SUCCESSION OF ALFRED J. MITCHELL	*	**NO. 2003-CA-1472**
	*	**COURT OF APPEAL**
	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2003-1094, DIVISION "N-8"
HONORABLE ETHEL SIMMS JULIEN, JUDGE
* * * * * *
JAMES F. MCKAY III
* * * * * *

(Court composed of Judge James F. McKay III, Judge Max N. Tobias Jr., Judge Edwin A. Lombard)

VERNON B. MITCHELL
Slidell, Louisiana 70461
In Proper Person, Appellant

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AFFIRMED

This appeal arises out of a judgment of the trial court denying an Opposition to Petition to Probate, which had been filed by Vernon B. Mitchell (appellant). For the reasons assigned, we affirm.

Alfred J. Mitchell (Mr. Mitchell) died on August 10, 2002. His daughter, Gwendolyn Mitchell LaMothe (LaMothe), filed a "Petition for Appointment of Administrator" on January 23, 2003. LaMothe represented that she believed her father died intestate, but attached a copy of what purports to be a testament executed by the decedent on January 22, 1976. LaMothe further claimed that the original testament could not be found. LaMothe was appointed administratrix on February 4, 2003.

On March 19, 2003, appellant, Mr. Mitchell's son, filed an Opposition to Petition for Probate. Although the pleading was titled an opposition to probate, appellant prayed only for an order dismissing LaMothe as "administrator." Appellant argued that Mr. Mitchell did not die intestate, as claimed by LaMothe, and introduced a photocopy of a document executed by his father on April 8, 2002, entitled: "REVOCABLE LIVING TRUST KNOWN AS THE LIVING TRUST OF ALFRED J. MITCHELL, SR. (REVOKING ALL OTHERS)."

A hearing was conducted on appellant's opposition on April 25, 2003,

before the Honorable Ethel Simms Julien of the Civil District Court for the Parish of Orleans. The matter was taken under advisement by the trial court. Before a judgment was rendered, appellant filed a motion for appeal on May 23, 2003. The trial court thereafter rendered judgment, denying the opposition, on May 29, 2003, and signed appellant's appeal motion on June 16, 2003.

In her reasons for judgment, Judge Julien stated that although the inter vivos trust, executed by Mr. Mitchell, named appellant as co-trustee, it did not grant appellant the right to become executor of the succession.

Appellant does not specify a particular assignment of error on the part of the trial court. Instead, appellant asks that Judge Julien be made to "amend the phraseology of her judgment." Specifically, appellant requests that the judgment be amended to state that appellant is acknowledged as co-trustee of his father's living trust and that he be granted the Opposition to Petition for Probate against the administration of LaMothe. Appellant suggests that the ruling of the trial court, recognizing him as co-trustee, is contrary to the court's own ruling to allow LaMothe to remain as administratrix.

In opposition to this appeal, LaMothe submits that appellant's request to have the phraseology of the judgment amended to grant his opposition to

the petition for probate is an impermissible substantive alteration of the judgment. LaMothe relies on La. C.C.P. art. 1951 which provides as follows:

> A final judgment may be amended by the trial court at any time, with or without final notice, on its own motion or on motion of any party:
>
> (1) To alter the phraseology of the judgment, but not the substance; or
>
> (2) To correct errors of calculation.

LaMothe maintains that appellant is improperly asking this Court to reverse the trial court's judgment under the guise of correcting an error as allowed under article 1951.

The well-established standard of appellate review dictates that we evaluate the findings of the trier of fact under the manifest error or clearly wrong standand. Rosell v. ESCO, 549 So.2d 840 (La. 1989); Stobart v. State, Through Department of Development and Transportation, 617 So.2d 880, 883 (La. 1993). The issue to be resolved by the reviewing court is not whether the trier of fact was right or wrong, but whether the fact finder's conclusion was a reasonable one. Cosse v. Allen-Bradley Co., 601 So.2d 1349, 1351 (La. 1992).

After a thorough review of the record, we find no error on the part of the trial court in denying appellant's Opposition to Petition for Probate. We note that there has been no attempt by LaMothe to probate a testament. To

the contrary, LaMothe filed only a Petition for Appointment of Administrator and represented to the court that Mr. Mitchell died intestate.

As to appellant's argument that the trial court erred by not appointing him as administrator in place of LaMothe, we find no error. The thrust of appellant's argument is that because Judge Julien recognized him as co-trustee of his father's inter vivos trust, she should also have appointed him administrator of the succession. We find no error on the part of the trial court in denying appellant the right to administer the succession based solely on the inter vivos trust.

Our Code of Civil Procedure provides the appropriate procedure to have a succession representative disqualified and removed. La. C.C.P. art. 3182 provides in pertinent part: "The court on its own motion may, and on motion of any interested party shall, order the succession representative sought to be removed to show cause why he should not be removed from office." Appellant has not availed himself of that procedure to properly seek disqualification of LaMothe as administratrix.

Finally, we note that appellant argues for the first time in his appeal brief that LaMothe be ordered to return $15,143.00 which appellant alleges was "illegally removed" from the decedent's bank account. This issue was not raised in the trial court; therefore, it will not be considered on this

appeal.

For the reasons set forth herein, we find no error on the part of the trial court in denying appellant's Opposition to Petition for Probate.

AFFIRMED