Florida Law Review

Volume 56 | Issue 4 Article 5

September 2004

# Expert Testimony in Eminent Domain Proceedings: Oh Frye, Where Art Thou?

Justin Smith

# EXPERT TESTIMONY IN EMINENT DOMAIN PROCEEDINGS: OH *FRYE*, WHERE ART THOU?

## *Florida Department of Transportation v. Armadillo Partners, Inc.*, 849 So. 2d 279 (Fla. 2003)

*Justin Smith*[*]

Respondent, a shopping center owner in Broward County, sought damages resulting from an eminent domain taking by Petitioner, the Florida Department of Transportation.[1] Petitioner's partial taking resulted in a decrease in the number of available parking spaces on Respondent's property.[2] Respondent sought "severance damages" and compensation for the property actually taken.[3] Both parties agreed that the shopping center would no longer be operable if improvements to the land were not implemented after the taking.[4]

To minimize the impact of the partial taking, both sides submitted "cures" as a way to improve the post-taking property.[5] In support of its proposal, each party presented expert testimony on the value of the property after the taking and on the costs to cure.[6] Petitioner's appraiser testified regarding a cure that created additional parking by eliminating an arbor area currently on the property.[7] The appraiser estimated severance

---

* To my parents, for supporting me in everything I do.

1. Fla. Dep't of Transp. v. Armadillo Partners, Inc., 849 So. 2d 279, 281 (Fla. 2003) (per curiam).

2. *Id.* The taking resulted in the loss of seventy-three parking spaces. Armadillo Partners, Inc. v. State Dep't of Transp., 780 So. 2d 234, 235 (Fla. 4th DCA 2001), *rev'd per curiam*, 849 So. 2d 279 (Fla. 2003).

3. *Armadillo Partners, Inc.*, 849 So. 2d at 281. The court defined "severance damages" as "damage to the remainder caused by the taking . . . [or] damage caused by severing a part from the whole." *Id.* at 283; *see* Div. of Admin., State Dep't of Transp. v. Frenchman, Inc., 476 So. 2d 224, 226 (Fla. 4th DCA 1985) (recognizing "that when less than the entire property is being appropriated, full compensation for the taking of private property by eminent domain includes both the value of the portion being appropriated and any damage to the remainder caused by the taking").

4. *Armadillo Partners, Inc.*, 849 So. 2d at 281.

5. *Id.* at 281-82. The court defined cures as "ways the remaining property could be improved to minimize the effect of the partial taking on the value of the remaining property." *Id.* The court went on to explain that "the 'cost to cure' is the cost of an attempt to ameliorate the damage to value sustained by the property as a result of the partial taking by the government." *Id.* at 285.

6. *Id.* at 282.

7. *Id.* Respondent asserted that the loss of the arbor area caused by implementation of the cure constituted a separate element of damages. *Id.* at 284. Respondent wanted to treat the arbor area loss as if it were a second taking. *Id.* The Florida Supreme Court disagreed, holding that a property owner is entitled to no additional compensation if the change in use of the remaining

damages resulting from the taking at $308,400, plus an additional $102,300 for the cost to cure.[8] Respondent's appraiser calculated severance damages at $493,000, and a cost to cure of $425,000.[9] At trial, a jury returned a verdict awarding Petitioner $308,400 for severance damages and $318,750 for the cure.[10] Respondent appealed to the Fourth District Court of Appeal, which reversed the final judgment.[11] Relying on a series of cases from the First District Court of Appeal, the Fourth District held that Petitioner's appraiser did not properly consider the necessary factors in determining severance damages.[12] It found that the appraiser's calculation failed to account for the loss in value caused by converting the arbor area into parking.[13] As a result, the Fourth District concluded that his testimony should have been excluded.[14] The Florida Supreme Court reversed and HELD, that the failure of an otherwise competent witness to consider one of many factors in determining compensation goes to the weight of his testimony, and not to his competency to testify as a witness.[15]

---

property results in no decrease in fair market value. *Id.* at 285. In this case, the appraiser did not consider the arbor area to have any impact on the fair market value of the property. *Id.* at 286 n.5. He only considered the arbor area in the context of rental value. *Id.* He concluded that, because comparable rental properties in the neighborhood did not have trees, the property's rental value would not suffer from losing the arbor area. *Id.*

8. *Id.* at 282.

