

First Extraordinary Session, 2000

HOUSE BILL NO. 94

BY REPRESENTATIVES MCMAINS AND ANSARDI AND SENATORS
MARIONNEAUX AND SCHEDLER

(On Recommendation of the Louisiana State Law Institute)

AN ACT

To amend and reenact Title IX of Book I of the Civil Code, presently composed of Articles 389 through 426, to comprise Articles 389 through 399, Civil Code Articles 1482 and 2319, Title VIII of Book VII of the Code of Civil Procedure, presently composed of Articles 4541 through 4557, to comprise Articles 4541 through 4556 and Articles 4561 through 4569, and to repeal R.S. 9:1001 through 1004, all relative to interdiction and curatorship; to provide for full interdiction, limited interdiction, temporary interdiction, and preliminary interdiction; to provide for curatorship, curators, and undercurators; to provide for the effects of interdiction, the modification of interdiction, the termination of interdiction, and the wrongful filing of a petition for interdiction; to provide for the proof of the incapacity of a person to donate; to provide for the responsibility of a curator or an undercurator for the delictual obligations of an interdict; to provide for the petition for interdiction; to provide for the venue for an interdiction proceeding; to provide for the service of citation upon the defendant and notice to interested persons; to provide for the appointment of an attorney for the defendant; to provide for the appointment of an examiner for the defendant; to provide for the fixing of a hearing or a trial; to provide for the burden of proof in an interdiction proceeding; to provide for the

judgment of interdiction; to provide for the recordation of a notice of suit for interdiction and of the judgment of interdiction; to provide for the inventory and security of a curator, the oath of a curator and of an undercurator, and the letters of curatorship; to provide for the costs of an interdiction proceeding and attorney fees; to provide for the appeal of a judgment or order relative to interdiction or curatorship; to provide for the management of an interdict's affairs and the expenses of an interdict and his legal dependents; to provide for the modification and termination of the appointment of a curator or an undercurator, the post-judgment monitoring and reporting, and the procedures relative to an ancillary proceeding; to repeal special statutes for the interdiction of inebriates; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Title IX of Book I of the Civil Code, presently composed of Articles 389 through 426, to comprise Articles 389 through 399, is hereby amended and reenacted to read as follows:

CIVIL CODE

BOOK I. OF PERSONS

TITLE IX. PERSONS UNABLE TO CARE FOR THEIR

PERSONS OR PROPERTY

CHAPTER 1. GROUNDS FOR INTERDICTION

Art. 389. Full Interdiction

A court may order the full interdiction of a natural person of the age of majority, or an emancipated minor, who due to an infirmity, is unable consistently to make reasoned decisions regarding the care of

his person and property, or to communicate those decisions, and whose interests cannot be protected by less restrictive means.

Source: New. Cf. C.C. Arts. 389, 422, and 426 (1870). Cf. Uniform Guardianship and Protective Proceedings Act (UGPPA) (1998) Sections 5-102 (4) and 5-311.

Comments

(a) This Article changes the law. Under prior law, full interdiction was appropriate when the defendant was "subject to an habitual state of imbecility, insanity or madness," or when the defendant "owing to any infirmity", was incapable of taking care of his person and administering his estate. See Civil Code Articles 389 and 422 (1870). This Article changes the law by making eligibility for interdiction dependent upon functional inability and is uncomplicated by considerations of "insanity", "madness", and the like.

(b) For a person to be interdicted under this Article, the inability to make reasoned decisions regarding the care of his person and his property must result from an infirmity, including among others, chronic substance abuse. Advanced age alone is not an infirmity. Consequently, a person who is merely caring for his person and property in an imprudent manner, but who does not suffer from an infirmity affecting his ability to make reasoned decisions, is not a candidate for full interdiction. However, categorizing the infirmity from which a person suffers is significantly less important than evaluating his functional ability to make reasoned decisions and to communicate those decisions. A decision is not unreasoned merely because it appears risky, unwise, or imprudent.

(c) A person lacks the ability to communicate reasoned decisions only when he cannot convey his thoughts in an understandable manner to other persons. Thus, a person who can consistently communicate his reasoned decisions through any form of verbal or nonverbal communication is not a candidate for full interdiction.

(d) A person is unable consistently to make reasoned decisions if, for example, he suffers from an infirmity which intermittently deprives him of reason. A person who experiences periodic deprivations of reason can inflict substantial harm to himself or his property during such bouts and is a candidate for full interdiction. In short, that a person suffering from an infirmity may experience lucid intervals does not render him ineligible for full interdiction.

(e) Full interdiction is a last resort and, as a result, is warranted only when a person's interests cannot be protected by less restrictive means. A person's interests can be protected by less restrictive means if, for example, his interests (1) are currently being protected by other legal arrangements, including a procuration, mandate, or trust, or (2) could be protected by other legal arrangements, including limited

interdiction, see Civil Code Article 390 (Rev. 2000). If the court determines that less restrictive means can protect the defendant's interests, the court should deny full interdiction.

(f) Full interdiction is distinct from civil commitment. See *Vance v. Ellerbe*, 150 La. 388, 90 So. 735, 740 (1922). Civil commitment requires compliance with the standards and procedures set forth in the mental health law. See R.S. 28:1 through 28:173.

(g) The petitioner in a full interdiction proceeding shall prove by clear and convincing evidence all facts justifying interdiction. See Code of Civil Procedure Article 4548 (Rev. 2000).

Art. 390. Limited interdiction

A court may order the limited interdiction of a natural person of the age of majority, or an emancipated minor, who due to an infirmity is unable consistently to make reasoned decisions regarding the care of his person or property, or any aspect of either, or to communicate those decisions, and whose interests cannot be protected by less restrictive means.

Source: New, Cf. in part C.C. Art. 389.1 (1981). Cf. UGPPA (1998) Section 5-311.

Comments

(a) This Article reproduces the principle that a right not specifically restricted in the judgment of limited interdiction is retained by the limited interdict. See Civil Code Article 389.1 as enacted by Acts 1981, No. 167.

(b) A person is a candidate for limited interdiction if he is consistently unable to make reasoned decisions regarding the care of his person or property, or any aspect of either, or to communicate those decisions. If he is consistently unable to make reasoned decisions regarding the care of both his person and his property, or to communicate those decisions, he is a candidate for full interdiction.

