

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0370

MEADOWRIDGE HEALTH SERVICES, L.L.C.

VERSUS

BRYAN BLANCHARD

Handwritten initials: MC, J.P.

Judgment Rendered: FEB 13 2012

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On Appeal from the Seventeenth Judicial District Court
In and for the Parish of Lafourche
State of Louisiana
Docket No. 103122

Honorable F. Hugh Larose, Judge Presiding

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

Handwritten notes: JEW, b7D-2P, WELCH, J. Concurs

McCLENDON, J.

A member of a limited liability company seeks review of a judgment denying his motion to appoint a liquidator. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Bryan Blanchard, Donald Olivier, and Lester Olinde together established Meadowridge Health Services, LLC, an outpatient mental health rehabilitation facility in Thibodaux, Louisiana, in September 2002. The company's primary business was providing care for Medicaid patients. In addition to being a member of the company, Mr. Blanchard was employed by the company.

In December 2005, Mr. Blanchard was terminated from his employment with the company. Meadowridge subsequently filed a petition, alleging that in February 2006, Mr. Blanchard withdrew \$8,576.61 from Meadowridge's bank account. Meadowridge sought damages for "tort[ious] conversion," seeking recovery of the amount Mr. Blanchard withdrew along with "consequential damages."

Mr. Blanchard answered, alleging that he was acting as a member of the company when he disbursed \$8,576.61 in satisfaction of "lawful obligations" owed by the company (including repayment of \$5,205.00 to Mr. Blanchard's mother for an outstanding loan made to the company and payment to himself of a dividend owed). Mr. Blanchard, joined by his wife Lesli, also reconvened against Meadowridge, Donald Olivier, II and Lester Olinde, Jr. in a derivative action. The Blanchards alleged that Mr. Olivier and Mr. Olinde breached their fiduciary duties to the company by terminating Mr. Blanchard's employment and insurance coverage, ceasing to pay Mr. Blanchard's salary and portion of the profits while continuing to pay themselves, terminating Mrs. Blanchard's employment and insurance coverage, and various other acts including forcing Mr. Blanchard's withdrawal without paying him the value of his membership interest. The Blanchards also alleged that "Olinde and Olivier also have taken actions that

harmed the company and may jeopardize its eligibility to continue as a Medicaid eligible provider and caused other injury to the company.”

With regard to these issues, in a pretrial statement filed by the Blanchards, they indicated that the proper value of Meadowridge and Magnolia Family Services, LLC, a subsequent company formed by Mr. Olinde and Mr. Olivier after Meadowridge ceased doing business, was at issue and that they may introduce reports regarding valuation of Meadowridge and Magnolia. Additionally, Meadowridge’s witness list included six individuals associated with the Louisiana Department of Health and Hospitals, a representative from the Commission on Accreditation of Rehabilitation Facilities, and an individual associated with the Louisiana Department of Social Services, Bureau of Licensing and Quality Assurance, all of whom were expected to testify “regarding the legal status of the Company as a Medicaid provider.” Further, Meadowridge’s exhibit list included “[a]ll licensure and other documents relating to the Company’s status as a Louisiana Medicaid Service Provider, including Enrollment Packet for the Louisiana Medicaid Assistance Program (Medicaid), the Mental Health Rehabilitation Services Provider Manual, the PE 50, and all other documents pertaining to the Company, and its participation in the Medicaid program, including correspondence, regulations and laws.”¹

The matter was tried on the merits on April 30, 2008, through May 2, 2008. Judgment was signed on June 19, 2008, awarding Meadowridge \$7,978.81 (after a setoff for salary due Mr. Blanchard) on the main demand against Mr. Blanchard, awarding Mrs. Blanchard \$448.78, dismissing the derivative actions for failure to comply with previous rulings, and ruling:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Meadowridge Health Services, LLC be dissolved and its affairs shall be wound up and liquidated. All members shall meet on or before June 15, 2008, to determine whether a wind-up plan and the liquidation of [Meadowridge] Health Services, LLC can be mutually agreed upon and completed without the Court’s appointment of a liquidator. If the members cannot mutually agree to a plan of

¹ Meadowridge asserts that none of the referenced witnesses or documents were offered because Mr. Blanchard failed to put on any evidence which required it.

wind-up and liquidation the Court shall be notified forthwith and will appoint a liquidator. Thereafter any assets remaining shall be distributed to the members in the proportions of their respective one-third (1/3) membership interests.