9. *Id.* This "cut and reface" cure required the removal of "7000 square feet from the north end of the north-south building, closing one of the driveways on Griffin Road, and reconfiguring the parking lot to accommodate 99 parking spaces." *Id.*

10. *Id.* The total compensation awarded was $817,450, which included $308,400 in severance damages and $318,750 for the cost to cure. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 287-88. The court's holding, which affirmed *State Road Dep't v. Falcon, Inc.*, 157 So. 2d 563 (Fla. 2d DCA 1963), is somewhat troubling for a property owner subjected to an eminent domain taking. *Armadillo Partners, Inc.*, 849 So. 2d at 290. In the instant case, both sides agreed that if no action was taken to implement a cure, the shopping mall would no longer be operable. *Id.* at 281. Petitioner's appraiser felt that the best available cure was to wipe out an arbor area, consisting of a brick sidewalk, planted areas, an irrigation system, grass, and two wooden arbor structures, and to relocate the lost parking there. *Id.* at 282. Under this proposal, the owner would get no compensation for the arbor area because the appraiser felt that it contributed nothing to the fair market rental value of the property. *Id.* at 286 n.5. However, this calculation seems inconsistent with the law of severance damages in Florida, which has adopted the "before-and-after" rule. Canney v. City of St. Petersburg, 466 So. 2d 1193, 1195 (Fla. 2d DCA 1985) (quoting Jahoda v. State Rd. Dep't, 106 So. 2d 870, 872 (Fla. 2d DCA 1958). Severance damages are determined by the difference in values pre-taking and post-taking. *Id.* The property in the instant case had no value as a shopping center after the taking. *Armadillo Partners, Inc.*, 849 So. 2d at 281. Action needed to be taken. *Id.* It seems difficult to consider an appraisal method that places no value on a shopping center's arbor area as proper. At the very least the arbor area had some aesthetic value, which is an appropriate consideration in severance damages, as the Petitioner's

In Florida, when the government appropriates private property, the affected landowner is entitled to a hearing to determine the amount of compensation due.[16] This right applies whether the government appropriates the whole parcel or only a part of it.[17] When the government engages in a partial taking, the landowner is entitled to a form of compensation known as severance damages.[18] This amount is equal to the decrease in value of the remainder parcel caused by the partial taking.[19]

Often, the loss in value caused by the taking is a contested issue between the parties. To prove its theory of damages, a party may call on expert appraisers to testify as to the amount of the decrease in value.[20] Given that these expert appraisers have a great deal of influence on the factfinder, requirements are in place to ensure competent expert testimony.[21] These requirements transform the scientific foundations of an expert's testimony into initial matters of admissibility for the judge to decide, rather than questions as to the weight of evidence for the jury to decide.[22]

As evidentiary gatekeepers, judges in Florida are generally guided by the principle laid down in *Frye v. United States*.[23] Under *Frye*, an expert's

---

appraiser acknowledged. *Id.* at 286 n.5. This value seems especially appropriate when, as the Petitioner's appraiser admits, the comparable properties in the neighborhood possess no such feature. *Id.* This arbor area distinguished Respondent's property from the others, giving it a feature unique from the comparable properties in the area. After the taking, Respondent faced a Catch-22: implement the cure and receive no severance damages for the loss of the arbor area or be content with the value of the land itself with a useless shopping center.

16. FLA. STAT. ch. 73.071(1) (2004).

17. *Id.* at ch. 73.071(3)(b).

18. *Id.*; Kendry v. Div. of Admin., State Dep't of Transp., 366 So. 2d 391, 394 (Fla. 1978); *Canney*, 466 So. 2d at 1195 (adopting "before-and-after" rule under which severance damages are calculated by the difference between pre-taking and post-taking values of the property).

