

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 CA 1655

SUCCESSION OF ELIZABETH
ASHLEY CLAIBORNE

Judgment rendered June 6, 2008.

J. 2008

Appealed from the
18th Judicial District Court
in and for the Parish of Pointe Coupee, Louisiana
Trial Court No. 31,421
Honorable William C. Dupont, Judge

C. BLASE McCARTHY, JR.
NEW ORLEANS, LA
AND
RITA K. AKEHURST, II
HARVEY, LA
AND
JAMES M. McCAFFERY
NEW ORLEANS, LA

ATTORNEYS FOR
APPELLANT, LEON J. GIBERT, JR.

JAMES C. DEWEY
NEW ROADS, LA

ATTORNEY FOR
APPELLEE, WALTER H. CLAIBORNE,
JR.

SHONE T. PIERRE
NYKEBA R. WALKER
BARRY KELLEY
BATON ROUGE, LA

ATTORNEYS FOR
APPELLEE, CYNTHIA BRIDGES,
SECRETARY, LA. DEPT. OF REVENUE
& TAXATION

BEFORE: CARTER, C.J., PETTIGREW, AND WELCH, JJ.

*Carter Cj. concurs by J&W
Welch J. concurs w/o reasons.*

PETTIGREW, J.

In this action, appellant, in the belief that he was the primary legatee of the deceased, took out a personal loan to cover the inheritance taxes that he believed were owed to the Louisiana Department of Revenue ("LDR"). When it was judicially determined that appellant was not a legatee of the succession, appellant sought to recover the tax payment that he had paid but did not owe. Through a complicated procedural morass, a judgment was ultimately rendered that awarded appellant a portion of the taxes he had paid. From this judgment, appellant has appealed.

FACTS

This case has a lengthy and complex procedural history; however, in a previous opinion in this matter, this court noted the following facts:

The record reflects that upon the death of her father in 1979, [the decedent, Elizabeth Ashley Claiborne ("Ms. Claiborne")] began residing with and caring for her mother at Ashley Plantation in Pointe Coupee Parish. Upon the death of their mother in 1989, [Walter H. Claiborne, III ("Mr. Claiborne")] and Ms. Claiborne inherited several pieces of immovable property, including Ashley Plantation. Ms. Claiborne continued to reside there until she met [Leon J. Gibert, Jr. (appellant herein, and hereinafter referred to as "Mr. Gibert")] and began residing with him in 1992. Although they did not marry, Ms. Claiborne resided with Mr. Gibert until her death. During that time, she frequently spent weekends at horse shows or at Ashley Plantation without Mr. Gibert.

In 1992, Ms. Claiborne was diagnosed with cancer. Late that year, her illness appeared to be in remission, and Ms. Claiborne continued to pursue her hobby, raising and riding cutting horses. During 1993, she left her long-time horse trainer, Fred Evans, and placed her horses with another trainer. The testimony is consistent that they remained friends after she removed her horses from Mr. Evans' care; however, their contact with each other was diminished. Then, in June of 1996, she was diagnosed with a recurrence of her illness, which led to her demise in December of that year.

In re Succession of Claiborne, 99-2415, p. 4 (La. App. 1 Cir. 11/3/00), 769 So.2d 1267, 1269, writs denied, 00-3283, 00-3310 (La. 2/16/01), 786 So.2d 98, 99.

PRIOR COURT PROCEEDINGS

Ms. Claiborne died on December 7, 1996. Ms. Claiborne left a will dated December 20, 1992, wherein she made particular legacies to Fred Evans and Gloria Ford, and named Mr. Gibert as her universal legatee.¹ On December 20, 1996, Mr. Gibert, believing that he

¹ **In re Succession of Claiborne**, 99-2415 at 2, 769 So.2d at 1268.

had been designated as Ms. Claiborne's universal legatee pursuant to her last will and testament, filed a petition requesting notice of the court's appointment of an administrator of the succession, in the 18th Judicial District Court, for the Parish of Pointe Coupee, State of Louisiana ("18th JDC").²

Believing that he possessed the only valid will, Mr. Gibert filed an inheritance tax return ("original return") in connection with the Succession of Elizabeth Ashley Claiborne ("the succession"), on or about May 15, 1997. The inheritance tax return filed by Mr. Gibert reflected a balance due of \$52,227.00, which Mr. Gibert voluntarily paid with funds he borrowed through Nationscredit Financial Services at a yearly rate of 13.95 percent, with a relatively short amortization.

