Illinois Official Reports

Appellate Court

Osaghae v. Oasis Hospice & Palliative Care, Inc., 2021 IL App (1st) 200515

Appellate Court Caption	VINCENT OSAGHAE and MABEL OSAGHAE, Plaintiffs-Appellants, v. OASIS HOSPICE AND PALLIATIVE CARE, INC., Defendant and Counterplaintiff-Appellee (Olufolasade Bello, Third-Party Plaintiff-Appellee; Mabel Osaghae, Plaintiff, Counterdefendant, and Third-Party Defendant-Appellant).
District & No.	First District, Fourth Division No. 1-20-0515
Filed	December 30, 2021
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 2016-L-4142; the Hon. Lorna E. Propes, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Samuel J. Schumer and Jason M. Metnick, of Meltzer, Purtill & Stelle LLC, of Chicago, for appellants. William J. Arendt and Nicola K.B. Latus, of William J. Arendt & Associates, P.C., of Burr Ridge, for appellees.

Panel JUSTICE MARTIN delivered the judgment of the court, with opinion. Presiding Justice Reyes and Justice Lampkin concurred in the judgment and opinion.

OPINION

¶ 1 This appeal involves section 12.56 of the Illinois Business Corporation Act of 1983 (Act) (805 ILCS 5/12.56 (West 2016)). This section of the Act provides remedies to shareholders of closely held nonpublic corporations when, as in this case, the shareholders of the corporation are deadlocked and it has been established that the corporation will be irreparably harmed by the continuation of the deadlock. *Id.* § 12.56(a)(2).

¶ 2 We are asked to decide the following questions on appeal: (1) whether the nonexclusivity provision of section 12.56(c) of the Act, which provides that the remedies set forth in the Act "shall not be exclusive of other legal and equitable remedies which the court may impose" (*id.* § 12.56(c)), permits a trial court to order an involuntary buyout of a nonpetitioning party's shares as an alternative remedy to dissolution; (2) whether the involuntary buyout of a nonpetitioning party's shares, as an alternative remedy to dissolution, constitutes an illegal forfeiture; (3) whether the corporation at issue in this case had standing to seek relief under section 12.56 of the Act; and (4) whether the trial court failed to conduct an evidentiary trial on the counterclaim brought under section 12.56 of the Act. Our answers to these questions lead us to affirm the trial court's ruling.[1]

¶ 3 I. BACKGROUND

¶ 4 Oasis Hospice and Palliative Care, Inc. (Oasis) is a nonpublic, closely held Illinois corporation that provides in-home hospice care and similar health care services to patients in the Chicago area. Mabel Osaghae (Mabel) and Olufolasade Bello (Bello) are each 50% shareholders of Oasis. Bello is the president and administrator of the corporation. Mabel is the corporate vice president. Bello's husband, Hakeem Bello, is the secretary. Mabel's husband, Vincent Osaghae, is the treasurer.[2]

¶ 5 A. Corporate Formation of Oasis

¶ 6 Initially, we briefly summarize the history leading to the formation of Oasis. Mabel and Bello, who are both from Nigeria, shared a social and business relationship prior to forming Oasis. Mabel is a registered nurse, and Bello holds an MBA from Purdue University. The two women met at church and became friends in 1997 or 1998.

¶ 7 Mabel owns and operates a health care business called Ultimate Home Healthcare (Ultimate). Ultimate provides in-home nursing services to patients in the Chicago area. Bello accepted a job offer from Mabel to work at Ultimate. Bello served as director of operations and performed billing services for Ultimate from 2001 to 2006. After leaving Ultimate, Bello

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon entry of a separate written order.

[2] We refer to Mabel and Vincent collectively as the "Osaghaes."

worked at her aunt's hospice business as director of operations and human resources from 2007 through 2013.

¶ 8 In 2013, Bello began making plans to start her own hospice business. Bello lacked the medical education and training required to obtain a hospice license. In addition, she also lacked the start-up capital to open the business and therefore began searching for a suitable business partner. In the summer of 2013, Bello received an offer from potential investors, both of whom were registered nurses, offering to invest in Bello's hospice business in exchange for an ownership interest.

¶ 9 On November 6, 2013, Bello and Hakeem met with the Osaghaes to discuss the business offer from the two nurses. Bello sought Vincent's advice based on his experience as a certified public accountant who operated his own accounting business. Previously, Vincent had assisted Bello's aunt in setting up her hospice business. Vincent warned Bello to be wary of entering into a partnership with people she did not know very well. Mabel advised Bello to open the hospice business on her own, without any partners. Bello responded that when the time came to start her hospice business, she would use Vincent's services to assist in setting up the business.

¶ 10 A few days later, Vincent contacted Bello and informed her that he wanted to meet with her again to discuss a business proposal he had prepared for her consideration. On November 10, 2013, Vincent met with Bello at her home and proposed that Bello enter into a partnership agreement with his wife, Mabel, to start a new hospice business. Vincent offered that, in exchange for his wife receiving a 50% ownership share in the new hospice business, he would provide the following: (1) $50,000 start-up capital and additional funding to keep the business operational until it became self-sustaining, (2) rent-free office space with all utilities paid for approximately six to nine months, and (3) full accounting and business services. Mabel would provide clinical experience as a registered nurse. She would also provide marketing services.

¶ 11 Bello requested that Vincent memorialize the terms of his business offer in writing. Vincent sent Bello a text message containing the terms of his offer. Bello reviewed the offer and agreed to its terms and conditions.

¶ 12 Later that November, Vincent prepared and submitted articles of incorporation for Oasis with the Illinois Secretary of State. Bello and Mabel each paid $1025 for their respective 50% ownership share in Oasis. Shortly after Oasis was incorporated, Bello began the process of making the new hospice business operational.

¶ 13 On January 2, 2014, Bello started working full-time at Oasis. Bello began drafting policies and procedures for the new hospice business. Mabel assisted Bello with these tasks. Bello also started the process of applying for a hospice license from the State of Illinois. Mabel was not involved with this process but was listed as the corporation's registered nurse for licensing purposes. As part of his role as accountant, Vincent installed accounting software QuickBooks on the office computers to track expenditures and deposits.

¶ 14 In January 2014, Vincent deposited $50,000 into the corporation's bank account. The Osaghaes subsequently deposited additional amounts into the corporation's bank account on the following dates: $25,000 on May 14, 2014; $25,000 on July 3, 2014; and $10,000 on August 18, 2014.

