

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 0581

GENE E. LOCKHART, JR.

VERSUS

JUANITA M. LOCKHART

Judgment Rendered: MAY 19 2015

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APPEALED FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT  
IN AND FOR THE PARISH OF LIVINGSTON  
STATE OF LOUISIANA  
DOCKET NUMBER 122746, DIVISION H

HONORABLE ZORRAINE M. WAGUESPACK, JUDGE

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Denham Springs, Louisiana

Attorney for Plaintiff/Appellee  
Gene E. Lockhart, Jr.

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Attorney for Defendant/Appellant  
Juanita M. Lockhart

BEFORE: GUIDRY, McDONALD, CRAIN, DRAKE, AND HOLDRIDGE, JJ.

*Guidry, J. Dissents in part and concurs in part on certain reasons.*

*GA*  
*JMM*  
*[Signature]*  
*[Signature]*

**McDONALD, J.**

This is an appeal from a judgment that partitioned community property.

**FACTS**

Gene E. Lockhart, Jr. and Juanita M. Lockhart were married on August 28, 1982. A petition for divorce was filed on July 30, 2008, and the parties were divorced on February 5, 2009.

During the marriage, the parties formed Lockhart Insurance Agency, L.L.C. Ms. Lockhart is a licensed insurance agent, and Mr. Lockhart did accounting work for the agency. Also during the marriage, the parties formed Ryano & Beezer, L.L.C., which owned a building on Greenwell Springs Road in Central that housed the insurance agency.<sup>1</sup> The Lockharts also owned a residence on Dialtha Drive in Watson. A second residence on Landmor Drive in Greenwell Springs was owned by the parties during the marriage and sold prior to the start of the trial.

The case went to trial, and Mr. Lockhart introduced 53 exhibits into evidence, plus the entire clerk's record and all pleadings filed in the divorce proceeding. Also, six joint exhibits were entered into evidence, all of which pertained to tax filings from 2009. Ms. Lockhart introduced one document into evidence, a copy of the life insurance premium for Mr. Lockhart's parents. Mr. Lockhart testified and called two witnesses to testify. Ms. Lockhart did not testify and did not call any witnesses.

After the trial, the trial court issued a judgment partitioning the community assets; awarding reimbursement to Mr. Lockhart by Ms. Lockhart of \$115,952.31; allocating Lockhart Insurance Agency to Ms. Lockhart; ordering the dissolution of Ryano & Beezer, with any money in its bank account escrowed pending determination whether there were sufficient funds to reimburse Mr. Lockhart from

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<sup>1</sup> The trial court noted that while the two companies could have been "dealt with separately" from the community property partition, they were small, closely-held companies with the parties as the only members, and neither party objected to their being included within the community property partition.

the sale proceeds; and ordering Ms. Lockhart to deliver LSU memorabilia and an antique clock to Mr. Lockhart. Ms. Lockhart was cast for costs and for the cost of an expert forensic accountant. Ms. Lockhart appealed the judgment.

In her appeal, Ms. Lockhart makes the following assignments of error:

1. The Trial Court erred in valuing movables, particularly jewelry and a lawnmower, allocating the jewelry to [Ms. Lockhart], and for failing to allocate the Yukon vehicle.
2. The Trial Court erred in classifying a malpractice lawsuit as community property and in assessing value for a malpractice lawsuit at \$50,000.00 without proper foundation or evidence of value.
3. The Trial Court erred in its classification and valuation of a boat at \$6,764.45 and allocating it to [Ms.] Lockhart, while ordering reimbursement of insurance.
4. The Trial Court erred in ordering [Ms. Lockhart] to reimburse [Mr. Lockhart] for [his] tax debt in the sum of \$15,643.00 derived from tax treatment of the LLC's.
5. The Trial Court erred in ordering [Ms. Lockhart] to reimburse to [Mr. Lockhart] proceeds from sale of the Dialtha property.
6. The Trial Court erred in ordering the dissolution of Ryano-Beezer, LLC and ordering that Lockhart Insurance Agency, LLC vacate the property belonging to Ryano-Beezer.
7. The Trial Court erred in failing to order the reimbursement by [Mr. Lockhart] to [Ms. Lockhart of] the sum of \$15,991.92 for the sale of the Wal-Mart stock.
8. The Trial Court erred in assessing all court costs to [Ms. Lockhart].