On May 19, 1997, Ms. Claiborne's December 20, 1992 will was probated in the 18th JDC.³ The 18th JDC pursuant to an order signed on July 21, 1997, appointed Mr. Claiborne as the provisional administrator of his sister's succession. Said order further authorized Mr. Claiborne to seek a refund of state inheritance tax paid by Mr. Gibert and directed Mr. Claiborne to "pay the interest on the loan taken out by Mr. Gibert until said refund is received or the matter concluded otherwise by order or judgment of [the] Court."

In a letter dated August 8, 1997, Mr. Gibert, through his attorney, requested that the LDR refund to him the amount reflected on the inheritance tax return that he had previously paid. The LDR responded to Mr. Gibert's request in a letter dated September 8, 1997, advising that a refund could not be issued until the filing of an amended inheritance tax return. Mr. Gibert thereafter filed an amended inheritance tax return ("first amended return") on September 26, 1997; and once again, requested a refund of the inheritance tax he had paid.

Once again, we rely upon our previous opinion in this case for the following facts:

² Later that same date, Mr. Claiborne filed a similar pleading also requesting notice of the 18th JDC's appointment of an administrator for the succession of his sister.

³ **In re Succession of Claiborne**, 99-2415 at 2, 769 So.2d at 1268.

On August 13, 1997, Clifford Donovan Hyatt, II, the alleged son of [Ms. Claiborne], filed a petition to annul the probate of the 1992 testament, asserting that the will was not signed and dated by [Ms. Claiborne].

Thereafter, Mr. Claiborne intervened in the will contest on January 20, 1998, asserting claims similar to Mr. Hyatt's, as well as asserting [Ms. Claiborne's] lack of capacity to create the 1992 will. On June 19, 1998, Mr. Claiborne filed a motion in accordance with LSA-C.C.P. art. 2853, asserting that he had discovered three photocopies of a 1995 olographic will of [Ms. Claiborne.] The 1995 will revoked all prior wills and named Mr. Claiborne's children, Walter H. Claiborne, IV and Barbara E. Claiborne, as well as Gloria Ford, as legatees. Thereafter, on February 23, 1999, Mr. Claiborne filed a motion to probate a copy of the 1995 will.

A trial on Mr. Hyatt's petition to annul the probate of the 1992 will, Mr. Claiborne's petition of intervention to annul the probate of the 1992 will, and Mr. Claiborne's motion to probate the photocopy of the 1995 will was held on March 5, 1999. On April 14, 1999, the trial judge rendered judgment recalling the probate of the 1992 will and probating the 1995 will.

In re Succession of Claiborne, 99-2415 at pp. 2-3, 769 So.2d at 1268.

While appealing the trial court's determination that he was not a legatee of Ms. Claiborne, and accordingly, had no interest in her succession, Mr. Gibert filed, on August 4, 1999, a motion in the 18th JDC requesting issuance of a rule nisi. Said rule directed the LDR to show cause why the inheritance taxes paid by Mr. Gibert should not be refunded. Additionally, and in the alternative, Mr. Gibert moved for issuance of a rule nisi directing Mr. Claiborne, as the provisional administrator of Ms. Claiborne's estate, to pay Mr. Gibert the payment that Mr. Gibert made to the State of Louisiana and to reimburse Mr. Gibert those interest payments that Mr. Claiborne was previously ordered by the court to pay. Following a hearing held on August 17, 1999, Mr. Claiborne, as administrator of Ms. Claiborne's estate, was ordered to pay Mr. Gibert the sum of \$622.83 on the 8th day of each month pending further orders of the court in addition to \$9,342.45, said sum representing interest payments of \$622.83 per month from May 1998 through August 1999.

A panel of this court affirmed, on November 3, 2000, the 18th JDC's judgment of April 14, 1999, that recalled the probate of the 1992 will and probated the 1995 will.

The supreme court thereafter denied writs. **In re Succession of Claiborne**, 99-2415, (La. App. 1 Cir. 11/3/00), 769 So.2d 1267, writs denied, 00-3283, 00-3310 (La. 2/16/01), 786 So.2d 98, 99.⁴

On February 20, 2001, Mr. Claiborne moved for authority to cease making monthly payments to Mr. Gibert. Following a hearing on May 8, 2001, Mr. Claiborne was authorized to discontinue payments of interest to Mr. Gibert as of the date upon which the judgment ordering the probate of the November 30, 1995 will of Ms. Claiborne became executory.