¶ 15 On September 16, 2014, Oasis received its hospice licensure from the State of Illinois and began administering in-home hospice care. Thereafter, the Osaghaes deposited additional

amounts into the corporation's bank account on the following dates: $25,000 on October 29, 2014; $30,000 on December 10, 2014; $25,000 on January 16, 2015; and $25,000 on March 16, 2015.

¶ 16 In January 2015, the Osaghaes called a meeting to discuss Vincent's concerns regarding the way in which Bello was spending the corporate funds. The meeting led to a dispute concerning whether the funds the Osaghaes deposited into the corporation's bank account constituted oral loans to be paid back or capital investments. Despite subsequent meetings and discussions over the ensuing months, the parties failed to resolve their dispute.

¶ 17 In August 2015, Vincent resigned his position as accountant for Oasis. Thereafter, Bello continued to operate Oasis without any participation or input from either Vincent or Mabel.

¶ 18 B. Commencement of Lawsuit

¶ 19 On April 25, 2016, the Osaghaes filed a two-count verified complaint against Oasis in the circuit court of Cook County. In count I, the Osaghaes alleged the existence of an oral loan agreement for the amounts they deposited into the corporation's bank account and subsequent breach of that agreement to repay the loan. The Osaghaes sought judgment for $241,872.91, plus interest, costs, all additional sums accruing through the date of judgment, and any additional relief the court deemed equitable and just. In count II, the Osaghaes pled *quantum meruit* as an alternative theory to their claim for breach of the oral loan agreement. See *Weydert Homes, Inc. v. Kammes*, 395 Ill. App. 3d 512, 522 (2009) ("*Quantum meruit* is used as an equitable remedy to provide restitution for unjust enrichment and is often pleaded as an alternative claim in a breach-of-contract case so that the plaintiff may recover even if the contract is unenforceable." (citing Black's Law Dictionary 1276 (8th ed. 2004))).

¶ 20 In response, Oasis filed a motion to dismiss the Osaghaes' verified complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)). Oasis argued that the Osaghaes failed to sufficiently allege the essential terms of a valid and enforceable oral contract to loan money. The circuit court subsequently denied the section 2-615 motion to dismiss.

¶ 21 After Oasis answered the verified complaint, the Osaghaes filed a motion for summary judgment as to count I of their verified complaint for breach of the oral loan agreement. The Osaghaes alleged that Oasis's admissions and internal business records established that the Osaghaes loaned Oasis $233,654.39 and that the corporation failed to repay said amount. The circuit court denied the Osaghaes' motion for summary judgment, finding that genuine issues of material fact remained concerning the terms of the alleged oral loan agreement.

¶ 22 On August 2, 2017, Oasis filed a two-count verified counter-complaint against the Osaghaes.[3] The counter-complaint asserted that the parties' ongoing dispute over the breach of the alleged oral loan agreement had resulted in a shareholder-director deadlock. Count I of the counter-complaint sought relief in the form of a judgment directing (1) removal of the Osaghaes as directors and officers of Oasis, (2) a corporate buyout of Mabel's shares pursuant

[3]Oasis's counter-complaint contained two counts against the Osaghaes. Count I sought relief under section 12.56 of the Act. Count II alleged that Vincent breached his fiduciary duties to Oasis through his oppressive and fraudulent conduct. Count II was voluntarily dismissed, without prejudice.

to section 12.56 of the Act, and (3) monetary damages in an amount to be determined at trial, but no less than $50,000.

¶ 23 The Osaghaes, in turn, filed a motion to dismiss count I of the counter-complaint pursuant to section 2-619(a)(9) of the Code (*id.* § 2-619(a)(9)). The Osaghaes argued that count I failed as a matter of law because Oasis lacked standing. Specifically, the Osaghaes maintained that only shareholders of a corporation, and not the corporation itself, have standing to bring an action under section 12.56 of the Act. The Osaghaes contended that Oasis had no statutory standing to assert a section 12.56 action because this section of the statute provided for shareholder remedies and actions and not actions by the corporation itself.

¶ 24 In response to the Osaghaes' section 2-619(a)(9) motion to dismiss, Oasis withdrew count I of its counter-complaint, and the circuit court ruled that the motion to dismiss was thereby rendered moot. In addition, the circuit court granted the Osaghaes' oral motion for leave to file a claim for corporate dissolution.

¶ 25 On October 26, 2017, Mabel filed a claim to dissolve Oasis pursuant to section 12.56(b)(12) of the Act, which provides for dissolution of a corporation if the court determines that other statutory remedies (section 12.56(b)(1)-(11)), and alternative remedies, are insufficient "to resolve the matters in dispute."[4] 805 ILCS 5/12.56(b)(12) (West 2016). Mabel argued that corporate dissolution was the only appropriate remedy because she and Bello were deadlocked within the meaning of the Act and that the deadlock was causing irreparable harm to the corporation. Oasis answered that the more appropriate remedy would be to allow Oasis to purchase Mabel's shares.

¶ 26 On March 13, 2018, Mabel filed a motion to voluntarily dismiss her corporate dissolution claim, without prejudice. Mabel's motion also sought vacatur of the expert disclosure schedule as moot in the absence of the corporate dissolution claim. Mabel asserted that she no longer sought corporate dissolution, but that she still intended to pursue her claim for breach of the oral loan agreement.

¶ 27 Bello filed a petition to intervene in the litigation for the purpose of filing her own claim for corporate dissolution. Bello contended that the claim for corporate dissolution and the claim for breach of the alleged oral loan agreement were both based on the same set of facts and circumstances, which had been subject to extensive discovery. Bello argued that, therefore, the two claims should be tried together and that she should be permitted to intervene in the litigation.

¶ 28 Bello attached a proposed third-party complaint to her petition to intervene. The proposed third-party complaint sought a judgment directing removal of the Osaghaes as directors and officers of Oasis, a corporate buyout of Mabel's shares pursuant to section 12.56 of Act, and monetary damages to be determined at trial, but no less than $50,000.

¶ 29 On March 22, 2018, the circuit court granted Mabel's motion to voluntarily dismiss her claim for corporate dissolution. The court also granted Bello's petition to intervene.

