NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 CA 0069

BRETT JOSEPH CHIASSON

VERSUS

GISELLE BUSTILLO CHIASSON

Judgment Rendered: NOV 06 2015

* * * * *

On Appeal from the
21st Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
Trial Court No. 2006-0004186

The Honorable Zorraine M. Waguespack, Judge Presiding

* * * * *

Vincent Saffiotti
Baton Rouge, Louisiana

Attorney for
Defendant/Appellant,
Giselle Bustillo Chiasson

Mitchell Hoffman
New Orleans, Louisiana

Attorney for Plaintiff/Appellee,
Brett Joseph Chiasson

* * * * *

BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.

Welch J. concurs in part and dissents in part and assigns reasons.

DRAKE, J.

Giselle Bustillo Chiasson appeals a judgment of the trial court partitioning the community of acquets and gains formerly existing between herself and her former spouse, Brett Joseph Chiasson (Dr. Chiasson). For the following reasons, we affirm, in part, and reverse, in part, the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

Ms. Chiasson and Dr. Chiasson were married on June 15, 1991. Two children were born of the marriage, both of whom were minors at the time the divorce was initiated. Dr. Chiasson filed for divorce on December 27, 2006, pursuant to Louisiana Civil Code article 102, which permitted a divorce within one hundred and eighty days from the date of service of the petition. Prior to the filing for divorce, the parties had entered into a collaborative divorce on September 5, 2006, in an attempt to resolve all matters outside of court. A stipulated judgment regarding the collaborative divorce was signed by the trial court on January 18, 2007. The trial court signed a final judgment of divorce on June 19, 2007.[1] Dr. Chiasson filed a Petition for Joint Custody, which was tried on December 2 and 5, 2008.

Ms. Chiasson filed a rule to set child support on September 26, 2008. The matter came before the court on June 26, 2009, and the parties entered into a stipulated judgment wherein Dr. Chiasson was to pay child support in the amount of $4,000.00 per month beginning July 1, 2009. Dr. Chiasson was also ordered to pay child support arrears in the amount of $13,000.00 from the date of judicial demand, or September 26, 2008 through June 30, 2009. Dr. Chiasson was ordered to further pay all medical expenses, private school tuition, and registration fees for the minor children.

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[1] Although the judgment of divorce is not contained in this record, it is referred to in the Petition for Custody filed by Dr. Chiasson on March 19, 2008.

Ms. Chiasson filed a petition for partition on June 15, 2011. Ms. Chiasson asserted in the petition for partition that on June 6, 2007, she filed a petition for divorce based on Louisiana Civil Code article 103, which provided for divorce if the parties were living separate and apart for the requisite time period provided in Louisiana Civil Code article 103.1. La. C.C. art. 103, as revised by 2006 La. Acts, No. 743, § 1, effective January 1, 2007. Louisiana Civil Code article 103.1 required parties with minor children to live separate and apart for 365 days, rather than 180 days. Ms. Chiasson sought to partition the community of acquets and gains retroactively to June 6, 2007. Both parties filed sworn detailed descriptive lists setting forth their valuations of the community assets and debts.

The trial on the partition of the community was held on May 22, 2012, at which both parties testified and submitted documentary evidence. The trial court permitted both parties to file post-trial memorandum and issued written reasons on August 20, 2012, and supplemental written reasons on October 25, 2012. Judgment was signed on March 13, 2013. Ms. Chiasson appealed the judgment to this court, which held that the March 13, 2013 judgment was not a final judgment and remanded the matter to the trial court. *Chiasson v. Chiasson,* 2013-1349 (La. App. 1 Cir. 5/22/14)(unpublished).

On remand, the trial court held a hearing on September 3, 2014, and issued an amended judgment on the same date. It is from this amended judgment that Ms. Chiasson appeals.