Mr. Claiborne filed a Rule to Show Cause on August 23, 2001, directing the LDR to show cause why the court should not determine the amount of inheritance tax owed by the heirs and legatees of Ms. Claiborne. In addition, the LDR was further ordered to show cause why any overpayment of inheritance tax should not be paid into the registry of the court to allow all persons with any claim thereto an opportunity to assert said claims through a contradictory hearing. Mr. Claiborne also filed, on behalf of the succession, a

⁴ In **In re Succession of Claiborne**, 2003-0202 (La. App. 1 Cir. 11/7/03)(unpublished), this court set forth the following: After the denial of writs by the supreme court, Mr. Claiborne was appointed the testamentary executor of his sister's succession. Mr. Claiborne later became aware that Mr. Gibert had filed various pleadings in Orleans Parish attacking the subject matter jurisdiction of the 18th JDC and alleging that Ms. Claiborne was actually domiciled in Orleans Parish at the time of her death. Mr. Claiborne responded by filing a rule to show cause in the 18th JDC seeking affirmation of its subject matter jurisdiction. On the day of the hearing, Mr. Gibert filed numerous exceptions.

No one appeared on Mr. Gibert's behalf at the hearing on the rule. The trial court denied a motion for a continuance, and in a judgment signed that date, June 12, 2001, affirmed its jurisdiction over the subject matter finding that Ms. Claiborne was domiciled in Pointe Coupee Parish at the time of her death. The trial court further denied the remaining exceptions filed by Mr. Gibert. The June 12, 2001 judgment was never appealed.

On July 26, 2001, Mr. Gibert filed a writ application with this court seeking a review of the June 12, 2001 judgment. The writ was not considered as it was untimely. **In re Succession of Claiborne**, 2001 CW 1770 (La. App. 1 Cir. 9/26/01).

On February 19, 2002, the 18th JDC signed a judgment homologating a motion by Mr. Claiborne who requested authority as testamentary executor to pay a legacy and to make partial payment towards certain debts and charges of the succession. Mr. Gibert thereafter appealed urging three assignments of error all related to the judgment of June 12, 2001. Since this appeal was filed more than seven months after the judgment of June 12, 2001, it was ruled untimely and dismissed by the court.

second amended inheritance tax return on or about August 31, 2001, that requested an inheritance tax refund of \$34,275.00⁵ ("second amended return").

Mr. Gibert responded by filing a memorandum in opposition and argued therein that the litigation expenses referenced by Mr. Claiborne were not charges against the succession, but rather expenses incurred for the sole benefit of Mr. Claiborne and his children. Mr. Gibert also argued that the charging of such expenses against the succession would constitute a breach of Mr. Claiborne's duty as succession representative. Mr. Gibert further argued that the inheritance taxes he paid were his personal funds rather than funds belonging to the succession, thus the attempt by Mr. Claiborne to gain control of the tax refund due Mr. Gibert would constitute a wrongful seizure. Finally, Mr. Gibert argued that the 18th JDC lacked jurisdiction over the subject matter due to the fact that prior to her death, Ms. Claiborne resided with him in Orleans Parish and ultimately died in a hospital situated in neighboring Jefferson Parish. Mr. Gibert urged the LDR to refrain from depositing the alleged tax overpayment into the registry of the court, but to maintain the taxes paid in an interest-bearing account pending a full and final disposition of all outstanding issues.

Following a hearing on October 9, 2001, the court entered an order directing the LDR to retain any refund of inheritance tax that may be owed pending further orders from the court.⁶

Thereafter, it appears, that Mr. Gibert initiated proceedings in the 19th Judicial District Court for the Parish of East Baton Rouge ("19th JDC")⁷, pursuant to La. R.S. 47:2451⁸, against the LDR and its secretary, Ms. Cynthia Bridges, seeking a refund of the

⁵ Mr. Claiborne asserted that the significantly lower tax amount was partly due to the relationship of the principal legatees to Ms. Claiborne, and partly because of "changes in debts and charges due to the extensive litigation that has been conducted herein."