(c) Various Louisiana laws, including Civil Code articles within this Title, refer to "interdicts" and "curators of interdicts." To the extent that doing so is consistent with the terms and purposes of the judgment of limited interdiction, such legislation should be applied to "limited interdicts" and to "curators of limited interdicts."

(d) A judgment of limited interdiction does not deprive a limited interdict of the capacity to make a disposition mortis causa. See Civil Code Articles 395 and 1482 (Rev. 2000).

Art. 391. Temporary and preliminary interdiction

When a petition for interdiction is pending, a court may order a temporary or preliminary interdiction when there is a substantial likelihood that grounds for interdiction exist and substantial harm to the health, safety, or property of the person sought to be interdicted is imminent.

Source: New, Cf. in part C.C. Art. 394 (1997) and C.C.P. Art. 4549 (1997). Cf. UGPPA (1998) Section 5-312.

Comments

(a) This Article is based upon Civil Code Article 394 and Code of Civil Procedure Article 4549 as amended by Acts 1997, No. 1117. It does not change the law.

(b) A court can order either full interdiction or limited interdiction on a temporary or preliminary basis.

(c) For purposes of this Title and other Louisiana legislation, a temporary or preliminary interdict is an interdict, a temporary or preliminary curator is a curator, a temporary or preliminary limited interdict is a limited interdict, and a temporary or preliminary limited curator is a limited curator.

(d) The terms temporary interdiction and preliminary interdiction parallel similar terms used in the context of injunctive relief. See Code of Civil Procedure Articles 3601-3613.

**CHAPTER 2. GENERAL DUTIES OF CURATORS
AND UNDERCURATORS**

Art. 392. Curators

The court shall appoint a curator to represent the interdict in juridical acts and to care for the person or affairs of the interdict, or any aspect of either. The duties and powers of a curator commence upon his qualification. In discharging his duties, a curator shall exercise reasonable care, diligence, and prudence and shall act in the best interest of the interdict.

The court shall confer upon a curator of a limited interdict only those powers required to protect the interests of the interdict.

Source: New. Cf. C.C. Arts. 389.1, 404, 405, and 418 (1870). Cf. C.C. Art. 2985 (Rev. 1997). Cf. C.C.P. Arts. 4550, 4552, 4554, and 4556. Cf. C.C.P. Art. 4262. Cf. UGPPA (1998) Sections 5-304, 5-314, 5-315, 5-316, 5-410, and 5-418.

Comments

(a) This Article is new. It sets forth in general terms the duties of care and loyalty that the curator owes to the interdict.

(b) Code of Civil Procedure Articles 4566, 4567, and 4569 (Rev. 2000), contain provisions setting forth more particular duties of curators.

(c) In making decisions regarding the interdict, the curator should consider the interdict's preinterdiction expressions of will set forth in any preplanning documents, wills, or other directives. Moreover, the curator should consider the interdict's preferences, religious beliefs, and values to the extent known to the curator.

(d) To the extent reasonably possible, a curator should encourage the interdict to participate in decisions and to develop or to regain the ability to care for his person, to manage his affairs, or both.

(e) The term "affairs" is used throughout this title to refer to interests of the interdict that are distinct from his person. This term includes the interdict's estate, property, and business, but may include other interests as well. The use of this term is consistent with the terminology used in the mandate Articles, see Civil Code Article 2989 (Rev. 1997), Comment (d), and confirms that interdiction serves to empower the curator to protect the interdict from harm to all his interests.

(f) A curator's duties and powers commence upon his taking an oath and furnishing security, irrespective of when letters of curatorship evidencing such qualification are issued.

Art. 393. Undercurators

The court shall appoint an undercurator to discharge the duties prescribed for him by law. The duties and powers of an undercurator shall commence upon qualification. In discharging his duties, an

undercurator shall exercise reasonable care, diligence, and prudence and shall act in the best interest of the interdict.

Source: New. Cf. C.C. Arts. 406, 407, 409, 410, and 411 (1870). Cf. C.C.P. Art. 4553. Cf. R.S. 9:1031(F).

Comment

This Article changes the law. It sets forth generally the undercurator's duties of care and loyalty. Code of Civil Procedure Article 4565 (Rev. 2000), contains provisions setting forth the particular duties of undercurators. The undercurator has no particular duties, either expressed or implied, other than those specifically set forth in that Article.

CHAPTER 3. EFFECTS OF INTERDICTION

Art. 394. Pre-interdiction juridical acts

Interdiction does not affect the validity of a juridical act made by the interdict prior to the effective date of interdiction.

Source: New. Cf. C.C. Arts. 402 and 403 (1870).

Comments

(a) This Article is new.

(b) This Article relates only to juridical acts predating interdiction. Whether a pre-interdiction juridical act creates, modifies, transfers, or terminates a personal or real right turns on the substantive law potentially giving effect to the act.

Art. 395. Capacity to make juridical acts

A full interdict lacks the capacity to make a juridical act, except as otherwise provided by law. A limited interdict retains the capacity to make a juridical act, except as otherwise provided by law or the judgment of limited interdiction. A judgment of interdiction does not remove the capacity of the interdict to make or revoke a disposition mortis causa, except as otherwise provided by law.

Source: Cf. C.C. Arts. 28 (Rev. 1987), 389.1 (1981), 1918 (Rev. 1984), and 2031 (Rev. 1984).

Comments

(a) This Article is new. This Article provides an exception to the general rule that natural persons have the capacity to make juridical acts, see Civil Code Article 28 (Rev. 1987). In addition, it explicitly acknowledges that specific legislation may override this general lack of legal capacity of an interdict.

(b) A juridical act is a lawful volitional act intended to have legal consequences. It may be a unilateral act, such as an affidavit, or a bilateral act, such as a contract. It may be onerous or gratuitous. See Civil Code Article 3471 (Rev. 1982), Comment (c) (citing 1 A.N. Yiannopoulos, Louisiana Civil Law System Coursebook Section 77 (1977)); 1 Planiol & Ripert, *Treatise on the Civil Law*, pt. 1, no. 265, at 187 (La. St. L. Inst. trans., 12th ed. 1939).

(c) The interdict lacks capacity to make a juridical act including an act purporting to create, modify, transfer, or extinguish rights and obligations, whether personal or real.

