[Cite as *Calderon v. Reinig*, 2011-Ohio-6136.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Enrique Calderon,	:	
Plaintiff-Appellant,	:	
v.	:	No. 11AP-347 (M.C. No. 2009 CVF 42049)
Wayne E. Reinig,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on November 29, 2011

Kevin O'Brien & Associates Co., L.P.A., Benjamin Sigall, *Kevin* O'Brien and *Jonathan Layman*, for appellant.

James W. Adair, III, for appellee.

APPEAL from the Franklin County Municipal Court

TYACK, J.

{¶1} Enrique Calderon ("appellant") is appealing from the verdict of the Franklin County Municipal Court which granted him what he viewed to be inadequate damages. He assigns a single error for our review:

> THE MARCH 8, 2011, DECISION AND ENTRY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE DUE TO THE INCORRECT APPLICATION OF EVIDENTIARY RULES AND THE BURDEN OF PROOF, R. 24.

{¶2} Appellant used to train horses for Wayne E. Reinig. Neither appellant's billing for services rendered nor Reinig's payment for services was exemplary. Clearly Reinig fell behind in his payments, which resulted in appellant being given as partial payment one of the horses he was training. The municipal court judge who heard the case found that an additional sum of $2,057.49 was still due.

{¶3} On appeal, counsel for appellant disagrees with the value assigned to the horse given to appellant. The horse, named 36 Hours, was assigned a value of $3,500 by the trial court. Reinig claimed the horse was worth $5,000. Counsel for appellant asserts that the horse was essentially worthless.

{¶4} The trial court discarded the $5,000 figure, based upon the fact Reinig had entered the horse in a $3,500 claiming race. Any horse entered in such a race can be claimed or purchased for $3,500. The fact that no one bought 36 Hours for $3,500 is an indication that 36 Hours was not seen by potential buyers as being worth $3,500. However, appellant raced 36 Hours after receiving ownership of it, leading to a conclusion that the horse was not worthless. In fact, the horse generated winnings for Calderon.

{¶5} In short, the trial court had to assign a value to 36 Hours without being provided a great deal of evidence by either party to the litigation. We cannot find the value assigned as being in error under the circumstances.

{¶6} Counsel for appellant also asserts that Reinig should not have been given credit for the sum of $592.51 apparently paid to appellant from Reinig's account at Beulah Park, a Columbus area racetrack. Still, the exhibit detailing the payments was admitted into evidence. No one debates that payments were made or even that the total on the

exhibit is incorrect. Again, we cannot find error by the trial court in giving the credits based on the exhibit.

{¶7} Counsel for appellant also attacks the trial court's permitting of an accountant, Brian Russell, to testify in the case. The trial court's written decision does not indicate that the court relied on Russell's testimony in arriving at a verdict, so admission of Russell's testimony cannot be reversible error. Further, the trial court was within its discretion to hear the testimony.

{¶8} Finally, counsel for appellant argues that the trial court should not have granted setoffs for feed provided and for handling credits. These credits are reflected in appellant's own invoices to Reinig, so were appropriately applied to the balance due.

{¶9} The assignment of error set forth on behalf of appellant is overruled.

{¶10} Counsel for Reinig has filed a motion requesting that the appeal on behalf of appellant be deemed frivolous and expenses awarded. We do not view the appeal as frivolous and therefore overrule the motion.

{¶11} The assignment of error having been overruled, the judgment of the Franklin County Municipal Court is affirmed.

Motion overruled; Judgment affirmed.

BRYANT, P.J., and BROWN, J., concur.
