NOT DESIGNATED FOR PUBLICATION

SHANNON RAINEY BLANCO	*	**NO. 2006-CA-0787**
VERSUS	*	**COURT OF APPEAL**
MARTIN BLANCO, JR.	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

*** * * * * * ***

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 92-14170, DIVISION "C-DRS 1"
Honorable Sidney H. Cates, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Judge James F. McKay, III, Judge Dennis R. Bagneris, Sr., and Judge Michael E. Kirby)

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AFFIRMED AND REMANDED IN PART

DECEMBER 6, 2006

The Appellant, Shannon Rainey Blanco, appeals the judgment of the district court partitioning community property from a marriage that ended in 1994. We affirm and remand in part.

Procedural History and Facts

Ms. Blanco was married to Martin Blanco, Jr., the Appellee, in 1975. They physically separated in July of 1992 and were subsequently divorced on February 3, 1994. Initially the Petition for Divorce was filed on August 14, 1992 but was amended and filed again on January 4, 1994 in order to obtain a La. Civil Code Art. 103 divorce.

The parties never partitioned their community assets although they filed a Motion for Petition to Partition Community Property on January 8, 2004. After losing their property to Hurricane Katrina, the matter came for trial on Janauary 18, 2006.

State Farm Insurance Company paid them $89,000[1] for their immovable property and $23,000 for their movable property. The district court reviewed all of the evidence and divided the monies between the parties accordingly.

[1] The Appellant notes in her brief that there is a $200 discrepancy because she maintains that the insurance payment was $89,200(discussed infra).

Ms. Blanco is now before this Court appealing the calculation and distribution of the monies by the district court.

Standard of Review

It is well settled that a court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong," and where there is a conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed on review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. Where there are two permissible views of the evidence, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. When findings are based on determinations regarding the credibility of witnesses, the manifest error-clearly wrong standard demands great deference to the trier of fact's findings. Where a fact finder's finding is based on its decision to credit the testimony of one or more witnesses, that finding can virtually never be manifestly erroneous or clearly wrong. *Rosell v. ESCO,* 549 So.2d 840, 844-845 (La.1989). See also, *Hill v. Morehouse Parish Police Jury,* 95-1100 (La.1/16/96), p. 4, 666 So.2d 612, 614. *Ferrell v. Fireman's Fund Ins. Co.*, 94-1252 (La.2/20/95), 650 So.2d 742, 745; *Stobart v. State through Dept. of Transp. and Development,* 617 So.2d 880 (La.1993); *Arceneaux v. Domingue,* 365 So.2d 1330 (La.1978). We are instructed that before a fact-finder's verdict may be reversed, we must find from the record that a reasonable factual basis does not exist for the verdict, and that the record establishes the verdict is manifestly wrong. *Lewis v. State Through Dept. of Transp. and Development,* 94-2370 (La.4/21/95), 654 So.2d 311, 314; *Stobart v. State through Dept. of Transp. and Development,* 617 So.2d 880 (La.1993). Although we accord deference to the fact finder, we are cognizant of our

constitutional duty to review facts, not merely to decide if we, as a reviewing court, would have found the facts differently, but to determine whether the trial court's verdict was manifestly erroneous, clearly wrong based on the evidence, or clearly without evidentiary support. *Ambrose v. New Orleans Police Department Ambulance Service,* 93-3099 (La.7/5/94), 639 So.2d 216, 221; *Ferrell v. Fireman's Fund Ins. Co.,* 94-1252 (La.2/20/95), 650 So.2d 742, 745; *Washington v. Washington* 2002-2226 (LA. App. 4 Cir. 4/23/03) 846 So.2d 895, 900.

Assignment of error #1

Ms. Blanco maintains that the trial court erred in its determination that the community property regime terminated on the date the initial Petition for Divorce was filed (August 14, 1992) and not the date the Amending Petition for Divorce was filed (January 4, 1994).

LSA-C.C. Art. 159 states:

> A judgment of divorce terminates a community property regime **retroactively to the date of filing of the petition** in the action in which the judgment of divorce is rendered. The retroactive termination of the community shall be without prejudice to rights of third parties validly acquired in the interim between the filing of the petition and recordation of the judgment.

Ms. Blanco seeks to move the termination of community date forward because Mr. Blanco remained in the home and made mortgage payments three years after the divorce. Ms. Blanco claims that the community terminated on January 4, 1994 NOT August 4, 1992 when an Amendment to the Petition for Divorce was filed. The termination date was never an issue in the district court and the district court accepted the filing date as August 14, 1992.