### **THE MOTION TO STRIKE**

Mr. Lockhart filed a motion to strike with this court, asserting that Ms. Lockhart attached 274 documents to her post-trial memorandum that she did not introduce into evidence at trial. Mr. Lockhart asks that the documents be stricken from the record. The motion to strike was referred to this panel.

There was no designation of the appeal record. When no designation is made, the appellate record shall be a transcript of all the proceedings as well as all documents filed in the trial court. La. C.C.P. art. 2128. The record on appeal

includes copies of the pleadings, extracts from the minutes of the court, transcript of the testimony, bills of exception, instructions to juries, judgments, and other rulings. La. C.C.P. art. 2127, comment (d). All motions and pleadings, together with documents and exhibits attached, and orders of court pertaining thereto, shall be placed in the record. Uniform Rules of Louisiana, Courts of Appeal, Rule 2-1.6. A record on appeal that is incorrect or contains misstatements, irregularities, or informalities, or that omits a material part of the trial record, may be corrected even after the record is transmitted to the appellate court, by the parties by stipulation, by the trial court, or by the order of the appellate court. All other questions as to the content and form of the record shall be presented to the appellate court. La. C.C.P. art. 2132.

The documents that Mr. Lockhart challenges were filed into the record as attachments to Ms. Lockhart's post-trial memorandum and are properly included in the appellate record. Mr. Lockhart objects to this court's consideration of these documents on appeal because they were not introduced into evidence. See Denoux v. Vessel Management Services, Inc., 2007-2143 (La. 5/21/08), 983 So.2d 84, 88. Ms. Lockhart's post-trial memorandum was drafted by her personally, without the benefit of counsel, and pursuant to the order of the trial court. Moreover, the trial in this matter was stretched out over three different dates that were months apart. Ms. Lockhart appeared in proper person at the final trial date at which time she was supposed to present her case in chief, but was precluded from doing so. Thus, considering Ms. Lockhart's pro se status and the fact that Ms. Lockhart's post-trial memorandum was considered by the trial court without objection, we deny the motion to strike. See La. C.C.P. art. 2164.

#### **THE APPLICABLE LAW**

The provisions of La. R.S. 9:2801 set forth the procedure by which community property is to be partitioned when the spouses are unable to agree on a

partition of community property. **Benoit v. Benoit**, 2011-0376 (La. App. 1 Cir. 3/8/12), 91 So.3d 1015, 1018, writ denied, 2012-1265 (La. 9/28/12), 98 So.3d 838.

Louisiana Revised Statute 9:2801 provides, in pertinent part:

A. When the spouses are unable to agree on a partition of community property or on the settlement of the claims between the spouses arising either from the matrimonial regime, or from the co-ownership of former community property following termination of the matrimonial regime, either spouse, as an incident of the action that would result in a termination of the matrimonial regime or upon termination of the matrimonial regime or thereafter, may institute a proceeding, which shall be conducted in accordance with the following rules:

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(4) The court shall then partition the community in accordance with the following rules:

(a) The court shall value the assets as of the time of trial on the merits, determine the liabilities, and adjudicate the claims of the parties.

(b) The court shall divide the community assets and liabilities so that each spouse receives property of an equal net value.

(c) The court shall allocate or assign to the respective spouses all of the community assets and liabilities. In allocating assets and liabilities, the court may divide a particular asset or liability equally or unequally or may allocate it in its entirety to one of the spouses. The court shall consider the nature and source of the asset or liability, the economic condition of each spouse, and any other circumstances that the court deems relevant. As between the spouses, the allocation of a liability to a spouse obligates that spouse to extinguish that liability. The allocation in no way affects the rights of creditors.

(d) In the event that the allocation of assets and liabilities results in an unequal net distribution, the court shall order the payment of an equalizing sum of money, either cash or deferred, secured or unsecured, upon such terms and conditions as the court shall direct. The court may order the execution of notes, mortgages, or other documents as it deems necessary, or may impose a mortgage or lien on either community or separate property, movable or immovable, as security.