¶ 30 On March 29, 2018, Bello filed her counterclaim/third-party complaint against Mabel, naming Oasis as a nominal third-party plaintiff. Mabel filed an answer and affirmative defense

[4]Dissolution is defined as "a court-ordered termination of the company as a legal entity." Kenneth J. Vanko, Dissolution and Rational Choice: The Unique Remedial Framework for Director Deadlock Under the Illinois Business Corporation Act, 38 N. Ill. U. L. Rev. 348, 363 (2018).

to Bello's counterclaim. Mabel admitted that she and Bello were deadlocked. As a remedy to the deadlock, Mabel requested that, instead of allowing a corporate buyout of her shares, that the court appoint a custodian to manage the corporation and oversee its dissolution and liquidation.

¶ 31 The parties engaged in expert discovery and exchanged expert reports focused on the valuation of Oasis. Following the completion of discovery, the circuit court set a trial date of January 14, 2019, for both the Osaghaes' complaint and Bello's counterclaim. Bello subsequently withdrew her jury demand with respect to her counterclaim. The parties proceeded to a jury trial on the Osaghaes' complaint. Bello's counterclaim was scheduled for a later bench trial.

¶ 32 C. Jury Trial for the Osaghaes' Complaint for Breach of Oral Loan Agreement

¶ 33 Prior to trial, the parties requested, and the trial court agreed, to enter the following stipulation: "The value of each shareholder's 50% ownership interest in Oasis Hospice and Palliative Care Inc. is $143,801." The stipulation stated that the stipulated value did not account for the amount owed under the alleged oral loan agreement. The stipulation provided that if the Osaghaes were successful at trial in establishing the existence of the alleged oral loan agreement, then the stipulation would control, and the value of Mabel's shares would be calculated using a formula which accounted for the loan amount.[5] The parties entered into the stipulation in an effort to avoid the need for expert testimony on the issue of valuation.

¶ 34 The matter proceeded to a four-day jury trial.[6] At the conclusion of the evidence, the case was submitted to the jury on the question of whether the funds the Osaghaes advanced to Oasis constituted oral loans subject to reimbursement or capital investments in the corporation. On January 18, 2019, the jury reached a verdict in favor of Oasis, finding that the funds constituted capital investments. Bello's counterclaim was continued for status.

¶ 35 D. Bello's Counterclaim Under Section 12.56 of the Act

¶ 36 On March 12, 2019, the trial court ordered the parties to submit briefs in support of their respective positions regarding Bello's counterclaim. The briefs were not to exceed five pages.

¶ 37 1. Court Hearing of June 3, 2019

¶ 38 On June 3, 2019, the trial court heard argument on Bello's counterclaim. Counsel for both Bello and Mabel presented competing arguments as to the remedy the trial court should apply to resolve the deadlock between the two shareholder-directors.

¶ 39 Bello's counsel argued that corporate dissolution was considered a remedy of last resort. Counsel requested that, rather than dissolve Oasis, the trial court should resolve the deadlock by ordering a corporate buyout of Mabel's shares at the agreed-upon stipulated value of $143,801.

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[5]The stipulation is silent as to how the value of Mabel's shares would be calculated in the event the Osaghaes were unsuccessful in establishing the existence of the alleged oral loan agreement.

[6]A bystander's report, which was filed on appeal, summarized the testimony and evidence presented at trial.

¶ 40 Mabel's counsel countered that section 12.56 of the Act did not apply in the instant case because that section of the Act provided remedies for minority shareholders and not to 50/50 shareholders of a corporation. Counsel argued that the appropriate remedy for the deadlock was dissolution of Oasis, liquidation of corporate assets, and distribution of the proceeds.

¶ 41 Mabel's counsel argued that the stipulation as to the value of each partner's 50% ownership interest in Oasis did not apply to Bello's counterclaim. Counsel contended that the stipulated valuation did not take into consideration the existence of the alleged oral loan agreement. Counsel maintained that the stipulation was intended to apply only if the Osaghaes were successful in establishing the existence of the oral loan agreement at the jury trial, which they failed to do.

¶ 42 At the conclusion of the hearing, the trial court stated that it could not rule on Bello's counterclaim without having some knowledge of the value of Oasis. In order to acquire such knowledge, the court decided that it must determine whether the stipulated valuation was intended to apply in the context of the counterclaim. The court took the matter under advisement. The court also denied the Osaghaes' motion for judgment notwithstanding the verdict.

¶ 43 On June 10, 2019, the trial court entered an order finding that the stipulated valuation was not intended to apply to Bello's counterclaim. Bello filed a motion to reconsider and attached exhibits to the motion. The exhibits included e-mail correspondence between counsels for the parties, which Bello argued supported her position. Arguments on the motion to reconsider were held on June 18, 2019.

¶ 44 2. Court Hearing of June 18, 2019

¶ 45 At the hearing on June 18, 2019, the trial court reversed itself and determined there was possible ambiguity concerning whether the parties intended that the stipulated valuation applied in the context of Bello's counterclaim. The court encouraged the parties to reach a settlement and scheduled them to participate in a settlement conference. The court also invited the parties to brief the issues raised in Bello's motion for reconsideration.

¶ 46 3. Court Hearing of November 20, 2019

¶ 47 At the next court hearing, the parties informed the trial court that they had been unable to reach a settlement because they could not agree on the valuation of Oasis. The court expressed disappointment that the parties had failed to reach a settlement, which the court determined would have avoided the costs of further litigation.

¶ 48 The court then heard argument and considered evidence on the issue of whether the stipulated value of each partner's 50% ownership interest in Oasis applied in the context of Bello's counterclaim. The court took the motion for reconsideration under advisement and continued the matter.

¶ 49 4. Court Hearing of January 17, 2020

¶ 50 On January 17, 2020, the trial court granted Bello's motion for reconsideration. The court found there was ambiguity as to whether the parties intended the stipulated valuation to apply in the context of Bello's counterclaim. The court set a hearing date of January 24, 2020, to hear argument concerning application of the stipulation and the appropriate remedy to resolve the

shareholder deadlock between Bello and Mabel. At the hearing, each party would be given 30 minutes to present their arguments and evidence. Each party was ordered to exchange any documents they intended to use at the hearing that had not been previously attached to the motion for reconsideration, response, and reply. In addition, at least two days prior to the hearing, the parties were required to submit a list of witnesses they intended to present at the hearing.