(d) A juridical act by an interdict is a relative nullity. See Civil Code Articles 1919 and 2031 (Rev 1984). Likewise, a marriage contracted by an interdict would lack consent and, thus, would be a relative nullity. See Civil Code Article 93 (Rev. 1987).

(e) This Article qualifies the general rule that an interdict lacks capacity to make juridical acts with the proviso "except as otherwise provided by law". Other statutes expressly reserve to interdicts the limited capacity to make specified juridical acts. See Code of Civil Procedure Article 4554 (Rev. 2000), (reserving capacity of an interdict to seek termination of interdiction). Moreover, this Article specifically reserves for an interdict the capacity to make and to revoke a disposition mortis causa. Nevertheless, the proponent of a testament executed by an interdict shall prove the testator's capacity by clear and convincing evidence. See Civil Code Article 1482 (Rev. 2000).

(f) Because interdiction affects only the interdict's capacity to make juridical acts, it has no effect on obligations that do not arise through an exercise of will. For example, an interdict remains responsible for obligations arising under tort law or family law.

Art. 396. Effective date of judgment of interdiction

A judgment of interdiction has effect retroactive to the date of the filing of the petition for interdiction.

Source: C.C. Arts. 400 and 401 (1870).

Comment

This Article reproduces the substance of Civil Code Articles 400 and 401 (1870).

CHAPTER 4. MODIFICATION AND TERMINATION OF
INTERDICTION

Art. 397. Modification and termination of interdiction

The court may modify or terminate a judgment of interdiction for good cause. Interdiction terminates upon death of the interdict or by judgment of the court.

A judgment of preliminary interdiction granted after an adversarial hearing terminates thirty days after being signed, unless extended by the court for good cause for a period not exceeding thirty days. A judgment of temporary interdiction granted ex parte terminates ten days after being signed. On motion of the defendant or for extraordinary reasons shown at a contradictory hearing, the court may extend the judgment of temporary interdiction for one additional period not to exceed ten days.

Source: New. Cf. C.C. Arts. 420 and 421 (1870). Cf. C.C.P. Art. 4557 and C.C.P. Art. 4549 (1997). Cf. UGPPA (1998) Section 5-318.

Comments

(a) This Article is new. This Article does not change the law with regard to the termination date of a final judgment of interdiction. This Article, however, does change the law with regard to the termination date of a judgment of temporary interdiction by permitting a court to extend the life of an ex parte judgment of temporary interdiction for an additional ten day period. A separate hearing must be held prior to the granting of such an extension.

(b) For the procedures associated with modification or termination of a judgment of interdiction, see Code of Civil Procedure Article 4554 (Rev. 2000).

Art. 398. Effective date of modification or termination of a judgment
of interdiction

An order modifying or terminating a judgment of interdiction is effective on the date signed by the court.

Source: C.C. Art. 420 (1870).

Comment

This Article reproduces the substance of Civil Code Article 420 (1870).

CHAPTER 5. RESPONSIBILITY FOR WRONGFUL FILING OF
INTERDICTION PETITION

Art. 399. Responsibility for wrongful filing of interdiction petition

A petitioner whose petition for interdiction is denied is liable for resulting damages caused to the defendant if the petitioner knew or should have known at the time of filing that any material factual allegation regarding the ability of the defendant consistently to make reasoned decisions or to communicate those decisions was false.

Source: C.C. Art. 419 (1870).

Comments

(a) This Article is based upon Civil Code Article 419 (1870). This Article retains a cause of action against those who file unwarranted petitions for interdiction. However, this Article changes the law. It requires that the petitioner knew or should have known that a material factual allegation was false. In contrast, Civil Code Article 419 (1870) premised liability on proof that the petitioner acted from motives of interest or passion.

(b) This Article does not limit or restrict other remedies that may be available to the defendant, including court-imposed sanctions or delictual damages.

Section 2. Civil Code Articles 1482 and 2319 are hereby amended and reenacted to read as follows:

Art. 1482. Proof of incapacity to donate

A person who challenges the capacity of a donor ~~must~~ shall prove by clear and convincing evidence that the donor lacked capacity at the time the ~~donor made the~~ donation inter vivos was made or ~~executed the testament~~ was executed. ~~However, if the donor made the donation or executed the testament at a time when he was judicially declared to be mentally infirm, then the proponent of the challenged~~

~~donation or testament must prove the capacity of the donor by clear and convincing evidence. A person who makes or revokes a disposition mortis causa while interdicted from the care of property is presumed to lack capacity. This presumption may be rebutted by clear and convincing evidence.~~

Source: C.C. Art. 1482 (Rev. 1991).

* * *

Art. 2319. Acts of ~~insane persons~~ interdicts

~~The curators of insane persons are answerable for the damage occasioned by those under their care.~~

Neither a curator nor an undercurator is personally responsible to a third person for a delictual obligation of the interdict in his charge solely by reason of his office.

Source: New. C.C. Art. 2319 (Rev. 1870). Cf. UGPPA (1998) Section 5-316.

Comments

(a) This Article is new and changes the law. This Article was revised by the legislature in 2000 as part of a comprehensive revision of Louisiana's interdiction laws. Under Article 2319 of the Civil Code of 1870, "(t)he curators of insane persons are answerable for the damage occasioned by those under their care". See Civil Code Article 2319 (1870). As revised, this Article shields curators from vicarious liability for the torts of interdicts in their charge.

(b) Although a curator is not personally responsible for an interdict's torts solely by reason of the relationship, the curator may be liable for damages resulting from his own acts or omissions. For example, if a curator negligently supervises an interdict in his charge and, as a result, the interdict causes damages to himself or to a third party, the curator may be personally responsible for the resulting damages.

Section 3. Title VIII of Book VII of the Code of Civil Procedure, presently composed of Articles 4541 through 4557, to comprise Articles 4541

through 4556 and Articles 4561 through 4569, is hereby amended and reenacted to read as follows:

CODE OF CIVIL PROCEDURE
BOOK VII. SPECIAL PROCEEDINGS
TITLE VIII. INTERDICTION AND CURATORSHIP
OF INTERDICTS
CHAPTER 1. IN GENERAL

Art. 4541. Petition for interdiction

Any person may petition for the interdiction of a natural person of the age of majority or an emancipated minor. The petitioner shall verify the petition and set forth the following with particularity:

(1) The name, domicile, age, and current address of the petitioner and his relationship to the defendant.

