RENDERED: JULY 31, 2020; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001071-MR

UNBRIDLED HOLDINGS, LLC,
KENTUCKY PROPERTY MANAGEMENT, LLC,
AND WILLIAM MILES ARVIN, JR. APPELLANTS

v.

APPEAL FROM JESSAMINE CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 17-CI-00111

DAREN CARTER AND
SOUTHERN TAX SERVICES, LLC APPELLEES

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: CLAYTON, CHIEF JUDGE; JONES AND LAMBERT, JUDGES.

JONES, JUDGE: This appeal arises out of a dispute between William Miles Arvin, Jr., and Daren Carter, the two sole members of three Kentucky limited liability companies: 1) Southern Tax Services, LLC; 2) Kentucky Property Management, LLC; and 3) Unbridled Holdings, LLC. While Arvin and Carter

were initially quite congenial with each other, and generally managed their companies without much, if any, discord, problems developed several years later. These problems eventually led to a complete breakdown in communication and bitter disagreements regarding how to manage the three companies. Ultimately, Arvin filed a complaint in Jessamine Circuit Court wherein he asked the court to judicially dissolve all three companies pursuant to KRS[1] 275.290 on the basis that it was no longer "reasonably practicable to carry on the business of the limited liability compan[ies] in conformity with the operating agreement[s]." KRS 275.290(1).

Although the trial court ordered Southern Tax Services to be judicially dissolved, it dismissed Arvin's petition as related to the other two limited liability companies based on its conclusion that there was no deadlock between the two members because the operating agreements permitted either member, acting alone, to do all things necessary and convenient to carry out the day-to-day business and affairs of the companies. On appeal, Arvin argues the trial court erred by reading a requirement of deadlock into KRS 275.290 and elevating the standard of impracticability to one of impossibility.

[1] Kentucky Revised Statutes.

Having reviewed the record, and being otherwise sufficiently advised in the law, we agree with Arvin. The trial court's judgment suggests that judicial dissolution requires the members to be deadlocked on a particular issue at the time dissolution is ordered. While deadlock is one of many factors a trial court should consider, it is not a prerequisite for judicial dissolution. Accordingly, we vacate the trial court's judgment with respect to Kentucky Property Management, LLC, and Unbridled Holdings, LLC, and remand for additional analysis and factual findings as explained in more detail below.

I. BACKGROUND

In 2007, Arvin and Carter entered into an agreement to form a Kentucky limited liability company to invest in the purchase and redemption of delinquent tax lien certificates.[2] The two men named their company Southern Tax

[2] In *Fayette County Clerk v. Kings Right, LLC*, 536 S.W.3d 201 (Ky. App. 2017), we explained the process in Kentucky whereby a private third party is permitted to purchase certificates of tax delinquency.

> "[T]o combat tax delinquency, our General Assembly enacted legislation permitting the sale of long-delinquent tax bills, known as 'certificates of delinquency' (tax certificates) to private, third-party purchasers." *Farmers National Bank v. Commonwealth*, 486 S.W.3d 872, 875 (Ky. App. 2015). Unpaid property tax bills may be sold by the county sheriff to become certificates of delinquency in the hands of the purchaser. Third-party purchasers then pay the counties and local governments the full delinquent amount owed at the time of purchase (including all accrued interest, penalties, and fees). *Id.*; *see* KRS 134.127(1)(b) and KRS 134.128.
>
> The holder of a certificate of delinquency may, after a one-year period, institute a collection action or a tax lien foreclosure action,

Services, LLC ("Southern Tax"). Articles of organization for Southern Tax were filed with the Kentucky Secretary of State on or about December 13, 2007. Southern Tax actively purchased tax lien delinquency certificates for several years after its formation; however, it ceased doing so well before this litigation began. At that time, its business activity was focused almost solely on collections as related to its existing lien portfolio.

Later, Arvin and Carter formed two additional Kentucky limited liability companies: Kentucky Property Management, LLC ("Property Management"), in 2008 and Unbridled Holdings, LLC ("Unbridled"), in 2012. The purpose of both companies was to take title to, hold, and manage the real property acquired by Southern Tax in conjunction with its tax lien redemption business. Property Management's primary purpose was to purchase and lease properties long-term, while Unbridled was formed to acquire riskier properties to lease short-term and then sell. While the original intent may have been for both companies to purchase most of their properties from Southern Tax and its related

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> or both, against the delinquent taxpayer. In *Flag Drilling Co., Inc. v. Erco, Inc.*, 156 S.W.3d 762 (Ky. App. 2005), a panel of this Court found that third-party purchasers "stand in the shoes of the state, county, city, or taxing district in whose name the lien has been imposed. By doing so, the statute gives the private owner of a certificate of delinquency a feasible means of recovering its tax claims." *Id.* at 767.