19. Ch. 73.071(3)(b) (establishing that "[w]here less than the entire property is sought to be appropriated, any damages to the remainder caused by the taking" may be awarded); *see also supra* note 3.

20. *See* ch. 90.072 (establishing that if "specialized knowledge will assist the trier of fact in understanding the evidence . . ., a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion").

21. Kruse v. State, 483 So. 2d 1383, 1386 (Fla. 4th DCA 1986) ("We are aware . . . of the danger that the trier of fact may place undue emphasis on evidence offered by an expert, simply because of the special gloss placed on that evidence by reason of the witness's status as an expert.").

22. Brim v. State, 695 So. 2d 268, 271 (Fla. 1997).

23. 293 F. 1013 (D.C. Cir. 1923); *Brim*, 695 So. 2d at 271 (affirming that the *Frye* test is utilized in Florida to ensure reliability of new or novel scientific evidence).

The *Brim* court emphasized that the *Frye* test is the appropriate test in Florida, despite the federal courts' adoption of the more lenient standard in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). *Brim*, 695 So. 2d at 271-72. The *Frye* test "requires a determination, by the judge, that the basic underlying principles of scientific evidence have been sufficiently tested

testimony is admissible only if the scientific principle or method upon which the expert relies has "gained general acceptance in the particular field in which it belongs."[24] The *Frye* test ensures that only those methods deemed generally accepted, and thus competent, will be heard by the fact-finder.[25]

In *State Road Department v. Falcon, Inc.*,[26] the Second District Court of Appeal laid the foundation for the admissibility of expert testimony in eminent domain proceedings.[27] In *Falcon*, two expert appraisers testified on behalf of the State Road Department as to the amount of compensation to which they believed Falcon was entitled as a result of the taking.[28] In calculating damages, they analyzed sale prices of similar properties during a five-year period.[29] However, their calculation failed to account for a transaction involving the sale of a Holiday Inn.[30] Ordering a new trial, the trial court held that the Department's appraisers' testimony was prejudicial to Falcon, as the appraisers' failure to account for the Holiday Inn sale caused them to underestimate the value of the appropriated land.[31] On appeal, the Second District Court of Appeal reversed, and held that the failure of an otherwise competent witness to consider one of numerous factors in determining compensation goes not to the competency of the testimony, but only to its weight.[32]

Four years later, the Second District Court of Appeal, in *Rochelle v. State Road Department*,[33] further clarified the minimal burden an expert appraiser must meet.[34] The State Road Department initiated an eminent domain proceeding against Rochelle to appropriate land for the building of a turnpike interchange.[35] The Department's appraiser calculated

---

and accepted by the relevant scientific community." *Id.* at 272; *see* Castillo v. E.I. Du Pont de Nemours & Co., 854 So. 2d 1264, 1268 (Fla. 2003) (reaffirming that "[t]o determine whether expert testimony is admissible under section 90.702, Florida Statutes (2001), Florida courts follow the test set out in *Frye v. United States*"); Hadden v. State, 690 So. 2d 573, 576 (Fla. 1997) (stating that the *Frye* test "requires that the scientific principles undergirding this evidence be found by the trial court to be generally accepted by the relevant members of its particular field").

24. *Frye*, 293 F. at 1014.

25. *Id.*

26. 157 So. 2d 563 (Fla. 2d DCA 1963).

27. *Id.* at 564.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* The State's appraiser calculated the value at $300-$350 per front foot, while Falcon's appraisers valued the land at $850 per front foot. *Id.* A third appraiser valued it at $570 per front foot. *Id.* The jury awarded damages valued at $365 per front foot. *Id.*

32. *Id.* at 566.

33. 196 So. 2d 477 (Fla. 2d DCA 1967).

34. *See id.* at 479.

