

24-128345-A

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**IN THE COURT OF APPEALS OF THE STATE OF KANSAS**

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**BRUCE BETTS,**  
**Plaintiff / Appellee,**  
**vs.**  
**NORMAN KEENAN,**  
**Defendant / Appellant.**

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**On Appeal from the District Court of Miami County**  
**Honorable Richard M. Fisher, Jr., District Court Judge**  
**District Court Case No. MI-2021-CV-000058**

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**REPLY BRIEF OF THE APPELLANT**

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## **Reply Argument and Authorities**

### *Rule 6.05 Statement*

This reply brief is made necessary by new material in the appellee's Brief. Specifically, that new material is the appellee's arguments:

- (1) That the issue of appellate subject-matter jurisdiction is an “end-run” around preservation issues (Brief of the Appellee [“Aple.Br.”] 5-12);
- (2) That Mr. Keenan's issues II and III are unpreserved (Aple.Br. 12-15);
- (3) That the Partnership was dissolved in 2020 (Aple.Br. 18);
- (4) That equity is “paramount” when winding up a partnership's business (Aple.Br. 20);
- (5) That Article 4 of the Kansas Revised Uniform Partnership Act does not apply to the winding up of a partnership's business (Aple.Br. 19);
- (6) That remanding this case for the district court to follow the law and supervise an appropriate winding up process would be a “blatant inequity” for the Appellee (Aple.Br. 20-22).

## **I. Summary of Mr. Keenan's opening brief**

Norman Keenan appeals from the district court's judgment resolving a dispute between him and Bruce Betts over the dissolution of their 50/50 farming partnership (the "Partnership"). In his opening brief, Mr. Keenan explained that the district court erred in three ways.

At the outset, the district court's judgment was not final. It: (1) did not dispose of all claims between the parties and (2) lacked specificity in some of its determinations of the rights of the parties (Aplt.Br. 13-18). As a result, this Court lacks appellate jurisdiction (Aplt.Br. 13-18). This court should dismiss this appeal so the district court can enter a final judgment (Aplt.Br. 15).

If the Court disagreed with his jurisdictional challenge, Mr. Keenan explained that the district court committed substantive error in two ways. First, the district court misapplied the law when when it failed to follow the Partnership agreement and the Kansas Revised Uniform Partnership Act ("KRUPA"), K.S.A. §§ 56a-401, *et seq.* in winding up the Partnership's business (Aplt.Br. 19-27). Second, the district court erred in classifying the equipment at issue as personal property, rather than Partnership property that needed to be handled in the winding-up process (Aplt.Br. 28-33).

For these reasons, if this Court has jurisdiction, it should vacate the district court's judgment and remand this case with instructions to properly apply both the Partnership's agreement as the district court found it existed and KRUPA (Aplt.Br. 27, 33).

## **II. Challenging this Court’s appellate jurisdiction is proper and is not an “end-run” around preservation issues.**

In his first issue in his opening brief, Mr. Keenan explained this Court actually lacks appellate subject matter jurisdiction over this appeal because the district court’s judgment did not explicitly dispose of Mr. Keenan’s claim for judicial dissolution of the Partnership and therefore is not a final judgment since it did not dispose of all claims between the parties (Aplt.Br. 13-18). Mr. Betts argues this Court should ignore the question of appellate jurisdiction, claiming it is an “end-run” around preservation issues (Aple.Br. 5-12).

Mr. Betts’s argument is in error. It conflates district court subject-matter jurisdiction with appellate jurisdiction. It is true that the former is a requirement for the latter – if the district court lacked jurisdiction, the appellate court does not acquire jurisdiction on appeal. *Nicholson v. Mercer*, 319 Kan. 712, 714, 559 P.3d 350 (2024). But appellate jurisdiction requires more – including a final judgment, i.e., one that disposes of the entire merits of the case. *Kaelter v. Sokol*, 301 Kan. 247, 249-50, 340 P.3d 1210 (2015).

