

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

**CIVIL/PROCEDURE: Provides a comprehensive revision of the Code of Civil Procedure**

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DIGEST

Present law (C.C.P. Art. 966) provides the procedure by which a party may move for a summary judgment. Requires the court to render a decision only as to those issues raised in the motion under consideration.

Proposed law clarifies present law by stating that summary judgment on a particular issue may be rendered in favor of one or more parties even if the granting of the summary judgment does not dispose of the case as to that party or parties.

Proposed law changes present law by providing that the court may only render a decision as to those issues raised in the motion under consideration.

Present law requires the court to consider only evidence admitted for the purposes of the motion for summary judgment in its ruling on the motion.

Proposed law adds language providing that evidence cited in and attached to the motion for summary judgment or memorandum filed by an adverse party are deemed admitted for purposes of the motion for summary judgment unless excluded in response to an objection made in accordance with Article 966(F)(3). Proposed law further provides that only evidence admitted for purposes of the motion for summary judgment may be considered by the court in its ruling on the motion.

Proposed law further provides that objections to evidence in support of or in opposition to a motion for summary judgment may be raised in memorandum or written motion to strike stating the specific grounds therefor.

Present law (C.C.P. Art. 1732) provides that a trial by jury shall not be available in a suit where the amount of no individual petitioner's cause of action exceeds \$50,000 exclusive of interests and costs.

Proposed law provides that a party may retain the right to a trial by jury even if the petitioner has stipulated that the cause of action does not exceed \$50,000 when that party is entitled to trial by jury pursuant to present law has complied with the procedural requirements for asserting that right if the stipulation has occurred less than 90 days prior to trial. Proposed law further provides that a defendant shall not be entitled to a trial by jury when a petitioner stipulates that his cause of action is less than \$50,000 if the stipulation occurs more than 90 days before trial.

Proposed law further provides that, notwithstanding proposed law, if, as a result of a compromise or dismissal of one or more claims or parties which occurs less than 90 days prior to trial, an individual petitioner stipulates or otherwise judicially admits that the amount of the individual petitioner's cause of action does not exceed \$50,000 exclusive of interest and costs, a defendant shall not be entitled to a trial by jury.

Present law (C.C.P. Art. 1915) authorizes the court to render a final judgment when it does one of the following:

- (1) Dismisses the suit.
- (2) Grants a motion for judgment on the pleadings.

- (3) Grants a motion for summary judgment except when summary judgment does not dispose of the entire case.
- (4) Signs a judgment on the principal or incidental demand.
- (5) Signs a judgment on the issue of liability when the issues of liability and damages have been tried separately.
- (6) Imposes sanctions pursuant to various provisions of present law.

Present law further provides that a partial judgment or partial summary judgment that does not address all of the claims, demand, issues, or theories is not a final judgment unless the court specifically designates it as such after an express determination that there is no reason for delay. Provides that absent the required designation and determination, an order that does not adjudicate all claims or the rights of all parties does not terminate the action and is not a final judgment for purposes of an immediate appeal.

Proposed law retains present law except that it deletes the prohibition of terminating an action if a partial judgment or partial summary judgment does not adjudicate all claims or the rights of all parties.

Present law (C.C.P. Art. 4553) requires post-judgment proceedings relative to an interdiction to be conducted by the court and division or section that rendered the interdiction judgment unless there is good cause shown.

Proposed law retains present law and requires notice of the post-judgment proceeding to be served upon the attorney who was appointed for the interdict or on an attorney who was previously appointed for the interdict.

(Amends C.C.P. 966(B), (E) and (F), 1732(1), and 1915(B); Adds C.C.P. Art. 966(G) and 4553(D))

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Clarified that a motion for summary judgment may be rendered on a particular issue in favor of one or more parties even if the granting of the summary judgment does not dispose of the case as to that party or parties.
2. Added provisions allowing a party to retain his right to a trial by jury under Article 1732(1) if a petitioner stipulates less than 90 days prior to trial that his cause of action is less than \$50,000, but prohibits a defendant from obtaining a jury trial if the stipulation occurred more than 90 days prior to trial.

#### House Floor Amendments to the engrossed bill.

1. Added a memorandum in opposition as a method to object to evidence submitted in support of or opposition to a motion for summary judgment.
2. Added provision requiring notice to be sent to the attorney from the Mental Health Advocacy Service who was appointed for the interdict or on an attorney who was previously appointed for the interdict.

#### Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the engrossed bill

1. Adds language in Code of Civil Procedure Article 966(B) providing that the pleadings, depositions, answers to interrogatories, and admissions, together with the affidavits which the court shall consider to determine whether there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law, shall be only those pleadings, depositions, answers to interrogatories, and admissions, together with affidavits which were admitted for purposes of the motion for summary judgment.
2. Deletes language providing that only evidence cited and attached to the motion for summary judgment or opposition may be considered by the court in its ruling on the motion for summary judgment.
3. Adds language providing that evidence cited in and attached to the motion for summary judgment or memorandum filed by an adverse party are deemed admitted for purposes of the motion for summary judgment unless excluded in response to an objection made in accordance with Article 966(F)(3). Adds language providing that only evidence admitted for purposes of the motion for summary judgment may be considered by the court in its ruling on the motion.
4. Deletes language providing that objections to evidence in support of or in opposition to a motion for summary judgment may be raised in a memorandum in support or opposition thereof or in a motion to strike stating the specific grounds therefor.
5. Adds language providing that objections to evidence in support of or in opposition to a motion for summary judgment may be raised in memorandum or written motion to strike stating the specific grounds therefor.
6. Adds language providing that, notwithstanding proposed law, if, as a result of a compromise or dismissal of one or more claims or parties which occurs less than 90 days prior to trial, an individual petitioner stipulates or otherwise judicially admits that the amount of the individual petitioner's cause of action does not exceed \$50,000 exclusive of interest and costs, a defendant shall not be entitled to a trial by jury.
7. Deletes reference to Mental Health Advocacy Service.