⁶ Mr. Gibert later claimed that a hearing was never held and that the LDR's claim to jurisdiction in the 18th JDC is based upon an interim minute entry that was never made a signed order much less a judgment of the court.

⁷ **Leon J. Gibert, Jr. v. Louisiana Department of Revenue**, 19th JDC, Docket # 526219-B.

⁸ Louisiana Revised Statute 47:2451 authorizes claims and suits for the erroneous payment or overpayment of inheritance taxes paid to the secretary of the LDR, and sets forth the period within which such claims or suits shall be made or instituted.

inheritance tax he paid. Claiming that the 19th JDC was the only court of proper venue for claims against a state agency, Mr. Gibert sought to require the LDR to refund to him the inheritance tax he had erroneously paid in connection with this succession. In response, the LDR filed a peremptory exception raising the objection of no cause of action.⁹ In a ruling issued on October 23, 2006, the 19th JDC sustained the exception and directed the parties to resolve the tax issue pending in the 18th JDC succession proceeding within sixty (60) days.¹⁰

In an effort to comply with the order of the 19th JDC and to resolve the inheritance tax issue, the LDR filed a motion on October 30, 2006, requesting that a status conference be fixed in the 18th JDC. A status conference was thereafter held. Mr. Claiborne filed a motion to set for trial on February 5, 2007, and the 18th JDC ordered that the rule to show cause previously filed by the succession on August 23, 2001, relative to the amount of inheritance tax owed and the disposition of any overpayment, the executor's petition for the return of succession assets filed on April 24, 2002, together with all other pending matters be heard on February 27, 2007.

On February 12, 2007, Mr. Gibert submitted via facsimile transmission to the 18th JDC a motion and order for declaratory judgment that was filed that date.¹¹ Mr. Gibert sought a declaration from the 18th JDC that because he was neither an heir nor a legatee of Ms. Claiborne's succession, he did not owe any Louisiana inheritance tax. Mr. Gibert further requested that the 18th JDC order the LDR to refund to him the money that he paid. Mr. Gibert also filed on February 15, 2007, an Amended Proof of Claim wherein he

⁹ The LDR asserts in its brief to this court that inasmuch as Mr. Gibert requested a refund from the LDR, which the LDR denied, Mr. Gibert was required, pursuant to La. R.S. 47:1625, to appeal the denial of his refund claim at the Board of Tax Appeals. The LDR argues that due to Mr. Gibert's failure to exhaust his statutory administrative remedies, no trial court has jurisdiction to adjudicate his refund claim.

¹⁰ The 19th JDC's order of October 23, 2006, was not made a part of the record herein, only the LDR's subsequent request for a status conference in the 18th JDC. Mr. Gibert claimed that the language of said order stated that in the event the 18th JDC failed to set Mr. Gibert's claim requesting a refund of inheritance tax for hearing within 60 days, jurisdiction would be maintained in the 19th JDC, the order in question vacated, and the 19th JDC would move towards a resolution of Mr. Gibert's claim.

¹¹ A document that purports to be the signed original was filed into the record on the date of the hearing, February 27, 2007. See, La. R.S. 13:850.

asserted a \$42,257.32 claim against Ms. Claiborne's succession for "loans tendered to and for other expenses paid by him on behalf of and for the benefit of [Ms. Claiborne]."

In response to Mr. Gibert's motion for hearing on his amended proof of claim, Mr. Claiborne filed various exceptions on February 16, 2007. The exceptions urged by Mr. Claiborne included a dilatory exception objecting to the authorized use of summary proceedings, a declinatory exception objecting to the insufficient service of process, and a peremptory exception raising the objection of prescription. In addition, the LDR filed a memorandum in opposition to Mr. Gibert's motion for declaratory judgment on the ground that Mr. Gibert was not the proper party to request a refund of inheritance tax on behalf of the succession.

A hearing was held by the 18th JDC on February 27, 2007, to address all pending matters. Among the matters taken up by the court was a rule to show cause, previously filed by the succession, that sought a refund of inheritance tax in the amount of \$52,227.00, as reflected on the original and first amended inheritance tax returns. Also at issue were Mr. Gibert's motion for declaratory judgment, request for an inheritance tax refund, and amended proof of claim. Through a judgment signed on April 5, 2007, the 18th JDC ordered the LDR to refund \$52,227.00 to the succession of Ms. Claiborne by placing said funds into the registry of the court until such time as a determination could be made relative to the claims between the parties. Said judgment was not appealed. At the conclusion of the February 27, 2007 hearing, the 18th JDC requested that the parties submit legal memoranda regarding Mr. Gibert's request for a refund of inheritance tax as well as the issues involved in the competing monetary claims.

