

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

**2010 CA 1566
& 2010 CW 2240**

IN THE MATTER OF THE SUCCESSION OF
NAPOLEON "MUTT" HARRISON



Judgment Rendered: MAR 17 2011

APPEALED FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF TANGIPAHOA
STATE OF LOUISIANA
DOCKET NUMBER 10451, DIVISION "B"

THE HONORABLE ROBERT H. MORRISON, III, JUDGE

Otha Curtis Nelson, Sr.
Baton Rouge, Louisiana

Attorney for Appellee
Succession of Napoleon "Mutt"
Harrison


Russell Clay Monroe
Greensburg, Louisiana

Attorney for Appellee
Unopened Succession of Ethel
Harrison and Isaac Carter
Appellee

Charlie B.W. Palmer
Amite, Louisiana

Appellant
In Proper Person

BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.



McCleendon, J. concurs and assigns reasons.

McDONALD, J.

Napoleon "Mutt" Harrison died on December 24, 1983. On April 13, 1984, a petition for probate of Mr. Harrison's will was filed in the district court, along with a detailed descriptive list of assets and liabilities. On that same day, a judgment of possession was signed by the district court, putting Mr. Harrison's sister, Ethel Harrison, and two brothers, Otis Harrison and Jessie Harrison (collectively Mr. Harrison's heirs), in possession of 1/3 each of Mr. Harrison's estate.

Almost 26 years later, on November 3, 2009, Charlie B.W. Palmer, filed into the succession record a petition for declaratory judgment, and alternatively, a petition to reopen the succession of Mr. Harrison, to correct errors that he asserted were made in the succession. Mr. Palmer asserted that the succession of Mr. Harrison had wrongfully transferred an interest in a tract of land located in St. Helena Parish (which land was owned in part by Mr. Palmer) to Mr. Harrison's heirs.

Mr. Palmer asserted that he had been in litigation with Mr. Harrison and a number of other persons, both individually and as counsel for the "Gladys Spears group" and other persons from 1972 until 2004, and that he no longer represented anyone other than himself in the matter.¹ He asserted that errors in the succession documents and in the judgment of possession had erroneously given the Harrison heirs an interest in Mr. Palmer's property, consisting of a 44.60-acre tract of land.

Thereafter, on February 18, 2010, Judge Wayne Ray Chutz signed an order recusing himself from the case, as he had been named as a defendant in a suit Mr. Palmer had filed in St. Helena Parish against District Court Judge Elizabeth P. Wolfe. Thereafter, Judge Robert H. Morrison, III, presided over the case.

¹The record reveals that after numerous complaints were made about Mr. Palmer to the Louisiana Attorney Disciplinary Board, Mr. Palmer was transferred to disability inactive attorney status.

On March 25, 2010, Isaac Carter, individually and on behalf of the unopened succession of Ethel Harrison, filed an exception of unauthorized use of a summary process, improper collateral attack on a final judgment, and, in the alternative, a motion for continuance.

After a hearing on March 29, 2010, the district court ruled, denying Mr. Palmer's petition for declaratory judgment and his motion to reopen the succession of Mr. Harrison. An order filed by Mr. Carter, asking that his exceptions and his motion for continuance be set for a hearing, was denied as moot.

On April 12, 2010, Mr. Palmer filed a motion to recuse Judge Morrison, asserting that Judge Morrison had recused himself from three prior cases that Mr. Palmer had handled, that Judge Morrison was biased against Mr. Palmer, and that Judge Morrison had filed numerous charges against Mr. Palmer with the Louisiana State Bar Association Disciplinary Counsel, some of which Mr. Palmer asserted were false. Thus, Mr. Palmer "demanded" that Judge Morrison recuse himself from the case. Mr. Palmer also urged that the matter could not be re-allotted to Divisions A, C, D, F, or G, as all of those district court judges had consistently recused themselves from Mr. Palmer's cases or had unsuccessfully attempted to have Mr. Palmer disbarred. Thus, Mr. Palmer asserted, a re-allotment of his case could only be lawfully accomplished by re-allotment to Divisions B, E, or H, or assignment of an ad hoc judge appointed by the Louisiana Supreme Court. Judge Morrison set the recusal motion for a hearing. Mr. Palmer also filed a motion for a new trial. The recusal hearing was allotted by the Twenty-First Judicial District Court to Judge Zorraine M. Waguespack. After a hearing on May 6, 2010, Judge Waguespack denied Mr. Palmer's motion for recusal.² On July 6, 2010, Judge Morrison denied the motion for a new trial.

