

ACT No. 371

2024 Regular Session

HOUSE BILL NO. 227

BY REPRESENTATIVE MUSCARELLO

(On Recommendation of the Louisiana State Law Institute)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

AN ACT

To amend and reenact Code of Civil Procedure Articles 863(A), 1425(F)(1) and (2), 1436.1, 2163, 2298, 3136, and 3335, relative to civil procedure; to provide for continuous revisions to the Code of Civil Procedure; to provide for the electronic signature of pleadings; to provide for the procedure to challenge experts; to provide with respect to depositions by telephone; to provide for peremptory exceptions filed in an appellate court; to provide with respect to injunctions prohibiting sales; to provide with respect to descriptive lists of property in lieu of inventory; to provide for notice to heirs and residuary legatees; to provide for comments; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Articles 863(A), 1425(F)(1) and (2), 1436.1, 2163, 2298, 3136, and 3335 are hereby amended and reenacted to read as follows:

Art. 863. Signing of pleadings; effect

A. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose physical address and email address for service of process shall be stated. A party who is not represented by an attorney shall sign his pleading and state his physical address and email address, if ~~he~~ the party has an email address, for service of process. If mail is not received at the physical address for service of process, a designated mailing address shall also be provided. A party or attorney may sign a pleading by electronic signature in accordance with Article 253.

* * *

1 Art. 1425. Experts; pretrial disclosures; scope of discovery

2 * * *

3 F.(1) ~~Any party may file a motion for a pretrial hearing to determine~~ A party
4 seeking to challenge whether a witness qualifies as an expert or whether the
5 methodologies employed by ~~such~~ the witness are reliable under Code of Evidence
6 Articles 702 through 705 of the Louisiana Code of Evidence shall file a motion for
7 a pretrial hearing. The motion shall be filed not later than sixty days prior to trial
8 and shall set forth sufficient allegations showing the necessity for these
9 determinations by the court.

10 (2) The court shall hold a contradictory hearing and shall rule on the motion
11 not later than thirty days prior to the trial. At the hearing, the court shall consider the
12 qualifications and methodologies of the proposed witness based upon the provisions
13 of Code of Evidence Articles 104(A) and 702 through 705 ~~of the Louisiana Code of~~
14 ~~Evidence~~. For good cause shown, the court may allow live testimony at the
15 contradictory hearing.

16 * * *

17 Comments - 2024

18 The amendment to Paragraph F of this Article makes clear that a pretrial
19 hearing is necessary to determine whether a witness qualifies as an expert or whether
20 the methodologies employed by the witness are reliable. This would change the
21 result reached by the First Circuit in Williams v. State Farm Mutual Automobile
22 Insurance Company, 322 So. 3d 795, 797 (La. App. 1 Cir. 2021), in which the court
23 held that the use of the permissive "may" did not mandate a pretrial motion to
24 challenge the qualifications of an expert.

25 * * *

26 Art. 1436.1. Depositions by telephone

27 If agreed upon by every party to ~~a suit~~ an action or if ordered by the court, a
28 deposition may be taken by telephone or other remote electronic means.

29 * * *

1 Art. 2163. Peremptory exception filed in appellate court; remand if prescription or
2 peremption pleaded

3 A. The appellate court may consider ~~the~~ a peremptory exception filed for the
4 first time in that court; if the exception is pleaded prior to a submission of the case
5 for a decision; and if proof of the ground of the exception appears of record.

6 B. If the ground for the peremptory exception pleaded in the appellate court
7 is prescription or peremption, the plaintiff may demand that the case be remanded
8 to the trial court for trial of the exception.

9 * * *

10 Art. 2298. Injunction prohibiting sale; damages

11 A. Injunctive relief prohibiting the sheriff from proceeding with the sale of
12 property seized under a writ of fieri facias shall be granted to the judgment debtor
13 or to a third person claiming ownership of the seized property:

14 (1) When the sheriff is proceeding with the execution contrary to law;₂

15 (2) When subsequent to the judgment payment has been made, ~~or~~
16 compensation has taken place against the judgment, or it the judgment has been
17 otherwise extinguished. If the payment, compensation, or extinguishment is for a
18 part of the judgment, the injunction shall be granted to that extent, and the execution
19 shall continue for the amount of the excess;₂

20 (3) When the judgment is for the payment of the purchase price of property
21 sold to the judgment debtor and a suit for recovery of the property has been filed by
22 an adverse claimant;~~or~~₂

23 (4) When the judgment sought to be executed is absolutely null.

24 B. In the event that injunctive relief is granted to the judgment debtor or third
25 party claiming ownership of the seized property, if the court finds the seizure to be
26 wrongful, it may allow damages. ~~Attorney's~~ Attorney fees for the services rendered
27 in connection with the injunction may be included as an element of the damages.

28 Comments - 2024

29 Paragraph B of this Article, the substance of which was enacted in 1981, is
30 intended to give the trial judge the discretion to award damages and attorney fees
31 where the seizure through executory process was wrongful. It is not intended to

1 require that damages and attorney fees be awarded in every case in which
 2 injunction is issued, such as when an injunction is issued because of a technical
 3 deficiency or a technical error.

4 * * *

5 Art. 3136. Descriptive list of property in lieu of inventory

6 A. Whenever an inventory of succession property otherwise would be
 7 required by law, the person at whose instance the inventory would be taken may file
 8 ~~with the Department of Revenue and~~ in the succession proceeding, in lieu of an
 9 inventory complying with ~~articles~~ Articles 3131 through 3135, a detailed; descriptive
 10 list of all succession property. This list shall be sworn to and subscribed by the
 11 person filing it, shall show the location of all items of succession property, and shall
 12 set forth the fair market value of each item thereof at the date of the death of the
 13 deceased.

14 B. The privilege of filing a descriptive list of succession property, in lieu of
 15 an inventory thereof, may be exercised without judicial authority.

16 * * *

17 Art. 3335. Notice to heirs and residuary legatees

18 A. A copy of any account filed by a succession representative shall be served
 19 upon each heir or residuary legatee, together with a notice that the account may be
 20 homologated after the expiration of ten days from the date of service and that any
 21 opposition thereto ~~must~~ shall be filed before homologation.

22 B. In the case of any account other than the final account, service on either
 23 a resident or a nonresident may be made by ordinary mail.

24 C. In the case of a final account, service may be made by either of the
 25 following:

- 26 ~~(a)~~ (1) In accordance with the provisions of Article 1314; ~~or,~~
- 27 ~~(b)~~ (2) On either a resident or a nonresident, by certified or registered
 28 mail on either a resident or nonresident or by use of a commercial courier that
 29 requires a signed receipt from the addressee upon completion of delivery. The
 30 certificate of the attorney for the succession representative that the notice and final

1 account were ~~mailed~~ sent to the heir or legatee, together with the ~~return~~ receipt
 2 signed by the addressee, shall be filed in the succession proceeding prior to
 3 homologation of the final account.

4 Comments - 2024

5 In light of the practical difficulties in the modern day of obtaining a "return
 6 receipt signed by the addressee" for certified mail, this Article was revised to allow
 7 for a final account to be served upon an heir or residuary legatee by a commercial
 8 courier that requires a signed receipt from the addressee upon completion of
 9 delivery. Moreover, service by "registered" mail was removed as an option because
 10 the addressee of a parcel sent by registered mail has the ability to waive the signature
 11 requirement and still receive the parcel.

12 Section 2. The Louisiana State Law Institute is hereby directed to delete Comment
 13 (f) of the 1960 Official Revision Comments to Code of Civil Procedure Article 2751.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____