

2021 Regular Session

HOUSE BILL NO. 152

BY REPRESENTATIVE GREGORY MILLER

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Civil Code Article 3452, Code of Civil Procedure Articles 80(A)(1)
3 and (2), 253.2, 592(A)(2) and (3), 893(A)(2), (B), and (C), 927(B), 1352, 1561(A),
4 1702(D) and (E), 1793(D), 1795, 1918, 1951, 1974, 2088(A), 2254(B), 2721(C),
5 3943, 3947(B), 4907(B), 4913(B)(4), and 5001, and R.S. 13:3661 and to enact Code
6 of Civil Procedure Articles 1702(F), 4904(D), and 4921(C), relative to civil
7 procedure; to provide with respect to venue; to provide with respect to certification
8 procedure; to provide for the pleading of damages; to provide for the necessity of
9 pleading prescription; to provide for restrictions on subpoenas; to provide for
10 consolidation; to provide with respect to courts raising the issue of prescription on
11 their own motion; to provide for jury instructions; to provide for the form and
12 amendment of final judgments; to provide with respect to the delay for applying for
13 a new trial; to provide for the jurisdiction of trial and justice of the peace courts; to
14 provide for the appeal of judgments; to provide with respect to improper or wrongful
15 seizure; to provide for name confirmation; to provide for witness fees; and to provide
16 for related matters.

17 Be it enacted by the Legislature of Louisiana:

18 Section 1. Civil Code Article 3452 is hereby amended and reenacted to read as
19 follows:

20 Art. 3452. Necessity for pleading prescription

21 Prescription must be pleaded. ~~Courts~~ Except as otherwise provided by
22 legislation, courts may not supply a plea of prescription.

23 Section 2. Code of Civil Procedure Articles 80(A)(1) and (2), 253.2, 592(A)(2) and
24 (3), 893(A)(2), (B), and (C), 927(B), 1352, 1561(A), 1702(D) and (E), 1793(D), 1795, 1918,

1 1951, 1974, 2088(A), 2254(B), 2721(C), 3943, 3947(B), 4907(B), 4913(B)(4), and 5001 are
2 hereby amended and reenacted, and Code of Civil Procedure Articles 1702(F), 4904(D), and
3 4921(C) are hereby enacted to read as follows:

4 Art. 80. Action involving immovable property

5 A. The following actions may be brought in the parish where the immovable
6 property is situated or in the parish where the defendant in the action is domiciled:

7 (1) An action to assert an interest in immovable property, or a right in, to, or
8 against immovable property, ~~except as otherwise provided in Article 72;~~

9 (2) An action to partition immovable property, except as otherwise provided
10 in Articles 81, 82, and 83, ~~and.~~

11 * * *

12 Comments - 2021

13 The deletion of the phrase "except as otherwise provided in Article 72" is
14 intended to recognize the removal by Acts 1997, No. 1005 of the exception that
15 previously allowed a defendant to convert a personal action into an in rem action by
16 objecting to venue.

17 * * *

18 Art. 253.2. Transfer and reassignment of pending cases

19 After a case has been assigned to a particular section or division of the court,
20 it may not be transferred from one section or division to another section or division
21 within the same court, unless agreed to by all parties, or unless it is being transferred
22 to effect a consolidation ~~for purpose of trial~~ pursuant to Article 1561. However, the
23 supreme court, by rule, may establish uniform procedures for reassigning cases under
24 circumstances where an expeditious disposition of cases may be effectuated.

25 * * *

26 Art. 592. Certification procedure; notice; judgment; orders

27 A.

28 * * *

29 (2) If the proponent fails to file a motion for certification within the delay
30 allowed by Subparagraph ~~A(1)~~ A(1) of this Paragraph, any adverse party may file a notice
31 of the failure to move for certification. On the filing of such a notice and after

1 hearing thereon, the demand for class relief may be stricken. If the demand for class
2 relief is stricken, the action may continue between the named parties alone. A
3 demand for class relief stricken under this Subparagraph may be reinstated upon a
4 showing of good cause by the proponent.

5 (3)(a) No motion to certify an action as a class action shall be granted prior
6 to a hearing on the motion. Such hearing shall be held as soon as practicable, but in
7 no event ~~before~~ until after both of the following have occurred:

8 (i) All named adverse parties have been served with the pleading containing
9 the demand for class relief or have made an appearance or, with respect to unserved
10 defendants who have not appeared, the proponent of the class has made due and
11 diligent effort to perfect service of such pleading, ~~and~~.

