SUMMARY
June 8, 2023

2023COA52

No. 22CA0988, *Colorado v. International Association of Firefighters* — Government — Attorney General — Public Integrity; Civil Procedure — Intervention of Right — Permissive Intervention

A division of the court of appeals considers whether section 24-31-113, C.R.S. 2022 — which permits the attorney general to bring a civil suit against a governmental authority when the attorney general has reasonable cause to believe that the governmental authority has engaged in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities protected by law — bars a third party from intervening pursuant to C.R.C.P. 24. Based on the plain language of the statute and informed by how federal courts have addressed motions to intervene in cases brought under a similar federal statute, the division concludes that the statute does not bar intervention.

The division next addresses whether the appellant met the criteria for intervention under Rule 24. The division concludes that the district court did not err by denying the appellant's motion to intervene as of right under Rule 24(a), but that it erred by failing to address the appellant's request for permissive intervention under Rule 24(b). Accordingly, the judgment is affirmed in part and reversed in part, and the case is remanded with directions.

COLORADO COURT OF APPEALS **2023COA52**

Court of Appeals No. 22CA0988
Arapahoe County District Court No. 21CV32026
Honorable Elizabeth Beebe Volz, Judge

State of Colorado, ex rel. Philip J. Weiser, Attorney General,

Plaintiff-Appellee,

v.

City of Aurora, Colorado,

Defendant-Appellee,

and

International Association of Firefighters, Local 1290,

Intervenor-Appellant.

ORDER AFFIRMED IN PART AND REVERSED IN PART,
AND CASE REMANDED WITH DIRECTIONS

Division V
Opinion by JUDGE YUN
Navarro and Richman*, JJ., concur

Announced June 8, 2023

Philip J. Weiser, Attorney General, Eric R. Olson, Solicitor General Emeritus, Janet S. Drake, Deputy Attorney General, Alexa D. Jones, Assistant Attorney General, Talia B. Kraemer, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

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*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2022.

¶ 1 The International Association of Firefighters, Local 1290 (the Union) appeals the district court's order denying its motion to intervene in the underlying lawsuit between plaintiff-appellee, the State of Colorado through Philip J. Weiser, Attorney General (the State), and defendant-appellee, the City of Aurora (the City).

¶ 2 The public integrity statute, section 24-31-113, C.R.S. 2022, permits the attorney general to bring a civil suit against a governmental authority when the attorney general has reasonable cause to believe that the governmental authority has engaged in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities protected by law. The State and the City argue that the public integrity statute bars a third party (here, the Union) from intervening pursuant to C.R.C.P. 24 because it limits the parties in a pattern-or-practice action to the attorney general and governmental authorities or their agents, and because third-party intervention would frustrate the statute's purpose of incentivizing voluntary reform. But based on the plain language of the statute and informed by how federal courts have addressed motions to intervene in cases brought under a similar federal

statute, we conclude, as a matter of first impression, that the public integrity statute does not bar intervention.

¶ 3 We further conclude that the district court did not err by denying the Union's motion to intervene as of right under Rule 24(a), but that it erred by failing to address the Union's request for permissive intervention under Rule 24(b). We therefore affirm in part, reverse in part, and remand with directions.

I. Background

¶ 4 This case arises from the investigations of the Aurora Police Department (Aurora Police) and Aurora Fire Rescue (Aurora Fire) that followed the death of Elijah McClain on August 30, 2019. McClain died six days after a police encounter during which Aurora Fire personnel injected him with ketamine to sedate him.

A. The Report

¶ 5 In September 2021, the State released a report pursuant to section 24-31-113 finding that Aurora Police and Aurora Fire had engaged in a pattern and practice of illegal conduct. The report found that Aurora Police had a pattern and practice of racially biased policing, using excessive force, and failing to record required information about civilian encounters. The report also concluded

that Aurora Fire had a pattern and practice of illegally administering the sedative ketamine. Specifically, the report found that individuals were routinely given ketamine in doses that exceeded the maximum allowed by protocol and that, once sedated, some people were not properly monitored, placing them at risk for life-threatening complications.

¶ 6 After the State released its report, the State and the City negotiated for two months and crafted a consent decree intended to address and remediate the State's findings under the supervision of an independent monitor.