(e) In the event that the allocation of an asset, in whole or in part, would be inequitable to a party, the court may order the parties to draw lots for the asset or may order the private sale of the asset on such terms and conditions as the court deems proper, including the minimum price, the terms of sale, the execution of realtor listing agreements, and the period of time during which the asset shall be offered for private sale.

## THE STANDARD OF REVIEW

It is well settled that a trial court has broad discretion in adjudicating issues raised by divorce and partition of the community. A trial court is afforded a great deal of latitude in arriving at an equitable distribution of the assets between the spouses. Factual findings and credibility determinations made in the course of valuing and allocating assets and liabilities in the partition of community property may not be set aside absent manifest error. However, the allocation or assigning of assets and liabilities in the partition of community property is reviewed under the abuse of discretion standard. **Benoit**, 91 So.3d at 1019.

### ASSIGNMENT OF ERROR NO. 1

In this assignment of error, Ms. Lockhart asserts that the trial court erred in valuing movables, particularly jewelry and a lawnmower, in allocating the jewelry to her, and in failing to allocate the Yukon vehicle.

Mr. Lockhart testified that some of the jewelry purchases made during the marriage were for investment purposes and were not gifts to Ms. Lockhart. He testified that the investment purchases included a diamond ring that was bought for \$9,000.00 at Diamonds International on a cruise. Another such purchase, he testified, consisted of earrings, a diamond pendant, and a chain for \$3,200.00 at Alpha Jewelers in St. Thomas. He introduced the receipts for these items, and he testified about other jewelry purchases that were gifts to Ms. Lockhart. The trial court allocated this jewelry to Ms. Lockhart, and valued it at \$12,200.00, the purchase price. We find no manifest error by the trial court in the valuation of this jewelry, and we find no abuse of discretion in the trial court's allocation of this jewelry to Ms. Lockhart.

Mr. Lockhart testified that the parties purchased a zero-turn-radius lawnmower for \$5,500.00 to \$6,000.00 in 2004, and he listed the lawn equipment on his detailed descriptive list as having a value of \$4,000.00 and being in the

possession of Ms. Lockhart. Ms. Lockhart lists the lawn equipment on her supplemental detailed descriptive list with zero value. Mr. Lockhart testified that Ms. Lockhart told him that the lawnmower was discarded because it had burned up, but she neither testified regarding the lawnmower nor provided any documentation. Mr. Lockhart testified that the motor on the lawnmower could have been replaced. The trial court assessed the value of \$2,500.00 for the lawnmower and allocated it to Ms. Lockhart. Based upon the evidence presented at trial, we find no manifest error and no abuse of discretion by the trial court in the assessment of \$2,500.00 for the lawnmower allocated to Ms. Lockhart.

The 2000 GM Yukon XL was allocated to Mr. Lockhart with a value of \$4,990.00 (mistakenly referred to in the judgment as a 2000 Chevrolet Suburban.) Ms. Lockhart asserts that the trial court erred in failing to allocate a “\$49,090.00” vehicle. A review of the record shows that Mr. Lockhart testified that the parties owned a 2000 GM Yukon XL that was still in his possession. He introduced a Kelly Blue Book pricing report dated September 23, 2008, which showed the vehicle’s value to be \$4,990.00. It appears that Ms. Lockhart is attempting to capitalize upon a typographical error in the transcript where it appears that Mr. Lockhart testified that the Yukon XL was worth \$49,090.00. The original detailed descriptive list filed by Ms. Lockhart valued that vehicle at \$2,775.00. We find no manifest error in the valuation of the Yukon XL at \$4,990.00 and no abuse of discretion in the allocation of that vehicle to Mr. Lockhart.

## **ASSIGNMENT OF ERROR NO. 2**

In this assignment of error, Ms. Lockhart asserts that the trial court erred in classifying a malpractice lawsuit as community property and erred in assessing its value at \$50,000.00 without a proper foundation or evidence.

Mr. Lockhart testified that during their marriage, Ms. Lockhart was dismissed from a job and filed a lawsuit seeking damages for wrongful discharge

and lost wages. According to Ms. Lockhart, the attorney representing Ms. Lockhart allowed the suit to prescribe and Ms. Lockhart filed a malpractice suit against the attorney, which was settled after the divorce. In her supplemental detailed descriptive list, Ms. Lockhart indicated the settled suit had an unknown value and was not a community asset.