35. *Id.* at 478.

damages by looking at the capitalization of a lease on the property, a new method of appraising.[36] The trial court held that use of this technique made the appraiser's testimony incompetent, and the judge struck it from the record.[37] On appeal, the Second District Court of Appeal reversed, holding that the method used by an expert appraiser does not relate to the competency of the testimony, but is only relevant to its weight.[38] Only when the appraisal method is totally inadequate, improper, or entirely new and unauthenticated will the court exclude the appraiser's testimony.[39]

While the Second District Court of Appeal was crafting a lenient standard for expert appraiser admissibility, the First District Court of Appeal was establishing a higher threshold. In *State Department of Transportation v. Murray*,[40] the First District Court of Appeal affirmed its prior rulings excluding expert testimony when the appraiser improperly calculated severance damages.[41] In *Murray*, the Department of Transportation took a portion of a restaurant owner's parking lot for a state road expansion.[42] The Department of Transportation's appraiser planned to testify that the loss could be replaced by adding parking spaces to the ends of the existing lot and by striping a paved area used for overflow parking.[43] The trial court excluded this cure testimony on the grounds that

---

36. *Id.* at 479.

37. *Id.*

38. *Id.*

39. *Id.* The Second District Court of Appeal explained the minimal threshold for admissibility by holding that the method adopted by the expert is not a matter related to the competency of his testimony, "unless the method used by the witness is so totally inadequate or improper that adoption of the method would require departing from all common sense and reason or would require adoption of an entirely new and totally unauthenticated formula in the field of appraising." *Id.*

40. 670 So. 2d 977 (Fla. 1st DCA 1996) (per curiam).

41. *Id.* at 979; *see* Williams v. State Dep't of Transp., 579 So. 2d 226, 229 (Fla. 1st DCA 1991) (holding that "[w]here the testimony of an appraiser is based on a misconception of the law resulting in a lower valuation of damages than if he had correctly applied the law, such testimony should be excluded"); State Dep't of Transp. v. Byrd, 254 So. 2d 836, 836-37 (Fla. 1st DCA 1971) (holding that the expert appraiser's failure to consider the loss of a shuffleboard area resulting from the proposed cure made his testimony inconsistent with the law of severance damages, and its subsequent exclusion by the trial court was proper).

In these cases, the State's appraiser proposed a cure to replace the lost parking by converting another part of the landowner's property into spaces. *Murray*, 670 So. 2d at 978; *Williams*, 579 So. 2d at 228; *Byrd*, 254 So. 2d at 836. The appraiser argued that because the lost parking spaces could be relocated, there was no decrease in value to the remainder, and severance damages were zero. *Murray*, 670 So. 2d at 978; *Williams*, 579 So. 2d at 228; *Byrd*, 254 So. 2d at 836. The First District Court of Appeal disagreed because, according to the court, the appraiser had to account for the reduction in available parking space or the lost shuffleboard area that would result from the proposed cure. *Murray*, 670 So. 2d at 979; *Williams*, 579 So. 2d at 229; *Byrd*, 254 So. 2d at 836-37.

42. *Murray*, 670 So. 2d at 978. The taking resulted in a loss of thirteen parking spaces. *Id.*

43. *Id.*

the appraiser failed to account for certain valuation factors in calculating severance damages.[44] Specifically, the appraiser's method ignored the reduction in value of a restaurant with a smaller parking area for its customers.[45] Although the First District Court of Appeal quashed the trial court's decision on other grounds, it affirmed the exclusion of the Department of Transportation's appraiser's testimony.[46]

The *Murray* holding demonstrates the inconsistencies that developed between the district courts of appeal in determining the admissibility of appraiser testimony. Under the Second District's analysis in *Falcon*, the testimony of the appraiser in *Murray* would have been found to be competent, and thus admissible.[47] Any failure to account for "valuation factors" such as overflow parking loss would go to the weight of the appraiser's testimony, and not to its competency.[48] Furthermore, the method used by the appraiser in *Murray* would likely meet the minimal threshold set by the Second District in *Rochelle*.[49] So long as the *Murray* appraiser's method would not "require departing from all common sense and reason," it would be admissible under *Rochelle*.[50]

In the instant case, the Florida Supreme Court resolved these prior ambiguities in determining whether expert appraiser testimony is admissible.[51] Given that the First and Second District Courts of Appeal were at opposite ends of the admissibility spectrum, the instant court had two alternative views from which to choose.[52] The court explicitly adopted

---

44. *Id.* at 979.

