

MARCIA HENRY

*

NO. 2017-CA-0282

VERSUS

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COURT OF APPEAL

TROY HENRY

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2011-01516, DIVISION "K"
Honorable Bernadette D'Souza, Judge

* * * * *

Judge Terri F. Love

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(Court composed of Judge Terri F. Love, Judge Terrel J. Broussard, Pro Tempore,
Judge Marion F. Edwards, Pro Tempore)

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AFFIRMED IN PART; REVERSED IN PART; REMANDED

OCTOBER 18, 2017

Appellant Marcia Henry appeals the trial court's September 6, 2016 judgment of partition that adopted the special master's findings that classified and allocated settlement funds from a breach of contract suit and other alleged community assets. In his Answer, appellee Troy Henry claims the trial court erred in the adoption of the special master's opinion insofar as he substituted his opinion for that of the court appointed expert consented to by the parties to conduct a business valuation of Henry Consulting, LLC.

We find Ms. Henry has failed to comply with the Rule 2-12.4 of the Uniform Rules, Courts of Appeal and therefore, the assigned errors are disregarded on appeal. Additionally, those errors which this Court can decipher are without merit. Further, it is unclear whether the trial court considered the credibility of the appointed expert, who the parties agreed would be the only expert to provide a business valuation for Henry Consulting, LLC, before it rejected the expert's opinion. Therefore, we reverse in part the portion of the judgment pertaining to the business valuation of Henry Consulting, LLC and remand the matter for

proceedings in line with this opinion. In all other respects, the judgment of the trial court is affirmed.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Troy and Marcia Henry were married on June 9, 1984, and three children were born of the union, all of whom attained the age of majority by the time Ms. Henry filed a petition for divorce in February 2011. A judgment of divorce was granted in December 2011. Thereafter, the Henrys partially partitioned the community by consent judgment. However, before proceeding to a trial for partition of the remaining community assets, the parties sought classification of settlement proceeds received from a breach of contract suit as well as a business valuation of the community-owned business Henry Consulting, LLC. The parties entered a consent judgment in September 2013, agreeing to the appointment of Chaffe & Associates, Inc. (“Chaffe”) to conduct a business valuation of Henry Consulting, LLC. Chaffe issued a report in August 2014 and later updated its report in December 2014. In February 2015, the parties stipulated to the appointment of a special master. In September 2015, the trial court appointed Frank Tranchina as the special master.

The special master ordered a bifurcated trial to address the classification of the settlement proceeds prior to the trial of the remaining community issues. The classification issue was heard in December 2015 and the special master issued his report in February 2016, which included a breakdown of how the settlement proceeds should be classified. In March 2016, the special master conducted a two-

day trial, addressing the remaining assets of the community property and the parties' respective reimbursement and accounting claims. The primary asset that required valuation was Henry Consulting, LLC, which also owns 100% of Infinity Fuels, LLC, 20% interest in Pnuema Aviation, LLC, and 50% interest of Sterling Fresh Foods, LLC ("Sterling"). In May 2016, the special master issued his opinion recommending the manner in which the community assets should be allocated. Ms. Henry subsequently filed her objections to the special master's opinion, and Mr. Henry filed his opposition to Ms. Henry's objections.

The trial court took the matter under advisement in August 2016 and issued its judgment on September 6, 2016. The trial court found no clear error in the special master's opinions. Therefore, the trial court declined to grant Ms. Henry's request for modification of the special master's opinion and adopted instead the special master's February and May 2016 reports in their entirety pursuant to La. R.S. 13:4165(C)(3).

Ms. Henry subsequently filed the instant appeal. Mr. Henry answered the appeal, alleging the special master erred in his report when he substituted his opinion for that of the expert appointed by the court and agreed to by the parties to provide a business valuation of Henry Consulting, LLC. Mr. Henry indicates that while the special master acknowledged in his report Chaffe's revised valuation of Henry Consulting, LLC and its investment in Infinity Fuels, LLC, Pnuema Aviation, LLC, and Sterling Fresh Foods, LLC as of December 31, 2013, he

nevertheless substituted his own valuation of Henry Consulting, LLC for that of the court appointed expert.

STANDARD OF REVIEW

“A trial court's finding regarding the nature of property as being either community or separate is a factual determination subject to the manifest error/clearly wrong standard of review.” *Durden v. Durden*, 14-1154, p. 10 (La. App. 4 Cir. 4/29/15), 165 So.3d 1131, 1139 (citing *Jemison v. Tipton*, 09-1166, p. 8 (La. App. 4 Cir. 5/6/10), 38 So.3d 1021, 1027).

DISCUSSION

Appellant's Assigned Errors

At the outset, we note that Ms. Henry's appellate brief fails to comply with the Uniform Rules of Louisiana Courts of Appeal. “According to Uniform Rules, Courts of Appeal Rule 2-12.4, an argument on an assignment of error in a brief shall include a suitable reference by volume and page to the place in the record which contains the basis for the alleged error. This Court may disregard an argument on that error in the event suitable reference to the record is not made....” *State v. Rouser*, 14-0613, p. 18 (La. App. 4 Cir. 1/7/15), 158 So.3d 860, 873, n. 13; Uniform Rules, Courts of Appeal Rule 2-12.4(A)(4) and (7).