LSA-C.C.P. Art. 1153 states:

> When the action or defense asserted in the amended petition or answer **arises out of the conduct, transaction, or occurrence** set forth or attempted to be set forth in the original pleading, the amendment **relates back** to the date of filing the original pleading.

The amended Petition for Divorce relates back to the original petition and therefore, the district court was correct in concluding that the August 14, 1992 dissolved the community as per La. Civ. Code Art. 159.

Assignment of Error #2

In her second assignment of error, Ms. Blanco argues that the trial court erred in deducting the parties' reimbursement claims from the total community immovable assets and not the value of each party's respective share in the total. Ms. Blanco argues that the district court erred in the computation of the distribution of insurance proceeds. More specifically, she maintains that the district court was required to deduct the total value of Mr. Blanco's reimbursement claim minus the total value of Ms. Blanco's reimbursement claim from the total community assets, leaving $29,0198.28 to be divided equally between the parties and that the district court violated La. Civ. Code Art. 2365 in its calculations.

The district court concluded the following:

1. The parties had to pay off the mortgage for $18,748.97;

2. Mr. Blanco receives $11,492 in reimbursement;

3. Ms. Blanco receives $43,607.87 in reimbursement and

4. The remaining portion of the proceeds are to be divided equally between the parties.

It was established at trial that Mr. Blanco lived in the property until August 1995 and paid the mortgage. Ms. Blanco remained living in the house until it was destroyed by Hurricane Katrina and paid the mortgage until January 2006. Earlier,

Mr. Blanco paid $7,000 of his separate funds to stop foreclosure on the property and Ms. Blanco claims that she too paid an additional $7,000, totaling $14,000 to stop foreclosure. Ms. Blanco submitted an itemized list of expenditures on improvements totaling $14,860.75. Ms. Blanco argued at trial that the movable property was mainly hers, however, Mr. Blanco argued that he left most of the items in the home when he left. The district court admittedly was unable to resolve this issue so the funds were spilt down the middle.

Mr. Blanco argues that the district court used a standard formula. Ms. Blanco relies on *Davezac v. Davezac*, 483 So.2d 1197 (La. App. 4 Cir., 1986). Mr. Blanco maintains that *Davezac* is controlling when there is not enough community left to give full reimbursement to the parties. We find that *Davezac* serves as a standard when the partitioning parties have unique circumstances and expenses and the court is left to divide the assets as it sees fit and in all fairness. This is what the district court did in *Davezac* and this is what the district court did in the instant matter.

LSA-C.C. Art. 2365 states:

> If separate property of a spouse has been used to satisfy a community obligation, that spouse, upon termination of the community property regime, is entitled to reimbursement for one-half of the amount or value that the property had at the time it was used. The liability of a spouse who owes reimbursement is limited to the value of his share in the community **after deduction of all community obligations**.
>
> Nevertheless, if the community obligation was incurred for the ordinary and customary expenses of the marriage, or for the support, maintenance, and education of children of either spouse in keeping with the economic condition of the community, the spouse is entitled to reimbursement from the other spouse regardless of the value of that spouse's share of the community.

The district court does not rely on any case law in its Reasons For Judgment as a guide to the amounts figured for each party, however, the district court conducts a thorough assessment of the monies owed and the monies paid accounting for every cent. The district court paid the community debts first and relied on R.S. 9:2801(A)(4)(b):

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

It is fair to conclude that the parties are in a delicate situation now that Hurricane Katrina has destroyed their assets. While Ms. Blanco may feel more entitlement to the insurance proceeds, because she remained in the house and made improvements to it, the district court did its best to decipher who contributed what financially. The district court simply split the proceeds down the middle and took into account any evidence for the reimbursement claims. The district court could not have been more reasonable and fair.

Ms. Blanco makes reference in her brief that the actual amount of the State Farm disbursement for the immovable property was $89,200. The district court judgment reflects the amount as $89,000 (a difference of $200). Ms. Blanco notes that the correct amount referenced in the Interim Order of January 9, 2006 filed in

the record. However, the record does not contain a copy of the original disbursement check from State Farm for this Court to conclude a specific amount. Therefore, we remand this matter only for the district court to amend its judgment accordingly if the evidence reveals that there is a $200 discrepancy between the amount allocated to the parties and the amount that is reflected in the district court's final judgment.

Decree

For the reasons stated herein, we affirm the judgment of the district court and remand for further review the district court's final calculation of the insurance proceeds.

AFFIRMED AND REMANDED IN PART