

STATE OF VERMONT
WINDSOR COUNTY, SS.

DOREEN FORAUER, Plaintiff : WINDSOR COUNTY SUPERIOR COURT
 :
 v. : DOCKET NO. 45-1-02 Wrcv
 :
 SABRA BENSON and :
 JAY FRANCOEUR, Defendants :
 :
 v. :
 :
 JOSHUA FORAUER, Third Party Defendant :

ENTRY RE: DEFENDANTS' OBJECTIONS TO MASTER'S REPORT

Defendants object to the Master's Report which was filed August 11, 2003. The court expects to review the master's report under the usual standard for an "on the record" appeal. The reference order contemplates superior court review at a final hearing, and the Master's Report notes that the parties "reserved the right in accord with Rule 53(e)(2) to object to acceptance of the Master's report in the event the Master's Findings were clearly erroneous." For a general discussion of the standards for review, see Messier v. Messier, 140 Vt. 308, 313-14 (1981).

Before the court can review the record, defendants will have to submit the relevant transcripts (as they have suggested in their cover letter dated August 22, 2003). Defendants also bear the burden of demonstrating how the master erred and why the report must be modified. In re S.B.L., 150 Vt. 294, 297 (1988). As the objecting parties, they must provide specific citations to the record, and where appropriate they must provide affirmative representations that the masters' findings are not supported by other evidence in the record. See Chittenden Solid Waste Dist. v. Hinesburg Sand & Gravel, 169 Vt. 153, 162 (1999) (appellant must specify which findings it believes are erroneous or not supported by credible evidence); Lawrence v. Pelletier, 154 Vt. 29, 33 (1990) (findings of fact upheld if the record contains any credible evidence that fairly and reasonably supports them). In addition, defendants must explain why any objectionable findings are material to the conclusions. See Kelly v. Lord, 173 Vt. 21, 44 (2001) (appellate court need not review findings that are not necessary to resolution of the case).

The court will await further briefing before scheduling any hearing in this matter.

Dated at Woodstock, Vermont, this 6th day of November, 2003.

Mary Miles Teachout
Hon. Mary Miles Teachout, Presiding Judge

FILED
NOV 6 2003

Windsor County Clerk

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