operate" because Mike's businesses had subsumed the Partnership's business and Frank's refusal to leave the property had diminished the Ranch's value; thus, the Partnership's only assets had been "taken over" by Frank and Mike. And seventh, it was not financially feasible to continue the Partnership because it only generated a small profit, most of which went to Mike, while Mike and Frank intended to continue to occupy the Ranch without

authorization — something the Partnership could not prevent without Mike and Frank's approval.

¶ 16 Because some of the General Partners did not trust, or even speak to, each other, the court found "there [wa]s irreparable deterioration of the General Partners' relationship, which ha[d] left the [P]artnership with trespassers it cannot evict and no rights it can actually enforce." As a result, the district court ruled in Chuck's favor, judicially dissolved the Partnership, and ordered the liquidation of its assets and distribution of the sale proceeds.

¶ 17 As relevant here, the court also rejected Mike and Frank's request to partition the Ranch or distribute interests in the Ranch to the General Partners as tenants in common.[3] The court noted that "this is not a partition action" and that article XV, section 10, of the Agreement explicitly included a "Waiver of Partition," specifying that "[e]ach Partner waives any right to maintain any

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[3] At trial, Mike and Frank contended that a partition action could have been initiated after the Partnership was dissolved and the Ranch was distributed to the General Partners as tenants in common, a position Mike maintained during oral argument in this court. The trial court addressed both the feasibility of partition and distribution of the General Partners' interests in the Ranch as tenants in common.

action for partition with respect to the Partnership's property assets during the Partnership's term." Regardless, the court found that a partition would be inappropriate because "it would not be reasonable to divide the [R]anch parcel in kind as there was no way to do so while providing each brother (and others) their respective percentage portions of that property."

¶ 18 The court noted that the "Hogue Ranch Partnership interests are held in varying percentages by the General Partners and the Limited Partners,"[4] and therefore, "[c]arving up the Hogue Ranch into multiple, separate pieces that accurately reflect the partnership interests would be incredibly difficult, if not impossible." It thus determined, based on "the various partnership interests in the Hogue Ranch, the varying topography of the Hogue Ranch, including a landlocked parcel, and the fact that no plan was presented that would allow this Court to divide up the Hogue Ranch," that partition would be inappropriate.

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[4] The brothers served as the General Partners in the Partnership but also served as Limited Partners along with two other individuals and two trusts. At trial, Chuck testified that the brothers each owned "23.17 percent" of the Partnership, while the other Limited Partners owned "about 1.8 percent each."

¶ 19 As to winding up the Partnership by distributing the Ranch in kind to each General Partner as tenants in common, the court found that this "was simply not feasible" as it would not solve the underlying disputes in the case and would lead to further litigation. The court recognized that "ordering the partners [to] take the properties as tenants-in-common would not solve the underlying issues, namely managing the properties together." It aptly added, "If the Hogue Brothers cannot get along as General Partners" when there is an Agreement "governing their rights and obligations," there is "no reason to believe they can get along as tenants-in-common with no such agreements to guide their actions."

¶ 20 Lastly, the district court rejected Mike and Frank's "unclean hands" affirmative defense. The court concluded that, because "the right to judicial dissolution is absolute," unclean hands cannot serve as a defense to a dissolution action. The court explained its conclusion when rejecting the same unclean hands defense in the Squire Building Partnership dispute. The court quoted the following principle from a Colorado case: "The doctrine of unclean hands is an equitable defense to proceedings in equity and is premised on the theory that one who requests equity must do so

with clean hands." *Colo. Korean Ass'n v. Korean Senior Ass'n of Colo.*, 151 P.3d 626, 629 (Colo. App. 2006). But the district court noted that in *Colorado Korean Ass'n*, a division of this court held that unclean hands is not a defense to another type of equitable action — partition. *Id.* The division said this was so because, under section 38-28-101, C.R.S. 2024, "the right of partition is absolute and unqualified," and no exceptions applied. *Id.* at 629-39.

¶ 21 As a result, because section 7-62-802, C.R.S. 2024, provides that "[o]n application by or for a partner, . . . [the court] may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement," the district court reasoned that the right to judicial dissolution of a partnership is absolute where any partner has the right to apply for dissolution. Therefore, like the partition action in *Colorado Korean Ass'n*, the unclean hands doctrine was not a proper defense to challenge a claim for judicial dissolution. *See* 151 P.3d at 629-30.