B. The Consent Decree

¶ 7 The consent decree establishes goals including reducing racial bias in policing and creating a culture of enforcement that prioritizes de-escalation when possible. It outlines procedures that the City must follow, in consultation with the independent monitor, to adopt new policies and trainings. But the decree does not dictate the details of implementation, which the City will instead develop over a two-year period.

¶ 8 Many of the decree's requirements are specific to Aurora Police. As to Aurora Fire, the decree requires changes to

procedures for using chemical sedatives. The decree acknowledges that Aurora Fire stopped using ketamine in the field in September 2020 and that the City and Aurora Fire "have stated they do not intend to use ketamine again." But if Aurora Fire does seek to resume using ketamine, the decree provides that it must first submit a medical protocol to the independent monitor and develop a procedure for analyzing incidents of ketamine use. Aurora Fire must further ensure that its use of any other chemical sedatives complies with applicable law and develop a process to periodically review their use. And the policies that govern coordination between Aurora Police and Aurora Fire must ensure that Aurora Fire uses chemical sedatives only under its own medical protocols, and not at the suggestion of Aurora Police.

¶ 9 The decree also requires Aurora Fire to review its recruitment and hiring programs to ensure that it attracts a diverse, qualified workforce. The process for hiring entry-level firefighters, which was handled entirely by the Civil Service Commission before the decree, must be revised to give Aurora Fire a more active role in hiring. Finally, the Civil Service Commission, which has certain responsibilities for employment matters involving Aurora Fire

personnel, must consider changes to its promotion process and revise its rules governing employee discipline to reduce the time involved in resolving disciplinary cases, require more detail in written disciplinary decisions, and make the process more transparent to the public.

C. Procedural History

¶ 10 On November 23, 2021, the State filed a civil complaint against the City seeking, as relevant here, to "enjoin Aurora Fire from engaging in a pattern or practice of using ketamine or other chemical sedatives . . . in violation of the law." At the same time, the State and the City submitted a joint motion seeking entry of their proposed consent decree.

¶ 11 On December 1, 2021, the Union, which represents the firefighters and emergency medical technicians of Aurora Fire and advocates for its members in their employment, moved to intervene as a defendant, either as of right or permissively, under C.R.C.P. 24. The Union also asked the court not to make a final decision about the consent decree until it resolved the Union's motion. The next day, however, the court approved the consent decree without addressing the motion. On December 13, the Union moved to stay

the motion to allow it time to discuss its concerns with the State and the City. The court granted the motion to stay.

¶ 12 Three months later, the Union filed a renewed motion to intervene. The State and the City filed a joint opposition, arguing that the public integrity statute does not allow intervention pursuant to Rule 24 and, in any event, the Union had failed to satisfy the requirements for intervention, either as of right or permissively, under Rule 24.

¶ 13 The court denied the Union's motion. As to the Union's request to intervene as of right, the court found that the Union did not have an interest in the litigation and that, even if it did have an interest, its interest would not be impaired if it were not allowed to intervene. The court did not address whether the public integrity statute bars intervention or the Union's request for permissive intervention.

¶ 14 The Union now appeals.

II. Analysis

¶ 15 The Union contends that the district court reversibly erred by (1) denying the Union's request to intervene as a matter of right; (2) failing to address the Union's request for permissive

intervention; and (3) approving the consent decree while the Union's initial motion to intervene was pending. For their part, the State and the City contend that the public integrity statute bars intervention and, even if the statute allows intervention, the district court did not err by denying the Union's motion to intervene and approving the consent decree.

¶ 16 We begin with the question whether the statute bars intervention and then address each of the Union's contentions in turn.

A. The Public Integrity Statute

¶ 17 The State and the City contend that the public integrity statute bars intervention pursuant to Rule 24. Although the district court did not address this issue, the State and the City argue that we can affirm on any grounds supported by the record. *See Laleh v. Johnson*, 2017 CO 93, ¶ 24 (an appellate court may affirm a judgment on any ground supported by the record, even if the district court did not rely on or consider it). We disagree that the public integrity statute bars intervention.

1. Standard of Review

¶ 18 Whether the public integrity statute bars intervention is a question of law that we review de novo. *See Yen, LLC v. Jefferson Cnty. Bd. of Comm'rs*, 2021 COA 107, ¶ 10. We aim to effectuate the legislature's intent, and, in doing so, we look first to the statute's plain language. *Id.* at ¶ 11.