Mr. Lockhart filed a motion to compel Ms. Lockhart to produce the settlement documents, which Ms. Lockhart failed to do. Ms. Lockhart was ordered by the trial court to submit the documents for an in camera inspection, which she also failed to do.<sup>2</sup> The trial court then assessed the settlement with a \$50,000.00 value, which was allocated to Ms. Lockhart.

On appeal, Ms. Lockhart maintains that there was no testimony or documentary evidence introduced to sufficiently establish the value of the malpractice lawsuit, and she avers that it is logical to infer that funds from a suit were already accounted for in the bank account balances that were partitioned by the trial court.

The trial court acknowledged in its written reasons for judgment that the \$50,000.00 value assessed to the settlement was an arbitrary amount. The record contains no support for this valuation, and we find manifest error in the trial court's assessment of an arbitrary amount for the settlement value.

Thus, we vacate the \$50,000.00 valuation, and we remand the case for the trial court to hold an evidentiary hearing to determine the value of the settlement and to utilize its contempt powers, if necessary, to enforce its orders.

### **ASSIGNMENT OF ERROR NO. 3**

In this assignment of error, Ms. Lockhart asserts that the trial court erred in its classification and valuation of a boat, motor, and trailer at \$6,769.45 and

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<sup>2</sup> We note that the record does not contain an order granting the motion to compel or an order for an in camera inspection, although the trial court's reasons for judgment references both. The parties do not dispute the trial court's statements regarding the history of the case.



allocating it to her, while awarding Mr. Lockhart a reimbursement for one-half of boat insurance premiums he paid.

Mr. Lockhart and his father, Gene Lockhart, Sr., both testified that the boat was purchased by Ms. Lockhart as a Father's Day gift for Mr. Lockhart. Mr. Lockhart, Sr., testified that he went with Ms. Lockhart to pick out the fishing boat for Mr. Lockhart. Mr. Lockhart testified that only his wife's name was on the title for the trailer, because he was not present when the purchase was made, but otherwise his name would have been on the title. Mr. Lockhart testified that he was not able to access the boat after the separation, but continued to pay insurance on the boat, as he was worried about his liability. Mr. Lockhart testified regarding the Kelly Blue Book values for the boat (\$54,075.00), motor (\$1,290.00), and trailer (\$445.00). He also provided NADA values for each item.

The trial court classified the boat, motor, and trailer as Mr. Lockhart's separate property. We find a reasonable factual basis in the record for the finding of the trial court that the boat, motor, and trailer were the separate property of Mr. Lockhart, and we cannot say that this finding was clearly wrong.

The trial court allocated the boat, motor, and trailer to Ms. Lockhart, based on the evidence that Ms. Lockhart had sold the boat for the value of the repairs. The court further ordered Ms. Lockhart to reimburse Mr. Lockhart for one-half of the insurance premiums paid to insure the boat after the community property termination. Based upon the evidence presented at trial, we find no manifest error or abuse of discretion by the trial court in assessing Ms. Lockhart \$6,769.45 for the value of the boat, motor, and trailer and ordering her to reimburse Mr. Lockhart for one-half of the boat insurance premiums.<sup>3</sup>

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<sup>3</sup> While the judgment lists only the boat, the testimony and evidence established that the term "boat" included the boat, motor, and trailer.

#### **ASSIGNMENT OF ERROR NO. 4**

In this assignment of error, Ms. Lockhart asserts that the trial court erred in ordering her to reimburse Mr. Lockhart for his tax debt in the sum of \$15,643.00 derived from the tax treatment of Lockhart Insurance and Ryano & Beezer.

Shane Bennett, C.P.A., testified that Mr. Lockhart received K1 tax forms issued by the corporations, which reflected distributions to him that he did not receive. Mr. Bennett testified that this resulted in increased tax liabilities for Mr. Lockhart in the amount of \$6,461.00 for 2008, \$3,096.00 for 2009, and \$6,086.00 for 2010. This totaled \$15,643.00, which is the amount Ms. Lockhart was ordered to reimburse to Mr. Lockhart.