¶ 22 The district court added that even if the unclean hands doctrine was a defense to judicial dissolution, the defense would not

have applied because the basis for Frank and Mike's defense "amount[ed] to nothing more than an allegation that life is unfair." (In support, the district court cited *Atlas Biologicals, Inc. v. Kutrubes*, No. 15-cv-00355-CMA-KMT, 2019 WL 4594274, at *22 (D. Colo. Sept. 23, 2019) (unpublished order).) The court found that the only misconduct Frank and Mike alleged that Chuck committed was that he paid himself funds out of a family trust to manage two gravel pits owned by the trust. He did so as part of his duties as a trustee — conduct the court found was "not fraudulent or unconscionable" and had no relation to the judicial dissolution action. Thus, the court found that the evidence did not support invoking the unclean hands defense.

II. Analysis

¶ 23 On appeal, Mike raises two main issues. First, he contends that the district court erred by concluding that the Partnership could not be dissolved by ordering a partition of the Ranch or distributing the property to the brothers as tenants in common to allow for a later partition action. Second, he contends that the district court erred by rejecting the unclean hands affirmative defense.

A. The District Court Did Not Err by Declining to Partition the Ranch

¶ 24 First, Mike contends that the district court erred by refusing to partition the Ranch or divide the partners' interests in the Ranch in-kind to make them tenants in common, rather than ordering the sale of the Ranch. Specifically, Mike contends the district court failed to follow the specific statutory procedures for the partition of property in sections 38-28-101 to -110, C.R.S. 2024, when it determined it could not partition the property because "no plan was presented" to do so.

¶ 25 He also contends that the court erred because partition in kind is favored over partition by sale, and the court ignored the facts that (1) the Ranch is "particularly unique"; (2) no manifest prejudice would result from a partition in kind because the Ranch could be practically divided and the value of the whole parcel is not greater than the sum of its parts; and (3) the Ranch served as a "homestead" for multiple families. Lastly, Mike argues that the waiver-of-partition-rights provision in the Agreement did not prevent the district court from ordering a partition because the court could have dissolved the Partnership and made the General

Partners tenants in common, allowing them to seek partition of the Ranch at a later time. The district court's findings on the matter preserved these issues. *See In re Estate of Owens*, 2017 COA 53, ¶ 21.

¶ 26 Chuck responds that the district court did not err because he raised a claim for judicial dissolution, not partition, and therefore the court did not need to consider or follow the partition statutes' procedures. Thus, the issue should be whether the district court abused its discretion by choosing to liquidate the Partnership's assets (the Ranch) after the Partnership's dissolution and whether this was a proper equitable remedy. We agree with Chuck.

1. Partition Actions Versus Judicial Dissolution

¶ 27 As Mike concedes at the outset of his opening brief, "[t]his was not a partition action." The brothers had no property interests in the Ranch itself — the property belonged entirely to the Partnership. As the General Partners, the brothers only had interests in the Partnership. As a result, none of the brothers could have requested a partition of the property under section 38-28-101 because none of them was a "person having an interest in" the property at issue. *See In re Marriage of Paul*, 821 P.2d 925, 928

(Colo. App. 1991) (Under the "entity theory of partnership adopted in the [Colorado] Uniform Partnership Act," article 60 of title 7, "partnership property is owned by the partnership entity, not the individual partners.").

¶ 28 While the statutory regime governing LLLPs is complex, because the Partnership was an LLLP formed in 1999 (and has not elected to be governed by article 64 of title 7) it is primarily governed by article 62 of title 7 of the Colorado Revised Statutes, though there is some degree of overlap between the statutes governing partnerships in Colorado. *See* § 7-62-1101, C.R.S. 2024 (Article 62 governs "all limited partnerships formed on or after November 1, 1981."); *see also* § 7-62-101(7), C.R.S. 2024 ("A limited liability limited partnership is for all purposes a limited partnership."); § 7-61-129(1)(c), C.R.S. 2024 ("A limited partnership that has not made the election" to be governed by article 64 "shall be governed by article 60" of title 7 when article 62 does not have a relevant provision.).

¶ 29 Mike accurately cites authority concerning the requirements and considerations associated with partition actions. But that authority is largely inapposite. We therefore reject Mike's

contentions that the district court erred by refusing to partition the property because (1) it did not adhere to the procedures for partition; (2) the property was "particularly unique"; (3) no manifest prejudice would arise from a partition in kind; and (4) the Ranch served as a homestead for multiple families. These considerations apply to partition actions, not dissolution actions.