2. Discussion

¶ 19 The public integrity statute provides that it is "unlawful for any governmental authority . . . to engage in a pattern or practice of conduct . . . that deprives persons of rights, privileges, or immunities" protected by law. § 24-31-113. Upon reasonable belief that a violation of the statute has occurred, the attorney general may sue "to eliminate the pattern or practice" — but the attorney general must first notify the governmental authority of the factual basis for the suit, after which the governmental authority has sixty days to cease the identified conduct. *Id.* If the pattern or practice is not permanently eliminated after sixty days, the attorney general may file a civil lawsuit. *Id.*

¶ 20 The State and the City argue that the public integrity statute bars the Union from intervening because the Union is not a

potential party under the statute: the attorney general may bring a pattern-or-practice claim only against governmental authorities or their agents. But the State and the City acknowledge that our supreme court has interpreted Rule 24 to permit an entity to intervene "even if it could not have been a party at the start of the legal action." *See Cherokee Metro. Dist. v. Meridian Serv. Metro. Dist.*, 266 P.3d 401, 406 (Colo. 2011) (noting that a proposed intervenor could intervene in a contract action even though it was not a party to the contract); *Feigin v. Alexa Grp., Ltd.*, 19 P.3d 23, 29 (Colo. 2001) (rejecting any requirement that proposed intervenors prove they had enforcement rights under, or were intended beneficiaries of, the underlying agreements). Legislatures are presumed to craft statutes "with knowledge of existing law." *Snyder v. Sullivan*, 705 P.2d 510, 513 (Colo. 1985). Because nothing in the public integrity statute limits intervention to entities that could have been parties at the start of the legal action, we decline to read this restriction into the statute. *See Yen*, ¶ 13 ("[W]e do not add words to the statute.") (citation omitted).

¶ 21 The State and the City also argue that the public integrity statute bars intervention in general because "intervention would

frustrate the statute's purpose." Specifically, they argue that the statute "incentivizes voluntary reform," as evidenced by the sixty-day grace period before the attorney general may file suit, and that intervention could "undermine" a governmental authority's choice to engage in "consensual resolution" of the attorney general's claims. But nothing in the statute bars intervention, and we are not at liberty to rewrite the statute to better effectuate what we perceive to be the legislature's intent. *See Prairie Mountain Publ'g Co., LLP v. Regents of Univ. of Colo.*, 2021 COA 26, ¶ 17 (a court may not rewrite statutes to improve them).

¶ 22 While the Colorado Rules of Civil Procedure "do not govern procedure and practice in any special statutory proceeding insofar as they are inconsistent or in conflict with the procedure and practice provided by the applicable statute," C.R.C.P. 81(a), the public integrity statute does not set out a procedure that is inconsistent with allowing a third party to intervene in a civil suit. Rather, the statute simply provides that the attorney general may sue a governmental authority if it does not cease the identified conduct shortly after receiving notice. Accordingly, we perceive no

inherent conflict between the public integrity statute and Rule 24 within the meaning of Rule 81.

¶ 23 Moreover, at least in the case of permissive intervention under Rule 24(b)(2), the requirement that the court consider whether intervention will "prejudice the adjudication of the rights of the original parties" may address any potential frustration of the statute's purpose. If permitting intervention in a particular case would harm the parties and their negotiation efforts, the court could deny intervention under the rule.

¶ 24 Further, we observe that the public integrity statute closely resembles 34 U.S.C. § 12601, which empowers the United States Attorney General to sue "any governmental authority" for "a pattern or practice of conduct . . . that deprives persons of rights, privileges, or immunities" protected by law, and the State and the City cite no authority, nor are we aware of any, holding that § 12601 does not permit intervention, even though that statute and its predecessor, 42 U.S.C. § 14141 (transferred 2017), have existed for nearly thirty years. On the contrary, courts analyze motions to intervene in federal pattern-or-practice suits as in any other case — under Fed. R. Civ. P. 24. *See, e.g.*, *United States v. City of Los Angeles*,