After a review of the record, we find no manifest error in the calculation of Mr. Lockhart's increased tax liability by the trial court and no abuse of discretion by the trial court in ordering Ms. Lockhart to reimburse Mr. Lockhart for that amount.

#### **ASSIGNMENT OF ERROR NO. 5**

In this assignment of error, Ms. Lockhart asserts that the trial court erred in ordering her to reimburse Mr. Lockhart for proceeds from the sale of the Dialtha property (the family home). Ms. Lockhart asserts that she should not be required to reimburse Mr. Lockhart for the sale of this community asset because, by keeping the sale proceeds to herself, and using them to reduce the debt due on property owned by Ryano & Beezer, she increased the value of the company, which benefitted both parties.

Mr. Lockhart notes that Ms. Lockhart was granted full ownership of Lockhart Insurance without any value being attributed to it, and she retained any profits from Lockhart Insurance since the community property termination date. He maintains that Ms. Lockhart seeks to receive the benefit of her failure to pay the rent due from Lockhart Insurance to Ryano & Beezer, while Mr. Lockhart uses

his personal funds (his portion of the proceeds from the sale of the Dialtha house) to satisfy the mortgage owed by Ryano & Beezer.

A review of the record and the trial court's reasons for judgment shows that the proceeds of the Dialtha house sale were only one piece of the complex puzzle that the trial court had to put together to account for the assets and liabilities of the parties. After a review of the record, we cannot say that the trial court committed manifest error or an abuse of discretion in ordering Ms. Lockhart to reimburse Mr. Lockhart for proceeds from the sale of the Dialtha house, which was a community property asset.

#### **ASSIGNMENT OF ERROR NO. 6**

In this assignment of error, Ms. Lockhart asserts that the trial court erred in ordering the dissolution of Ryano & Beezer and in ordering that Lockhart Insurance Agency vacate the property belonging to Ryano & Beezer. She maintains that “[t]he only testimony the Court had that may have even touched upon aiding and determining the proper disposition of the LLCs is the testimony of Mr. Bennett and the report from Elena Lavigne.”<sup>4</sup> Mr. Lockhart maintains that the trial court ordered the sale of Ryano & Beezer so that Ms. Lockhart would be able to pay the reimbursement claim of \$115,952.31 to him and that the property was the only security for the payment.

We find that the trial court manifestly erred in ordering that Ryano & Beezer be dissolved, rather than valuing Ryano & Beezer in accordance with La. R.S. 9:2801. Thus, we vacate the order that Ryano & Beezer be dissolved, and we remand the case so that the trial court can value Ryano & Beezer and use that value in calculating the parties' assets and liabilities and determining any balancing payments that may be owed.

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<sup>4</sup> Elena Lavigne, C.P.A., was a court-appointed expert forensic accountant.

### **ASSIGNMENT OF ERROR NO. 7**

In this assignment of error, Ms. Lockhart asserts that the trial court erred in failing to order the reimbursement by Mr. Lockhart to her for the sale of Wal-Mart stock in the amount of \$15,991.92. A review of the record shows that Mr. Lockhart testified that he sold Wal-Mart stock three times after the termination of the community and that he agreed that he would be assessed with the value of these sales in the community property partition.

A review of the record shows that the Wal-Mart stock sales made after the termination of the community totaled \$15,991.92, as asserted by Ms. Lockhart. However, the amount assessed to Mr. Lockhart for the sale of Wal-Mart stock after the termination of the community is only \$10,012.67, plus \$636.24 in remaining Wal-Mart stock, for a total of \$10,648.91. We find no explanation in the trial court's reasons for judgment, or in allocation of the property, for Mr. Lockhart to be assessed less than the total sales figure of \$15,991.92, plus \$636.24 for remaining Wal-Mart stock, for a total value of Wal-Mart stock at \$16,628.16. We find that the trial court manifestly erred in this calculation of stock sales by Mr. Lockhart. Thus, the judgment is amended to provide that the value of Wal-Mart stock assessed to Mr. Lockhart is \$16,628.16.<sup>5</sup>

### **ASSIGNMENT OF ERROR NO. 8**

In this assignment of error, Ms. Lockhart asserts that the trial court erred in assessing her with all court costs.