JUDGMENT GIVING RISE TO PRESENT APPEAL

The 18th JDC thereafter held a hearing on March 19, 2007, to determine the disposition of the inheritance tax refunded by the LDR and the validity of the competing

monetary claims, which were filed against Mr. Gibert by Mr. Claiborne on behalf of the succession¹² and by Mr. Gibert against the succession.

In his Pre-Hearing Memorandum, Mr. Gibert urged the trial court to grant him a full refund of the \$52,227.00 that he paid in inheritance tax together with interest thereon. Mr. Gibert also urged the trial court to order payment by the succession of the full amount of his proof of claim and to deny the exceptions thereto filed by Mr. Claiborne. Mr. Gibert further urged the trial court to dismiss the claims put forth against him by Mr. Claiborne.

Mr. Claiborne responded with a memorandum on behalf of the estate of Ms. Claiborne. At the outset, Mr. Claiborne argued that although no exception had been filed, Mr. Gibert appeared to claim that venue was improper in the 18th JDC based upon his domicile in Orleans Parish. It was the position of Mr. Claiborne that regardless of whether the issue of venue had merit, it could no longer be timely asserted. Mr. Claiborne also put forth a claim against Mr. Gibert for the return of certain succession assets allegedly disposed of by Mr. Gibert as well as a claim on behalf of the succession for damages suffered while Mr. Gibert challenged the validity of a copy of the subsequently-prepared 1995 testament.

At the conclusion of the hearing, the trial court issued oral reasons for its judgment in open court. The trial court declined to award the succession penalties and attorney fees incurred in the defense of litigation instituted by Mr. Gibert in Orleans Parish. The trial court also ruled that from the \$52,227.00 that the LDR deposited into the registry of the court, Mr. Gibert owed the succession \$7,700.00, representing the total of three checks written on Ms. Claiborne's account, together with \$874.80, resulting from the sale of a saddle belonging to Ms. Claiborne. The trial court further directed that the sum of \$26,781.69 that the succession had previously been ordered to pay, representing the interest on Mr. Gibert's loan for inheritance tax, be refunded to the succession. The trial

¹² On April 24, 2002, Mr. Claiborne, in his capacity as the duly appointed provisional administrator of Ms. Claiborne's succession, filed a petition in the succession proceeding. The petition sought a judgment ordering Mr. Gibert to return certain assets allegedly belonging to the succession or the respective values, together with repayment to the succession of the increased taxes and expenses it incurred as a result of the alleged frivolous pleadings Mr. Gibert filed in various courts and his actions in connection with the succession proceedings.

court ordered that Mr. Gibert be permitted to withdraw from the registry of the court the difference between the \$52,227.00 and the amounts that Mr. Gibert was found to owe the succession.¹³

Accordingly, Mr. Gibert moved to withdraw the remaining balance from the registry of the court and filed for a devolutive appeal from the trial court's judgment of March 19, 2007. On April 25, 2007, the trial court signed the judgment, authorized Mr. Gibert to withdraw the remaining balance from the registry of the court, and further, granted Mr. Gibert's petition for devolutive appeal from the trial court's judgment of March 19, 2007.¹⁴

ISSUES PRESENTED FOR REVIEW

In connection with his appeal in this matter, Mr. Gibert presents the following issues for review and consideration by this court:

- 1) Whether the trial court erred in holding the March 19, 2007 hearing as said court lacked both jurisdiction and venue to hold such a hearing;
- 2) Why the trial court refused to hear properly filed exceptions to both jurisdiction and venue prior to the March 19, 2007 hearing;
- 3) Whether the trial court ordered payments to the succession despite the fact that said claims would be prescribed in a court of proper jurisdiction and venue;
- 4) Whether the trial court erred in refusing to hear Mr. Gibert's properly filed Proof of Claim against the succession at the March 19, 2007 hearing;
- 5) Whether the trial court erred in awarding the succession money from the inheritance tax return filed by Mr. Gibert;
- 6) Whether the trial court erred in vacating a consent agreement properly entered into by Mr. Gibert and the succession;
- 7) Whether the trial court erred in ordering that Mr. Gibert's tax refund check be paid into the registry of the 18th JDC; and
- 8) Whether the trial court erred in refusing to timely provide properly requested written reasons for his March 19, 2007 judgment.