288 F.3d 391, 404 (9th Cir. 2002) (permitting a police union to intervene in a § 14141 suit in which the United States alleged that the Los Angeles Police Department had engaged in a pattern or practice of false arrests, excessive force, and improper searches and seizures); *United States v. City of Albuquerque*, No. CV 14-1025 RB/SMV, 2015 WL 13747185, at *1 (D.N.M. Feb. 19, 2015) (unpublished opinion) (permitting a police union to intervene in a § 14141 suit in which the United States alleged that the City of Albuquerque's police force had engaged in a pattern or practice of excessive force); *United States v. City of Seattle*, No. C12-1282JLR, 2018 WL 348372, at *4 (W.D. Wash. Jan. 10, 2018) (unpublished opinion) (denying a motion to intervene in a § 14141 suit after analyzing the motion under Fed. R. Civ. P. 24(a) and (b)(1)). We see no reason to hold otherwise in the context of Colorado's statute.

¶ 25 We are not persuaded otherwise by the State and the City's reliance on *Floyd v. City of New York*, 770 F.3d 1051 (2d Cir. 2014). In that case, the court denied motions by several police unions seeking to intervene in a suit alleging that New York City's "stop-and-frisk" policy was being carried out in a discriminatory manner. *Id.* at 1054. Although the court noted that it had "serious

reservations about the prospect of allowing a public-sector union to encroach upon a duly-elected government's discretion to settle a dispute against it," it engaged in a straightforward Fed. R. Civ. P. 24 analysis and denied the motions in substantial part because they were untimely. *Id.* at 1058-60.

¶ 26 We therefore conclude that the public integrity statute does not bar intervention pursuant to Rule 24.

B. Intervention as a Matter of Right

¶ 27 The Union contends that the district court erred by denying its request to intervene as a matter of right. We disagree.

1. Standard of Review and Governing Law

¶ 28 We review the district court's denial of a motion to intervene as of right de novo. *Auto-Owners Ins. Co. v. Bolt Factory Lofts Owners Ass'n*, 2021 CO 32, ¶ 10. Under Rule 24(a)(2), a nonparty, upon a timely application, is entitled to intervene as of right when it

> claims an interest relating to the property or transaction which is the subject of the action and [it] is so situated that the disposition of the action may as a practical matter impair or impede [its] ability to protect that interest, unless [its] interest is adequately represented by existing parties.

"Intervention as of right is a fact-specific determination." *Auto-Owners Ins. Co.*, ¶ 11 (quoting *Cherokee Metro. Dist.*, 266 P.3d at 404).

¶ 29 "Rule 24(a)(2) imposes 'three substantive requirements' for intervention as of right." *Id.* at ¶ 12 (quoting *Feigin*, 19 P.3d at 28). First, the party seeking intervention must claim "an interest relating to the transaction that is the subject of the action." *Id.* (quoting *Feigin*, 19 P.3d at 28). Courts should use "a 'flexible approach' to determining whether a party has claimed such an interest," and "[t]he existence of an interest should be determined in a liberal manner." *Id.* (quoting *Cherokee Metro. Dist.*, 266 P.3d at 404). Thus, this interest prong is "a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Id.* (citation omitted).

¶ 30 Second, "the party seeking intervention must show that it is so situated that the disposition of the underlying action may as a practical matter impair its ability to protect its interest." *Id.* at ¶ 13 (quoting *Cherokee Metro. Dist.*, 266 P.3d at 406). This prong is satisfied "if the disposition of the action . . . will prevent any future attempts by the applicant to pursue [its] interest." *Id.* (quoting

Feigin, 19 P.3d at 30). But "where there [are] alternative forums in which to bring a suit, [a party] is neither impaired nor impeded in [its] ability to protect [its] interests." *Id.* (quoting *Feigin*, 19 P.3d at 30).

¶ 31 Third, "the party seeking intervention must establish that its interest is not 'adequately represented by existing parties.'" *Id.* at ¶ 14 (quoting *Cherokee Metro. Dist.*, 266 P.3d at 407). "A party satisfies this prong if it demonstrates that its interests are not represented at all or if the existing parties are adverse." *Id.* (citing *Feigin*, 19 P.3d at 31).

¶ 32 We conclude that the district court correctly found that the Union did not satisfy the first or the second requirement under Rule 24(a)(2).