Neither party ever sought review of the referenced judgment.

At a status conference on June 19, 2008, the parties informed the court that they could not reach a mutual agreement regarding liquidation of the company. At that time, Mr. Blanchard's counsel urged the court to appoint a liquidator; however, Meadowridge's counsel opposed the motion, contending that the company was insolvent and could not pay a liquidator.

Thereafter, additional financial information was furnished to Mr. Blanchard. At some point, Mr. Blanchard filed a motion to appoint a liquidator. After several preliminary hearings and continuances, the motion was heard on July 27, 2010. At the hearing, plaintiffs objected to Mr. Blanchard's attempt to introduce the testimony of an expert, Charles Theriot, regarding the value of Meadowridge and its remaining assets. In sustaining the plaintiffs' objection to the relevancy of Mr. Theriot's testimony, the trial court stated:²

The only issue that remains in this case, and I understand that you may not feel that the claim regarding the valuation of any licensing, because that issue was most certainly addressed, and whether you agree with the energy with which it was pursued in 2008 when the trial was held is not relevant. I mean a judgment was rendered. The appeals process has long expired.^[3]

The only remaining issue before this Court is whether or not there [exist] assets and liabilities of such a complex nature that is going to need or necessitate the appointment of a liquidator in order to handle this.

But I'm not going to use that as a guise under which we are going to reopen the litigation regarding the valuation of assets for the liquidation of the LLC because that was done in 2008. Nor will I allow a rule to adopt a liquidator to become another trial long after the exhaustion of...all the legal remedies.

² The court allowed Mr. Blanchard to proffer Mr. Theriot's deposition testimony; however, Mr. Blanchard filed into the record a statement by his attorney regarding what Mr. Theriot would have testified to and not Mr. Theriot's deposition testimony as authorized by the trial court.

³ While we question the finality of this ruling, for purposes of this opinion, we need not address whether the June 19, 2008 judgment was an interlocutory ruling or a final judgment.

I'm going to sustain the objection. We're going down a road that this Court cannot see is going to be beneficial to its decision in the appointment of a liquidator.

On November 18, 2010, the court signed a judgment that denied Mr. Blanchard's motion to appoint a liquidator. In its reasons filed that same day, the court indicated that all of the substantial assets of Meadowridge had been liquidated previously, so there was no need to appoint a liquidator.

Mr. Blanchard timely filed a motion and order for a devolutive appeal, assigning the following as error:

1. The trial court committed error and abused its discretion in excluding the testimony of Charles Theriot, CPA.
2. The trial court erred in denying the Defendant, Bryan Blanchard's Motion to Appoint Liquidator since there is no evidence of record to support its decision.

Thereafter, this court issued a rule to show cause, noting that "the November 18, 2010 judgment on appeal in this matter does not appear to be an appealable ruling." On August 3, 2011, this court issued an interim order remanding the matter to the trial court to "sign a valid written judgment which contains appropriate decretal language." This court noted that while a ruling on a motion to appoint a liquidator is usually an interlocutory judgment, "it is possible that under the circumstances of this case that the trial court has adjudicated the only issues still pending before it, but the judgment neither dismisses the suit nor states that all issues in the suit are resolved." On August 10, 2011, the trial court, in accordance with this court's interim order, issued another Judgment that provided:⁴

IT IS ORDERED ADJUDGED AND DECREED that the Motion to Appoint Liquidator, filed in this cause on behalf of Bryan Blanchard, be and the same is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that since a final judgment on the merits of this cause having been rendered on June 19, 2008, this court having reserved jurisdiction for the limited purpose of deciding whether the appointment of a

⁴ Mr. Blanchard filed a motion to supplement the appellate record with the August 10, 2011 judgment. We grant the motion.

liquidator was warranted, this judgment resolves all remaining issues in this cause.

Because the judgment resolves all remaining issues before the trial court, we conclude that it is a final judgment ripe for review at this time.