¹³ The record reflects that counsel for the LDR advised the trial court that the sum of \$7,700.00, \$874.80 and \$26,781.69 totaled \$35,356.49; however, we calculate that the sum owed by Mr. Gibert to the succession totaled \$35,366.49.

¹⁴ Despite repeated requests by Mr. Gibert both at the hearing and thereafter, the trial court failed to provide written reasons for its judgment.

STANDARD OF REVIEW

The Louisiana Constitution of 1974 provides that the appellate jurisdiction of the courts of appeal extends to both law and facts. La. Const., art. V, § 10(B). A court of appeal may not overturn a judgment of a trial court absent an error of law or a factual finding that is manifestly erroneous or clearly wrong. See **Stobart v. State, Department of Transportation and Development**, 617 So.2d 880, 882, n.2 (La. 1993). If the trial court or jury findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989).

DISCUSSION AND LAW

The initial three issues raised by Mr. Gibert relate to whether the 18th JDC was a proper forum with respect to jurisdiction and venue. The seventh issue raised by Mr. Gibert questions whether the trial court erred in ordering that Mr. Gibert's tax refund check be paid into the registry of the 18th JDC.

Jurisdiction and Venue

In his brief to this court, Mr. Gibert contends that the 18th JDC was neither a court of proper jurisdiction nor a court of proper venue with respect to Mr. Gibert's suit against the LDR. Mr. Gibert claims that the language of an order signed by the 19th JDC¹⁵ on October 23, 2006, made it evident that the 18th JDC was divested of jurisdiction long before the March 19, 2007 hearing, due to its failure to hold a hearing on Mr. Gibert's request for a refund of inheritance tax within sixty days. He argues that because he remitted the inheritance tax at issue directly to the LDR, a state agency, and the succession is not a party to his suit in the 19th JDC against the LDR, the 18th JDC, without proper venue or jurisdiction, "confiscated" a large portion of his tax refund.

¹⁵ See Footnote 10, herein.

Mr. Claiborne asserts that statutes¹⁶, which provide for venue in East Baton Rouge Parish with respect to proceedings against state agencies arising out of contract or tort, do not strip other district courts of jurisdiction over the subject matter of the lawsuit. Mr. Claiborne further asserted that the fact that Mr. Gibert may have a case pending in East Baton Rouge Parish does not remove the subject matter jurisdiction of the 18th JDC.

We agree that regardless of the status of Mr. Gibert's case against LDR, the 18th JDC never relinquished its subject matter jurisdiction over the underlying succession. Following a hearing on February 27, 2007, the 18th JDC, through a judgment signed on April 5, 2007, ordered the LDR to refund to the succession of Ms. Claiborne the \$52,227.00 that Mr. Gibert had paid in inheritance tax. The judgment further directed that said sum be deposited into the registry of the court pending a determination by the court as to the claims between the parties. Mr. Gibert did not take an appeal or a writ from the trial court's judgment of April 5, 2007, and said judgment has now become final and executory.

Inasmuch as Mr. Gibert did not appeal or take writs from the April 5, 2007 judgment of the 18th JDC that ordered that the inheritance tax paid by Mr. Gibert be paid to the succession, the first, second, third and seventh issues raised by Mr. Gibert are without merit.

Gibert's Claims Against the Succession

The fourth issue put forth by Mr. Gibert is whether the trial judge erred in refusing to hear Mr. Gibert's properly filed proof of claim against the succession at the March 19, 2007 hearing. Mr. Gibert contends that his original proof of claim was put forth and properly filed in 1998 prior to the issuance of a judgment of possession, but was denied by the succession representative and never set for hearing.

¹⁶ See La. R.S. 13:5101.

Mr. Gibert relies on a statement allegedly made by a judge in a prior proceeding¹⁷ in the 18th JDC to the effect that if Mr. Gibert gave money to Ms. Claiborne, said monies were intended to be a loan and that Mr. Gibert expected to be repaid. Mr. Gibert further contends that since this proceeding was later reviewed by this court, and ultimately the supreme court, this alleged statement must be considered the law of the case, and should have been heard by the trial court at the March 19, 2007 hearing.