Mr. Betts relies on the Supreme Court’s decision in *Nicholson* for his “end-run” argument. *Nicholson* is inapposite. There, the appellant argued – after not having done so before the district court – that the *district court* lacked jurisdiction to entertain a statutory garnishment action because the garnishment rights had been assigned. *Id.* at 714. The Supreme Court noted that jurisdiction is conferred by law, not by a perfectly formed pleading or indictment. *Id.* at 716. Because of this, defects in a pleading or a claim itself do not deprive the court of jurisdiction. *Id.* After all, a court has jurisdiction

to dismiss a petition for failure to state a claim, which it could not do if it lacked jurisdiction because the claim was invalid. *Id.*

Mr. Keenan's argument has nothing in common with *Nicholson*. He does not claim that some legal flaw in the underlying claims deprived the district court of jurisdiction. Instead, his point is that the district court's judgment did not dispose of all of the parties' claims because it never ruled on the request for judicial dissolution of the partnership. That request could have been granted or denied. If the court intended to find the Partnership terminated in 2020 during the Vohs farm incident, as Mr. Betts now argues (Aple.Br. 18), then it could have denied Mr. Keenan's claim as moot. The court did not do any of this. Instead, as the judgment stands, it is not clear whether the Partnership exists to this day.

Mr. Betts points out that Mr. Keenan makes this argument for the first time on appeal (Aple.Br. 5). Of course Mr. Keenan raises an issue of *appellate* jurisdiction for the first time on appeal. Once a notice of appeal is filed, the only authority that allows a district court, rather than the Court of Appeals, to dismiss a party's appeal is Supreme Court Rule 5.051. But that rule only applies when a party has failed to timely docket an appeal, which obviously is not the case here. Any arguments before the district court about appellate jurisdiction would have been misplaced, as the district court had no power to do anything about them.

Even if *Nicholson*'s concerns about "end-runs" somehow were taken out of context and applied here, there is no "end-run" here. As Mr. Keenan

explains below at pp. 6-10, he preserved the other issues he now appeals, so there is nothing around which he could make an “end-run.”

Mr. Betts also argues lack of preservation because Mr. Keenan did not point in his opening brief to the specific point in the record where the court ruled on his two substantive issues (Aple.Br. 14). A “lack of pinpoint citations is not fatal to appellate review of an issue.” *In re Rockhill Pain Specialists, P.A.*, 55 Kan. App. 2d 161, 177-78, 412 P.3d 1008 (2017). The point to Mr. Keenan’s jurisdictional issue is that the district court never explicitly ruled on his claim for dissolution and winding up of the Partnership’s business. If this Court agrees with that and finds the district court *did not* resolve Mr. Keenan’s claim for dissolution and winding up, it will remand the case for entry of a final judgment. If it disagrees with the jurisdictional issue because it identifies a final ruling on that claim, then that is where the district court ruled on the issue.

Finally, Mr. Keenan also noted that the judgment was insufficiently clear because it simply awarded ownership of the property each partner possessed to that partner (Aplt.Br. 17-18). Mr. Betts argues these objections are waived because Mr. Keenan did not object to inadequate findings of fact (Aple.Br. 11-12).

Mr. Betts’s argument is in error. Mr. Keenan’s point is that the judgment’s final determination of the rights of the parties is insufficiently clear to define and determine those rights. The decisions Mr. Betts cites are inapposite because they address whether a court’s findings are sufficiently stated to support its holding. In *In re Marriage of Bradley*, 258 Kan. 39, Syl.

¶¶ 1-2, 899 P.2d 471 (1995), for example, the appellant challenged the validity of a post-divorce change of primary residential custody, arguing this was improper *because* the district court had not made a factual finding of a change in circumstance.

In contrast, the decisions about clarity and finality of judgments on which Mr. Keenan relied in his opening brief (Aplt.Br. 17-18) are concerned with whether a judgment is sufficient to “fix clearly the rights and liabilities of the respective parties ... and be such as defendant may readily understand.” *Bandel v. Bandel*, 211 Kan. 672, 677, 508 P.2d 487 (1973) (quoting *Golden Press v. Rylands*, 124 Colo. 122, 125, 235 P.2d 592 (1951)). This is because “[t]he rights of the parties under a mandatory judgment whereby they may be subjected to punishment as contemnors for a violation of its provisions, should not rest upon implication or conjecture, but the language declaring such rights or imposing burdens should be clear, specific and unequivocal so that the parties may not be misled thereby.” *Id.*

Put another way, when a court’s final decision is unclear, it is a problem for the finality of the judgment because the parties cannot know how to obey. Conversely, when the court is only unclear about how it arrived at the final decision, but states that final decision clearly, it is a procedural issue that can be waived by failing to object. This illustrates a key problem with the finality of the judgment here: it is not clear whether the Partnership exists today.