45. *Id.*

46. *Id.* at 979-80.

47. *See* State Rd. Dep't v. Falcon, Inc., 157 So. 2d 563, 566 (Fla. 2d DCA 1963) (holding that an otherwise competent witness's failure to consider one of numerous factors in determining damages goes not to the competency of his testimony, but only to its weight).

The court in *Murray* held the expert appraiser's testimony inadmissible because of his failure to include the "reduction in value of the restaurant business with a smaller parking area." 670 So. 2d at 979. The Second District Court of Appeal would consider this just one factor that goes to the weight of the expert's testimony, rather than to the competency of his appraisal method. *Falcon*, 157 So. 2d at 566.

48. *Murray*, 670 So. 2d at 979; *see supra* note 47.

49. *See supra* note 39.

50. Rochelle v. State Rd. Dep't, 196 So. 2d 477, 479 (Fla. 2d DCA 1967).

51. Fla. Dep't of Transp. v. Armadillo Partners, Inc., 849 So. 2d 279, 290 (Fla. 2003) (overruling *Murray*, 670 So. 2d 977, State Dep't of Transp. v. Byrd, 254 So. 2d 836 (Fla. 1st DCA 1971), and Williams v. State Dep't of Transp., 579 So. 2d 226 (Fla. 1st DCA 1991), and affirming *Rochelle*, 196 So. 2d 477, and *Falcon, Inc.*, 157 So. 2d 563).

52. *See supra* notes 47-50 and accompanying text. In order for an appraiser's testimony to be admissible, the First District Court of Appeal required the appraisal method to account for all necessary factors in determining severance damages. *See Murray*, 670 So. 2d at 979. The Second District Court of Appeal failed to account for "one of numerous factors," an issue of weight for the jury, rather than of competency for the judge. *Falcon, Inc.*, 157 So. 2d at 566.

the principles laid down by the Second District.[53] After the instant case, expert appraiser testimony is admissible so long as the method employed is within the minimal standard set forth in *Rochelle*.[54] Even unauthenticated and improper methods may be admissible, so long as they are not a complete departure from common sense.[55]

Further reinforcing the rulings of the Second District, the instant court held that any failure of an appraiser's method to account for the lost arbor area would go only to the testimony's weight, not its competency.[56] The instant court noted, "even had DOT's expert failed to include the arbor area in his valuation of severance damages, we conclude that this exclusion would have gone to the weight, not the admissibility of his testimony [sic]."[57] If the appraiser believes that wiping out the arbor area to relocate the lost parking will not alter the property's market value, then he is allowed to testify to that effect.[58]

By focusing on the weight the factfinder may give the appraiser's testimony rather than on the admissibility of the appraiser's method, the instant case takes a step away from *Frye* and its brethren. The purpose of the *Frye* test is to ensure that only methods generally accepted within the expert's field are admitted into evidence.[59] Under *Frye*, if the judge finds that the appraiser's methodology is not generally accepted within the relevant community, the expert will never be able to exert his influence on the jury.[60] However, the instant court's holding requires a far lower threshold, as the appraiser's testimony is admissible so long as the method used to calculate damages is not "totally inadequate or improper."[61] The *Rochelle* standard, adopted by the instant court, explicitly removes the gatekeeping role of the judge in determining the competency of an expert's

53. *Armadillo Partners, Inc.*, 849 So. 2d at 290.

54. *Id.*; *see supra* note 39 and accompanying text.

55. *See supra* note 39.

56. *Armadillo Partners, Inc.*, 849 So. 2d at 287-88.