12 (ii) The parties have had a reasonable opportunity to obtain discovery on
13 class certification issues, on such terms and conditions as the court deems necessary,
14 which may include expert witness testimony or evidence. The admissibility of
15 expert witness testimony or evidence for class certification purposes shall also be
16 governed by Article 1425(F), although the court in its discretion may change the
17 deadlines for filing or hearing a motion as set forth in Article 1425(F) provided such
18 deadlines are prior to or contemporaneous with the class certification hearing.

19 (b) At the hearing on the motion to certify an action as a class action, the
20 proponent of the class shall have the burden of proof to establish that all
21 requirements of Article 591 ~~of this Code~~ have been satisfied.

22 (c) If the court finds that the action should be maintained as a class action,
23 it shall certify the action accordingly. If the court finds that the action should not be
24 maintained as a class action, the action may continue between the named parties. In
25 either event, the court shall give in writing its findings of fact and reasons for
26 judgment provided a request is made not later than ten days after notice of the order
27 or judgment. A suspensive or devolutive appeal, as provided in Article 2081 et seq.
28 ~~of the Code of Civil Procedure~~, may be taken as a matter of right from an order or
29 judgment provided for herein.

1 amount of damages shall be adduced in accordance with the Louisiana Code of
2 Evidence or other applicable law.

3 Comments - 2021

4 The amendment to Paragraph (A)(2) of this Article is intended to make this
5 paragraph consistent with Article 863, which permits the court to impose sanctions
6 for the improper certification of a pleading against the person who made the
7 certification, the represented party, or both.

8 * * *

9 Art. 927. Objections raised by peremptory exception

10 * * *

11 B. The Except as otherwise provided by Articles 1702(D), 4904(D), and
12 4921(C), the court may not supply the objection of prescription, which shall be
13 specially pleaded. The nonjoinder of a party, peremption, res judicata, the failure to
14 disclose a cause of action or a right or interest in the plaintiff to institute the suit, or
15 discharge in bankruptcy, may be noticed by either the trial or appellate court on its
16 own motion.

17 * * *

18 Art. 1352. Restrictions on subpoena

19 A witness, whether a party or not, who resides or is employed in this state
20 may be subpoenaed to attend a trial or hearing wherever held in this state. No
21 subpoena shall issue to compel the attendance of such a witness ~~who resides and is~~
22 ~~employed outside the parish and more than twenty-five miles from the courthouse~~
23 ~~where the trial or hearing is to be held~~, unless the provisions of R.S. 13:3661 are
24 complied with.

25 * * *

26 Art. 1561. Consolidation for trial or other limited purposes

27 A. When two or more separate actions are pending in the same court, the
28 section or division of the court in which the first filed action is pending may order
29 consolidation of the actions for trial or other limited purposes after a contradictory
30 hearing, ~~and~~ upon a finding that common issues of fact and law predominate, and,
31 in the event a trial date has been set in a subsequently filed action, upon a finding

1 that consolidation is in the interest of justice. The contradictory hearing may be
2 waived upon the certification by the mover that all parties in all cases to be
3 consolidated consent to the consolidation.

4 * * *

5 Comments - 2021

6 The amendment to this Article to allow the court in its discretion to
7 consolidate two or more separate actions for trial or other limited purposes, such as
8 discovery, is intended to legislatively overrule the decision of the Fourth Circuit
9 Court of Appeal in *Boh v. James Indus. Contractors, LLC*, 868 So. 2d 180 (La. App.
10 4 Cir. 2004).

11 * * *

12 Art. 1702. Confirmation of preliminary default

13 * * *

14 D. When the demand is based upon a right acquired by assignment in an
15 open account, promissory note, or other negotiable instrument, the court may raise
16 an objection of prescription before entering a final default judgment if the grounds
17 for the objection appear from the pleadings or from the evidence submitted by the
18 plaintiff. If the court raises an objection of prescription, it shall not enter the final
19 default judgment unless the plaintiff presents prima facie proof that the action is not
20 barred by prescription. Upon the plaintiff's request, the court shall hold a hearing for
21 the submission of such proof.

22 ~~D.E.~~ When the demand is based upon a claim for a personal injury, a sworn
23 narrative report of the treating physician or dentist may be offered in lieu of his
24 testimony.