### **III. Mr. Keenan preserved his second and third issues on appeal.**

In his second issue in his opening brief, Mr. Keenan explained that the district court erred in winding up the Partnership's business when it failed to follow the Partnership agreement and KRUPA (Aplt.Br. 19-27). In his third issue, he explained that the court also erred in classifying the equipment at issue as personal property, rather than Partnership property that needed to be handled in the winding-up process (Aplt.Br. 28-33).

In response, Mr. Betts argues these issues are not preserved because "Mr. Keenan never even mentioned the KRUPA" below (Aple.Br. 13).

Mr. Betts's argument is in error. As Mr. Keenan noted in his opening brief, he preserved his second issue on appeal by seeking in his counterclaim at least half the Partnership's assets based on the Partnership's original 50/50 agreement – an agreement Mr. Betts did not and does not dispute (Aplt.Br. 19; R1 at 62; A25). Mr. Keenan consistently maintained this request throughout the litigation, including in his trial position statement (R2 at 57), and at trial itself (R7 at 187).

In arguing otherwise, Mr. Betts seeks to impose a higher standard for preservation than either the law or good sense requires. Appellate courts do not require a party to cite every single governing case or statute by name and number to preserve an issue for appeal – "[w]hat matters is not the nomenclature" of the claim, but what the parties and court understood about the nature of the claim. *See Drumgold v. Callahan*, 707 F.3d 28, 44 (1st Cir. 2013).

Here, the parties and court all recognized that Mr. Keenan sought half the Partnership's assets. Indeed, the actual dispute at trial was not about whether to follow KRUPA, but instead about whether there was – as Mr. Betts alleged – a *separate* agreement in 2018 that departed from the original 50/50 Partnership agreement and would have led to Mr. Betts receiving all the Partnership equipment (R2 at 70; A6). The district found there was no such separate agreement (R2 at 73; A9 (finding Mr. Betts “has not met his burden from the evidence presented ... that the Partnership between the parties was terminated on December 31, 2018.”)).

Mr. Keenan correctly asserted a right to half the Partnership's assets based on the 50/50 Partnership agreement and acknowledged that equity may come into play. Mr. Betts never argued some other law governed or that the 50/50 Partnership agreement should be interpreted differently. He just argued there was a *different* agreement that superseded that one. With that being the dispute, there was never any reason for Mr. Keenan to believe he needed to set forth a treatise on the basic rules of contracts and partnership law below.

Mr. Betts claims Mr. Keenan invited the district court's error, but does so based on a cherry-picked sentence from Mr. Keenan's trial position statement where Mr. Keenan described one of his claims as being “entitled to an equitable division of the assets of the [Partnership]” (Aple.Br. 15-16 (citing R2 at 58)). Mr. Betts omits any mention of the preceding page, where Mr. Keenan asserted “an entitlement to, at least and at a minimum, 50% of the

[Partnership equipment] pursuant to the on-going partnership agreement of the parties dating back to 2003-2004” (R2 at 57).

This is the same as Mr. Keenan’s argument on appeal. He is *not* arguing that the district court was prohibited from considering and applying principles of equity in winding up the Partnership’s business and distributing its assets. Instead, the error was in the district court completely disregarding the Partnership agreement (as well as the gap-filling default rules of KRUPA) that governed that process. *See In re PB&R*, 52 Kan. App. 2d 871, 874, 380 P.3d 234 (2016). Mr. Keenan correctly asked the court for his share of the Partnership’s equipment per the Partnership agreement and recognized that equity would play a role. But Mr. Keenan never asked the court to rely *solely* on equity, as Mr. Betts suggests.

Mr. Betts further asserts, without explanation, that this statement about equitable division invited error on *both* Mr. Keenan’s second and third issues on appeal (Aple.Br. 15). But he does not explain how even if the statement is read as he interprets it this could have anything to do with Mr. Keenan’s third issue. That issue concerns the district court’s determination of whether the equipment was Partnership property, not how the winding up of the Partnership’s business should have been conducted.