¶ 51 5. Final Court Hearing of January 24, 2020

¶ 52 At the hearing on January 24, 2020, the trial court heard argument from Vincent concerning his intent in entering into the stipulation. Vincent was sworn, gave testimony, and offered documentary evidence in the form of tax returns as to why he agreed to the stipulated value of Mabel's 50% ownership interest in Oasis. Vincent explained that he agreed to the stipulation to eliminate the need to call his valuation expert at trial, thereby reducing trial costs and limiting the length of the trial. Vincent reiterated that the stipulation did not account for the amount owed under the alleged oral loan agreement. Vincent testified that the stipulation was only applicable if he and Mabel were successful at trial in establishing the existence of the alleged oral loan agreement. Vincent testified that considering the amount of money he and his wife put into Oasis, and in light of the fact that Mabel did not share in the profits on which she paid taxes in 2017 and 2018, it would be "absurd" for them to agree to a buyout of Mabel's shares for $143,801.

¶ 53 After hearing Vincent's testimony and arguments from both parties' counsels, the trial court heard argument relating to the appropriate remedy to be used in resolving the shareholder-director deadlock.

¶ 54 Bello's counsel requested that the court resolve the deadlock by ordering a corporate buyout of Mabel's shares at the agreed upon stipulated value of $143,801. In support of this request, counsel gave the following reasons: (1) it was Bello's idea to start Oasis, she founded the corporation, and the community identified her with the corporation; (2) Mabel was only involved with Oasis for a few months at the start and testified that she never wanted to be directly involved in running the business; (3) Bello had done most of the work to get Oasis operational as an ongoing business; and (4) Bello was the person who had the business relationships with the patients, referral agencies, vendors, and the insurance companies. As a second option, counsel suggested that Mabel buy out Bello.

¶ 55 Mabel's counsel stated, "[w]e don't have a dissolution claim," but acknowledged that one of the remedies formerly sought to resolve the shareholder-director deadlock was dissolution of Oasis. Counsel then mentioned alternative remedies such as mediation, nonbinding alternative dispute resolution, and placing Oasis into receivership. The trial court responded in part:

> "There are resolutions. And every one of them that you mentioned involves enormous attorneys' fees. Getting me back to what I've been saying all along that it is—let's pick an option that doesn't involve people spending more money on this case that the case doesn't justify. You know, I wish I could force it but I can't. I don't think I can force it to binding arbitration. I almost would if I thought I could. But that would cost money. That's not free either."

¶ 56 The trial court stated that it had resolved the ambiguity question relating to the parties' stipulation. The court determined that e-mail correspondence between counsels for the parties

and language in the stipulation showed that the parties intended "to create a value of the company which would control throughout the litigation related to" the Osaghaes' complaint and Bello's counterclaim. A written order was entered, stating in part: "The court finds that it was the intent of the parties that the Agreed Order and Stipulation entered on January 14, 2019 was intended to set the value of Oasis Hospice to control throughout this litigation, including both the Plaintiffs' Complaint and the Third Party Complaint for dissolution."

¶ 57 The court concluded that the only remaining issue was deciding the appropriate remedy to resolve the shareholder-director deadlock. The court announced that it would issue a written order regarding the remedy issue at a later date.

¶ 58 6. Trial Court's Final Written Order

¶ 59 The trial court issued its final written order on February 19, 2020. On the issue of shareholder remedies, the court noted that among the possible remedies Mabel sought under section 12.56 of the Act were the appointment of a receiver, mediation, or dissolution. The sole remedy Bello sought was an order from the trial court ordering Mabel to sell her shares to Oasis.

¶ 60 In the order, the trial court indicated that it had reviewed the parties' submissions, the cases cited therein, and the applicable law. The court also indicated that it had taken into consideration the evidence adduced at the jury trial regarding the circumstances surrounding the formation of Oasis, the parties' intentions at the time of formation, the current conditions of the business, and the parties' respective levels of participation in operating the business. The court observed that Oasis was Bello's project and that she had operated the business since its inception. The court recited that Mabel had never been involved in the operation of the business. The court found that Mabel's disinterest in purchasing Bello's shares of Oasis demonstrated that Mabel had no interest in running the company.

¶ 61 The trial court determined that the nonexclusivity provision of section 12.56(c) of the Act, which provides that the remedies set forth in the Act "shall not be exclusive of other legal and equitable remedies which the court may impose" (805 ILCS 5/12.56(c) (West 2016)), afforded the court with "broad equitable powers to fashion a remedy that does not do irreparable harm to Oasis." The court held that the remedies Mabel proposed would either result in dissolution of Oasis, a drastic result not favored by the law, or would unnecessarily dissipate the company's limited resources.

¶ 62 The trial court engaged in a balancing of the equities, as provided for in section 12.56 of the Act, and determined that the fair solution was to order the removal of Vincent and Mabel as directors of Oasis. The court also ordered that Mabel's shares be purchased by Oasis for the stipulated sum of $143,801, with payment to be made in twelve equal installments of $11,983.42, due the first of each month, with the first payment due April 1, 2020.

¶ 63 Mabel and Vincent filed their timely notice of appeal on March 12, 2020. This court has jurisdiction pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. July 1, 2017), governing appeals from final judgments entered by the circuit court in civil cases.

¶ 64 II. ANALYSIS

¶ 65 A. Illinois Close Corporations

¶ 66 Before addressing the merits of this appeal, we give a brief overview of what constitutes a closely held corporation under Illinois law and how it differs from a publicly held corporation. In *Galler v. Galler*, 32 Ill. 2d 16, 27 (1964), our supreme court defined a closely held corporation as a corporation "in which the stock is held in a few hands, or in a few families, and wherein it is not at all, or only rarely, dealt in by buying or selling." Our legislature has defined a nonpublic corporation as "a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association." 805 ILCS 5/12.56(a) (West 2016); see also William R. Quinlan & John F. Kennedy, *The Rights and Remedies of Shareholders in Closely Held Corporations Under Illinois Law*, 29 Loy. U. Chi. L.J. 585, 587 (1998) (noting the statutory definition).

¶ 67 There are several key differences between a closely held corporation and a publicly held corporation. "[C]lose corporations, unlike publicly traded corporations, have no market for the corporation's shares." Quinlan & Kennedy, *supra*, at 587. "[T]he shares of a close corporation traditionally lack liquidity because there is no public market for the purchase and sale of those shares." Sara C. McNamara, *Fiduciary Duties in the Wisconsin Close Corporation: Time to Set the Law Straight*, 100 Marq. L. Rev. 1445, 1452-53 (2017). In addition, unlike in a public corporation, where the "shareholders typically do not play a role in the day-to-day operations of the business," the shareholders in a close corporation are frequently employed by the corporation and "normally play a large role in the operations of a business, often acting as officers and directors." *Id.* at 1452. As a result, shareholders of close corporations "invest substantial amounts of time and money and expect a return on that investment in the form of salaries rather than dividends or capital appreciation." Quinlan & Kennedy, *supra*, at 587-88. With this brief overview in mind, we now turn to the merits of this appeal.