Mr. Claiborne responds with the assertion that the trial court allowed Mr. Gibert an opportunity to present his case on the proof of claim; however, Mr. Gibert failed to put forth evidence to support his claim. Mr. Claiborne argues that Mr. Gibert did not mention the proof of claim in his testimony and only after all of the witnesses had testified did counsel for Mr. Gibert seek to introduce a group of unidentified checks into evidence. After the trial court sustained an objection by Mr. Claiborne to the introduction of the checks, no proffer or further evidence relative to the proof of claim was offered.

Upon review of this matter, we note that the transcript of the March 19, 2007 hearing reveals the following colloquy:

Counsel for Mr. Claiborne:

And I realize the Court's desire is to try to end all of these things today if it can, and for the record I'm going to have to object to any consideration or proof of claim filed by Mr. Gibert.

Your Honor, my understanding of the law is that the proof of claim merely – if it's done properly and we're not even agreeing to that – it would interrupt prescription for a longer period and give the claimant an opportunity to file . . . a suit on an open account against the succession representative and that's subject to whatever other claims and defenses that you would have in an ordinary proceeding. No such suit has been filed. Mr. McCarthy has filed a motion to have his proof of claim heard and my objection to that is that you still have to go through the process of filing a lawsuit.

And I realize, I'm only noting this for the record. I know the Judge, the Court wants to finish it and that you want to have us take testimony on it, but I really do believe that we're not at an appropriate place procedurally to try that claim.

The Court:

I want to hear what anyone wants to present to me today.

¹⁷ Mr. Gibert is evidently referring to the trial that sought to annul the probate of the 1992 will urged by Mr. Gibert. See **In re Succession of Claiborne**, 99-2415 (La. App. 1 Cir. 11/3/00), 769 So.2d 1267, writs denied, 00-3283, 00-3310 (La. 2/16/01), 786 So.2d 98, 99.

Counsel for Mr. Claiborne:

I understand, Your Honor.

The Court:

Okay. And I will place that huh, those facts where they belong.

* * * *

The Court:

Okay. Now let's get down to the merits of whatever I can hear today. . . .

* * * *

The Court:

All right. On Mr. Gibert's part, what are the – it's my understanding there's a claim by Mr. Gibert against the estate.

* * * *

Counsel for Mr. Gibert:

We are asking as a creditor of the estate for money Mr. Gibert spent to pay for Ms. Claiborne's horse training bills, for her drug and medical bills, for the truck payments she made or he made on her behalf, travel expenses, dues to various horsing associations.

The Court:

All right. Let me ask one question right there. Is this expenses [sic] that were paid on her behalf by Mr. Gibert after she died or prior to her death?

Counsel for Mr. Gibert:

Prior to her death, Your Honor.

The Court:

Prior to her death that he is saying he paid out of his own pocket?

Counsel for Mr. Gibert:

Yes, sir.

The Court:

That he's a creditor of her, he's been paying some of her bills out of his own money prior to and that she owes him that.

Counsel for Mr. Gibert:

That's correct, Your Honor.

The Court:

Is there a total amount that you have on that?

Counsel for Mr. Gibert:

It's forty-two thousand and change, I'll have to dig it out of my file.

The Court:

That's fine. I just wanted to know what the claims were and I understand now, you're saying that there were some bills that you feel,

your client feels he's a creditor to the estate because there were some things he paid that weren't gifts or anything, or anything like that.

Counsel for Mr. Gibert:

In fact, that was held at the trial of this matter, Your Honor.

The Court:

All right.

Counsel for Mr. Gibert:

I have the checks here if you would like to see them.

The Court:

No, I'm going to let y'all present y'all's cases, okay. I'm not the lawyer. Y'all are the lawyers, I'm not going to tell y'all how to do your job .

...

* * * *

The Court:

All right. He has rested his claim. Do you wish to present anything else?

Counsel for Mr. Gibert:

Your Honor, the proof of claim is there, the checks are all in the record of the Court, I have copies of all the checks here if you'd like to go through them.

The Court:

I have what y'all have introduced. I'm not the lawyer, I'm only the judge.