Mr. Keenan explained in his opening brief he preserved his third issue by seeking half the Partnership’s equipment and testifying that all property in the appraisal he introduced into evidence was Partnership property (Aplt.Br. 28; R1 at 62; R6 at 139). He also argued it to the district court in closing, *specifically* arguing the presumption that anything Mr. Betts even

partially purchased with proceeds from Partnership property (for example, by trading in Partnership equipment for new equipment) was itself Partnership property unless Mr. Betts proved otherwise (R7 at 186-187). Mr. Betts claims Mr. Keenan never argued this presumption to the court (Aple.Br. 22), but the record shows that is not so.

As with Mr. Keenan's second issue, "[w]hat matters is not the nomenclature" of the claim, but what the parties and court understood about the nature of the claim. *Drumgold*, 707 F.3d at 44. The parties and court knew Mr. Keenan asserted an entitlement to half of the Partnership equipment, knew what equipment that was, and knew Mr. Keenan's legal theory that all equipment acquired with Partnership assets was Partnership property. Mr. Keenan was not required to cite specific cases or statute sections to preserve this argument for appeal.

#### **IV. The district court misapplied the law in winding up the Partnership's business and distributing its assets to the partners.**

In his second and third issues on appeal, Mr. Keenan argued that the district court misapplied the law in two ways (Aplt.Br. 22, 31). First, the court erred in not following the Partnership's 50/50 agreement and KRUPA (Aplt.Br. 22). Second, the court erred in failing to apply the correct legal presumption – that property acquired with Partnership assets is presumed to be Partnership property – to the facts *as the court found them* (Aplt.Br. 32).

**A. The Partnership was not dissolved in 2020, and even if it were, its business still would need to be wound up.**

Responding to these issues, Mr. Betts first claims the Partnership was dissolved *in 2020* when Mr. Betts said “[t]hat’s it, no more” during an argument at the Vohs farm (Aple.Br. 18). But the judgment refers to this incident as an allegation rather than finding it at a fact (R2 at 69; A4). Even taken as true, that comment is far from a clear statement of intent to dissolve the Partnership – it could have referred to the conversation, the work for the day, money, or any number of other things. Neither party argued below that this incident terminated the Partnership, much less wound up the Partnership’s business. There is no reason to believe the court intended to find *sub silentio* that this dissolved the Partnership. If it had, the appropriate decision would have been to deny Mr. Keenan’s claim for judicial dissolution as moot or simply include that ruling in its decision. It did not do that.

Even if the court had found the Partnership terminated in 2020, the Partnership’s business would still need to be wound up, as Mr. Keenan explained in his opening brief (Aplt.Br. 22). Mr. Betts argues this is not so, taking issue with a “*see*” citation to K.S.A. § 56a-801 in Mr. Keenan’s brief (Aple.Br. 17). Under § 56a-801, “[a] partnership is dissolved, and *its business must be wound up*” in certain enumerated circumstances. (Emphasis added). Mr. Betts ignores this first line of the statute and focuses only on the enumerated circumstances that follow.

Mr. Keenan’s use of a “*see*” signal was appropriate. In fact, it was necessary because the citation supported a proposition that was an

application of that rule to the facts of this case. *See* THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. § 1.2(a) (Columbia L. Rev. Ass’n et al. eds., 20th ed.2015) (“*See*’ is used instead of ‘[no signal]’ when the proposition is not directly stated by the cited authority but obviously follows from it; there is an inferential step between the authority cited and the proposition it supports.”) A citation to the statute without any signal is appropriate when citing it for the rule itself, as Mr. Keenan did in his initial rule statement (Aplt.Br. 21). But applying that rule to this specific partnership requires an inferential step, though an obvious one, that the rule in fact applies to the Partnership. So, when Mr. Keenan applied that rule to argue *this* Partnership’s business needed to be wound up, a “*see*” citation was proper.

**B. Equity is not “paramount” when a district court winds up a partnership’s business, as the court still first must follow the partnership agreement and KRUPA.**

Mr. Betts claims that when winding up a partnership’s business, a “district court’s equitable powers are paramount” (Aple.Br. 20). This is incorrect. The court’s equitable powers take a back seat to any governing Partnership agreement and to KRUPA itself.