2. Interest

¶ 33 The district court found that the Union did not have an interest in the subject matter of the litigation because "making changes in city policy and city employee conduct is an interest that belongs to the city." The court acknowledged that, "[w]hen a city makes some changes in supervision, training, and monitoring like those required" by the consent decree, city employees will

implement the changes "because they will be prohibited from engaging in conduct that is held to be unlawful." But the court found that "[t]his does not . . . give the city employees or their union an interest in defending that conduct."

¶ 34 The Union argues that the district court erred because the consent decree "promises sweeping changes" to the terms and conditions of its members' employment that "may conflict with" its collective bargaining agreement (CBA). Specifically, it notes that the consent decree (1) sets out new policies on the use of chemical sedatives; (2) mandates training on the new policies; (3) provides a framework for changes to hiring, promotion, and discipline; and (4) creates a new dispute-resolution procedure. It further argues that it has an interest because "[i]ts members have been accused of widespread civil rights violations." Finally, it argues that this case is "directly analogous" to *City of Los Angeles*, 288 F.3d at 400, in which the Ninth Circuit held that a police union had interests that might be impaired by a proposed consent decree. We address each of the Union's arguments in turn.

¶ 35 The Union argues that it has "an interest in ensuring the integrity" of its CBA. The CBA covers issues of pay, leave, work

hours, insurance, and pension coverage. As the Union notes, the CBA also establishes joint committees between the Union and the City and requires the City to provide the Union with a copy of proposed changes to the City's employee manual thirty days before implementation. Although the Union speculates that the consent decree "may conflict with" the CBA, it does not identify any particular conflict. Nor is a conflict apparent to us, as the CBA and consent decree address different topics. For instance, the consent decree does not affect the joint committees or alter the Union's right to review and comment on proposed changes to the City's employee manual. Accordingly, the Union's interest in preserving its CBA is not an "interest in the subject matter of the litigation." *Feigin*, 19 P.3d at 26. And to the extent the Union's interest is based on the possibility that future policies developed under the consent decree may conflict with the CBA, such an interest is too remote to justify intervention.

¶ 36 The Union argues that it has an interest based on its members' obligation to undergo training and implement new policies on the use of chemical sedatives. But while it is true that Union members will carry out new policies developed under the

decree, so too will many other City employees. Allowing all employees affected by the decree to claim a legally protectable interest would create an unmanageably large number of potentially intervening parties, undermining the purpose of Rule 24 intervention. *See Feigin*, 19 P.3d at 26 (Rule 24 should be interpreted to allow issues related to the same transaction to be resolved together when "compatible with efficiency and due process").

¶ 37 The Union argues that it has an interest based on the consent decree's provisions concerning hiring, promotion, and discipline. But these subjects are expressly excluded from collective bargaining under the City Charter. *See* Aurora City Charter §§ 14-2(f), 14-3, https://perma.cc/H52Z-TBJW (providing that it is the "inherent and exclusive right of the City" to "hire, promote, . . . evaluate and retain employees" and to "demote, suspend and discharge or otherwise discipline employees," and exempting these matters from collective bargaining); *Floyd*, 770 F.3d at 1061 (union lacked a legally protectable interest when the changes required by the consent decree fell squarely within the "management rights" provision of New York City's administrative code, which exempts

certain managerial prerogatives from mandatory collective bargaining). Thus, the changes contemplated by the consent decree do not affect the Union's collective bargaining rights and cannot justify its intervention as of right.

¶ 38 The Union argues that it has an interest because the consent decree creates a new dispute-resolution procedure, which it speculates may apply to its members in "unclear" ways. But the dispute-resolution procedure set out in the consent decree does not involve the Union's members: rather, it is a process for resolving disputes that arise between the City and the independent monitor about the City's obligations.[1]

¶ 39 The Union argues that it has an interest because the State's lawsuit against the City "accuses the Union's members of a pattern

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[1] In its reply brief, the Union argues that it has the ability or standing to protect or assert its members' rights outside of the CBA. Although the Union's opening brief contains one sentence stating that it "has an interest in advocating for its membership more broadly, outside the four corners of the CBA," the Union did not develop this argument or provide any legal authority until it filed its reply brief. We decline to consider this new argument developed for the first time in the reply brief. *See In re Marriage of Dean*, 2017 COA 51, ¶ 31 ("We do not consider the arguments [the appellant] makes for the first time in her reply brief or those that seek to expand upon the contentions she raised in her opening brief.").

and practice of illegal behavior" amounting to "widespread civil rights violations." But any indirect reputational effect on individual firefighters is too "remote from the subject matter of the proceeding" to justify intervention. *Floyd*, 770 F.3d at 1061 (quoting *Brennan v. N.Y.C. Bd. of Educ.*, 260 P.3d 123, 129 (2d Cir. 2001)); *see id.* at 1060-61 (holding that, where lawsuits targeted New York City and not individual police officers, the police unions' interest in their members' reputations was "too indirect and insubstantial" to be legally protectable).