25 E.F. Notwithstanding any other provisions of law to the contrary, when the
26 demand is for divorce under Civil Code Article 103(1) or (5), whether or not the
27 demand contains a claim for relief incidental or ancillary thereto, a hearing in open
28 court shall not be required unless the judge, in his discretion, directs that a hearing
29 be held. The plaintiff shall submit to the court an affidavit specifically attesting to
30 and testifying as to the truth of all of the factual allegations contained in the petition,
31 the original and not less than one copy of the proposed final judgment, and a
32 certification which shall indicate the type of service made on the defendant, the date

1 of service, the date a preliminary default was entered, and a certification by the clerk
 2 that the record was examined by the clerk, including the date of the examination, and
 3 a statement that no answer or other pleading has been filed. If the demand is for
 4 divorce under Civil Code Article 103(5), a certified copy of the protective order or
 5 injunction rendered after a contradictory hearing or consent decree shall also be
 6 submitted to the court. If no answer or other pleading has been filed by the
 7 defendant, the judge shall, after two days, exclusive of holidays, of entry of a
 8 preliminary default, review the affidavit, proposed final default judgment, and
 9 certification, render and sign the proposed final default judgment, or direct that a
 10 hearing be held. The minutes shall reflect rendition and signing of the final default
 11 judgment.

12 * * *

13 Art. 1793. Instructions to jury; objections

14 * * *

15 D. The jury may take with it or have sent to it a written copy of all
 16 instructions and charges ~~and any object or document received in evidence when a~~
 17 ~~physical examination thereof is required to enable the jury to arrive at a verdict.~~

18 Comments - 2021

19 Paragraph D of this Article has been amended to delete the restriction that the
 20 jury may take evidence into the jury room only when a physical examination of the
 21 evidence is required to enable the jury to arrive at a verdict. This language
 22 incorrectly imposed the criminal procedural rule of Code of Criminal Procedure
 23 Article 793(A). In civil proceedings, Article 1794(B) permits the jury to take into
 24 the deliberation room any object or writing received in evidence, except depositions
 25 and except as otherwise provided in the Louisiana Code of Evidence.

26 * * *

27 Art. 1795. Jury request to review ~~evidence~~ testimony

28 A. If the jury, after retiring for deliberation, requests a review of certain
 29 testimony ~~or other evidence~~, they shall be conducted to the courtroom. After giving
 30 notice to the parties, the court may have the requested testimony read to the jury.

31 B. ~~After giving notice to the parties, the court may have the requested~~
 32 ~~testimony read to the jury and may permit the jury to examine the requested~~
 33 ~~materials admitted into evidence.~~

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Comments - 2021

This Article has been amended to clarify a misunderstanding concerning the review of testimony by the jury. Under this Article, when the jury retires for deliberation and later requests review of certain testimony, the jury must be conducted to the courtroom where, after notifying the parties, the requested testimony may be read to the jury; however, the jury may not take depositions, trial transcripts, or other testimony into the jury room for examination. Because Article 1794 already permits the jury, with certain exceptions, to take with it any object or writing received into evidence, the references to "other evidence" and "materials" have been deleted to eliminate confusion.

* * *

Art. 1918. Form of final judgment

A. A final judgment in accordance with Article 1841 shall be identified as such by appropriate language; shall be signed and dated; and shall, in its decree, identify the name of the party in whose favor the relief is awarded, the name of the party against whom the relief is awarded, and the relief that is awarded. If appealed, a final judgment that does not contain the appropriate decretal language shall be remanded to the trial court, which shall amend the judgment in accordance with Article 1951 within the time set by the appellate court.

B. When written reasons for the judgment are assigned, they shall be set out in an opinion separate from the judgment.

Comments - 2021

(a) The amendments to this Article are intended to codify Louisiana jurisprudence providing that a final judgment must contain decretal language identifying the relief that is awarded and the parties in whose favor and against whom the relief is awarded. See, e.g., *Matter of Succession of Porche*, 213 So. 3d 401 (La. App. 1 Cir. 2017); *Abshire v. Town of Gueydan*, 208 So. 3d 405 (La. App. 3 Cir. 2016); *Schiff v. Pollard*, 222 So. 3d 867 (La. App. 4 Cir. 2017); *Contreras v. Vesper*, 202 So. 3d 1186 (La. App. 5 Cir. 2016). The issue of whether a judgment constitutes a final judgment should be determined in accordance with Article 1841. A lack of proper decretal language in a judgment that is otherwise a final judgment does not divest the appellate court of jurisdiction. Instead, the final judgment shall be corrected to include proper decretal language by an amendment in accordance with Article 1951.

(b) The amendments to this Article are consistent with existing requirements pertaining to final judgments affecting immovable property under Article 1919 and those granting an injunction or temporary restraining order under Article 3605.

* * *

1 Art. 1951. Amendment of judgment

2 On motion of the court or any party, a final judgment may be amended at any
 3 time to alter the phraseology of the judgment, ~~but not its substance~~, or to correct
 4 deficiencies in the decretal language or errors of calculation. The judgment may be
 5 amended only after a hearing with notice to all parties, except that a hearing is not
 6 required if all parties consent or if the court or the party submitting the amended
 7 judgment certifies that it was provided to all parties at least five days before the
 8 amendment and that no opposition has been received. A final judgment may not be
 9 amended under this Article to change its substance.