¶ 68 B. Section 12.56 of the Act

¶ 69 Mabel contends that the trial court committed reversible error by ordering her to sell her shares of Oasis to the corporation as a remedy to resolve the shareholder deadlock. Mabel argues that the buyout remedy was not available to the court as the court was limited to the 12 remedies outlined in section 12.56(b) of the Act, which do not provide for the involuntary buyout of a nonpetitioning shareholder's shares.

¶ 70 The nonexclusive remedies a trial court may order under section 12.56(b) of the Act include, but are not limited to, the following:

> "(1) The performance, prohibition, alteration, or setting aside of any action of the corporation or of its shareholders, directors, or officers of or any other party to the proceedings;
>
> (2) The cancellation or alteration of any provision in the corporation's articles of incorporation or by-laws;
>
> (3) The removal from office of any director or officer;
>
> (4) The appointment of any individual as a director or officer;
>
> (5) An accounting with respect to any matter in dispute;

(6) The appointment of a custodian to manage the business and affairs of the corporation to serve for the term and under the conditions prescribed by the court;

(7) The appointment of a provisional director to serve for the term and under the conditions prescribed by the court;

(8) The submission of the dispute to mediation or other forms of non-binding alternative dispute resolution;

(9) The payment of dividends;

(10) The award of damages to any aggrieved party;

(11) The purchase by the corporation or one or more other shareholders of all, but not less than all, of the shares of the petitioning shareholder for their fair value and on the terms determined under subsection (e); or

(12) The dissolution of the corporation if the court determines that no remedy specified in subdivisions (1) through (11) or other alternative remedy is sufficient to resolve the matters in dispute. In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve the corporation solely because it has accumulated earnings or current operating profits." 805 ILCS 5/12.56(b)(1)-(12) (West 2016).

See 8 Charles W. Murdock, Illinois Practice, Business Organizations § 18:24 (2d ed. 2021) (discussing alternative remedies).

¶ 71 Mabel's claims of error require this court to engage in statutory construction of section 12.56 of the Act. We review issues of statutory construction *de novo*. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110505, ¶ 48.

¶ 72 The construction of a statute is guided by familiar principles. The primary objective in construing a statute is to ascertain and give effect to the intent of the legislature. *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 23. The most reliable indicator of that intent is the statutory language itself, which must be given its plain and ordinary meaning. *Better Government Ass'n v. Illinois High School Ass'n*, 2017 IL 121124, ¶ 22. A statute is viewed as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation. *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶ 27. Of particular importance here is the rule of statutory construction providing that, in construing a statute, it is appropriate for the court to consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another. *Id.*

¶ 73 Section 12.56 of the Act was enacted to provide trial courts with broader discretion and flexibility in tailoring alternative equitable remedies to judicial dissolution in shareholder disputes involving closely held corporations. See, *e.g.*, 8 Charles W. Murdock, Illinois Practice, Business Organizations § 18:22 (2d ed. 2021) ("[T]he Illinois legislature transferred the alternative remedy section for closely held corporations to new section 12.56, expanded the list of remedies that a court could order from three to 11, provided that dissolution was a remedy of last resort, and provided that even the expanded list of alternative remedies was not exclusive."); David M. Jenkins, *The Election Remedy Under Section 12.56 of the Illinois Business Corporations Act Has Been Destroyed as an Effective Defense in Shareholder Oppression Suits or Corporate Dissolution Proceedings*, 18 Du Page Cty. Bar Ass'n Brief 14,

16 (2006) ("[S]ection 12.56 contains multiple remedies that are available to plaintiff shareholders, which remedies are alternatives to an absolute dissolution of the corporation."); Kenneth J. Vanko, *Dissolution and Rational Choice: The Unique Remedial Framework for Director Deadlock Under the Illinois Business Corporation Act*, 38 N. Ill. U. L. Rev. 348, 362-71 (2018) (providing an overview of section 12.56 of the Act). To accomplish this purpose, section 12.56(b) of the Act provides that the relief a trial court may order in an action under the Act "includes but is not limited to" the 12 alternative remedies outlined in section 12.56(b) of the Act. 805 ILCS 5/12.56(b) (West 2016). Moreover, section 12.56(c) of the Act provides that the remedies set forth in section 12.56(b) of the Act are not "exclusive of other legal and equitable remedies which the court may impose." *Id.* § 12.56(c).

¶ 74 Mabel argues that the trial court erred in relying on section 12.56(c) as authority to order her to sell her shares to Oasis. Mabel contends that the court's construction and application of section 12.56(c) ignores the specific buyout remedy set forth in section 12.56(b)(11) of the Act.

¶ 75 Section 12.56(b)(11) provides that the relief a court may order in an action under subsection (a) includes, but is not limited to, "[t]he purchase by the corporation or one or more other shareholders of all, but not less than all, of the shares of the petitioning shareholder for their fair value and on the terms determined under subsection (e)." *Id.* § 12.56(b)(11). Mabel also relies on section 12.56(f) of the Act which provides that:

> "(f) When the relief requested by the petition includes the purchase of the petitioner's shares, then at any time within 90 days after the filing of the petition under this Section, or at such time determined by the court to be equitable, the corporation or one or more shareholders may elect to purchase all, but not less than all, of the shares owned by the petitioning shareholder for their fair value. An election pursuant to this Section shall state in writing the amount which the electing party will pay for the shares." *Id.* § 12.56(f).

¶ 76 Mabel contends that the statutory language in sections 12.56(b)(11) and 12.56(f) of the Act shows that the legislature intended that only a petitioning shareholder's shares can be ordered sold as a remedy for shareholder deadlock. Mabel argues that "[s]ection 12.56 does not allow for a non-petitioning shareholder to be bought out against his or her will and is an improper interpretation of [s]ection 12.56." Mabel asserts that allowing the trial court "to circumvent the specific repurchase remedy provided in [s]ubsection (b)(11) would render it meaningless."

¶ 77 In support of her contentions, Mabel cites *Sinkus v. BTE Consulting*, 2017 IL App (1st) 152135. In *Sinkus*, the plaintiff, John Sinkus, was held in indirect civil contempt for refusing to comply with trial court orders directing him, as a shareholder of defendant corporation, to contribute to the compensation of the court-appointed provisional director. *Id.* ¶ 1.