(2) The name, domicile, age, and current address of the defendant and the place the petitioner proposes the defendant will reside if the relief sought in the petition is awarded.

(3) The reasons why interdiction is necessary, including a brief description of the nature and extent of the alleged infirmities of the defendant.

(4) If full interdiction is requested, the reasons why limited interdiction is inappropriate.

(5) If limited interdiction is requested, the capacity sought to be removed from the limited interdict, and the powers sought to be conferred upon the limited curator.

(6) The name and address of the spouse of the defendant.

(7) The name and address of the adult children of the defendant or, if he has none, of his parents and siblings or, if he has none, of his nearest adult relative.

(8) The name and address of any legal representative of the defendant.

(9) The name and address of any person previously designated as curator by the defendant in a writing signed by the defendant.

(10) The name, domicile, age, education, and current address of the proposed curator, and the reasons why the proposed curator should be appointed.

Source: New. Cf. C.C.P. Art. 4543. Cf. UGPPA (1998) Sections 5-106, 5-304, and 5-403.

Comments

(a) This Article changes the law. Most significantly, it sets forth in detail the required elements of an interdiction petition. Moreover, it requires that every interdiction petition be verified by the petitioner.

(b) Article 10 of the Code of Civil Procedure addresses jurisdiction over interdiction proceedings. See C.C.P. Art. 10. Under that Article, a Louisiana district court has jurisdiction over an interdiction proceeding if the person sought to be interdicted is domiciled in this state, or is present in this state and has property herein. See C.C.P. Art. 10(A)(3).

Art. 4542. Venue

Venue for an interdiction proceeding is the parish where the defendant is domiciled, where he resides if he has no domicile in this state, or where he is physically present if he has no residence in this state.

Source: C.C.P. Art. 4541. Cf. C.C. Art. 392 (1870). Cf. C.C.P. Art. 10 (A)(3),(4). Cf. UGPPA (1998) Section 5-108 (b).

Comments

(a) This Article reproduces the substance of Code of Civil Procedure Article 4541 as it existed prior to the 2000 Revision.

(b) An ancillary interdiction proceeding is governed by Code of Civil Procedure Article 4556 (Rev. 2000).

Art. 4543. Service upon defendant and notice to interested persons

A. Service of the citation and petition shall be personal.

Nevertheless, if the defendant is domiciled in this state, but is located elsewhere, service may be made by the delivery of a certified copy of the petition, citation, and all attachments, to the defendant personally by any person over the age of eighteen years. Service is effective as of the date a notarized affidavit is filed into the record affirming the personal delivery. Failure to serve the defendant as provided in this Paragraph shall preclude the court from granting the relief sought in the petition.

B. Within three days of filing the petition, the petitioner shall mail a copy of the petition by certified mail, return receipt requested, to the last known address of each other person named in the petition. Failure to mail a copy of the petition to any such person shall not affect the validity of the proceeding, but may subject the petitioner or his attorney to sanctions.

Source: New. Cf. C.C.P. Arts. 4544 and 4545. Cf. UGPPA (1998) Sections 5-309 and 5-404.

Comments

(a) This Article changes the law. First, it mandates personal service (or delivery) on the defendant in all cases. Thus, domiciliary service is not effective in interdiction suits. Second, it requires the mailing of notice to those with a possible interest in the defendant's interdiction.

(b) If the defendant cannot be served in accordance with this Article, the court cannot interdict him. However, if the circumstances

warrant it, the court may treat the defendant as an absent person and appoint a curator pursuant to Civil Code Articles 47 through 59 (Rev. 1990).

Art. 4544. Appointment of attorney

A. If the defendant makes no timely appearance through an attorney, the petitioner shall apply for an order appointing an attorney to represent the defendant. Pursuant to such a motion, or on its own motion, the court shall appoint an attorney to represent the defendant. If the defendant either retains his own attorney, or intelligently and voluntarily waives the assistance of an attorney, the court shall discharge the court-appointed attorney. The court-appointed attorney shall represent the defendant until discharged by the court.

B. The attorney representing a defendant shall personally visit the defendant, unless such visit is excused by the court for good cause. To the extent possible, the attorney shall discuss with the defendant the allegations in the petition, the relevant facts and law, and the rights and options of the defendant regarding the disposition of the case. Failure of the attorney to perform any of the duties imposed by this Paragraph shall not affect the validity of the proceeding, but may subject the attorney to sanctions.

Source: New. C.C.P. Arts. 4544 and 4545. C.C. Art. 391 (1870). Texas Probate Code Section 647. Cf. UGPPA (1998) Sections 5-305 and 5-406.

Comments

(a) This Article changes the law. Under prior law, every defendant who did not answer an interdiction petition through counsel was afforded an attorney. While this Article continues to mandate the appointment of counsel in all interdiction cases, it requires the petitioner's attorney affirmatively to move for the appointment of counsel if the defendant has either filed no answer or has answered in proper person. Finally, unlike prior law, this Article requires an attorney to personally visit his client and advise him of the allegations

made in the petition, the nature of the interdiction proceeding, and the client's rights and options.

(b) If the court previously appointed counsel in connection with a motion for temporary or preliminary interdiction and that attorney has not withdrawn as counsel of record, the court need not appoint or reappoint an attorney under this Article.

(c) An attorney appointed pursuant to this Article is not empowered to accept service of the petition and citation on behalf of a defendant whom the petitioner has failed to serve in accordance with Code of Civil Procedure Article 4543 (Rev. 2000). See *Segur v. Pellerin*, 16 La. 63 (1840).

Art. 4545. Appointment of examiner

After the filing of a petition for interdiction, the court may appoint an examiner who has training or experience in the type of infirmity alleged. The court may compel the defendant to submit to an examination by the examiner. Not less than seven days prior to a hearing, the examiner shall provide a written report to the court, all counsel of record, and any unrepresented parties. The report shall include such matters as the court directs. The report may consider the infirmities suffered by the defendant, the appropriateness of interdiction, including whether a less restrictive means of intervention is available, the type of interdiction that is appropriate, and any other relevant matters.