The trial court may assess costs in any equitable manner pursuant to La. C.C.P. art. 1920. This article has been liberally interpreted as granting broad discretion to the trial court. Upon review, an appellate court will not disturb the trial court's fixing of costs absent an abuse of the sound discretion afforded the

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<sup>5</sup> The difference between the amended value of \$16,628.16 and the previous value of \$10,648.91 is \$5,979.25. One-half of the \$5,979.25, or \$2,989.63, represents Ms. Lockhart's share of the increased value of the stock.

trial court. **Trinh ex rel. Tran v. Dufrene Boats, Inc.**, 2008-0824 (La. App. 1 Cir. 1/22/09), 6 So.3d 830, 837-38, writs denied, 2009-0406 and 2009-0411 (La. 4/13/09), 5 So.3d 166, cert. denied, 558 U.S. 875, 130 S.Ct. 228, 175 L.Ed.2d 128 (2009).

As noted previously, Ms. Lockhart failed to comply with a motion to compel production of her settlement documents and an order to produce the documents for an in camera inspection. Further, at the outset of the trial, the court asked if there were any stipulations, and Mr. Lockhart's attorney stated that there were a number of credit card statements, payments, and bills related to the family home that did not need to be authenticated, but Ms. Lockhart would not stipulate to them. When the trial court asked Ms. Lockhart's counsel whether that assertion was correct, he answered affirmatively. Thus, these items had to be entered into evidence one at a time, with Mr. Lockhart giving testimony about each item, which extended the trial.

After a thorough review, we find no abuse of the broad discretion afforded the trial court in its assessment of costs to Ms. Lockhart.

### **DECREE**

For the foregoing reasons, the trial court judgment dated November 21, 2013, is amended in part to change the valuation of the Wal-Mart stock assessed to Mr. Lockhart to \$16,628.16, and as amended, is affirmed in part; and the judgment is vacated in part, as to the valuation of the malpractice lawsuit settlement and the dissolution of Ryano and Beezer; and the case is remanded for an evidentiary hearing to determine the value of the malpractice lawsuit settlement and for the trial court to value Ryano & Beezer. Thereafter, the trial court shall reallocate any or all of the parties' assets and liabilities and determine any balancing payments

that may be owed. Costs are assessed one-half against Mr. Lockhart and one-half against Ms. Lockhart.

**MOTION TO STRIKE DENIED. JUDGMENT AMENDED IN PART;  
AND AS AMENDED AFFIRMED IN PART; VACATED IN PART; CASE  
REMANDED WITH INSTRUCTIONS.**

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

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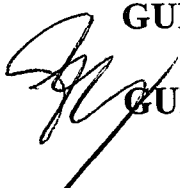
NUMBER 2014 CA 0581

GENE E. LOCKHART, JR

VERSUS

JUANITA M. LOCKHART

**GUIDRY, J., dissents in part, concurs in part, and assigns reasons.**

 **GUIDRY, J., dissenting in part and concurring in part.**

I disagree with the majority's decision to deny the motion to strike in this matter. Although at the time the objectionable documents were offered, Ms. Lockhart appeared *pro se* in the litigation, I find the holding in Denoux v. Vessel Management Services, Inc., 07-2143, pp. 4-6 (La. 5/21/08), 983 So. 2d 84, 87-89 to be controlling and to likewise mandate the granting of the motion to strike. See also Williams Law Firm v. Board of Supervisors of Louisiana State University, 03-0079, pp. 4-5 (La. App. 1st Cir. 4/2/04), 878 So. 2d 557, 562. Thus, I dissent from the portion of the opinion denying the motion to strike.

I also disagree with the majority's finding that Ms. Lockhart unjustifiably failed to stipulate to the introduction of certain records offered by Mr. Lockhart. The record shows that Ms. Lockhart *did* stipulate that the records did *not* need to be authenticated; however, she refused to stipulate that the liabilities represented by the evidence were incurred for the benefit of the community. Counsel for Mr. Lockhart likewise indicated that he would stipulate to the authenticity of any receipts offered by Ms. Lockhart, but he reserved the right to question whether any liability represented by the evidence was incurred for the benefit of the community. However, I do agree that Ms. Lockhart's failure to comply with certain discovery

orders issued by the trial court does support the trial court's assessment of costs to her. Thus, I respectfully concur in the remainder of the opinion.