10 Comments - 2021

11 The amendments to this Article and Article 2088 allow the trial court to
 12 retain jurisdiction to correct, on its own motion or after remand from the appellate
 13 court, the lack of proper decretal language in a final judgment. This Article does not
 14 allow the court to make a substantive change to a final judgment. See, e.g., *Denton*
 15 *v. State Farm Mut. Auto. Ins. Co.*, 998 So. 2d 48 (La. 2008); *Bourgeois v. Kost*, 846
 16 So. 2d 692 (La. 2003).

17 * * *

18 Art. 1974. Delay for applying for new trial

19 ~~The delay for applying for a new trial shall be~~ A party may file a motion for
 20 a new trial not later than seven days, exclusive of legal holidays, ~~;~~ ~~The delay for~~
 21 ~~applying for a new trial commences to run on the day~~ after the clerk has mailed; or
 22 the sheriff has served; the notice of judgment as required by Article 1913.

23 Comments - 2021

24 This Article has been amended to clarify that the delay for filing a motion for
 25 new trial is the same as the delay for filing a motion for judgment notwithstanding
 26 the verdict under Article 1811.

27 * * *

28 Art. 2088. Divesting of jurisdiction of trial court

29 A. The jurisdiction of the trial court over all matters in the case reviewable
 30 under the appeal is divested, and that of the appellate court attaches, on the granting
 31 of the order of appeal and the timely filing of the appeal bond, in the case of a
 32 suspensive appeal or on the granting of the order of appeal, in the case of a
 33 devolutive appeal. Thereafter, the trial court has jurisdiction in the case only over

1 those matters not reviewable under the appeal, including the right to do any of the
2 following:

3 (1) Allow the taking of a deposition, as provided in Article 1433~~;~~

4 (2) Extend the return day of the appeal, as provided in Article 2125~~;~~

5 (3) Make, or permit the making of, a written narrative of the facts of the
6 case, as provided in Article 2131~~;~~

7 (4) Correct any misstatement, irregularity, informality, or omission of the
8 trial record, as provided in Article 2132~~;~~

9 (5) Test the solvency of the surety on the appeal bond as of the date of its
10 filing or subsequently, consider objections to the form, substance, and sufficiency
11 of the appeal bond, and permit the curing thereof, as provided in Articles 5123, 5124,
12 and 5126~~;~~

13 (6) Grant an appeal to another party~~;~~

14 (7) Execute or give effect to the judgment when its execution or effect is not
15 suspended by the appeal~~;~~

16 (8) Enter orders permitting the deposit of sums of money within the meaning
17 of Article 4658 of this Code~~;~~

18 (9) Impose the penalties provided by Article 2126, or dismiss the appeal,
19 when the appellant fails to timely pay the estimated costs or the difference between
20 the estimated costs and the actual costs of the appeal~~; or~~

21 (10) Set and tax costs, ~~and expert witness fees, and attorney fees.~~

22 (11) Certify a partial judgment or partial summary judgment in accordance
23 with Article 1915(B).

24 (12) Amend a judgment to provide proper decretal language under Article
25 1918 or 1951.

26 * * *

27 Comments - 2021

28 (a) The amendment to Subparagraph (A)(10) of this Article clarifies that the
29 trial court retains jurisdiction for purposes of setting attorney fees after an appeal has
30 been taken from the initial judgment. Trial courts award reasonable attorney fees in
31 many judgments, but often these judgments are appealed before the attorney fees are
32 set. With this amendment, it is no longer necessary for an appellate court to dismiss

1 an appeal in order to allow the trial court to set the amount of the attorney fees,
2 because the trial court has jurisdiction to set attorney fees while the appeal is
3 pending.

4 (b) Subparagraph (A)(11) codifies the Louisiana Supreme Court's holding
5 in *In re Interdiction of Gambino*, 296 So. 3d 1046 (La. 2020) (per curiam), that the
6 trial court had jurisdiction to certify a partial judgment under Article 1915(B) as a
7 final judgment after an appeal had been obtained.

8 (c) Subparagraph (A)(12) allows a trial court to retain jurisdiction after an
9 order of appeal is granted to amend a final judgment to correct any deficiencies in
10 the decretal language.