¶ 78 One of the issues on appeal in *Sinkus* was whether section 12.56(c) of the Act gave the trial court the discretionary authority to order Sinkus, in his capacity as shareholder, to contribute to the compensation of the provisional director or whether section 12.56(g) of the Act required that the defendant corporation pay the fees of the provisional director. *Id.* ¶¶ 12, 19.[7] The

[7]Section 12.56(g) of the Act provides that "[i]n any proceeding under this Section, the court shall allow reasonable compensation to the custodian, provisional director, appraiser, or other such person appointed by the court for services rendered and reimbursement or direct payment of reasonable costs and expenses, which amounts shall be paid by the corporation." 805 ILCS 5/12.56(g) (West 2016).

appellate court engaged in statutory construction and held that section 12.56(g) of the Act specifically addressed whether, to what extent, and by whom a provisional director appointed under the Act is to be compensated and found that the plain language of the section required that the provisional director be compensated by the corporation and not its shareholders. *Id.* ¶ 16. The appellate court determined that interpreting section 12.56(c) of the Act to permit a trial court to order shareholders to pay the fees of a provisional director would create a conflict between that section and section 12.56(g) of the Act, rendering the latter section meaningless in direct contravention of the canons of statutory construction. *Id.* ¶ 19.

¶ 79 Here, unlike *Sinkus*, the trial court's construction of section 12.56(c) of the Act does not override or conflict with any sections of the Act, in particular sections 12.56(b)(11) and 12.56(f). Unlike section 12.56(g), section 12.56(b)(11) does not contain specific language, but rather nonexclusive language, *i.e.*, "includes but is not limited to." See 805 ILCS 5/12.56(b) (West 2016). The buyout remedy set forth in section 12.56(b)(11) of the Act is not intended to be the exclusive remedy for shareholders of close corporations. Therefore, there is no conflict between section 12.56(b)(11) and the court's use of section 12.56(c) to order the sale of Mabel's shares.

¶ 80 Similar reasoning applies to the construction of section 12.56(f) of the Act. "[S]ection 12.56(f) governs the specific procedure associated with the purchase of a petitioning party's stock in a closely-held corporation." Vanko, *supra*, at 368. In 2005, "the legislature amended section 12.56(f) by adding the following clause at the beginning of subsection (f): 'When the relief requested by the petition includes the purchase of the petitioner's shares.' " Murdock, *supra*, § 18:24 (quoting Pub. Act 94-394, § 5 (eff. July 1, 2005) (amending 805 ILCS 5/12.56(f))). Prior to the amendment, petitioning shareholders were discouraged from seeking relief under section 12.56(f) because they risked an involuntary buyout of their shares. *Vanko*, *supra*, at 369. As originally drafted, section 12.56(f) "gave either the corporation or one or more of the nonpetitioning shareholders the right to elect to purchase the shares of the petitioning shareholder." Murdock, *supra*, § 18:24. However, "not all persons who would bring an action under section 12.56 want to be bought out." Murdock, *supra*, § 18:22. Under amended section 12.56(f) "the mere filing of a lawsuit under section 12.56 no longer subjects the plaintiff to the risk of a forced buyout at the defendant's option." Murdock, *supra*, § 18:24.

¶ 81 In this case, the trial court's construction of section 12.56(c) of the Act does not override or conflict with the specific language of section 12.56(f) because Bello did not request to have her shares purchased by Mabel or Oasis under section 12.56(f). Rather, Bello sought to avoid the dissolution of Oasis by seeking an order from the trial court ordering Mabel to sell her shares to Oasis.

¶ 82 Although we find that sections 12.56(b) and 12.56(c) of the Act gave the trial court the discretionary authority to order Mabel to sell her shares to Oasis, we must now determine whether the court abused its discretion in ordering this remedy. See, *e.g.*, *Schirmer v. Bear*, 174 Ill. 2d 63, 75 (1996) (a trial court's decision to order remedies under the Act is left to the sound discretion of the court). A trial court abuses its discretion when its ruling is arbitrary, fanciful, or unreasonable or where its ruling rests on an error of law. *Urban Partnership Bank v. Chicago Title Land Trust Co.*, 2017 IL App (1st) 162086, ¶ 15.

¶ 83 Mabel argues that even if the trial court had the discretionary authority to order a buyout of her shares under section 12.56 of the Act, the court abused its discretion in doing so because ordering her to sell her shares to Oasis constituted an "illegal forfeiture." In support of this

argument, Mabel relies on the equitable maxim "equity abhors a forfeiture," as discussed in *Saballus v. Timke*, 122 Ill. App. 3d 109 (1983).

¶ 84 *Saballus* involved a two-man partnership governed by the Uniform Partnership Act (Ill. Rev. Stat. 1981, ch. 106½, ¶ 1 *et seq.* (now 805 ILCS 206/1 *et seq.* (West 2014))). *Saballus*, 122 Ill. App. 3d at 116. One of the issues in *Saballus* was whether the forfeiture provision in the parties' partnership agreement should be enforced. The forfeiture provision stated that in the event of a default by one of the partners, "the nondefaulting partner had the right to terminate the defaulting partner's interest without effecting a termination of the partnership upon written notice and opportunity to cure." *Id.* at 112. The trial court held that the plaintiff defaulted under the terms of the partnership agreement by, *inter alia*, failing to contribute his *pro rata* share of an end loan requirement, and the court applied the forfeiture provision. *Id.* at 116-17.

¶ 85 The *Saballus* court reversed this portion of the trial court's decision. The *Saballus* court determined that although plaintiff breached the partnership agreement, the defendant also breached the agreement by failing to "render an accounting to his partner." *Id.* at 117. The *Saballus* court found that since both parties were in breach of the partnership agreement, neither of them was entitled to enforce the forfeiture provision, and as a result, the court dissolved the partnership. *Id.* at 117-19. The *Saballus* court held that its finding was "buttressed by the equitable maxim that forfeitures are not favored by the law," especially where a party's right to enforce a forfeiture provision is "not clearly and unequivocally shown." *Id.* at 119.

¶ 86 The equitable maxim that "equity abhors a forfeiture," as discussed in *Saballus*, is inapplicable in the matter before us. Here, the trial court reached an equitable result as contemplated by the Act.