2. Standards of Review and Applicable Law

¶ 30 As noted, section 7-62-802 of the Colorado Uniform Limited Partnership Act of 1981 (ULPA) provides that the district court, "[o]n application by or for a partner, . . . may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement." If the district court finds that dissolution is appropriate, it "may wind up the limited partnership's affairs upon application of any partner." § 7-62-803, C.R.S. 2024. The ULPA does not define "reasonably practicable."

¶ 31 Looking to similar statutory language in the LLC context, as mentioned above, the division in *Gagne I* held that "to show that it is not reasonably practicable to carry on the business" requires the party seeking judicial dissolution to "establish that the managers

and members of the company are unable to pursue the purposes for which the company was formed in a reasonable, sensible, and feasible manner." *Gagne I*, ¶ 31. This entails weighing the seven factors outlined in *Gagne I*, which, as detailed above, the district court adequately addressed. *See id.* at ¶ 35.

¶ 32 The *Gagne I* division noted that judicial dissolution is an "extreme" remedy that courts should grant sparingly, and that it is

> reserved for situations in which the LLC's management has become so dysfunctional or its business purpose so thwarted that it is no longer practicable to operate the business, such as in the case of a voting deadlock or where the defined purpose of the entity has become impossible to fulfill.

Id. at ¶ 34 (quoting *In re Arrow Inv. Advisors, LLC*, No. 4091–VCS, 2009 WL 1101682, at *2 (Del. Ch. Apr. 23, 2009) (unpublished opinion)).

¶ 33 In a later appeal involving the same parties, *Gagne v. Gagne*, 2019 COA 42 (*Gagne II*), the division concluded that ordering the dissolution of an LLC "is ultimately a decision within the district court's discretion" and that we review its order for an abuse of that discretion. *Id.* at ¶ 16. The division added that "[j]udicial dissolution is essentially a proceeding in equity" and that "a court

has substantial discretion in determining an equitable remedy, and so we won't overturn a court's ruling fashioning such a remedy unless the party challenging it shows that the court abused its discretion." *Id.* at ¶ 41; *see also La Plata Med. Ctr. Assocs., Ltd. v. United Bank of Durango*, 857 P.2d 410, 420 (Colo. 1993) ("Generally, the power to fashion equitable remedies lies within the discretion of the trial court.").

¶ 34 These principles are equally applicable to the limited partnership context and the standards for judicial dissolution under section 7-62-802. Importantly, the two judicial dissolution statutes relevant here — section 7-62-802, concerning limited partnerships, and section 7-80-810(2), concerning LLCs — use identical language to say that organizations may be judicially dissolved upon a finding that "it is not reasonably practicable to carry on the business" in accordance with their partnership or operating agreements. *Compare In re Marriage of Stradtmann*, 2021 COA 145, ¶ 23 ("Statutes pertaining to the same subject matter must be harmonized to fulfill the intent of the General Assembly and to avoid inconsistency."), *with Gagne I*, ¶ 38 (Where the "language of the statutes governing judicial dissolutions of

corporations and partnerships . . . is different from the language in the statute at issue[,]. . . [w]e must presume that the legislature adopted different language for a reason, and we must give effect to that intent."); *see also In re Silver Leaf, L.L.C.*, No. C.A. 20611-N, 2005 WL 2045641, at *10 (Del. Ch. Aug. 18, 2005) (unpublished opinion) (Due to the lack of case law discussing the judicial dissolution of LLCs in Delaware, "the court looks by analogy to the dissolution statute for limited partnerships, which contains essentially the same wording as the LLC statute.") (citation omitted); *In re D'Amore*, 472 B.R. 679, 688-89 (Bankr. D.N.J. 2012) (approvingly citing *Silver Leaf*'s approach to look to analogous case law on partnerships when pertinent authority concerning LLCs is lacking).

¶ 35 Therefore, we conclude that the factors applicable to LLCs provided in *Gagne I*, ¶ 35, may be used to determine whether judicial dissolution of a limited partnership under section 7-62-802 is appropriate, a decision we review for an abuse of discretion. *See Gagne II*, ¶ 16. Further, the court's decision to judicially dissolve a limited partnership under section 7-62-802 is a proceeding in equity, and we review the remedy fashioned by the district court —

e.g., whether to dissolve and wind up a partnership's business via liquidation by sale or partition in kind — for an abuse of discretion. *See id.* at ¶¶ 16, 41. "A court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, or unfair, or if it misapplies or misconstrues the law." *Id.* at ¶ 16.