Source: New. Cf. C.C. Art. 393 (1870) and C.C.P. Art. 4547. Cf. UGPPA (1998) Sections 5-305 and 5-406.

Comments

(a) This Article refines prior law. Under Civil Code Article 393 (1870), the court could appoint "any" person, including a health-care professional, to visit and to examine the defendant prior to an interdiction hearing. This Article preserves the substance of prior law but more fully defines the reporting requirements of any such court-appointed examiner.

(b) An appointed examiner is considered a court-appointed expert within the meaning of Louisiana Code of Evidence Article 706(A).

Art. 4546. Fixing of hearings or trial

A hearing or trial in an interdiction proceeding shall be fixed and notice shall be served in the manner prescribed for summary proceedings. In addition, such notice shall be served on the defendant in the manner prescribed by Paragraph A of Article 4543. Except as provided in Article 4549, the petitioner shall mail a copy of the order fixing a hearing or trial by first-class United States mail, postage prepaid, to the last known address of each other person named in the petition at least ten days prior to the hearing. Failure to mail a copy of the order to any such person shall not affect the validity of the proceeding, but may subject the petitioner or his attorney to sanctions.

Source: New. Cf. C.C.P. Arts. 4544 and 4546. Cf. UGPPA (1998) Sections 5-309 and 5-404.

Comments

(a) This Article changes the law. This Article adds the requirement that the petitioner/movant give notice (by first-class mail) to other persons with a potential interest in the defendant's interdiction, and to the defendant personally. However, the lack of proper notice to "each other person" will not affect the validity of the interdiction proceeding.

(b) A summary hearing in an interdiction matter may be requested through the filing of a contradictory motion or rule to show cause, and may be fixed by order of the court. See C.C.P. Arts. 2593-2596.

Art. 4547. Hearing

An interdiction proceeding shall be heard summarily and by preference. The defendant has a right to be present at the hearing and the court shall not conduct the hearing in his absence, unless the court determines that good cause exists to do so. The defendant has the right to present evidence, to testify, to cross-examine witnesses, and to otherwise participate at the hearing. If the defendant is unable to come

to the courthouse for the hearing, the judge may hold the hearing where the defendant is located. The hearing may be closed for good cause. The court may call witnesses not called by the parties and may require the presence of a proposed curator.

Source: New. Cf. C.C.P. Art. 4546. Cf. UGPPA (1998) Sections 5-308 and 5-408.

Comments

(a) This Article changes the law. While this Article preserves much of the existing law regarding interdiction hearings, it changes the law by permitting the court to require the presence of the defendant and any proposed curator at the interdiction hearing.

(b) The Louisiana rules of evidence apply to interdiction hearings. See Louisiana Code of Evidence Article 1101(A)(1).

Art. 4548. Burden of proof

The petitioner in an interdiction proceeding shall prove by clear and convincing evidence all facts justifying interdiction.

Source: New. Cf. C.C. Art. 393 (1870). Cf. UGPPA (1870) Section 5-311.

Comments

(a) This Article clarifies the law by making it clear that the burden of proof in all interdiction proceedings is "clear and convincing evidence" rather than a "preponderance of the evidence."

(b) The "clear and convincing" burden of proof applies in all interdiction proceedings, including those in which the petitioner seeks full interdiction, limited interdiction, temporary interdiction, or preliminary interdiction.

Art. 4549. Temporary and preliminary interdiction

A. Temporary Interdiction: (1) When the court finds that immediate and irreparable injury, loss, or damage will result to the person or property of the defendant before a hearing can be held, the court may order temporary interdiction without notice and without an adversarial hearing. In that order, the court shall schedule a preliminary

interdiction hearing to be held not more than ten days following the signing of the ex parte judgment of temporary interdiction. On motion of the defendant or for extraordinary reasons shown at a contradictory hearing, the court may continue the hearing for one additional period not to exceed ten days.

(2) A pleading requesting ex parte temporary interdiction shall be accompanied by all of the following:

(a) An affidavit by a licensed physician or psychologist attesting to facts supporting the claim that all grounds for temporary interdiction set forth in Civil Code Article 391 exist.

(b) A verified petition or affidavit attesting to facts supporting the claim that immediate and irreparable injury, loss, or damage will result to the person or property of the defendant before he or his attorney can be heard.

(c) An affidavit by the movant or his attorney attesting to the efforts made to give notice to the defendant or the reasons supporting a claim that notice should not be required.

B. Preliminary Interdiction: (1) The court shall not grant a judgment of preliminary interdiction prior to an adversarial hearing. The court shall conduct a preliminary interdiction hearing within twenty days of signing the order scheduling the hearing.

(2) No later than seventy-two hours prior to a preliminary interdiction hearing, all orders, pleadings, and supporting documents shall be served personally on the defendant and his attorney. To the extent possible, the movant shall give reasonable notice of the preliminary interdiction hearing to all other persons named in the petition.

C. Attorney. In an ex parte judgment of temporary interdiction and in every order scheduling a preliminary interdiction hearing, the court shall appoint an attorney to represent the defendant. If the defendant either retains his own attorney, or intelligently and voluntarily waives the assistance of an attorney, the court shall discharge the court-appointed attorney.

Source: New. Cf. C.C.P. Art. 4549 (1997) and C.C. Art. 394 (1997). Cf. UGPPA (1998) Section 5-312.

Comments

(a) This Article changes the law. While this Article is substantially similar to the provisions enacted by the legislature in 1997, some differences exist. First, this Article tracks to a greater extent the provisions of the Code of Civil Procedure relating to preliminary injunctions and temporary restraining orders. See C.C.P. Arts. 3601-3613. Indeed, this Article adopts that terminology rather than "provisional interdiction" and "ex parte provisional interdiction." Second, this Article assures that there is no period during which the interdict is not protected by a curator pending a final interdiction hearing.

(b) Civil Code Article 391 (Rev. 2000), sets forth the grounds for temporary interdiction and preliminary interdiction. Civil Code Article 397 (Rev. 2000), prescribes the time at which any judgment of interdiction shall terminate. See C.C. Art. 397(B) (Rev. 2000). This termination date, or any earlier date established by the court, shall appear on any judgment of temporary interdiction or preliminary interdiction.