Mr. Betts reaches this erroneous conclusion by quoting this Court for the proposition that a district court acts in equity when it supervises the dissolution of a partnership (Aple.Br. 19) (quoting *PB&R*, 52 Kan. App. 2d at 872). But he takes this quote out of context and completely ignores the very next sentence that qualifies the general rule: “[s]o *except where an issue is specifically addressed by statute or the partnership agreement*, the district court has a great deal of discretion.” *Id.* This Court in *PB&R* emphasized

that unlike here, for the disputed issues in that case there were no applicable contractual provisions or KRUPA rules: “[w]e note once again that the district court was acting in equity here, and we review its decision for abuse of discretion. Neither the partnership agreement nor [KRUPA] specifically addressed the issue presented.” *Id.* at 874.

In his second and third issues on appeal, Mr. Keenan explained that the district court was obligated to follow the 50/50 Partnership agreement, which it expressly found governed the Partnership, and KRUPA, the procedures of which specifically govern winding up (Aplt.Br. 20-22). Rather than being paramount, equity empowers the district court with discretion to resolve questions and gaps that remain *after* it applies those two sources of law are applied if those sources do not resolve the issue. Equity cannot override law.

**C. Article 4 of KRUPA applies to the winding-up process.**

Mr. Betts also argues this Court in *PB&R* rejected applying KRUPA’s Article 4 to winding up because that article applies to partners’ relationships (Aple.Br. 19). But the Court in *PB&R* did not reject the entirety of Article 4, it only rejected applying that article’s default rule prohibiting in-kind distributions to partners in the normal course of business to the winding-up process. *PB&R*, 52 Kan. App. 2d at 886.

That does not mean *all* of Article 4 is cast aside when it comes to winding up a partnership’s business. That would make little sense. The winding-up statute refers to capital accounts. K.S.A. § 56a-807(b) (“Each partner is entitled to a settlement of all partnership accounts upon winding

up the partnership business”). Article 4 defines what a capital account is. K.S.A. § 56a-401(a). Discarding this section would render K.S.A. § 56a-807(b) nonsensical. This construction would be improper because an appellate court must consider various provisions of an act *in pari materia* and “must construe statutes to avoid unreasonable or absurd results.” *N. Nat. Gas Co. v. ONEOK Field Servs. Co.*, 296 Kan. 906, Syl. ¶ 5, 296 P.3d 1106 (2013).

**D. Mr. Betts bears the burden to prove his own capital contributions and will be able to try to meet that burden on remand.**

Mr. Betts complains that Mr. Keenan’s appellate arguments have “blatant inequity,” essentially arguing it would be unfair to not credit him with various amounts of money – from unequal equipment payments to the bean proceeds used to pay part of the Partnership’s co-op debt – as part of the winding-up process (Aple.Br. 20-22).

Mr. Keenan is not asking this Court to award him some amount of money. He asks the Court only to remand this case with instructions for the district court to follow KRUPA and properly wind-up the Partnership’s business (Aplt.Br. 27, 33). As he explained in his opening brief, that should have involved crediting the Partners’ capital accounts and distributing the net proceeds at the end of the process (Aplt.Br. 27). Mr. Betts will have the opportunity to present all the arguments he makes at that time to ensure he receives proper credit for his capital contributions to the Partnership.

That said, some of Mr. Betts’s claims are demonstrably incorrect based on the district court’s factual findings. Despite having explicitly abandoned his cross-appeal (Aple.Br. 5) and the court having found against him on these

counts, Mr. Betts continues to claim he should get credit for the entire amount of soybeans that were sold to satisfy the Partnership's debt at the Ottawa Co-op (Aple.Br. 21). But the district court found the Partnership had not dissolved at that time, so those soybeans were Partnership property, which the partners own 50/50 (R2 at 75). They were not Mr. Betts's contribution to the Partnership, so he cannot claim unilateral credit for them. Their sale simply reduced the Partnership's debt liabilities.

### **Conclusion**

The Court should either dismiss the appeal for lack of jurisdiction, or vacate the district court's judgment and remand with instructions to properly wind up the business.

Respectfully submitted,

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**Certificate of Service**

I certify that on September 19, 2025, I electronically filed a true and accurate Adobe PDF copy of the foregoing with the Clerk of the Court by using the electronic filing system, which will send notice of electronic filing to the following:

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