11 * * *

12 Art. 2254. Execution by sheriff; return; wrongful seizure

13 * * *

14 B. ~~Since secured collateral subject to a security interest under Chapter 9 of~~
15 ~~the Louisiana Commercial Laws (R.S. 10:9-101, et seq.) need only be reasonably~~
16 ~~described in the debtor's security agreement (R.S. 10:9-110), the The sheriff shall~~
17 have no liability to the debtor or to any third party for wrongful or improper seizure
18 of the debtor's or third party's property of the same general type as described in the
19 debtor's security agreement. If necessary, the sheriff shall request the secured
20 creditor to identify the property subject to the security agreement and shall act
21 pursuant to the secured creditor's instructions. The debtor's and other owner's sole
22 remedy for the wrongful or improper seizure of the property shall be for actual losses
23 sustained under R.S. ~~10:9-507(1)~~ 10:9-625 against the secured creditor on whose
24 behalf and pursuant to whose instructions the sheriff may act.

25 * * *

26 Art. 2721. Seizure of property; notice

27 * * *

28 C. ~~Since secured collateral subject to a security interest under Chapter 9 of~~
29 ~~the Louisiana Commercial Laws need only be reasonably described in the debtor's~~
30 ~~security agreement, the The sheriff shall have no liability to the debtor or to any third~~
31 party for wrongful or improper seizure of the debtor's or third party's property of the
32 same general type as described in the debtor's security agreement. If necessary, the
33 sheriff shall request the secured creditor to identify the property subject to the

1 security agreement and shall act pursuant to the secured creditor's instructions. The
 2 debtor's and other owner's sole remedy for the wrongful or improper seizure of the
 3 property shall be for actual losses sustained under R.S. 10:9-625 against the secured
 4 creditor on whose behalf and pursuant to whose instructions the sheriff may act.

5 * * *

6 Art. 3943. Appeal from judgment awarding, modifying, or denying custody,
 7 visitation, or support

8 An appeal from a judgment awarding, modifying, or denying custody,
 9 visitation, or support of a person can be taken only within the delay provided in
 10 Article 3942. Such an appeal shall not suspend execution of the judgment insofar
 11 as the judgment relates to custody, visitation, or support.

12 * * *

13 Art. 3947. Name confirmation

14 * * *

15 B. The court may enter an order confirming the name of a ~~married woman~~
 16 spouse in a divorce proceeding, whether ~~she~~ the person is the plaintiff or defendant,
 17 which confirmation shall be limited to the name ~~which she~~ that the person was using
 18 at the time of the marriage, or the name of ~~her~~ the person's minor children, or ~~her~~
 19 ~~maiden name~~ the person's surname on the birth certificate, without complying with
 20 the provisions of R.S. 13:4751 through 4755. This Article shall not be construed to
 21 allow ~~her to amend her~~ an amendment to a birth certificate with the Bureau of Vital
 22 Statistics.

23 * * *

24 Art. 4904. Final default judgment in parish and city courts

25 * * *

26 D. When the demand is based upon a right acquired by assignment in an
 27 open account, promissory note, or other negotiable instrument, the court may raise
 28 an objection of prescription before entering a final default judgment if the grounds
 29 for the objection appear from the pleadings or from the evidence submitted by the
 30 plaintiff. If the court raises an objection of prescription, it shall not enter the final

1 default judgment unless the plaintiff presents prima facie proof that the action is not
2 barred by prescription. Upon the plaintiff's request, the court shall hold a hearing for
3 the submission of proof.

4 * * *

5 Art. 4907. New trials; delay in parish or city courts

6 * * *

7 B. The delay for applying for a new trial shall be seven days, exclusive of
8 legal holidays. Where notice of judgment is required, ~~this delay commences to run~~
9 ~~on the day~~ a party may file a motion for a new trial not later than seven days,
10 exclusive of legal holidays, after the clerk has mailed, or the sheriff has served, the
11 notice of judgment.

12 Comments - 2021

13 This Article has been amended to make certain that the delay for filing a
14 motion for new trial in parish and city courts is seven days, exclusive of legal
15 holidays. If a notice of judgment is required, the delay begins to run once the clerk
16 has mailed the notice of judgment or the sheriff has served the notice of judgment.

17 * * *

18 Art. 4913. Limitations upon jurisdiction; nature of proceedings; justice of the peace
19 courts

20 * * *

21 B. A justice of the peace court has no jurisdiction in any of the following
22 cases or proceedings:

23 * * *

24 (4) A claim for annulment of marriage, separation from bed and board,
25 divorce, separation of property, ~~or alimony~~ custody, visitation, spousal support, or
26 child support.

27 * * *

28 Art. 4921. Final default judgment; justice of the peace courts; district courts with
29 concurrent jurisdiction

30 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

