STATE OF MICHIGAN

COURT OF APPEALS

ANNE K. DAVIDSON, Plaintiff-Appellee,	UNPUBLISHED August 9, 2011
V	No. 298746 Tuscola Circuit Court
RICHARD D. DAVIDSON, Defendant-Appellant.	LC No. 08-024763

Before: M. J. KELLY, P.J., and O'CONNELL and SERVITTO, JJ.

M. J. KELLY, P.J. (*dissenting*).

Because I believe the trial court abused its discretion when it failed to qualify defendant's proposed expert, George Charles Johns, and—on that basis—precluded his proposed testimony as to the value of the parties' franchise, I respectfully dissent.

If a trial court "determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion . . . ." MRE 702. It has long been recognized that formal education is not a prerequisite to being qualified as an expert. See *People v Whitfield*, 425 Mich 116, 123; 388 NW2d 206 (1986) (stating that an expert witness should not be scrutinized under an overly narrow test of qualifications); *People v King*, 58 Mich App 390, 399; 228 NW2d 391 (1975) (noting that a person can obtain the requisite "special knowledge" through employment experience). Indeed, practical experience can render a witness more qualified to testify as an expert on some subjects than a witness with academic credentials alone. See *People v Boyd*, 65 Mich App 11, 15-16; 236 NW2d 744 (1975) (holding that a heroin addict, who had used heroin hundreds of times, could be qualified as an expert on the identification of heroin and that questions regarding her qualifications were properly a matter of weight and credibility—not admissibility). Here, Johns testified that he had been in the accounting business for 30 years, held a real estate license, trained under his father, who himself had 50 years of experience in the field, and had performed business valuations for his clients four to six times per year for 30

years.[1] Although he did not have a formal degree, he testified that his major in college was accounting, that he "aced" his accounting courses, and that he was on the dean's list. Moreover, contrary to the majority's assertion that he "testified . . . that his expertise lay in tax matters rather than business valuation," he did not state that his expertise was limited to tax matters. Rather, he testified that he had not had the opportunity to testify as an expert on business valuations because the majority of the cases that he had been hired to work on were divorces and those cases rarely went to trial:

> THE COURT: And the area that you know more and have testified more is about taxation, taxes, in terms of a courtroom?
>
> THE WITNESS: Yes. In a courtroom, sure. I've never had to—I've never had—never gone this far. You know, most divorces don't go to court and trial. I've never had to testify and go forth and—that's correct.

This testimony does not establish that Johns was not qualified to testify as to the valuation of a relatively simple and uncomplicated business franchise that consisted of stationary vending machines at fixed locations. Likewise it does not establish that he has never provided deposition testimony or otherwise provided expert opinions in litigation. Rather, it merely shows that he had never previously testified in an actual trial relative to the valuation of a business. But that alone is not a sufficient reason to disqualify him from offering an expert opinion here. See *People v Yost*, 278 Mich App 341, 394-395; 749 NW2d 753 (2008) (stating that, although a medical examiner was not an expert on suicide, this did not preclude him from offering an opinion as to whether children commit suicide given his experience and concluding that any limitations in this regard were a matter of weight and credibility).

[1] Johns had vastly more experience in valuing businesses than did plaintiff's expert certified public accountant. Johns performed from 120 to 180 business valuations, whereas plaintiff's expert stated that she had performed only 30 valuations during her career.

I believe that Johns was plainly qualified to provide expert testimony under MRE 702 on the basis of his specialized knowledge, training and experience, and that the lower court erred by refusing to qualify him. While I acknowledge that the abuse of discretion standard we are to apply to a trial court's decision to qualify an expert witness is a high one, it is not insurmountable. See, e.g., *Whitfield*, 425 Mich at 123-124 (holding that the trial court abused its discretion when it refused to qualify the defendant's expert to testify about the transmission of gonorrhea because, although a family practitioner, the witness had acquired specialized knowledge through experience in treating cases and through literature on the topic). Because Johns was clearly qualified to testify as to the value of the business at issue, the trial court abused its discretion when it refused to permit him to testify. Moreover, because there is no record concerning what his testimony might have been, I cannot ascertain how this error might have affected the outcome. Therefore, I cannot conclude that this error was harmless. See MRE 103(a). Accordingly, I would reverse.

/s/ Michael J. Kelly