57. *Id.* at 288.

58. *See supra* note 7 (expert appraiser did not see the loss of the arbor area as affecting fair market value of the property).

59. Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923).

60. *Id.*

61. *Armadillo Partners, Inc.*, 849 So. 2d at 287.

methodology.[62] By adopting the *Rochelle* standard, the instant court seems to have carved out an exception to *Frye* in eminent domain proceedings.[63]

Given the court's recognition of the fact that expert testimony carries substantial weight with jurors,[64] this exception is problematic. In both the instant case and *Falcon*, the court allowed the State's expert appraiser to testify as to his estimate of severance damages.[65] The jury in the instant case awarded the exact amount of severance damages recommended by the State's appraiser,[66] and in *Falcon*, the jury awarded an amount nearly identical to the appraiser's estimated value.[67] If the jury awarded severance damages based on a method that was not generally accepted within the appraising field, its decision may have rested on highly speculative and unsupported evidence: the exact result sought to be prevented by safeguards like *Frye*.[68]

Rather than undermining the *Frye* test by adopting the *Rochelle* standard,[69] the instant court could have disposed of this case by focusing solely on the appraiser's failure to consider the lost arbor area. The appraiser's methodology could have been held competent under *Frye*.[70]

---

62. Rochelle v. State Rd. Dep't, 196 So. 2d 477, 479 (Fla. 2d DCA 1967). The court held that "the method of evaluation used by an appraiser-expert witness is not a matter relating to the competency of his testimony to be ruled upon by the trial Judge." *Id.* Only where "adoption of the method would require departing from all common sense and reason" is the trial judge permitted to exercise discretion and declare the expert's testimony inadmissible. *Id.*

While it expressly affirms the *Rochelle* standard, the instant court gives no guidance as to how the trial judge is to apply it. *Armadillo Partners, Inc.*, 849 So. 2d at 290. The instant court's acquiescence in the words "departing from all common sense," "totally unauthenticated," and "totally inadequate or improper," suggest that an expert appraiser's testimony will almost never be inadmissible. *Id.* at 287.

63. *See Armadillo Partners, Inc.*, 849 So. 2d at 287-88; *see supra* note 39.

64. *See supra* note 21 and accompanying text.

65. *See supra* note 8 and accompanying text; *supra* note 31.

66. *See supra* notes 8-10 and accompanying text.

67. *See supra* note 31.

68. *See supra* notes 24-25 and accompanying text; *see also Armadillo Partners, Inc.*, 849 So. 2d at 293 (Lewis, J., dissenting) (noting that "[c]ontrary to assisting the trier of fact, such testimony will mislead factfinders, resulting in erroneous and inequitable jury verdicts").

69. *See supra* note 51 (affirming Rochelle v. State Rd. Dep't, 196 So. 2d 477 (Fla. 2d DCA 1967)); *see also supra* note 39 (describing the *Rochelle* standard of admissibility as adopted by Second District Court of Appeal).

70. *See* Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923). The State's appraiser in the instant case made his calculation of severance damages by looking at comparable rental values in the area. *Armadillo Partners, Inc.*, 849 So. 2d at 286 n.5. He concluded that, because other similar properties did not have arbor areas, removing Respondent's arbor area would not detrimentally affect the rental value of the property. *Id.* The focus under *Frye* would not be on the appraiser's failure to consider the arbor area, but on his chosen method of comparing rental values of similar properties. *See supra* notes 24-25 and accompanying text. Comparing sales, or in this case rentals, is the method preferred in the majority of American jurisdictions, likely giving it the level of general acceptance required by *Frye*. 4 NICHOLS' THE LAW OF EMINENT DOMAIN,

Consistent with *Falcon*,[71] the instant court could have found that the appraiser's failure to account for the loss of the arbor area was only relevant to the weight of his testimony.[72] By adopting this alternative disposition, the court could have ensured that the methodology adopted by future expert appraisers would be subjected to the requirements of *Frye*, instead of the minimal threshold set by *Rochelle*.[73] As a result, property owners would not have to fear that, if their land is taken by the government, their compensation could be based on improper or unauthenticated methodology.