Art. 4550. Costs and attorney fees

The court may render judgment for costs and attorney fees, or any part thereof, against any party, as the court may consider fair. However, no attorney fees shall be awarded to a petitioner when judgment is granted against the petitioner or the petition is dismissed on the merits.

Source: New. Cf. C.C. Art. 397 (1870) and C.C.P. Art. 4551.

Comments

(a) This Article resolves a conflict in the law between C.C. Art. 397 (1870) and C.C.P. Art. 4551 as it existed prior to the 2000 Revision.

(b) Costs may include the fees of any examiner or other health-care professional.

(c) This Article applies to all proceedings relating to interdiction, including those taking place after the entry of judgment.

Art. 4551. Judgment

A. In the judgment of interdiction, the court shall:

(1) Appoint a curator.

(2) Appoint an undercurator, unless an undercurator is not required by law.

(3) State that the powers of the curator commence only upon qualification.

(4) Direct the clerk of court to record the judgment in the conveyance and mortgage records of the parish where it was rendered.

B. In addition, a judgment of limited interdiction shall confer upon the limited curator only those powers necessitated by the interests of the limited interdict to be protected through limited interdiction and shall state that the limited interdict retains the capacity of a natural person except as expressly limited by the judgment.

C. In addition, a judgment granting or extending temporary or preliminary interdiction shall set forth the date of termination.

Source: New. Cf. C.C. Art. 389.1 (1981). Cf. C.C.P. Art. 4542. Cf. R.S. 9:1031 (F).

Comments

(a) This Article changes the law. This Article sets forth all matters that shall be addressed in every judgment of interdiction, including judgments of full interdiction, limited interdiction, temporary interdiction, and preliminary interdiction.

(b) The court shall appoint a curator in every judgment of interdiction. However, if the court believes that additional hearings are necessary regarding the appointment of a more permanent curator, the court can conduct such hearings after entry of the judgment of interdiction.

(c) The court need not appoint an undercurator when it appoints as curator a nonprofit curatorship program. R.S. 9:1031(F): "Notwithstanding any law to the contrary, in cases wherein the program is appointed curator . . ., the appointment of an undercurator . . . is not required."

Art. 4552. Recordation of notice of suit and judgment

A. The clerk of court shall cause to be recorded a notice of the filing of the interdiction suit in the conveyance and mortgage records of the parish in which the interdiction action is pending. The clerk of court shall record every judgment granting, modifying, or terminating interdiction in the conveyance and mortgage records of the parish in which the judgment was rendered.

B. Within fifteen days of his qualification, the curator shall cause every judgment granting, modifying, or terminating interdiction to be recorded in the conveyance and mortgage records of every other parish in which the interdict owns immovable property.

C. A clerk or curator whose failure to perform his duties causes damage is liable only to those who contract with the interdict and who neither knew nor should have known of the interdiction proceedings or judgment.

Source: New. Cf. C.C.P. Art. 4552.

Comments

(a) This Article changes the law. This Article requires the clerk of court to record a notice of the filing of an interdiction suit in the mortgage records as well as the conveyance records of the parish in which the interdiction suit is pending. This Article allows a curator fifteen days from his qualification, rather than ten days from his appointment, to record an interdiction judgment in parishes other than the one in which judgment was rendered. This Article relieves the

curator of the obligation to record a judgment of interdiction in the parish in which judgment was rendered because, the clerk of court has this responsibility.

(b) A petitioner may, but is not required to, file notices of pendency of the interdiction proceeding in parishes in which the interdict owns immovable property in accordance with Code of Civil Procedure Articles 3751 through 3753.

Art. 4553. Post-judgment proceedings

Except for good cause shown, the court rendering an interdiction judgment shall conduct all post-judgment proceedings related to the interdiction.

Source: Cf. C.C.P. Art. 4542.

Comment

This Article changes the law in part. The phrase "(e)xccept for good cause shown," clarifies that there is no jurisdictional problem associated with a court other than that which rendered the interdiction judgment conducting a post-judgment proceeding.

Art. 4554. Modification or termination of interdiction

On motion of the court or any person, including the interdict, the court may modify or terminate its judgment when the court finds, by a preponderance of the evidence, that the terms of that judgment are currently either excessive or insufficient or that the ability of the interdict to care for his person or property has so changed as to warrant modification or termination. Except for good cause, the court shall follow substantially the same procedures that apply to an original petition for interdiction before it modifies or terminates an interdiction judgment.

Source: C.C. Art. 421 and C.C.P. Art. 4557. Cf. UGPPA (1998) Sections 5-318 and 5-431.

Comment

This Article does not change the law.

Art. 4555. Appeal

An appeal from a judgment of interdiction, an order or judgment appointing or removing a curator or undercurator, or a judgment modifying or terminating interdiction shall be taken within thirty days from the applicable date provided by Article 2087. The order or judgment is not suspended during the pendency of an appeal. The acts of a curator or an undercurator shall not be invalidated by the annulment of his appointment on appeal.

Source: C.C.P. Art. 4548. Cf. C.C. Art. 396 (1870).

Comment

This Article changes the law in part. This Article does not reproduce the substance of Civil Code Article 396 (1870) that provided for the "hearing of new proofs" in interdiction appeals. This Article does not change the general law of interdiction appeals as provided in Code Civil Procedure Article 4548 as it existed prior to the 2000 Revision.

Art. 4556. Ancillary interdiction procedure

A. Upon producing proof of his appointment, a conservator of a ward residing outside Louisiana who was appointed by a court outside of Louisiana may appear in court on behalf of the ward without qualifying as a curator according to the law of Louisiana when no curator has been appointed in this state. In accordance with the authority set forth in his letters, such a conservator may perform acts affecting the ward's property in Louisiana when authorized by the court of the parish in which the property is located. Once so authorized, the conservator shall act in the same manner and in accordance with the same procedures as a curator appointed by a court in Louisiana. Whenever the action of an undercurator would be necessary, the court shall appoint an undercurator ad hoc.

B. In order to take possession of the ward's property, or to remove any of it from the state, a conservator appointed by a court outside Louisiana shall file a petition for authority to do so in the court of the parish in which any of the property is located. The court shall render a judgment granting the authority prayed for if the foreign conservator alleges in the petition that there are no Louisiana creditors of the ward, or that all such known creditors have been paid, and if the foreign conservator attaches to the petition an irrevocable power of attorney appointing a resident of this state to receive service of process in any action or proceeding brought in Louisiana to enforce a claim against the ward, or against any of the ward's property located in this state.