¶ 36 But we review issues of contract and statutory interpretation de novo. *Id.* at ¶ 41. And if a party challenges the factual basis for a district court's choice of equitable remedy "we review any challenges to the court's underlying factual findings for clear error," which occurs only "if there is no support for [them] in the record." *Id.* at ¶ 17.

3. Application

¶ 37 The district court did not abuse its discretion by liquidating the Partnership's assets rather than ordering a partition of the Ranch. Section 7-62-803 does not require the district court to use a specific approach when winding up a partnership's business. Consistent with the *Gagne I* factors, the court found that dissolution was appropriate. *See Gagne I*, ¶ 35; *Gagne II*, ¶¶ 16-17, 41. Thus, the court was free to wind up the Partnership's business by finding a solution that fit the situation. *See La Plata*, 857 P.2d

at 420; *see also* § 7-62-803. While partitioning the property was proposed as a last resort, the court reasonably rejected this option.

¶ 38 First, the district court correctly recognized that this was not a partition action, and that article XV, section 10, of the Agreement explicitly says that the General Partners waived their right to seek partition. Thus, a partition of the property would have been inconsistent with the plain language of the Agreement and the parties' intent to prohibit partition actions. *See Gagne I*, ¶ 51 (The "primary goal" of contract interpretation is "to determine and give effect to the intent of the parties . . . primarily from the language of the instrument itself," and "[w]hen the written contract is complete and free from ambiguity, we will conclude that it expresses the intentions of the parties and enforce it according to its plain language."); *see also Colo. Korean Ass'n*, 151 P.3d at 630 (right to partition may be contractually waived).

¶ 39 Second, the district court determined that distributing the property by partition in kind was inappropriate because the Ranch could not easily be divided in accordance with the General Partners' ownership interests. Specific to this alleged error, Mike contends that because this case was not a partition action, there was little

evidence presented on whether the Ranch could have been divided uniformly. But this is precisely the point. The parties had not presented a clear plan concerning how to divide the property — Chuck and Mike both testified that some portions of the Ranch were landlocked and accessible only by crossing a river, and Mike testified that the Ranch contained various types of land (including irrigated and nonirrigated farmlands and pasture lands) with different property tax and insurance rates. The district court's findings enjoy record support, and the court did not clearly err or abuse its discretion by rejecting this underdeveloped partition request. *See Gagne II*, ¶ 17.

¶ 40 Finally, the district court also did not abuse its discretion by rejecting the request to distribute the Ranch through in-kind distributions to the partners, making the brothers tenants in common with the possibility of seeking a later partition action. The court correctly observed that this option threatened further litigation, as the conflicts between the brothers were likely to continue. The court highlighted that Frank and Mike continued to live on the Ranch and operated businesses there without leases or licensing agreements and that there was no sign this obstinate

behavior would change. These findings also enjoy record support. *See id.* Accordingly, the district court neither abused its discretion or clearly erred by rejecting a remedy that would likely lead to further litigation without resolving the underlying contentions among the General Partners.

¶ 41 The district court's choice to wind up the Partnership's business by liquidating its assets via the sale of the Ranch adhered to the parties' intent in the Agreement, best fit the circumstances of the property, and helped prevent further litigation. Accordingly, the court did not err.

B. The District Court Properly Rejected the Unclean Hands Defense

¶ 42 Next, Mike contends that the district court erred by rejecting his unclean hands affirmative defense. Specifically, he contends that the court erred by finding that the right to judicial dissolution was absolute. He argues that judicial dissolution is discretionary and that the unclean hands doctrine has been applied to similar partnership dissolution cases in the past. Further, Mike contends that the district court reversibly erred by only considering Chuck's payment to himself out of the family trust for managing the gravel

pits as part of the unclean hands defense. Mike contends that the court should have also considered whether Chuck "manufactured" the Partnership's deadlock with the aim of forcing a dissolution of the Partnership by issuing the demand letters, while never intending to negotiate new lease agreements with Frank and Mike. Mike contends this was evidenced by Chuck's failure to locate alternative tenants or licensees and independently research market rental rates or licensing fees for the property. These contentions were preserved. *See Madalena v. Zurich Am. Ins. Co.*, 2023 COA 32, ¶ 50.