Ms. Henry's appellate brief lists twelve assignments of error regarding various rulings in the proceedings in the trial court. However, the alleged errors are vague and confusing. Additionally, to the extent her arguments can be deciphered, they do not include page references to the record in support of her

claims. Further, Ms. Henry makes several procedural and factual allegations which are unsupported by the record. In that Ms. Henry's remaining assignments of error are not properly briefed and/or proffered, this Court will not consider them. *See* Uniform Rules, Courts of Appeal Rule 2-12.4(B)(3) and (4).

Appellee's Answer

Mr. Henry asserts five assignments of error including: (1) the special master erroneously substituted his opinion of the business valuation of Henry Consulting, LLC for that of the court appointed expert; (2) the special master erroneously disregarded all the debts of Sterling; (3) the special master erroneously valued Sterling to be \$0 and erroneously ignored the negative equity of Henry Consulting, LLC; (4) the special master erroneously concluded that Sterling was not able to service its debts; and (5) the special master erred in his valuation of Henry Consulting, LLC.

On September 6, 2013, the parties entered a consent judgment to appoint a business valuation expert. The parties agreed to the trial court's appointing of Chaffe as the trial court's expert to conduct a business valuation of Henry Consulting, LLC. The parties also agreed to use Chaffe's valuation for purposes of partitioning the community property and that Chaffe would be the only expert used to value the business.

Chaffe issued a report on August 2014 and later updated its report in December 2014, valuing Henry Consulting, LLC as of December 31, 2013. In accordance with the September 6, 2013 consent judgment, the valuation as of

December 31, 2013, that Chaffe provided is the value to be used for Henry Consulting, LLC.

In *Watts v. Watts*, 552 So.2d 738, 740 (La. App. 1st Cir. 1989), the First Circuit explained that “[g]enerally, the trier of fact is not bound by expert testimony. The testimony of an expert witness is to be received and weighed in the same manner as any other evidence.” *Id.* (citing *White v. Givens*, 491 So.2d 63, 65 (La. App. 1st Cir. 1986); *See also Motton v. Travelers Insurance Company*, 484 So.2d 816, 820 (La. App. 1st Cir. 1986). “However, the testimony of experts must be given effect if it appears reasonable and well founded. ... Additionally, a trial court may not substitute its opinion for that of an expert's when the expert's testimony is based on correct facts and good reasoning.” *Watts*, 552 So.2d at 740 (internal citations omitted). Further, in *McGhee v. McGhee*, the court held that the trial court erred when it substituted its opinion for that of the expert's, stating “[t]he opinion of the court cannot supersede the opinion of an expert in this factual posture. The court can only accept or reject the opinion of the expert.” *Id.*, 543 So.2d 1126, 1128 (La. App. 1st Cir. 1989).

In this case, the trial court summarily adopted the findings of the special master, who disagreed with the expert's valuation of Henry Consulting, LLC. The special master concluded that Chaffe's valuation of the business should be adjusted to disregard the debts of Sterling because Henry Consulting, LLC did not guarantee the debts. The special master further determined that Mr. Henry did not include the debts of Sterling in his sworn detailed descriptive list because they

were “incurred post-termination and thus, could not be deemed a ‘community debt.’”

At trial, the court appointed expert “expressed doubt about including the debts saying that it was a legal matter for the court to decide.” Accordingly, the special master explained that in adjusting Chaffe’s valuation for Henry Consulting, LLC, it was “not substituting his opinion for that of the Court’s expert, [as] he [was] using all [Chaffe’s] figures, but resolving the legal issues [Chaffe] had.”

It is unclear from a review of trial court’s September 6, 2016 judgment whether it considered the court appointed expert’s testimony, evaluated the expert’s credibility, or determined whether the expert’s opinions were unreasonable or unfounded. By consent judgment, the parties agreed that Chaffe would be the only expert used to value Henry Consulting, LLC. In that the special master disagrees with the expert’s business valuation, we find remand is necessary for the trial court to consider the credibility of the expert’s findings before rejecting the expert’s opinion. *Watts*, 552 So.2d at 741 (citing La. C.C.P. art. 2164). Therefore, we remand the matter for further proceedings as to the proper valuation of Henry Consulting, LLC, through the assessment of the credibility of the opinions and business valuation provided by Chaffe.

DECREE

We find Ms. Henry’s arguments on appeal are vague, confusing and in violation of Rule 2-12.4 of the Uniform Rules, Courts of Appeal. Therefore, this Court disregards those assignments of error. All other assigned errors presented by

Ms. Henry are without merit. Additionally, the portion of the trial court's September 6, 2016 judgment of partition which adopted the special master's valuation of Henry Consulting, LLC instead of the court appointed expert's valuation is reversed, and the matter is remanded for further proceedings in line with this opinion. In all other respects, the judgment is affirmed.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED