

MARCIA HENRY	*	NO. 2018-CA-0522
VERSUS	*	COURT OF APPEAL
TROY HENRY	*	FOURTH CIRCUIT
	*	STATE OF LOUISIANA
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BARTHOLOMEW-WOODS, J., DISSENTS WITH REASONS

I respectfully dissent from the majority's decision. An appeal was previously lodged by the parties and considered by a different panel of this Court, which remanded this matter for the district court "to consider the credibility of the expert's findings before rejecting the expert's opinion." *Henry v. Henry*, 2017-0282, p. 7 (La. App. 4 Cir. 10/18/17), ___So.3d___, 2017 WL 4700385. Instead of following these instructions, the district court adopted the findings of the Court Appointed Special Master and disregarded the expert's valuation of the community asset, Henry Consulting, LLC ("Henry Consulting").

In affirming the district court's ruling, the majority concludes, without any factual basis, that Sterling Fresh Foods, LLC ("Sterling Fresh Foods"), is a subsidiary of Henry Consulting, and that Henry Consulting cannot be held liable for the debts of its subsidiary without a written note of assumption of the debt. I believe that the majority failed to consider the definition and meaning of subsidiary in reaching its conclusion.

Black's Law Dictionary 419 (10th ed. 2014) defines a subsidiary corporation as a "corporation in which a parent corporation has a controlling share." Controlling interest or share is defined as "sufficient ownership of stock in a company to control policy and management; esp., a greater-than 50% ownership

interest in an enterprise.” Black’s Law Dictionary 934 (10th ed. 2014). Considering these definitions in the context of the instant matter, it is questionable whether Sterling Fresh Foods is, in fact, a subsidiary of Henry Consulting. In the briefs filed with the Court, Mr. Henry admits that Henry Consulting owns a 50% interest in Sterling Fresh Foods; however, a mere 50% ownership does not meet the definition of a subsidiary corporation. Furthermore, the record lacks any facts that would provide insight as to whether Henry Consulting owned sufficient stock in Sterling Fresh Foods to control policy and management greater than that of the other owner of Sterling Fresh Foods. Because there has been no delineation of how Sterling Fresh Foods was operated by both corporate owners, this Court cannot make a concrete determination as to whether Sterling Fresh Foods, is in fact a subsidiary of Henry Consulting. Based on this, alone, the majority’s reasoning and holding are erroneous.

I further dissent from the majority’s opinion, insofar as it discounts the district court’s reference to La.C.C. art. 2356 and the date of the termination of the community property regime as February 13, 2011. There is no reasonable basis for the district court to have referenced this date unless it was using it as the date upon which to declare the end of the community property regime as it relates to the partition of the community as well. In fact, the district court’s exact wording, states that “...Chaffe’s findings did not utilize well established law to come to its **final** valuation. Pursuant to La. C.C. Art. 2356, the well established law to come to its final valuation. [sic] Pursuant to La. C.C. Art. 2356, the community property regime terminated on February 13, 2011.” (Emphasis supplied). It is clear that the district court thought that the final valuation that Chaffe conducted should have been the date that the community property regime terminated, as opposed to the date of the partition trial. The district court, in discounting the opinion of the mutually agreed upon expert, made a mistake. The majority, however, reasons that

the district court's reference to those words and that phrase, in the grand scheme of things, is somehow irrelevant. In our law, words and phrases have meaning. While we do not look to the reasons for judgment as a basis for affirming or reversing a district court, we certainly can view them to gain an understanding of the intent of the district court.¹ In this matter, it is clear that the district court misapplied the law pertaining to the partition of community property and confused it with the law pertaining to the termination of a community.

Finally, the record indicates that Mr. Henry was the manager of the community asset, Henry Consulting, both during and after the termination of the community. As the spouse in control of the former community asset, Mr. Henry owed a fiduciary duty to his former spouse, Ms. Henry, in his management of Henry Consulting. *See Granger v. Granger*, 2006-1615, pp. 3-4 (La.App. 3 Cir. 9/26/2007), 967 So.2d 540, 543. Louisiana Civil Code article 2369.3 defines the duty of the spouse in control of the former community asset and provides, in relevant part:

A spouse has a duty to preserve and to manage prudently former community property under his control, including a former community enterprise, in a manner consistent with the mode of use of that property immediately prior to termination of the community regime. He is answerable for any damage caused by his fault, default or neglect.

The record lacks any evidence that would prove or disprove whether, when Mr. Henry invested in Sterling Fresh Foods as manager of Henry Consulting, he was acting in a prudent manner, and whether the debts incurred by Sterling Fresh Foods should be counted against Mr. Henry or not. However, whether the debts of Sterling Fresh Foods were guaranteed or not by Henry Consulting is unlikely germane to this determination because, as previously discussed, it is also unlikely that Sterling Fresh Foods is a subsidiary of Henry Consulting.

¹ The Louisiana Supreme Court has explained that while a trial court's reasons for judgment does not form part of the judgment, they serve as "an explication of the trial court's determinations." *Wooley v. Lucksinger*, 2009-0571, p. 77 (La. 4/1/11), 61 So.3d 507, 572.

I would remand this matter for further proceedings to determine, first, whether the expert's opinion should be considered or not, as ordered previously by this Court, but not followed by the district court; and second, whether Mr. Henry managed the community asset of Henry Consulting in a prudent manner when he invested in Sterling Fresh Foods, thereby either allowing the debts of Sterling Fresh Farms to be attributable to Mr. Henry or not.

Based on the foregoing, I respectfully dissent.