ERRORS

Ms. Chiasson assigns the following seven errors: (1) the trial court erred in determining that $56,000.00 in payments by Dr. Chiasson from the date of filing the petition for divorce through the date of the child support judgment were "advances of the community" for which reimbursement was due from Ms. Chiasson; (2) the trial court erred in valuing the "community movables" at

$50,000.00 and awarding the entirety of them to Ms. Chiasson; (3) the trial court erred in valuing the 2004 Lincoln at $10,874.00; (4) the trial court erred in admitting certain exhibits into evidence, which were allegedly not authenticated nor fell under any hearsay exception; (5) the trial court erred in granting reimbursement to Dr. Chiasson for certain invoices; (6) the trial court erred in granting reimbursement to Dr. Chiasson for a $1,900.00 payment to Qualified Plans; and (7) the trial court erred in awarding two commercial lots to Ms. Chiasson.

STANDARD OF REVIEW

An appellate court's review of facts is governed by the manifest error-clearly wrong standard. *Rao v. Rao*, 2005-0059 (La. App. 1 Cir. 11/4/05), 927 So. 2d 356, 360, *writ denied,* 2005-2453 (La. 3/24/06), 925 So. 2d 1232 (citing *Mart v. Hill,* 505 So. 2d 1120, 1127 (La.1987)). However, it is well settled that a trial court has broad discretion in adjudicating issues raised in a judicial partition proceeding under La. R.S. 9:2801. *Rao,* 927 So. 2d at 360 (citing *Smith v. Smith,* 1995-0913 (La. App. 1 Cir. 12/20/96), 685 So.2d 649, 655). If the trial court's valuations of community assets are reasonably supported by the record and do not constitute an abuse of discretion, its determinations should be affirmed. *Rao*, 927 So. 2d at 360-61 (citing *Ellington v. Ellington,* 36,943 (La. App. 2 Cir. 3/18/03), 842 So. 2d 1160, 1166, *writ denied,* 2003-1092 (La. 6/27/03), 847 So. 2d 1269).

It is well settled that a trial court has broad discretion in adjudicating issues raised by divorce and partition of the community. A trial judge 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. *Benoit v. Benoit*, 2011-0376 (La. App. 1 Cir. 3/8/12), 91 So. 3d 1015, 1019, *writ denied*, 2012-1265 (La. 9/28/12), 98 So.

3d 838. However, the allocation or assigning of assets and liabilities in the partition of community property is reviewed under the abuse of discretion standard. *Id.*

DISCUSSION

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. *Hoover v. Hoover*, 2010-1245 (La. App. 1 Cir. 3/17/11), 62 So. 3d 765, 767. Louisiana Revised Statutes 9:2801(A)(1)(a) provides that within forty-five days of service of a motion by either party, each party shall file a sworn detailed descriptive list of all community property, the fair market value and location of each asset, and all community liabilities. Within sixty days of the date of service of the last-filed detailed descriptive list, each party shall either traverse or concur in the inclusion or exclusion of each asset and liability and the valuations contained in the detailed descriptive list of the other party. La. R.S. 9:2801(A)(2). At the trial of such traverses, the court must determine the community assets and liabilities, and the valuation of assets is to be determined at the trial on the merits. However, the court, in its discretion, may by ordinary procedure try and determine at one hearing, all issues, including those raised in the traverses. La. R.S. 9:2801(A)(2); *Hoover,* 62 So. 3d at 768.

Further, La. R.S. 9:2801(A)(4) provides, in pertinent part:

> 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.

Advance on Community Property

Ms. Chiasson asserts that the trial court erred in determining that $56,000 in payments made by Dr. Chiasson from the date of filing of the petition, June 6, 2007, until the date of the judgment of child support, September, 2008, were "advances of the community" for which Dr. Chiasson was due reimbursement, rather than voluntary payments of child support. The parties separated in May, 2006 and were divorced on June 19, 2007. Between June 6, 2007, when the petition for divorce was filed, and September, 2008, Dr. Chiasson paid $56,000.00 to Ms. Chiasson, even though there was no judgment ordering the payment of child support. For a period of time, Dr. Chiasson paid Ms. Chiasson $4,500.00 per month, and then he reduced the payments to $2,500.00 per month. The issue before us is whether these payments were for child support or an advance on community property.

On December 2 and 5, 2008, the trial court held a custody hearing. At that hearing, Dr. Chiasson testified that beginning when he moved out of the home, he was paying Ms. Chiasson more than $4,500.00 a month. He eventually reduced the amount he paid Ms. Chiasson to $4,500.00 a month from July 9, 2007 until March 6, 2008. From March 7, 2008 until September 2, 2008, he paid Ms.