Id. at 205-06.

litigation, as it turned out, Property Management acquired very little property from Southern Tax. In contrast, Unbridled purchased all of its properties from Southern Tax and/or its related foreclosure litigation. It is unclear what Unbridled's long-term business plans were in light of Southern Tax's decision to stop acquiring new certificates of delinquency.

Arvin and Carter entered into an identical operating agreement for each company. Arvin, an attorney licensed to practice law in Kentucky, largely oversaw the drafting of the articles of organization and operating agreements. The operating agreements provided that each company was organized as a Kentucky limited liability company pursuant to KRS 275.001 through KRS 275.455. The stated purpose of the companies and the general nature of their businesses "shall include all transactions of any or all lawful business for which limited liability companies may be formed under the laws of the State of Kentucky." Operating Agreements Sec. 1.9. Management of the companies was vested in their two members, Arvin and Carter, who were each given separate authority to oversee "the ordinary and day-to-day decisions concerning the business affairs" of the companies. Operating Agreements Sec. 2.1.

Section 2.2 of the operating agreements, entitled "Binding Authority of Members," is particularly relevant to this appeal. It provides:

> The parties hereto hereby agree that the members of the Company shall have the authority to bind the Company.

No person other than a member shall take any action as a member to bind the Company, and shall indemnify the Company for any costs or damages incurred by the Company as a result of the unauthorized action of such member. Nothing in this agreement shall prevent or preclude any member from delegating or granting any or all of their authority to manage the company to another member or members. Each member has the power to do all things necessary or convenient to carry out the business and affairs of the Company, including but not limited to the following actions:

(i) the entering into contracts and guaranties; incurring of liabilities; borrowing money, issuance of notes, bonds, and other obligations; and the securing of any of its obligations by mortgage or pledge of any of its property or income;

(ii) the purchase, receipt, lease or other acquisition, ownership, holding, improvement, use and other dealing with property wherever located;

(iii) the sale, conveyance, mortgage, pledge, lease, exchange, and other disposition of property;

(iv) the lending of money, investment and reinvestment of Company funds, and receipt and holding of property as security for repayment, including the loaning of money to Company members, employees, and agents;

(v) the appointment of employees and agents of the Company and the establishment of their compensation;

(vi) the payment of compensation, or additional compensation to any or all members, and employees on account of services previously rendered to the Company, whether or not an agreement to pay such compensation was made before such services were rendered;

> (vii) the participation in partnership agreements, joint ventures, or other associations of any kind with any person(s) or entities;
>
> (viii) the indemnification of member or any other person.

Operating Agreements Sec. 2.2.

Section 3.3, entitled "Member's Management Rights," contains a list of certain actions that require the "unanimous written consent" of the members. The actions include: (1) the sale, mortgage, or encumbrance of all or substantially all of the assets; (2) disposal of goodwill; (3) submission of a company claim to arbitration; (4) confession of a judgment; (5) commission of an act that would make it impossible for the company to carry on its ordinary course of business; (6) amendment of the operating agreement; (7) amendment of the articles of organization; and (8) continuation of the company after an event causing dissolution. Operating Agreements Sec. 3.3. Section 5.1 additionally provides that "no member shall have any right to sell, transfer, or assign an interest in the Company without the written consent and approval of all of the members." Operating Agreements Sec. 5.1.

Section 6.1 governs events causing dissolution. It lists various scenarios whereby the companies may be dissolved. The two events relevant to this litigation are contained in subsections (b) and (c). Subsection (b) allows dissolution pursuant to "any order of a court of competent jurisdiction requiring

dissolution." Operating Agreements Sec. 6.1. Subsection (c) permits dissolution by "the unanimous written consent of all members entitled to vote to dissolve the Company." *Id.*

For several years, Arvin and Carter managed the companies peacefully and with little discord. Arvin performed most of the day-to-day management with the assistance of two full-time employees; Carter generally allowed Arvin to do so without objection or interference. In June of 2015, things changed dramatically. Arvin and Carter became embroiled in a bitter personal dispute unrelated to the companies. While the dispute itself did not involve the companies, the acrimony soon worked its way into the members' management of the companies. Before long, there was a breakdown of all communication between the two men such that they refused to speak to one another on any subject, including management of the companies. Since June of 2015, all of their communications with one another have been in writing. A series of electronic messages between Arvin and Carter dating from July 28, 2015, through February 23, 2017, was admitted into the record below by Arvin to show the total breakdown of their business relationship.