¶ 40 Finally, the Union argues that this case is "directly analogous" to *City of Los Angeles*, 288 F.3d at 400, in which the Ninth Circuit held that a police union had interests that might be impaired by a proposed consent decree. In that case, however, the consent decree provided for an implementation process that included bargaining with the police union concerning specific provisions. *Id.* at 401. Normally, the court explained, "California law alone governs the bargaining process" between the union and the city, "and any disputes relating to that bargaining process would be resolved in California courts." *Id.* But the consent decree altered the bargaining process in several ways, including "purport[ing] to give

the district court the power . . . to override" the union's bargaining rights under California law and potentially requiring the union "to resolve a bargaining dispute in federal court." *Id.* Accordingly, the consent decree's changes to the union's "state-law rights to negotiate about the terms and conditions of its members' employment" gave the union "an interest in the consent decree at issue." *Id.* at 399-400. In contrast, the consent decree here does not change the Union's rights under its CBA. We thus conclude that *City of Los Angeles* is inapposite.

¶ 41 Accordingly, because the Union has not identified any actual conflict between the consent decree and its CBA — and because, as discussed below, conflicts that may arise in the future can be addressed then — we conclude that the Union does not have an interest in the subject matter of this litigation.

3. Impairment

¶ 42 The district court further found that, even if the Union had an interest in the litigation, its interest would not be impaired if it were not allowed to intervene because nothing prevents it from "pursuing any interest in the future." We agree.

¶ 43 An interest is impaired "if the disposition of the action . . . will prevent any future attempts by the applicant to pursue his interest." *Feigin*, 19 P.3d at 30. As a result, "where there [are] alternative forums in which to bring a suit, an intervenor is neither impaired nor impeded in his ability to protect his interests under Rule 24(a)(2)." *Id.*

¶ 44 The consent decree does not affect the Union's notice and consultation rights under the CBA or the CBA's grievance procedure. If the Union believes, in the future, that specific policies developed under the consent decree violate the CBA or otherwise affect its rights, it can pursue the CBA grievance procedure or any other legal remedies at that time. The availability of these other forums precludes intervention as of right. *See Auto-Owners Ins. Co.*, ¶¶ 28-31 (insurer's interests were not impaired because it could assert its claims and defenses in a separate suit); *In Interest of K.L.O-V.*, 151 P.3d 637, 641 (Colo. App. 2006) (denying intervention because applicant could assert her interests in a separate proceeding).

¶ 45 The consent decree will not prejudice the Union in a separate action because it is a consensual resolution that lacks precedential

or preclusive effect. *See Feigin*, 19 P.3d at 30 ("[A] consent judgment resolving a civil enforcement action will not have a res judicata, collateral estoppel or stare decisis effect on a private action concerning the same matter."). For the same reason, the disposition of this case does not impair any interest the Union has in defending its members against allegations of misconduct. Indeed, the consent decree does not contain any admission or adjudication of liability on the part of the City, let alone individual Aurora Fire personnel. Moreover, if the State and the City were to ask the district court to interpret the consent decree in a way that might impair the Union's interests in future litigation, the Union could renew its application to intervene at that time. *See Illinois v. City of Chicago*, 912 F.3d 979, 988 (7th Cir. 2019) (noting that, if a proposed intervenor's "presently speculative" allegations were substantiated in the future, intervention could be re-examined).

¶ 46 We thus conclude that the district court properly denied the Union's motion to intervene as of right.

C. Permissive Intervention

¶ 47 The Union contends that the district court abused its discretion by failing to address the Union's request for permissive intervention. We agree.

¶ 48 Under Rule 24(b)(2), a district court may permit intervention "when an applicant's claim or defense and the main action have a question of law or fact in common." The court has "considerable discretion" to grant or deny a motion for permissive intervention. *In re Marriage of Paul*, 978 P.2d 136, 139 (Colo. App. 1998). "In exercising its discretion under the rule, the . . . court must consider whether intervention will delay or prejudice the rights of the original parties." *K.L.O-V.*, 151 P.3d at 642; *see* C.R.C.P. 24(b)(2).

¶ 49 We review the denial of a motion for permissive intervention for an abuse of discretion. *Feigin*, 19 P.3d at 26. "A court abuses its discretion if its decision is manifestly arbitrary, unreasonable, or unfair, or if it misapplies the law." *AA Wholesale Storage, LLC v. Swinyard*, 2021 COA 46, ¶ 32. And a court's "failure to exercise discretion is itself an abuse of discretion." *People v. Darlington*, 105 P.3d 230, 232 (Colo. 2005); *see also S. Cross Ranches, LLC v. JBC Agric. Mgmt., LLC*, 2019 COA 58, ¶ 48 ("[A] court's failure to

exercise discretion can be an abuse of discretion.") (citation omitted).

¶ 50 The district court did not address the Union's motion for permissive intervention at all. It did not make any findings of fact or conclusions of law about whether the Union's "claim or defense and the main action have a question of law or fact in common" or whether "the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." C.R.C.P. 24(b). A district court's order "must contain findings of fact and conclusions of law sufficiently explicit to give an appellate court a clear understanding of the basis of its order and to enable the appellate court to determine the grounds upon which it rendered its decision." *In re Marriage of Rozzi*, 190 P.3d 815, 822 (Colo. App. 2008); *see also Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1248 (6th Cir. 1997) ("If we are to review a district court's exercise of discretion [under Fed. R. Civ. P. 24(b)], the court must, except where the basis for the decision is obvious in light of the record, provide enough of an explanation for its decision to enable this court to conduct meaningful review. It is insufficient merely to quote the rule and to state the result."). Under these

circumstances, we conclude that the court abused its discretion by denying the Union's motion for permissive intervention without any explanation.

¶ 51 We are not persuaded otherwise by the State and the City's argument that the district court's denial of permissive intervention "followed directly from its holding" that the Union did not have an interest in the subject matter of the litigation. The Rule 24(a) "interest" requirement is more difficult to satisfy than the Rule 24(b) "common question of law or fact" standard. *See N. Poudre Irrigation Co. v. Hinderlider*, 112 Colo. 467, 476, 150 P.2d 304, 309 (1944) (C.R.C.P. 24(b) "plainly dispense[s] with any requirement that the intervener shall have a direct or personal or pecuniary interest in the subject of the litigation."); *see also* 7C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1911, Westlaw (3d ed. database updated Apr. 2023) (Fed. R. Civ. P. 24(b) "does not specify any particular interest that will suffice for permissive intervention and, as the Supreme Court has said, it 'plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation.'" (quoting *Sec. & Exch. Comm'n v. U.S. Realty &*

Improvement Co., 310 U.S. 434, 459 (1940))). A party may thus be permitted to intervene under Rule 24(b) even if it cannot satisfy Rule 24(a)'s more stringent standard. *See, e.g.*, *Crow Indian Tribe v. United States*, No. CV 17-89-M-DLC, 2017 WL 6327775, at *1-2 (D. Mont. Dec. 11, 2017) (unpublished opinion) (denying motion for intervention as of right because the applicant lacked a "significant protectable interest that may be impaired as a result of this litigation," but granting permissive intervention because the applicant's defenses had common questions of law with the main action and intervention would not unduly delay or prejudice the original parties).

¶ 52 Accordingly, we conclude that remand is required for the district court to address the Union's motion for permissive intervention.

D. Approval of Consent Decree

¶ 53 Finally, the Union contends that the district court abused its discretion by approving the consent decree while the Union's initial motion to intervene was pending. Because we have already concluded that we must remand the case, we decline to address

this issue until the district court rules on the Union's motion for permissive intervention.[2]

III. Disposition

¶ 54 We affirm the portion of the district court's order denying the Union's motion to intervene as of right, reverse the portion of the order denying without addressing the Union's motion for permissive intervention, and remand for the district court to make findings and issue a ruling under Rule 24(b).

JUDGE NAVARRO and JUDGE RICHMAN concur.

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[2] If the Union is not permitted to intervene under Rule 24(b), this issue is moot.