

HARRY A. WITT
VERSUS
GASPER J. SCHIRO

*** NO. 2007-CA-0299**
*** COURT OF APPEAL**
*** FOURTH CIRCUIT**
*** STATE OF LOUISIANA**

TOBIAS, J., CONCURS AND ASSIGNS REASONS.

I agree with the majority. I respectfully concur to emphasize a point not addressed by the majority.

No transcript of the trial of the exception appears in the record. Trial of the exception required live testimony unless waived by the parties. We have no evidence of record whether live testimony was waived and the matter submitted on the pleadings, the attachments thereto, and memoranda of counsel. Accordingly, in my view, we are required to reverse to allow a hearing with live testimony on the exception and evidence of fraud unless the parties at the new trial waive live testimony and present their case on stipulations, the pleadings, and memoranda of counsel.