Initially, the disputes between the two related primarily to Southern Tax. Carter complained about Arvin charging Southern Tax for legal work he performed and demanded that the company pay him a share of the legal fees as he

claims Arvin had initially promised to do. Arvin eventually hired an outside law firm to perform all the legal work for Southern Tax. Carter made other demands regarding Southern Tax; he requested that the physical office space of Southern Tax and Unbridled be moved,[3] that Southern Tax's investment strategies be changed, and insisted he must be informed on all operational matters and approve any decisions in writing. Arvin contends that he did as much as he could to appease Carter and salvage their business relationship even though doing so caused operational chaos and financial loss.

As Carter attempted to become more involved in the management of the companies, the parties' business relationship continued to decline. The parties could not come to any agreement regarding the businesses. The problems were compounded because the operating agreements vested both Arvin and Carter with "the power to do all things necessary or convenient to carry out the business and affairs of the Company" and did not provide a mechanism for resolving disputes related to those affairs. Despite this provision, in an email dated August 12, 2015, Carter instructed Mike Wade, one the companies' employees, that he did not want the companies to do *anything* unless both he and Arvin authorized it in writing.

[3] It appears that the work for both companies was done out of a single space that was primarily devoted to Southern Tax; a full-time employee worked out of the space and appears to have performed work for both companies. In contrast, a different employee did work for Property Management out of a different location.

His email to Mr. Wade states: "Going forward I am only comfortable if we both sign anything that is related to any of our companies that we have a joint interest in. This also includes any checks written by the companies."

When a commercial property owned by Property Management, a mini mall, needed roof maintenance, Arvin and Carter could not agree on whether to replace or patch the roof.[4] According to Arvin, the parties' inability to make a decision caused the roof to go unrepaired for many months risking the loss of the mall's tenants. Additionally, the parties began to contradict one another's day-to-day business decisions. On one occasion, Carter fired the sole employee of Southern Tax and Unbridled. The employee stayed on at Arvin's request, but Carter refused to acknowledge the individual was an employee and refused to approve any work done by him.[5] Additionally, at one point, Carter suggested that he would not agree to anything Arvin proposed for any of the three companies until Arvin agreed to move Southern Tax's office space.

[4] Part of the disagreement arose due to Property Management's financial condition at that time. A new roof was estimated to cost approximately $60,000.00 as opposed to $10,000.00 for a patch repair. Property Management did not have enough cash on hand to pay for the new roof. Arvin was unwilling to contribute additional capital to Property Management for the roof repair or personally guarantee renewal debt with Carter given the acrimony between the parties.

[5] A review of the electronic correspondence submitted to the trial court as part of the hearing also seems to indicate that the parties' inability to communicate with respect to Southern Tax bled over into problems concerning how to handle property purchased by Southern Tax that would have generally been sold to either Unbridled or Property Management.

Arvin testified that Carter's demands and objections to the companies' operations had nothing to do with his desire to benefit the companies or act in their best interests; rather, Arvin believes that Carter was simply trying to punish Arvin and make his life more difficult. In fact, Arvin testified that Carter went so far as to make statements that he did not care how much money he lost so long as Arvin lost the same amount.

Things reached a boiling point when Carter accused Arvin of embezzling money from the companies. At this point, Arvin concluded that he could not stay in a business relationship with someone who would accuse him of criminal conduct. Shortly thereafter, Arvin sent an electronic message to Carter asking him to consent to the dissolution of the companies. Carter refused to consent to dissolve Southern Tax; however, he expressed a willingness to sell Unbridled's real property holdings and to buy-out Arvin's interests in Property Management's real property. It appears that nothing came of this offer because Arvin wanted out of all three companies.

In the midst of this escalating dissension, Arvin received an unsolicited offer to purchase Southern Tax's entire tax lien portfolio for $210,000.00. According to Arvin, the specific terms of the offer were such that the net value of the offer to Arvin and Carter was approximately $400,000.00. Arvin believed the offer was "incredibly generous and remarkable from a business

perspective." Because the operating agreement required the unanimous written consent of the members for the sale of substantially all the company's assets, Arvin could not unilaterally accept the offer; to move forward, Arvin had to obtain Carter's written consent, which Carter refused to give on the basis that the value of the company's lien portfolio was much greater than $210,000.00. This led Arvin to offer Carter the right to buy out his interest in Southern Tax's lien portfolio for one-half of the third party's total offer amount. If Carter thought the portfolio was worth much more than $210,000.00, Arvin could see no reason for Carter to pass up such a bargain. However, Carter refused Arvin's offer.