Chiasson $2,500.00 a month. With regards to the reduction in payments, Dr. Chiasson testified as follows:

> Q. Did you think that those type of cuts would have an adverse effect on the spending habits or the social habits of your children when they were with Ms. Chiasson?
>
> A. No. My kids aren't that expensive to maintain their social habits...And forty five hundred dollars a month is plenty to have them half the time and twenty five hundred dollars a month is more than what you need to have them half the time. I pay tuition, health insurance. So to have the kids half the time and have their entertainment covered for twenty five hundred dollars a month, I think most kids would love to live on that for half the month.

Dr. Chiasson reiterated in his testimony that his children were not that "expensive to take care of" and that "[t]wenty five hundred dollars a month is plenty" to entertain them. He further stated that the kids were proving they were doing fine on twenty-five hundred dollars a month, which indicated that those funds were for child support. Furthermore, on redirect Dr. Chiasson testified as follows:

> Q. You were paying approximately two hundred thousand dollars towards the household during the first year in which you were physically separated from your wife. Is that correct?
>
> A. That would be the neighborhood....
>
> Q. And subsequent thereto, you paid approximately forty five hundred dollars a month to your now ex-wife *in the form of child support.* Is that correct?
>
> A. *That's correct.*
>
> Q. And subsequent thereto you paid about twenty five hundred dollars a month. And I believe that began sometime this year. Is that correct?
>
> A. I believe so, yes.
>
> (Emphasis added).

At the trial for partition of community property held on May 22, 2012, Dr. Chiasson testified that these payments were not child support, but were

disbursements of community assets as he was advised by an attorney during the collaborative process.

Ms. Chiasson testified that she believed the $56,000.00 payments were child support, not an advance on the community. She testified that Dr. Chiasson was paying the tuition and health insurance for the children, but that the other monetary support was for food, clothing and shelter of the children. Ms. Chiasson admitted that she and Dr. Chiasson never agreed that the money he was paying was for child support. Dr. Chiasson did agree that any payments made to Ms. Chiasson after September 26, 2008, were for child support.

Ms. Chiasson argues that the totality of the payments made indicates that Dr. Chiasson was making child support payments during the period at issue. She also claims that in a pre-trial memorandum to the trial court prior to a custody hearing, counsel for Dr. Chiasson indicated that the money at issue was for child support. Ms. Chiasson asserts that this is a judicial confession pursuant to Louisiana Civil Code article 1853, which provides that "[a] judicial confession is a declaration made by a party in a judicial proceeding." A judicial confession is an express acknowledgement of an adverse fact made by a party in a judicial proceeding and constitutes full proof against the party who made it. *Tucker v. St. Tammany Parish School Board,* 2003-2401 (La. 9/17/04), 888 So. 2d 235, 237. The effect of a judicial confession is to waive evidence as to the subject matter of admission. *C.T. Traina, Inc. v. Sunshine Plaza, Inc.,* 2003-1003 (La. 12/3/03), 861 So. 2d 156, 159. A judicial confession may be revoked only on the ground of error of fact. *Id.* at 160. Dr. Chiasson has at no time asserted that his judicial confession of child support payments was made in error. It was only when attempting to divide the community property that Dr. Chiasson retreated from his previous committed stance that the payments at issue were child support. We conclude that Dr. Chiasson never revoked his judicial confession that the payments made were child

support. *See J4H, LLC v. Derouen,* 2010-0319 (La. App. 1 Cir. 9/10/10), 49 So. 3d 10, 15-16. This court does not rely on the statements made in the pre-trial memorandum, which is not considered a pleading. *See and compare Dyes v. Isuzu Motors, Ltd. In Japan*, 611 So. 2d 126, 128 (La. App. 1 Cir. 1992). This court relies upon the statements made by Dr. Chiasson in open court on December 2, 2008, claiming that the payments he made to Ms. Chiasson from July 9, 2007, until September 2008, were for the support of his children. Dr. Chiasson cannot, years later, claim that the money he paid was an advance on community property once he testified in open court that the money was for the purpose of child support. The trial court committed manifest error when it characterized those payments as an advance on community property. We reverse the trial court's determination that the $56,000.00 was an advance on community property.

Community Movables

Ms. Chiasson claims in her second assignment of error that the trial court abused its discretion in valuing the "community movables" at $50,000.00 and assigning them all to her. Ms. Chiasson filed a sworn detailed descriptive list with the trial court and listed two vehicles under the "Household Furniture and Movables" section. Dr. Chiasson filed his own sworn detailed descriptive list wherein he listed the same two vehicles as well as "household furniture, china and other furnishings," which he valued at $50,000.00

At the partition trial, Ms. Chiasson testified that the home the parties lived in prior to their separation was a four-bedroom fully furnished home. The parties also owned china and fine crystal, which Ms. Chiasson guessed that the value was about $2,000.00. Ms. Chiasson moved out of the marital home in 2008 and took some of the furnishings with her. She admitted that Dr. Chiasson did not take anything when he left the marriage and that she had to dispose of the remaining furnishings.

Dr. Chiasson testified that the marital home was a 5,000 square foot home with 3,500 square feet of living area that was fully furnished. He admitted that when he left he took his clothes, medical books, two pieces of exercise equipment, and a small television. He valued the household furnishings at $50,000.00 because it seemed reasonable for that size home.

There are no specifics in the record as to what was included in the "community movables" except that it was a fully furnished home with 3,500 square feet of living area. There was absolutely no testimony as to what type of furniture or other goods were included in the "community movables" except for Ms. Chiasson's valuation of china and crystal as worth about $2,000.00 Ms. Chiasson testified that she took some of the furnishings with her when she moved and disposed of the rest. Dr. Chiasson testified he took very little when he left the home. In order for the appellate court to disturb the factual findings of the trier of fact, it must find manifest error. *Arceneaux v. Domingue,* 365 So. 2d 1330, 1333 (La. 1978). A court of appeal may not set aside a trial court's factual findings unless there is manifest error or they are clearly wrong. *Rosell v. ESCO,* 549 So. 2d 840, 844 (La. 1989). However, when there is no testimony or evidence to support a detailed descriptive list, there is insufficient evidence to support a partition of community property. *See Raymond v. Fluellen*, 2011-1290 (La. App. 4 Cir. 3/7/12), 88 So. 3d 652, 656, *decision clarified on reh'g* (4/4/12), *writ denied*, 2012-1007 (La. 6/22/12), 91 So. 3d 974. If the trial court's valuations are reasonably supported by the record and do not constitute an abuse of discretion, its determinations should be affirmed. *Ellington v. Ellington*, 36,943 (La. App. 2 Cir. 3/18/03), 842 So. 2d 1160, 1166, *writ denied,* 2003-1092 (La. 6/27/03), 847 So. 2d 1269. Although a trial court has broad discretion in adjudicating issues raised by a partition of community property and is afforded a great deal of latitude in arriving at an equitable distribution of assets between the spouses, in this case there is

nothing in the record to support the detailed descriptive list valuation filed by Dr. Chiasson with regard to the community movables. Therefore, we reverse the trial court's valuation as to the community movables as there is insufficient evidence in the record to support what these movables were or the value thereof.

2004 Lincoln Navigator

Ms. Chiasson claims in her third assignment of error that the record does not support the valuation of the 2004 Lincoln Navigator at $10,874.00. At the trial of the community partition, Ms. Chiasson entered the NADA and Kelly Blue Book values for the Navigator, which were $6,075.00 and $5,743.00, respectively. She also submitted a repair estimate for needed repairs in the amount of $4,398.97. Ms. Chiasson testified that based on the above evidence, she believed the Navigator was worth $2,000.00.

Dr. Chiasson submitted an Edmunds value of the Navigator as $10,874.00. The trial court accepted the value of the Navigator as submitted by Dr. Chiasson. If the trial court's valuations of community assets are reasonably supported by the record and do not constitute an abuse of discretion, its determinations should be affirmed. *Rao*, 927 So. 2d at 360-61. Ms. Chiasson claims that the valuation of the Navigator was not supported by the record, but was based only on the testimony of Dr. Chiasson that Ms. Chiasson did not properly maintain the vehicle.

Ms. Chiasson testified that the purchase price of the Navigator was $40,000.00 to $50,000.00 and that she had exclusive use of it since 2007. She originally valued the Navigator at $5,000.00 in her sworn detailed descriptive list filed on July 26, 2007. At the trial of the partition she valued the Navigator at $2000.00. By the time of trial, Ms. Chiasson had purchased a new vehicle, but did not trade in the Navigator. Ms. Chiasson testified as to the condition of the Navigator.

The trial court is free to accept or reject, in whole or in part, the testimony of any witness. *Callison v. Livingston Timber, Inc.,* 2002-1323 (La. App. 1 Cir. 5/9/03), 849 So. 2d 649, 653-54. After hearing the testimony of both parties and the exhibits submitted as to the value of the Navigator, the trial court chose to value the Navigator at the value submitted by Dr. Chiasson. We do not find any manifest error on the part of the trial court in doing so.

Admission of Certain Exhibits

In her fourth assignment of error, Ms. Chiasson claims that the trial court erred in admitting three exhibits, which she claims were unauthenticated and did not fall within any exception to hearsay under the Louisiana Code of Evidence article 803. The first exhibit was an invoice in the amount of $1,900.00 from Qualified Plans, LLC, paid by Dr. Chiasson to maintain a 401K account after the dissolution of his medical partnership. The second was an invoice and payment from LaPorte, Sehrt, Romig & Hand (LaPorte) in the amount of $11,000.00 for assessing the value of his medical practice in connection with the divorce. The third was an invoice and payment for services rendered by Sage, the software division of the billing component of his medical practice, to Dr. Chiasson in the amount of $1,471.50. Ms. Chiasson objected to the introduction of each of the disputed exhibits.

The trial court overruled the objections made by Ms. Chiasson. The trial court specifically found that Dr. Chiasson had laid the foundation for the admissibility of the Qualified Plans payment and that Ms. Chiasson had previously been furnished the invoice. Dr. Chiasson also testified as to the nature of the invoices and payments to LaPorte. The trial court admitted this exhibit as a business record over the objection of Ms. Chiasson. As to the third exhibit, Dr. Chiasson testified that Sage was the software division of the billing component of his medical practice, and he received an invoice for the medical practice. The total

amounts he paid to Sage were $2,616.00. Again, the trial court overruled the objection of Ms. Chiasson as to the admissibility of this exhibit.

Ms. Chiasson claims that the trial court erred in admitting the above documents pursuant to Louisiana Code of Evidence article 803(6) and asserts that Dr. Chiasson was not the proper party to testify as to the regularly conducted business activity. This court need not reach this issue because, under Louisiana Code of Evidence article 103(A), an error may not be predicated upon a ruling excluding evidence unless a substantial right of the party is affected. The test for determining whether a party was prejudiced by the court's alleged erroneous ruling is whether the alleged error, when compared to the entire record, had a substantial effect on the outcome of the case. The party alleging prejudice from the evidentiary ruling bears the burden of so proving. *Jennings v. Ryan's Family Steak House,* 2007-0372 (La. App. 1 Cir. 11/2/07), 984 So. 2d 31, 39.

In the instant case, Ms. Chiasson has made no showing of prejudice, nor does she even assert that she was prejudiced. Our examination of the record indicates that none of her substantial rights were affected by the disputed evidentiary rulings. Therefore, this assignment of error is without merit.

Reimbursement of Certain Invoices

As her fifth assignment of error, Ms. Chiasson claims that the trial court was manifestly erroneous in granting Dr. Chiasson reimbursement for payments made by him to LaPorte and Sage, asserting that these expenses do not fall within the Louisiana Civil Code articles on reimbursement, *i.e.* articles 2364-2367 or 2369.3.

The April 25, 2012 Joint Pre-Trial Memorandum filed by the parties shows that there was a discrepancy as to the value of Plaza Orthopedics, the medical business of Dr. Chiasson. On the date of trial, May 22, 2012, the parties stipulated that the value of Plaza Orthopedics was $59,000.00. Dr. Chiasson hired LaPorte to value the accounts receivable of the medical business in light of the divorce

proceedings. The report of the firm assisted in the parties agreeing on the amounts of the accounts receivable, which were community property. Sage was hired to calculate Dr. Chiasson's exact accounts receivable figure within the practice.