Source: C.C.P. Arts. 4554, 4431, 4432, and 4433.

Comment

This Article does not change the law.

Arts. 4557 through 4560 (Reserved).

CHAPTER 2. CURATORS AND UNDERCURATORS

Art. 4561. Appointment of curator

A. The court shall appoint as curator the qualified person who is best able to fulfill the duties of his office.

B.(1) The following persons are not qualified to serve as a curator of an interdict:

(a) A person under eighteen years of age.

(b) An interdicted person.

(c) A nonresident of the state without a resident agent for service of process.

(2) Except for good cause shown, the following persons are not qualified to serve as a curator of an interdict:

(a) A convicted felon.

(b) A person indebted to the interdict at the time of appointment.

(c) An adverse party in a lawsuit pending against the interdict at the time of appointment.

(d) An owner, operator, or employee of long-term care institutions where the interdict is receiving care, unless he is related to the interdict.

C.(1) The court shall consider the qualified persons in the following order of preference:

(a) A person designated by the defendant in a writing signed by him while he had sufficient ability to communicate a reasoned preference.

(b) The spouse of the defendant.

(c) An adult child of the defendant.

(d) A parent of the defendant.

(e) An individual with whom the defendant has resided for more than six months prior to the filing of the petition.

(f) Any other person.

(2) The court may appoint separate curators for the person and affairs of the interdict pursuant to Article 4069.

D. At any time prior to qualification, the court may revoke the appointment for good cause and appoint another qualified person.

Source: New. Cf. C.C.P. Arts. 4550 and 4231. Cf. UGPPA (1998) Sections 5-310 and 5-413.

Comments

(a) This Article changes the law. Under this Article, a defendant's preincapacity choice regarding a curator is given priority. Formerly, the defendant's preincapacity choice was given preference only if expressed in a power of attorney. Furthermore, this Article changes the law by enumerating additional persons (other than the defendant's designee and spouse) in the statutory order of preference. This Article preserves the option of appointing separate curators over the person and property of the interdict. This Article changes the law, however, by rendering ineligible for service as a curator (but not as undercurator) the operator of a nursing home or similar facility.

(b) As to what constitutes a signed writing, see Comment (c), Civil Code Article 1837 (Rev. 1984).

(c) The court may appoint a nonprofit curatorship service program to serve as curator. See R.S. 9:1031-9:1034.

Art. 4562. Qualification of curator

A. The person appointed qualifies as curator upon furnishing the security required by law and taking an oath to discharge faithfully the duties of his office.

B.(1) If the person fails to qualify for office within ten days from his appointment or within such other period specified by the court, the court on its own motion, or on motion of any interested person, may revoke the appointment and appoint another qualified person.

(2) The delay allowed for qualification may be extended by the court for good cause.

C. The court rendering an interdiction judgment may issue any protective order necessary to protect the interest of the interdict in the interim between the appointment and qualification of the curator.

Source: New. Cf. C.C.P. Arts. 4554, 4172, and 4232.

Comments

(a) This Article changes the law to permit the extension of the time period allowed for qualification "for good cause."

(b) Code of Civil Procedure Article 4562 (Rev. 2000) states that a court rendering an interdiction judgment may issue protective orders to protect the interdict in the interim between appointment and qualification of the curator.

Art. 4563. Inventory and security

A. The person appointed as the curator shall furnish security conditioned on the faithful discharge of his duties. The rules provided in Articles 4101 through 4102, 4131 through 4133, and 4136 apply to curatorship of interdicts. Provisions establishing special rules for natural tutors and parents shall not apply in the context of interdiction and curatorship.

B. A detailed descriptive list, sworn to and subscribed by the applicant setting forth the fair market value of each item of property of the interdict, shall be permitted in lieu of an inventory in interdiction matters, unless otherwise ordered by the court.

Source: New. Cf. C.C.P. Arts. 4554, 4101, 4102, 4131, 4132, 4133, and 4136.

Comment

This Article changes the law by permitting the substitution of a sworn descriptive list for an inventory in all cases. See Cf. C.C.P. Art. 4462. Furthermore, this Article clarifies that the provisions setting forth special security rules for "natural tutors" have no application in the context of interdiction.

Art. 4564. Letters of curatorship

Upon qualification of the appointed curator, the court or clerk thereof shall issue letters of curatorship in the name and under the seal of the court. The letters shall set forth the date of the qualification of the curator and the date, if any, on which the letters expire. Letters of curatorship issued to a limited curator shall also set forth the powers of the limited curator.

Source: New. C.C.P. Arts. 4554 and 4172. Cf. UGPPA (1998) Sections 5-110 and 5-410.

Comment

This Article changes the law. This Article requires that letters set forth the date of qualification and the date, if any, on which the letters expire. This Article requires that letters of limited curatorship set forth the powers of the limited curator.

Art. 4565. Undercurators

A.(1) The court shall appoint as undercurator the qualified person best able to fulfill the duties of his office. The person appointed as undercurator qualifies by taking an oath to discharge faithfully the duties of his office.

(2) At any time prior to qualification, the court may revoke the appointment for good cause and appoint another qualified person.

(3) If a person fails to qualify within ten days from his appointment or within the period specified by the court, the court on its own motion or on motion of any interested person, may revoke the appointment and appoint another qualified person. The delay allowed for qualification may be extended by the court for good cause.

B. The undercurator shall:

(1) Notify the court when the curator has failed to qualify timely for office.

(2) Have free access to the interdict and to all records relating to the interdict relevant to his office.

(3) Review all accounts and personal reports filed by the curator.

(4) Notify the court when he has reason to believe that the curator has failed to perform any duties imposed by law, including the duties to file necessary accounts and personal reports, and to maintain adequate security.

(5) Approve or disapprove any transactions that require his concurrence.

(6) Move to appoint a successor for a curator who becomes disqualified or whose office terminates.

C. The undercurator shall have no duties, either express or implied, other than those set forth in this Article and in Civil Code Article 393.

Source: Cf. C.C. Arts. 406, 407, 409, and 410 (1870). Cf. C.C.P. Arts. 4553, 4554, 4201 through 4206, and 4271.