Ultimately, Arvin concluded that he and Carter would never be able to effectively manage their companies. Arvin wanted out, and with Carter unwilling to voluntarily agree to dissolve the three companies, the only remedy he believed available to him was forced judicial dissolution. On February 20, 2017, after nearly two years of acrimony, Arvin filed a petition in Jessamine Circuit Court seeking to have the three companies ordered dissolved pursuant to KRS 275.290. Carter objected to court-ordered dissolution.

The trial court conducted a two-day evidentiary hearing. After Arvin rested his case, Carter moved for a dismissal pursuant to CR[6] 41.02(2). The trial court denied the motion with respect to Southern Tax; however, it sustained the

[6] Kentucky Rules of Civil Procedure.

motion with respect to Unbridled and Property Management. The trial court entered a final judgment on June 13, 2018. Therein, it explained that it dismissed Arvin's petition to dissolve Unbridled and Property Management because Arvin "failed to introduce evidence sufficient to establish a *prima facie* case that it was not reasonably practicable to carry on the businesses [of these two companies] in conformity with the operating agreements for each." In support of its conclusion, the trial court made the following findings of fact: (1) the operating agreement of each company permits either member acting alone to do all things necessary or convenient to carry on the day-to-day business and affairs of the company; (2) the business of Property Management is the rental of real estate long-term with no plan to sell; (3) the business of Unbridled is the rental of real estate until sale; and (4) there is no deadlock with regard to the management of the day-to-day operations of either Property Management or Unbridled and both businesses are still functioning.

In contrast, the trial court's final judgment ordered Southern Tax to be dissolved. It found that Southern Tax had not purchased any tax liens since 2012 and had been in the process of winding down its business for the last several years, and that Carter and Arvin could not agree on selling Southern Tax's remaining assets. The trial court concluded that the parties' inability to agree on whether to sell Southern Tax's remaining assets authorized it to "wind down the affairs of [Southern Tax] and judicially dissolve it" pursuant to KRS 275.290.

Thereafter, Arvin filed this appeal challenging the trial court's dismissal of his petition as related to the dissolution of Property Management and Unbridled.

II. STANDARD OF REVIEW

The parties devote a good deal of attention to the proper standard of review to be applied by this Court. Citing KRS 275.290, Arvin argues that the determination of whether to dissolve a Kentucky limited liability company is a question of law subject to *de novo* review on appeal. This is correct in a limited sense. We do review ultimate legal conclusions under a *de novo* standard of review. *Arterburn v. First Community Bank*, 299 S.W.3d 595, 598 (Ky. App. 2009). However, legal questions rarely arise in a vacuum, especially ones as complicated and acrimonious as a court-ordered dissolution. More often than not, the parties will present the trial court with alternative versions of the facts. In such a case, the trial court must first make factual findings. We review those factual findings under a clearly erroneous standard. *Moore v. Asente,* 110 S.W.3d 336, 354 (Ky. 2003).

Additionally, our standard of review depends on the procedural posture of the case at the point in time in which it was decided by the trial court. In this case, the trial court granted Carter's motion for dismissal following Arvin's

presentation of evidence during a bench trial. Therefore, we look first to CR 41.02(2). It provides:

> In an action tried by the court without a jury, after the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52.01.

A motion pursuant to CR 41.02(2) "fulfills the same mid-trial function as a motion for a directed verdict [pursuant to CR 50.01] in a jury case." *Morrison v. Trailmobile Trailers, Inc*., 526 S.W.2d 822, 823 (Ky. 1975). While the purposes of the two rules are similar, the trial court plays a different role under each. In response to a CR 41.02(2) motion during a bench trial, the trial court must weigh and evaluate the evidence, and if it finds against the plaintiff, it must make findings as directed by CR 52.01. *Morrison*, 526 S.W.2d at 823-24. Most importantly, "[t]he trial court does not, as in the case of a motion for a directed verdict [in a jury trial], indulge every inference in the plaintiff's favor." *Id*. at 824.