The evidence at trial shows that the payments to LaPorte and Sage were for third-parties to calculate the community portion of the accounts receivable. Relying on Louisiana Civil Code articles 806 and 2369.3, the trial court found that Dr. Chiasson incurred these expenses "to preserve and maintain community assets which were under his control, even though this was after the termination of the community." Therefore, the trial court allowed reimbursement. A spouse is entitled to reimbursement of expenses for the management of community assets. *McKneely v. McKneely,* 1998-2472 (La. App. 1 Cir. 6/14/00), 764 So. 2d 1157, 1163 (finding that husband was entitled to reimbursement of expenses in conjunction with his management of rental houses which were former community assets).

However, we agree with Ms. Chiasson that the payments made to LaPorte and Sage were not to "preserve and maintain community assets." By Dr. Chiasson's own testimony, these payments were made as part of the litigation to assist in assessing the value of the accounts receivable for his medical business. The argument of Dr. Chiasson in his post-trial memorandum refers to these payments as expert fees. This circuit has recognized that the Louisiana Supreme Court has stated that there exists no statute which provides that "the fee of an expert who is employed and paid by a litigant for work preparatory to trial, but who is not called to testify in the case, may be considered costs and taxed as such." *Collins v. Texaco,* 607 So. 2d 760, 769 (La. App. 1 Cir. 1992) (quoting *State, Department of Highways v. Salemi,* 249 La. 1078, 193 So. 2d 252, 254 (1966)). Therefore, the trial court erred in permitting Dr. Chiasson reimbursement for

expert fees when no expert testified. Accordingly, we reverse the trial court's finding as to the reimbursement allowed for payments to LaPorte and Sage.

Reimbursement for Qualified Plans Payment

In her sixth assignment of error, Ms. Chiasson claims the trial court erred in allowing Dr. Chiasson reimbursement for a $1,900.00 payment to Qualified Plans to maintain and preserve a 401K account after the dissolution of the community. The evidence at trial was that Dr. Chiasson incurred this expense to preserve and maintain a community asset. Louisiana Civil Code articles 806 and 2369.3 permit the reimbursement for expenses "to preserve and manage" community assets. Therefore, this assignment of error is without merit.

Commercial Lots

In her seventh assignment of error, Ms. Chiasson contends that the trial court erred in allocating the community interest in two of the three former community property commercial lots to her. The evidence at the time of trial established that Dr. Chiasson is a medical professional who, during the marriage, practiced with two other doctors at Plaza Orthopedics. During the marriage, Dr. Chiasson and his partners decided to purchase three contiguous lots to expand their practice and build a new facility. After the marriage ended, Dr. Chiasson left the medical partnership, but retained ownership in the three lots with the other two doctors. The evidence also showed that Plaza Orthopedics did not purchase the lots, but each of the three doctors and their wives purchased them as individuals. Ms. Chiasson requested that the trial court not assign these lots to her.

Louisiana Revised Statute 9:2801(A)(4)(c) provides as follows:

> 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.

While the court is required to consider the nature and source of an asset, it may divide that asset equally or unequally or may allocate it entirely to one spouse.

> In deciding to whom an asset or liability shall be allocated, the court shall consider the nature and source of the asset or liability, the economic condition of each spouse, and any other circumstances the court deems relevant. The trial court's allocation or assigning of assets and liabilities in the partition of community property is reviewed under the abuse of discretion standard.

Williams v. Williams, 2006-2491 (La. App. 1 Cir. 9/14/07), 970 So. 2d 633, 641 (internal citations omitted).