Comments

(a) This Article changes the law.

(b) Like a curator, an undercurator shall take an oath to discharge faithfully the duties of his office to qualify for office. Under Code of Civil Procedure Article 4565 (Rev. 2000), the undercurator's powers commence upon his qualification.

(c) An undercurator's access to records is limited to those "relevant to his office". For example, an undercurator appointed to monitor a curator of the interdict's property does not need access to the interdict's medical and personal records.

Art. 4566. Management of affairs of the interdict

A. Except as otherwise provided by law, the relationship between interdict and curator is the same as that between minor and tutor. The rules provided by Articles 4261 through 4269, 4270 through 4274, 4301 through 4342, and 4371 apply to curatorship of interdicts. Nevertheless, provisions establishing special rules for natural tutors and parents shall not apply in the context of interdiction.

B. A curator who owns an interest in property with the interdict or who holds a security interest or lien that encumbers the property of the interdict may acquire the property, or any interest therein, from the interdict upon compliance with Article 4271, with prior court

authorization, and when it would be in the best interest of the interdict. Except for good cause shown, the court shall appoint an independent appraiser to value the interest to be acquired by the curator.

C. A curator may accept donations made to the interdict. A curator shall not make donations of the property of the interdict except as provided by law.

D. A curator may place the property of the interdict in trust in accordance with the provisions of Article 4269.1. The trust shall be subject to termination at the option of the interdict upon termination of the interdiction, or if the interdict dies during the interdiction, at the option of his heirs or legatees.

E. A curator shall inform the undercurator reasonably in advance of any material changes in the living arrangements of the interdict and any transactions materially affecting his person or affairs.

F. A curator shall not establish or move the place of dwelling of the interdict outside this state without prior court authorization.

G. A curator may not consent to an abortion or sterilization of the interdict without prior court authorization.

H. Neither a curator nor a court shall admit or commit an interdict to a mental health treatment facility except in accordance with the provisions of R.S. 28:50 through 64.

I. A curator appointed in an order of temporary interdiction shall have no authority to admit the defendant to a residential or long-term care facility in the absence of good cause shown at a contradictory hearing.

Source: New. Cf. C.C.P. Arts. 4554, 4261-4269, 4269.1, 4270-4274, 4301-4342, and 4371. Cf. R.S. 28:50 through 64.

Comments

(a) This Article changes the law. Although this Article retains the basic structure of Code of Civil Procedure Article 4554 as it existed prior to the 2000 Revision (by retaining extensive cross-references to tutorship Articles governing management of a minor's affairs), it omits cross-references that are not necessary or that are made elsewhere in the Revision.

(b) R.S. 9:1022-1024 set forth detailed provisions governing a curator's ability to donate the interdict's property.

Art. 4567. Expenses of interdict and legal dependents

The curator shall expend that portion of the revenue from the property of the interdict as is necessary to care properly for his person or affairs, and with court authorization, to support his legal dependents. If the revenue is insufficient for these purposes, the curator may expend the capital of the interdict, with court authorization in the manner provided by Article 4271.

Source: C.C.P. Art. 4556. Cf. UGPPA (1998) Sections 5-314 and 5-316.

Comment

This Article does not change the law.

Art. 4568. Removal of curator or undercurator

On motion of any interested person, or on its own motion, the court may remove a curator or undercurator from office for good cause. Unless otherwise ordered by the court, removal of the curator or undercurator by the court is effective upon qualification of the appointed successor.

Source: New. Cf. C.C. Art. 414 (1870), R.S. 9:1025, and C.C.P. Arts. 4552, 4553, and 4557. Cf. UGPPA (1998) Sections 5-112 and 5-414.

Comments

(a) This Article changes the law. This Article omits any provision establishing a maximum term of ten years for certain curators. See C.C. Art. 414 (1870). This Article omits cross-references

to Code of Civil Procedure Articles 4231-4238 because the substance of those tutorship Articles is set forth in this Article.

(b) In a temporary interdiction or preliminary interdiction, the temporary curator or preliminary curator is removed from office and replaced by the curator appointed in the judgment of interdiction.

(c) Good cause for removal exists when the curator becomes disqualified because he no longer satisfies the requirements set forth in Code of Civil Procedure Article 4561 (Rev. 2000).

(d) R.S. 9:1025 supplements this Article by enumerating several circumstances under which good cause exists for removal.

(e) A curator's office terminates automatically upon his death or upon termination of interdiction. In such cases, "removal" from office is unnecessary.

Art. 4569. Post-judgment monitoring and reporting

A. A curator with responsibility for affairs of the interdict shall file an account annually, upon the termination of his office, and at any other time ordered by the court. A curator with responsibility for the person of an interdict shall file a personal report describing the location and condition of the interdict annually, upon the termination of his responsibilities, and at any other time ordered by the court. At the time of filing, the curator shall send copies of any required account or personal report by first class United States mail postage prepaid to the undercurator and any successor curator. The provisions of Articles 4393 and 4398 shall apply to accounts by curators.

B. The court may appoint an examiner at any time to review an account or personal report of the curator, to interview the interdict, curator, or undercurator, or to make any other investigation. At any time, the court may appoint an attorney to represent the interdict.

Source: New. Cf. C.C. Arts. 405 and 424 (1870). Cf. C.C.P. Arts. 4555, 3333, and 4391-4398. Cf. UGPPA (1998) Sections 5-317 and 5-420.

Comments

(a) This Article changes the law. This Article omits any cross-reference to Code of Civil Procedure Article 4392, because that Article makes final accounts merely permissive in most cases. This Article changes the law by mandating the filing of a final account or personal report at the termination of every curator’s appointment. This Article eliminates the requirement that all accounts be served and homologated in accordance with Code of Civil Procedure Articles 4394 through 4396.

(b) The curator’s personal report should, among other things, describe whether there has been a material change in the functional ability of the interdict to care for his person and affairs.

(c) The accounting and personal-reporting requirements applies to all curators, including temporary and preliminary curators.

Section 4. R.S. 9:1001 through 1004 are hereby repealed in their entirety.

Section 5. The headings, source lines, and comments in this Act are not part of the law and are not enacted into law by virtue of their inclusion in this Act.

Section 6. This Act shall become effective on July 1, 2001.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____