Furthermore, this reasoning would have resolved the inconsistency between the court's treatment of experts in eminent domain proceedings and its treatment of experts in other fields.[74] The instant court made no effort to deny that these appraisers were experts, as the court explicitly referred to them as such throughout the opinion.[75] However, the instant court adopted a standard of admissibility for appraisers that differs from the one used for expert testimony in a worker's compensation dispute or a murder prosecution.[76] Whereas a pesticide specialist testifying on causation in a worker's compensation claim will have to show that his or her methodology is generally accepted, an expert appraiser need only show that his or her method is not a complete departure from common sense.[77]

---

§ 12B.04(3) (Julius L. Sackman ed., rev. 3d ed., Matthew Bender 2003) (1964); *see* Nour v. Div. of Admin., State Dep't of Transp., 267 So. 2d 365, 366 (Fla. 1st DCA 1972).

71. *State Rd. Dep't v. Falcon, Inc.*, 157 So. 2d 563 (Fla. 2d DCA 1963).

72. *Id.* at 566.

73. *See Frye*, 293 F. at 1014; *supra* note 39 and accompanying text.

74. *See supra* note 51 and accompanying text.

75. *Armadillo Partners, Inc.*, 849 So. 2d at 281 (noting that "both parties submitted proposals and expert opinion testimony"). The most concrete evidence of the instant court's categorization of the appraisers as experts is the section of its opinion called "Expert Opinion Testimony" and its reference to chapter 90.072 of the Florida Statutes. *Id.* at 286-88. The instant court decided *Castillo v. E.I. Du Pont de Nemours & Co.*, 854 So. 2d 1264 (Fla. 2003), two months after handing down the decision in *Armadillo Partners, Inc. See Castillo*, 854 So. 2d 1264 ("July 10, 2003, Decided"); *Armadillo Partners, Inc.*, 849 So. 2d 279 ("April 24, 2003, Decided"). In *Castillo*, the instant court did not attempt to undermine its support for *Frye* in determining whether expert testimony is admissible. *Castillo*, 854 So. 2d at 1268. In fact, it expressly stated that when deciding "whether expert testimony is admissible under section 90.702, Florida Statutes (2001), Florida courts follow the test set out in *Frye v. United States*." *Id.* The court's opinions are inconsistent. It cited section 90.702 in *Armadillo Partners, Inc.*, only to apply the minimal standard of *Rochelle*, and then cited the same statute two months later and held that the *Frye* test is appropriate for applying the statute. *Compare Armadillo Partners, Inc.*, 849 So. 2d at 288, 290, *with Castillo*, 854 So. 2d at 1268. At no point in *Castillo* does the court attempt to reconcile these inconsistencies by overruling or distinguishing *Armadillo Partners, Inc. Castillo*, 854 So. 2d at 1268-80.

76. *See* United States Sugar Corp. v. Henson, 823 So. 2d 104, 106-07 (Fla. 2002) (applying *Frye* test to worker's expert opinion testimony); Arnold v. State, 807 So. 2d 136, 138-40 (Fla. 4th DCA 2002) (applying *Frye* test for expert testimony related to DNA analysis in burglary trial).

77. *See supra* notes 39, 76 and accompanying text.

Simply by deciding the instant case under the *Falcon* rule, rather than adopting the standard from *Rochelle*, the instant court could have avoided this unexplained inconsistency in determining the admissibility of expert testimony.

The instant court's decision has opened the door, although it is unclear how far, for unauthenticated appraiser testimony to reach juries. The instant case stresses flexibility in admitting expert testimony, where prior Florida cases stressed rigid safeguards.[78] In abandoning the *Frye* test and adopting the *Rochelle* standard to determine whether expert appraiser testimony is admissible, the instant court that has departed from common sense and reason.

78. *See supra* text accompanying notes 58-62.