Because CR 41.02(2) requires the trial court to make findings of fact pursuant to CR 52.01 and include them as part of its written judgment, our review of the factual findings is likewise controlled by CR 52.01 and is limited to the

question of whether those findings are clearly erroneous, giving due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Morrison*, 526 S.W.2d at 824.

"When the trial court makes a finding of fact adverse to the party having the burden of proof and his is the only evidence presented, the test of whether its finding is clearly erroneous is not one of support by 'substantial evidence,' but rather, one of ***whether the evidence adduced is so conclusive as to compel a finding in his favor as a matter of law***." *Id.* (emphases added) (citations omitted). Stated another way, we must determine whether on the whole the plaintiff's evidence was so overpowering that a reasonable fact finder could not fail to be persuaded by it. *Id.*; *Commonwealth v. Chestnut*, 250 S.W.3d 655, 660 (Ky. 2008). "On appellate review of a ruling on a defendant's CR 41.02 motion, we will overturn the trial court only for an abuse of discretion. An abuse of discretion will be found when the trial court's decision is 'arbitrary, unreasonable, unfair, or unsupported by sound legal principles.'" *R.S. v. Commonwealth*, 423 S.W.3d 178, 184 (Ky. 2014) (citations omitted).

III. ANALYSIS

Judicial dissolution of limited liability companies is authorized by KRS 275.290. It provides, in relevant part:

> (1) The Circuit Court for the county in which the principal office of the limited liability company is

> located, or, if none, in the county of the registered office, may dissolve a limited liability company in a proceeding by a member if it is established ***that it is not reasonably practicable to carry on the business of the limited liability company in conformity with the operating agreement***.
>
> (2) If after a hearing the court determines that one (1) or more grounds for judicial dissolution exist, it may enter a decree of dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it. The dissolution shall be effective upon the filing of the decree by the Secretary of State or a later date as is specified in the decree.

(Emphasis added.)

The trial court concluded that Arvin failed to introduce evidence sufficient to establish a *prima facie* case that it was not *reasonably practicable* to carry on the businesses of Unbridled and Property Management because there was no deadlock on any issues requiring unanimous agreement of the members under the terms of the operating agreements, and the operating agreements gave each member the authority to unilaterally do all things necessary or convenient to carry out the day-to-day business and affairs of the companies. Arvin argues that the trial court's analysis was flawed insomuch as it focused solely on whether it was technically possible for the members to run the companies under the operating agreements without considering the practical realities presented by the complete and total breakdown of the parties' relationship.

Arvin points out that Article II of the operating agreements does not address or provide a remedy for the resolution of operational disputes and disagreements by the members on day-to-day matters. According to Arvin, while the members had been able to function under this provision in the past, their acrimony and personal animus reached such a level after 2015 that it became practically impossible to continue day-to-day operations under this provision because the two members could not agree on any decision. Arvin cites Carter's firing of an employee against Arvin's wishes and the roof repair issue as two prime examples of the organizational chaos created by this provision in light of the parties' deteriorating relationship with one another.

The General Assembly did not define "not reasonably practicable," and despite KRS 275.290 having been on the books since 1994, there are no published cases that interpret or address its "not reasonably practicable" standard. As a matter of statutory interpretation, however, it is clear that the statute cannot be read to require impossibility. If the General Assembly had intended that to be the standard, it would have used the term "impossible" instead of "not reasonably practicable." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54, 112 S. Ct. 1146, 1149, 117 L. Ed. 2d 391 (1992) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.").

Therefore, we begin with the assumption that "not reasonably practicable" means something short of impossible.

While Kentucky does not have any published case law interpreting the meaning of "not reasonably practicable," other states with similar dissolution provisions have done so. Unfortunately, however, there is no universally accepted standard or definition of "not reasonably practicable." *See* 49 A.L.R.6th 1, *Construction and Application of Limited Liability Company Acts—Issues Relating to Dissolution and Winding Up of Affairs of Limited Liability Company* (originally published in 2009). Even so, almost all the outside authorities permit judicial dissolution under the "not reasonably practicable" standard in situations short of deadlock. *See, e.g.*, *Massood v. Fedynich*, 530 S.W.3d 49, 64 (Mo. Ct. App. 2017) (interpreting the statutory language and holding that Missouri's dissolution statute "does not require a voting deadlock as a condition to ordering dissolution and wind-up of a limited liability company"). We agree that the statute must be interpreted to allow for dissolution in situations other than deadlock; otherwise the General Assembly would have just stated that judicial dissolution was permitted where the members were deadlocked and unable to break their deadlock under the terms of the operating agreement.