² Mr. Palmer filed a motion for new trial after the denial of his motion for the recusal of Judge Morrison; however, there is no motion for a new trial from an interlocutory ruling.

Mr. Palmer is appealing the judgments denying his request for declaratory judgment and his alternate motion to reopen the succession of Mr. Harrison, denying his motion to recuse the district court judge, and denying his motion for a new trial.

Also, Mr. Palmer filed a writ application seeking review of the district court's judgments denying the recusal of Judge Morrison and denying Mr. Palmer's motion to supplement the appeal record. The writ was referred to this panel to be considered with the appeal.

In its reasons for judgment, the district court found that the succession of Mr. Harrison only gave Mr. Harrison's heirs the interest Mr. Harrison actually owned in the property, if any, and that a separate, ongoing lawsuit, with the same parties, was the proper vehicle for Mr. Palmer to assert his claims. In its reasons for judgment, the district court found, in pertinent part:

The gist of Mr. Palmer's argument is that the legatees/heirs in the present succession were involved in separate litigation over the ownership of this property which litigation has continued for years in St. Helena Parish. This Court determined that these claims did not present any basis for intervening in the present succession. By recognizing these persons, whom Mr. Palmer has apparently sued, the succession judgment itself would not overcome any claims Mr. Palmer might assert in other lawsuits, in the event that he is successful and prevails. This is therefore not a ground for reopening this succession, nor for inserting a claim for a declaratory judgment into the succession proceeding, where this same claim is apparently being litigated in other actions and lawsuits. To do so would simply further muddle the morass of existing litigation over claims of ownership to this property.

After denying Mr. Palmer's motion for a new trial, the district court gave additional reasons, as follows in part:

According to his petition, Mover has been involved, individually, and formerly as a legal representative of other parties, in litigation contesting the ownership of this property. According to his petition Mr. Palmer has been involved in this litigation since 1972. Further, according to his petition, Mr. Palmer references the litigation over the title or ownership of the properties as Napoleon 'Mutt' Harrison v. Charles B.W. Palmer, et al, # 10,253 "(and many others)" (Petition, Paragraph 1 (b)).

Obviously, therefore, the litigation involving claims of ownership is ongoing in other proceedings and before other divisions of this Court. One of the concerns, therefore, in grafting the same issues into yet another proceeding, i.e., this succession, is that of confusion and inconsistency. That is a primary factor this Court considered in not opening an additional rabbit hole in this warren of litigation. It would seem that the multiplicity of other litigation involving the ownership of this property has not served to bring the issue to any prompt conclusion.

Secondly, and perhaps more importantly, the Court's inference as to the reason for the present action is that Mover somehow thinks that the judgment of possession rendered in this succession somehow amounts to a cloud or additional issue, as to his own ownership claims to the property. This is simply not the case, legally. Inheritance through a succession cannot confer any additional rights on the heirs other than those owned by the decedent. Civil Code Article 872. If a decedent has lost a real right prior to his death, that right is not revived for the benefit of his heirs through a succession. Bodcaw Lumber Co. of Louisiana v. Clifton Heirs, 169 La. 759, 126 So. 52 (La. 1930). A succession representative cannot "revoke" a sale of property simply by listing it as an asset of the succession, where title to the property was validly transferred to another. Guillory v. Latour, 138 La. 142, 70 So. 66 (La. 1915).

Additionally, in the present succession the judgment of possession specifically refers to the fact that a portion of the property was involved in litigation, *the same litigation*, Suit # 10,253, to which Mover alludes in his present petition. Therefore, it is obvious that the litigious status of the property was recognized at the time the judgment was rendered. There is no reason, therefore, to reopen this succession; rather, Mover should continue to assert his claim in the existing litigation over the title to the property.

Ironically, in this Court's view, the status of this succession is actually helpful to Mover's other legal actions, in that it judicially recognizes the heirs/legatees of Mutt Harrison, such that Mover can pursue his claims against the legal and proper parties defendant.

After a thorough review, we affirm the district court judgment, denying the motion for declaratory judgment and denying the motion to reopen the succession, for the reasons assigned by the district court. Further, the writ application, seeking review of the district court's denial of the motion for recusal and seeking to supplement the appeal record, is denied. Costs are assessed against Mr. Palmer.

JUDGMENT AFFIRMED; WRIT DENIED.

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McCLENDON, J., concurs and assigns reasons.

Until such time as appellant establishes an ownership interest in the immovable property at issue, his right to proceed in this matter is speculative. Therefore, I concur in the result reached by the majority.