DISCUSSION

Mr. Blanchard asserts that the trial court erred in excluding the testimony of his expert witness, Mr. Theriot, and committed manifest error in denying his motion to appoint a liquidator since there was no evidence to support its ruling. Mr. Blanchard avers that Mr. Theriot was prepared to testify to multiple issues with respect to the remaining assets in Meadowridge, which the trial court had previously ordered resolved and liquidated. Specifically, Mr. Blanchard asserts that the Medicaid provider number was never accounted for nor liquidated when Meadowridge was dissolved.⁵ Mr. Blanchard maintains that Mr. Theriot's testimony would have assisted the trier of fact to understand the evidence and to determine that there was a necessity for a liquidator inasmuch as the most valuable asset of Meadowridge had never previously been accounted for or liquidated.

Louisiana Revised Statutes 12:1336 provides, in pertinent part:

A. Except as otherwise provided in the articles of organization or a written operating agreement, upon dissolution the members shall wind up the limited liability company's affairs. The windup of the limited liability company's affairs may be conducted by appointment of one or more liquidators to conduct the windup and liquidation...

B. However, any court of competent jurisdiction may wind up the limited liability company's affairs on application of any member or his legal representative or assignee or of any liquidator.

Pursuant to this statutory language, an LLC's members may wind up an LLC's affairs with or without a liquidator. See Glenn G. Morris & Wendell H. Holmes, **Business Organizations** § 44.25 at 564, in 8 Louisiana Civil Law Treatise

⁵ Mr. Blanchard avers that while there was a bill of sale transferring the "old" assets of Meadowridge to Magnolia, Mr. Theriot would have testified that the sale did not include the biggest asset of the old corporation—the Medicaid provider number. Nevertheless, Mr. Blanchard asserts that the new corporate entity continued to utilize the Medicaid provider number associated with Meadowridge.

(1999). Also, the trial court, upon application of any member, has the authority to wind up an LLC itself, or to appoint a receiver to perform the winding up. Such a decision, as evidenced by the use of the term "may" in LSA-R.S. 12:1336, is subject to the court's discretion. Moreover, nothing in the LLC act precludes the trial court from allowing an LLC's members to perform the winding up under appropriate circumstances.

Generally, the trial court is granted broad discretion on its evidentiary rulings and its determinations will not be disturbed on appeal absent a clear abuse of that discretion. **Turner v. Ostrowe**, 01-1935, p.5 (La.App. 1 Cir. 9/27/02), 828 So.2d 1212, 1216, writ denied, 02-2940 (La. 2/7/03), 836 So.2d 107. Except as otherwise provided by law, all relevant evidence is admissible. LSA-C.E. art. 402. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. LSA-C.E. art. 401. Whether evidence is relevant is within the discretion of the trial court, and its ruling will not be disturbed on appeal in the absence of a clear abuse of discretion. **Boudreaux v. Mid-Continent Cas. Co.**, 05-2453, p.8 (La.App. 1 Cir. 11/3/06), 950 So.2d 839, 845, writ denied, 06-2775 (La. 1/26/07), 948 So.2d 171.

In denying Mr. Blanchard's motion to appoint a liquidator, the trial court, cognizant of the pretrial discovery and the lengthy trial on the merits, indicated that the issue regarding valuation was previously addressed at trial in 2008. A review of the pretrial filings of both Mr. Blanchard and Meadowridge reveals the rights relative to the Medicaid provider number were at issue, or at a minimum, a cause of action in that regard, existed at the time of trial in 2008. However, Mr. Blanchard did not previously seek review of the June 19, 2008, judgment nor has he assigned it as error in this appeal. In light of the foregoing, we cannot conclude that the trial court abused its discretion in excluding Mr. Theriot's testimony or in denying Mr. Blanchard's motion to appoint a liquidator. Mr. Blanchard's assignments of error are without merit.

CONCLUSION

For the foregoing reasons, we grant the motion to supplement the appellate record and affirm the trial court's August 10, 2011 judgment. Costs of this appeal are assessed to appellant, Bryan Blanchard.

**MOTION TO SUPPLEMENT APPELLATE RECORD GRANTED;
JUDGMENT AFFIRMED.**