¶ 87 The evidence showed that Mabel and Bello both agreed that they could not remain in business together. The trial court was faced with the choice of dissolving Oasis or ordering some other equitable remedy. The court chose the latter option.

¶ 88 In reaching its decision, the court noted that Oasis was Bello's project and that she had operated the business since its inception. The court observed that Mabel had never been directly involved in the operation of the business. The court found that Mabel's disinterest in purchasing Bello's shares of Oasis demonstrated that Mabel had no interest in running the company. The court balanced the equities as provided for in section 12.56 of the Act, with the goal of selecting a remedy that avoided additional attorney fees and costs associated with dissolving the corporation. The court determined that the fair solution was to order the removal of Vincent and Mabel as directors of Oasis and order that Mabel's shares be purchased by Oasis for the stipulated sum of $143,801.

¶ 89 Mabel next argues that it was "manifestly unjust" for the trial court to order her to sell her shares to Oasis, as she made "significant investments of time, money and resources," to the corporation for which she has never been adequately compensated. We find this argument lacks merit.

¶ 90 The jury found that the funds the Osaghaes advanced to Oasis did not constitute oral loans to be paid back, but rather constituted capital investments in the newly formed corporation. Next, the trial court found that Mabel was not involved in the operation of the business and that she had no interest in running the company. Evidence in the bystander's report of the jury trial proceedings supports the court's findings.

¶ 91 At the jury trial, Mabel testified that she was not involved in any of the work necessary to get Oasis's licensure, other than assisting Bello in preparing the policies and procedures. Mabel was not aware of Oasis's finances because the financial aspects were handled by Vincent and Bello. Mabel testified that although she was in charge of Oasis's clinical aspect, there was nothing for her to do from a patient/services standpoint because Oasis was not up and running until the latter part of 2014. Mabel acknowledged that once the corporation was operational, she "could not perform the nursing aspect required by licensure" because she had a full-time job. Mabel testified that Bello was required to hire another registered nurse because she "was unable to perform the nursing services for Oasis."

¶ 92 Mabel next argues that nothing in the record disputes or contravenes the fact that she wanted to acquire Bello's shares of Oasis and run the business herself. The record contradicts this assertion. At the final court hearing of January 24, 2020, the trial court asked Mabel's counsel if he was requesting that Oasis be dissolved. Counsel responded, "[w]e don't have a dissolution claim," but acknowledged that one of the remedies he formerly sought to resolve the shareholder deadlock was dissolution of Oasis. Counsel then mentioned alternative remedies, such as mediation, nonbinding alternative dispute resolution, and placing Oasis into receivership. The court determined that these remedies all involved enormous attorney fees and were therefore undesirable.

¶ 93 Notwithstanding the arguments advanced by Mabel, we find the trial court did not abuse its discretionary authority under section 12.56 of the Act by ordering Mabel to sell her shares to Oasis.

> "In determining the appropriate relief to order pursuant to this Section, the court may take into consideration the reasonable expectations of the corporation's shareholders as they existed at the time the corporation was formed and developed during the course of the shareholders' relationship with the corporation and with each other." 805 ILCS 5/12.56(d) (West 2016).

¶ 94 In this case, the trial court considered these factors in arriving at its decision. As previously mentioned, the court noted that Oasis was Bello's project and that she had operated the business since its inception. The court observed that Mabel had never been directly involved in the operation of the business. The court found that Mabel's disinterest in purchasing Bello's shares of Oasis demonstrated that Mabel had no interest in running the company. The court held that the remedies Mabel proposed would either result in dissolution of Oasis or would unnecessarily dissipate the company's limited resources. The court balanced the equities as provided for in section 12.56 of the Act with the goal of selecting a remedy which avoided additional attorney fees and costs associated with dissolving the corporation. The court determined that the fair solution was to order the removal of Vincent and Mabel as directors of Oasis and order that Mabel's shares be purchased by Oasis for the stipulated sum of $143,801. The court found that these remedies were preferable to judicial dissolution. We agree with the court's finding.

¶ 95 Our supreme court has held that "[j]udicial dissolution is an extreme remedy which courts are properly reluctant to order." *Schirmer*, 174 Ill. 2d at 74. The position taken by our supreme court in *Schirmer*, which was followed by the trial court in the instant case, is in accord with other jurisdictions. See *Edenbaum v. Schwarcz-Osztreicherne*, 885 A.2d 365, 380 (Md. Ct. Spec. App. 2005) (explaining that courts are hesitant to order dissolution of an ongoing business if a less drastic alternative can be fashioned); *Scott v. Trans-System, Inc.*, 64 P.3d 1, 5 (Wash. 2003) (holding that judicial dissolution of a corporation is a drastic remedy and a

court should consider whether that solution will be beneficial or detrimental to shareholders or injurious to the public); *Brenner v. Berkowitz*, 634 A.2d 1019, 1030 (N.J. 1993) (holding that judicial dissolution of a corporation is an extreme remedy to be imposed with caution after a careful balancing of the interests at stake); *Levine v. Beem*, 608 So. 2d 373, 374 (Ala. 1992) (holding that judicial dissolution of a corporation is an extreme remedy and should be ordered only where the facts clearly warrant it).

¶ 96 We find the trial court used its broad equitable powers under section 12.56 of the Act to fashion a remedy that was fair and equitable to both parties. See, *e.g.*, *Brenner*, 634 A.2d at 1031 (holding that "in appropriate circumstances a court exercising its equitable powers, as an alternative to dissolution, could compel the purchase of a shareholder's stock by the corporation"); see also Thomas J. Bamonte, *Should the Illinois Courts Care About Corporate Deadlock?*, 29 Loy. U. Chi. L.J. 625, 640 (1998) (amendments to section 12.56 of the Act "make clear that the circuit court retains all of its equitable powers to shape a remedy specifically suited to the circumstances of the shareholder's complaint").

¶ 97 C. Standing

¶ 98 Mabel next contends the trial court erred in finding that Oasis had standing to seek relief under section 12.56 of the Act in connection with Bello's third-party counterclaim. Mabel argues that the trial court implicitly conferred legal standing on Oasis because the relief the court granted to Bello required Oasis to purchase Mabel's shares. Oasis did not seek relief in Bello's third-party counterclaim. Oasis was merely named as a nominal third-party plaintiff. The fact that the trial court ordered Oasis, on Bello's behalf, to purchase Mabel's shares does not indicate the court implicitly conferred legal standing on Oasis to seek relief on its own behalf.

¶ 99 D. Plain Error

¶ 100 Mabel's final contention is that the trial court erred by failing to conduct an evidentiary trial on Bello's third-party counterclaim. Mabel also argues that the court erred by making factual findings based on arguments by Bello's counsel, which Mabel contends are contrary to the record.

¶ 101 Neither argument was raised before the trial court. Therefore, both are waived. See *In re Marriage of Gabriel*, 2020 IL App (1st) 182710, ¶ 72. Mabel's reliance on the plain error doctrine is an acknowledgment that her counsel never voiced concerns to the trial court that Bello's counsel's arguments were contrary to the record or that the final court hearing of January 24, 2020, did not constitute a trial on the merits of Bello's third-party counterclaim.

¶ 102 Mabel requests that we review her claims under the plain error doctrine. Mabel concedes that the plain error doctrine more commonly applies in criminal cases and that its application in civil cases is limited to circumstances "amounting to an affront to the judicial process." (Internal quotation marks omitted.) *Palanti v. Dillon Enterprises, Ltd.*, 303 Ill. App. 3d 58, 66 (1999). Indeed, use of the plain error doctrine in civil cases is "exceedingly rare." (Internal quotation marks omitted.) *Reed v. Ault*, 2012 IL App (2d) 110744, ¶ 33; *Matthews v. Avalon Petroleum Co.*, 375 Ill. App. 3d 1, 8 (2007). The plain error doctrine applies in civil cases "only where the act complained of was a prejudicial error so egregious that it deprived the complaining party of a fair trial and substantially impaired the integrity of the judicial process itself." *Lange v. Freund*, 367 Ill. App. 3d 641, 649 (2006).

¶ 103 Before we apply the plain error doctrine, we must first determine whether any error occurred at all. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Absent error, there is no plain error. *People v. Hood*, 2016 IL 118581, ¶ 18.

¶ 104 In regard to Mabel's first claim of error, the record shows that she was not deprived of a trial on the merits. A trial is defined as a "formal judicial examination of evidence and determination of legal claims in an adversary proceeding." Black's Law Dictionary 1735 (10th ed. 2014). "The object of a trial is to secure a fair and impartial administration of justice between the parties to the litigation." *Gutsch v. Hyatt Legal Services*, 403 N.W.2d 314, 315-16 (Minn. Ct. App. 1987). "The right to a trial includes the right to be heard, to produce witnesses and documents, to examine and cross-examine witnesses, to present arguments, and to have the case decided upon the merits." *Id.* at 315.

¶ 105 The record shows that the final hearing held on January 24, 2020, constituted an evidentiary trial on the merits concerning the issues raised in Bello's third-party counterclaim. The record reveals that a week prior to the hearing, the trial court notified the parties that they would each be given 30 minutes to present their arguments and evidence. Each party was ordered to update the exchange of documents they intended to use at the hearing. In addition, at least two days prior to the hearing, the parties were required to submit a list of witnesses they intended to have testify at the hearing.

¶ 106 At the hearing, Vincent was sworn as a witness and gave testimony and offered documentary evidence in the form of tax returns as to why he agreed to the stipulated value of Mabel's 50% ownership interest in Oasis. After hearing Vincent's testimony and arguments from both parties' counsels, the trial court heard argument relating to the appropriate remedy to be used in resolving the shareholder deadlock.

¶ 107 The trial court announced that it had resolved the ambiguity relating to the parties' stipulation. The court determined that e-mail correspondence between counsels for the parties and language in the stipulation showed that the parties intended "to create a value of the company which would control throughout the litigation related to" the Osaghaes' complaint and Bello's counterclaim. The court concluded that the only remaining issue was deciding the appropriate remedy to apply to resolve the shareholder deadlock between Bello and Mabel. The court announced that it would issue a written order regarding the appropriate remedy at a later date.

¶ 108 At the hearing, the court allowed the parties to be heard and allowed counsels to examine and cross-examine witnesses. The court then made legal and factual findings. The court also heard competing arguments and considered conflicting evidence regarding the appropriate remedy to apply in resolving the shareholder deadlock. The merits of Bello's third-party counterclaim were fully litigated at the January 24, 2020, evidentiary hearing.

¶ 109 The trial court's final written order bears this out. In the order, the trial court noted that it had reviewed the parties' submissions, the cases cited therein, and the applicable law. The court indicated that it had taken into consideration the evidence adduced at the jury trial regarding the circumstances surrounding the formation of Oasis, the parties' intentions at the time of formation, the current conditions of the business, and the parties' respective levels of participation in operating the business.

¶ 110 The trial court determined that the nonexclusivity provision of section 12.56(c) of the Act afforded the court with "broad equitable powers to fashion a remedy that does not do irreparable harm to Oasis." The court held that the remedies Mabel proposed would either

result in dissolution of Oasis or would unnecessarily dissipate the company's limited resources. The court balanced the equities as provided for in section 12.56 of the Act and determined that the fair solution was to order the removal of Vincent and Mabel as directors of Oasis and order Mabel's shares be purchased by Oasis for the stipulated sum of $143,801.

¶ 111 In regard to Mabel's second and final claim of error, the trial court's final written order shows that the court's factual findings were based on its own examination of the evidence, and not on any alleged "mischaracterizations" of the evidence by Bello's counsel.

¶ 112 In sum, there was no error, much less reversible plain error. As proscribed in *Gutsch*, 403 N.W.2d at 315-16, the trial court heard from the litigants, allowed the production of witnesses and documents, allowed for examination and cross-examination, heard arguments, and decided the case upon the merits. Mabel was not deprived of a trial on the merits regarding the issues raised in Bello's third-party counterclaim, and the court's factual findings were not based on any alleged "mischaracterizations" of the evidence by Bello's counsel.

¶ 113 III. CONCLUSION

¶ 114 We find that the nonexclusivity provision of section 12.56(c) of the Act gave the trial court the discretionary authority to order Mabel to sell her shares to Oasis as an alternative equitable remedy to dissolution of the closely held corporation and that the court did not abuse its discretion in doing so. We also find that Oasis was not granted standing to seek relief under section 12.56 of the Act. Finally, we find there was no plain error regarding Mabel's contentions that the trial court failed to conduct an evidentiary trial on Bello's third-party counterclaim or that the court made factual findings based on arguments by Bello's counsel, which Mabel contends are contrary to the record. Accordingly, we affirm the trial court's ruling.

¶ 115 Affirmed.