The three commercial lots were appraised together for a total value of $359,400.00. The Chiassons owned one-third of each lot, so the total value they owned was $119,800.00. The trial court allocated the Chiassons' value in the lots as follows: Lot 12, valued at $36,466.67, to Dr. Chiasson and Lots 13 and 14, valued at $41,666.66 each, to Ms. Chiasson. The only comment made by the trial court was that the allocation was made "in order to fairly partition the parties' community property." Given the broad discretion afforded the trial court in allocating community property, we cannot say that the trial court in the instant case abused its discretion in allocating two of the commercial lots to Ms. Chiasson in an attempt to "fairly partition the parties' community property." *See Rao,* 927 So. 2d at 360.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed in part, and reversed in part. We reverse the portion of the trial court's judgment determining that the $56,000.00 paid by Dr. Chiasson to Ms. Chiasson between July 2007 and September 2008 was an advance on community property ordering reimbursement by Ms. Chiasson and that the invoices of LaPorte and Sage were

reimbursable expenses. We reverse that portion of the trial court's judgment valuing the community movables and the allocation of them to Ms.Chiasson.

We affirm the portion of the trial court's judgment valuing the 2004 Lincoln Navigator. We find no error in the trial court's admission of certain exhibits. We affirm the portions of the judgment ordering reimbursement of the Qualified Plans payment and the allocation of the commercial lots. We remand this matter to the trial court for further proceedings in accordance with this opinion. Costs of the appeal are assessed equally to both parties.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

BRETT JOSEPH CHIASSON **NO. 2015 CA 0069**

COURT OF APPEAL

VERSUS

FIRST CIRCUIT

GISELLE BUSTILLO CHIASSON **STATE OF LOUISIANA**

WELCH, J., concurring in part.

I agree with the majority opinion herein and respectfully concur with respect to the admission of the three exhibits challenged by Ms. Chiasson. I find that the documents at issue were hearsay and that the trial court erred in admitting those exhibits into evidence; however, the error was harmless and its evidentiary ruling on that issue should be affirmed on that basis, rather than on the basis that Ms. Chiasson made no showing of prejudice.

With regard to the trial court's evidentiary rulings, generally, the trial court is granted broad discretion in its evidentiary rulings and its determinations will not be disturbed on appeal absent a clear abuse of that discretion. **Wright v. Bennett**, 2004-1944 (La. App. 1st Cir. 9/28/05), 924 So.2d 178, 183. Additionally, La. C.E. art. 103(A) provides, in pertinent part, that "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected." The proper inquiry for determining whether a party was prejudiced by a trial court's alleged erroneous ruling on the admission or denial of evidence is whether the alleged error, when compared to the entire record, had a substantial effect on the outcome of the case; if the effect on the outcome is not substantial, reversal is not warranted. **Wright**, 924 So.2d at 183.

Ms. Chiasson urges that the trial court improperly admitted the bills/exhibits from (1) Qualified Plans, (2) LaPorte, and (3) Sage. Ms. Chiasson objected to the admissibility of those three documents because the documents were not authenticated and constituted hearsay and did not fall within any exception for

their admissibility as provided in La. C.E. art. 803.

Hearsay is "a statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted." La. C.E. art. 801(C). Hearsay is generally not admissibile unless it falls under one of the statutory exceptions set forth in La. C.E. arts. 803 or 804. See La. C.E. art. 802. The admission of hearsay evidence is subject to the harmless error analysis. **Clement v. Graves**, 2004-1831 (La. App. 1st Cir. 9/28/05), 924 So.2d 196, 204. The admission of hearsay that is merely cumulative or corroborative of other evidence is generally held to be harmless error. *Id.*

From my review, the documents at issue clearly contain hearsay, do not meet any exception to the hearsay rule, and should not have been admitted into evidence. However, with regard to the bills from LaPorte and from Sage, given the majority's decision to reverse Dr. Chiasson's claims for reimbursement for the payment of those bills (with which I agree), the trial court's error in admitting those two documents into evidence was harmless. With regard to the $1,900 bill from Qualified Plans, after reviewing the record in its entirety, I find that even if the document was improperly admitted into evidence, any such error was likewise harmless because it was cumulative or corroborative of the other evidence, *i.e.*, the testimony of Dr. Chiasson. Dr. Chiasson's testimony established that after the dissolution of his medical partnership, maintaining his 401K account (a community asset) became too expensive for his remaining two partners, so they elected to close the account; however, Dr. Chiasson explained that he paid $1,900 to keep that account opened and functioning, and therefore, was preserving the community asset. Therefore, the document evidencing the payment of that $1,900 by Dr. Chiasson was cumulative and thus, the trial court's ruling was harmless error.

Thus, I respectfully concur in part.