Having extensively surveyed case law from other jurisdictions, we believe the "not reasonably practicable" standard requires the trial court to conduct

a multifaceted analysis which takes into account a number of different factors that go well beyond whether there is a technical deadlock. For example, in *Gagne v. Gagne*, 338 P.3d 1152 (Colo. Ct. App. 2014), the court construed for the first time Colorado's LLC act, which permits judicial dissolution "if it is established that it is not reasonably practicable to carry on the business of the limited liability company in conformity with the operating agreement of said company." *Id.* at 1159 (citation omitted). The court construed the language as requiring the party seeking 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." *Id.* at 1160 (citation omitted). The court reiterated that "the test is whether it is reasonably practicable to carry on the business of the LLC, not whether it is impossible to do so." *Id.* (citations omitted). The Colorado court articulated a list of factors a trial court should consider in determining whether it is reasonably practicable to carry on. These include:

> (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. (citations omitted). The list is not exhaustive and no one factor is determinative.

We believe this multifactor approach gives full meaning to the phrase "not reasonably practicable" and allows the trial court the proper amount of flexibility and discretion to order dissolution in cases that fall short of technical deadlock. Accordingly, we hold this is the standard by which a trial court should evaluate a petition requesting dissolution on the ground that "it is not reasonably practicable to carry on the business of the limited liability company in conformity with the operating agreement" pursuant to KRS 275.290.

We reiterate that this standard does not require that the purpose of the company, as set out in the operating agreement, be completely frustrated or totally *impossible* to fulfill before the trial court can order judicial dissolution. It allows for dissolution where the disagreement or conflict among the members regarding the means, methods, or finances of the company's operations is so fundamental and intractable as to make it unfeasible for the company to carry on its business as originally intended. *See Haley v. Talcott*, 864 A.2d 86, 96 (Del. Ch. 2004).

With these standards in mind, we turn to the trial court's findings in support of its summary dismissal pursuant to CR 41.02. In doing so, we are sympathetic to the fact that the trial court was forced to analyze the issue without the benefit of any case law precedent from our appellate courts.

The trial court did not explain how it interpreted reasonable impracticability; however, it seems clear that its primary focus was on whether there was a technical deadlock with respect to the day-to-day management of the companies. As noted above, however, deadlock is merely one factor of many for a court to consider.[7] Additionally, it appears the trial court focused on the technical possibility of operating in conformity with the operating agreements without considering whether the personal conflicts made it impracticable to do so under the circumstances.[8]

In short, we are not confident that the trial court evaluated the evidence in light of the multifactor approach outlined above. Its findings and conclusions convince us that it applied a standard more akin to impossibility than impracticability and believed an actual deadlock on a particular issue was a prerequisite for judicial dissolution. Accordingly, we must vacate the summary dismissal and remand the matter to the trial court for consideration of the motion in

[7] Additionally, we disagree to the extent the trial court found that there was no deadlock between the members. Section 6.1 of the operating agreements requires the unanimous written consent of all the members to effect a voluntary dissolution. Arvin had requested Carter to consent to dissolution of all the companies, which Carter would not give. In this sense, the members were deadlocked. This type of deadlock of course will be present in almost every judicial dissolution case that results in a hearing. Nevertheless, there was some deadlock.

[8] We also note that Unbridled appears to have been formed to buy and immediately sell properties from Southern Tax litigation. We question how Unbridled could continue to fulfill this purpose if Southern Tax was no longer purchasing tax lien delinquency certificates as the trial court found.

light of the factors articulated above. Nothing in this opinion should be construed as a mandate for the trial court to deny the motion on remand. On that issue, we express no opinion. The trial court may review the motion in light of the factors and decide summary dismissal pursuant to CR 41.02 is proper, or it may decide based on the evidence of personal discord and animus that Arvin presented that he established at least a *prima facie* case in support of dissolution such that the motion should be denied and the matter proceed with Carter presenting his proof with respect to Unbridled and Property Management.

IV. CONCLUSION

For the reasons set forth above, we vacate the trial court's judgment insomuch as it dismissed the petition for dissolution of Kentucky Property Management, LLC, and Unbridled Holdings, LLC, and remand for additional proceedings as set forth above.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

David Russell Marshall
Nicholasville, Kentucky

BRIEF FOR APPELLEE DAREN CARTER:

Bruce E. Smith
Nicholasville, Kentucky