Counsel for Mr. Gibert:

Well, then, Your Honor, if I may, these are all checks that were written for the benefit of Ms. Claiborne, I'd like to introduce them.

The Court:

Counsel?

Counsel for Mr. Claiborne:

I'm sorry, Your Honor?

The Court:

Tell him what you're asking.

Counsel for Mr. Gibert:

I'd like to introduce these checks. I think they've already been introduced. [Counsel for Mr. Claiborne has] seen them when he subpoenaed Mr. Gibert's bank records years ago.

Counsel for Mr. Claiborne:

Your Honor, obviously there's no foundation for these checks whatsoever, there's no foundation for these checks whatsoever, there's - nobody's identified, nobody's talked about - there hasn't been a trial on them. So what they're trying to do is to have somebody say, yeah, I want to introduce them into evidence and I have to object.

Counsel for Mr. Gibert:

He's been through these checks one-by-one already.

The Court:

Objection on those checks is sustained, okay. I think I have the information I need to rule on this case.

Any other witnesses? No other witnesses? Okay. All right.

Upon our review of the record in this matter, it is the opinion of this court that Mr. Gibert failed to offer a foundation or to present evidence in support of his claim. We decline to say that the trial court erred in refusing to hear Mr. Gibert's proof of claim. This issue also lacks merit.

Award of Money Derived From Inheritance Tax to Succession

The fifth issue raised by Mr. Gibert concerns the trial court's award of funds to the succession from the inheritance tax previously paid by Mr. Gibert. Mr. Gibert contends that because he paid the inheritance tax directly to the LDR, the succession cannot make a claim against the refund that he claims the LDR owes to him. Mr. Gibert further contends that the 18th JDC lacked both jurisdiction and venue to award monies to the succession for sums allegedly owed by him.

Mr. Claiborne responds with the argument that despite the fact that Mr. Gibert held a power of attorney granted to him by Ms. Claiborne in 1992, this presumably valid grant of authority would not permit Mr. Gibert to convert property belonging to his principal for his own use.

At the hearing on this matter, Mr. Gibert admitted that at the point he believed himself to be Ms. Claiborne's primary legatee, he returned for resale a saddle purchased by Ms. Claiborne shortly before her death and received the sum of \$874.80. Mr. Gibert also admitted that prior to Ms. Claiborne's death, he cashed a series of checks totaling \$7,700.00 to cover Ms. Claiborne's pharmacy and hospital bills. Finally, the trial court directed that the sum of \$26,781.69, which the succession had previously been ordered to pay representing the interest on Mr. Gibert's loan for inheritance tax be refunded to the succession.

The trial court, in its oral reasons for judgment, theorized that the payments of \$622.83 per month that an earlier judge directed the succession to pay to Mr. Gibert

pending a determination as to the validity of the 1995 will, was intended only as a stop-gap measure. This was apparently part of the consent judgment that Mr. Gibert raises in his sixth issue for review, but thereafter failed to brief. Had the earlier 1992 will put forth by Mr. Gibert been held to be valid, said payments would have been valid debts owed by the succession; however, once the validity of the 1995 will was established, the payments ceased and the sums became a claim of the succession.

Upon review of the record in this matter and based upon our previous determination that the 18th JDC maintained the requisite subject matter jurisdiction over the succession proceedings, we find that the trial court acted within its authority and properly reimbursed the succession for those sums to which it was entitled.

Failure to Provide Written Reasons

The eighth and final issue raised by Mr. Gibert has not been briefed. In his list of issues, Mr. Gibert states only, "the trial judge erred in refusing to provide properly requested written reasons for his March 19, 2007, rulings despite knowledge of appellant's desire to appeal those rulings." No further reference is made, and pursuant to Uniform Rules – Courts of Appeal, Rule 2-12.4, "[a]ll specifications or assignments of error must be briefed. The court may consider as abandoned any specification or assignment of error which has not been briefed."

Based upon our review of the record in this matter, we note that the trial court nevertheless provided clear and cogent oral reasons for its ruling at the conclusion of the hearing. Accordingly, we find the trial court's failure to provide written reasons for its March 19, 2007 rulings to be harmless error. This assignment is without merit.

CONCLUSION

For the above and foregoing reasons, the judgment of the trial court is hereby affirmed. All costs associated with this appeal are assessed against plaintiff-appellant, Leon J. Gibert, Jr.

AFFIRMED.