¶ 43 Chuck responds that the district court did not err by finding that the right to judicial dissolution was absolute and that the unclean hands doctrine does not apply. Chuck also posits that, even if the court erred, any error was harmless because the result would have been the same. He notes that the court was presented with evidence that Chuck repeatedly invited Mike and Frank to negotiate new terms for the lease agreements, but the brothers were deadlocked, which the court recognized was not solely the result of Chuck's actions.

1. Standard of Review and Applicable Law

¶ 44 The doctrine of unclean hands is an "equitable defense" under which "a court will not consider a request for equitable relief under circumstances where the acts of the party requesting equitable relief offend the sense of equity to which the party appeals." *Colo. Korean Ass'n*, 151 P.3d at 629. But "for the doctrine to apply, the allegedly improper conduct must have an immediate and necessary relation to the claim under which relief is sought." *Id.* "Whether the doctrine applies is a mixed question of fact and law that involves an exercise of judicial discretion based on findings of fact." *Wilson v. Prentiss*, 140 P.3d 288, 293 (Colo. App. 2006).

2. Application

¶ 45 Assuming, without deciding, that the district court erred by finding that the right to judicial dissolution is absolute and unclean hands cannot be used as an equitable defense to judicial dissolution claims, we conclude that any such error was harmless because the court properly found that the unclean hands defense would not have applied regardless. *See* C.A.R. 35(c) ("The appellate court may disregard any error or defect not affecting the substantial rights of the parties.").

¶ 46 Mike essentially claims that the district court erred by not considering that Chuck manufactured the Partnership's deadlock by sending unreasonable demand letters proposing renegotiations of the Ground Lease, the License Agreement, and the Ranch Lease. But the court did consider these facts in its Findings Order, albeit not in the unclean hands defense section, when it rejected the claim that Chuck was the sole cause of the deadlock.

¶ 47 The court's Findings Order distinguished this case from the situation in *Master Garage, Inc. v. Bugdanowitz*, 690 P.2d 879, 881 (Colo. App. 1984). There, a division of this court affirmed a district court's decision not to dissolve a partnership where the record supported the finding that the "plaintiff's actions constituted the sole reason for the partnership's inability to perform and that, while defendants admitted to some differences with plaintiff, the partnership could be carried on had it not been for plaintiff's refusal to do so." *Id.*

¶ 48 As to the brothers' deadlock here, however, the court noted that Chuck's actions were "not the sole reason for the Hogue Ranch Partnership's inability to perform. Instead, [Chuck] has continued to make requests of the Hogue Ranch Partnership, but Defendants

have refused to respond, or even negotiate with [Chuck] and Defendants' actions all contribute to the Hogue Ranch Partnership's inability to perform."

¶ 49 As support for this position, the court pointed to the following evidence: (1) testimony from Chuck and John that they both felt the leases' rates were too low and that they would not extend the leases with their prior terms; (2) that Chuck reached out to the General Partners several times via the demand letters and emails asking to renegotiate the lease agreements, with no response; (3) Chuck's testimony that he would not have sought dissolution or eviction if the General Partners had renegotiated the leases; and (4) that Chuck waited a year to file suit for dissolution after initially demanding that the lease agreements be renegotiated. The record supports these findings, and we may not disturb them on appeal. *See M.D.C./Wood, Inc. v. Mortimer*, 866 P.2d 1380, 1383-84 (Colo. 1994).

¶ 50 The court was presented with the very evidence Mike claims supported his unclean hands defense. But the court rejected the proposition that the evidence proved Chuck was the sole cause of the deadlock. Therefore, this evidence also would not have

supported a finding that Chuck requested a judicial dissolution with unclean hands. And the district court did not abuse its discretion by rejecting an unclean hands equitable defense where the record supports the conclusion that the party seeking the judicial dissolution neither manufactured nor solely caused the deadlock. *See Prentiss*, 140 P.3d at 293; *Mortimer*, 866 P.2d at 1383-84. Thus, any assumed error in the district court's categorical rejection of the unclean hands defense was harmless. *See* C.A.R. 35(c).

III. Disposition

¶ 51 The district court's judgment is affirmed.

JUDGE JOHNSON and JUDGE SCHOCK concur.