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LOUISIANA CIVIL PROCEDURE

Howard W. L'Enfant, Jr.*

VENUE-CUSTODY

Article 74.2 of the Louisiana Code of Civil Procedure, added by Act 62 of 1983, provides the venue for an action to obtain custody or to change custody as follows: A proceeding to obtain legal custody of a minor may be brought in the parish where a party is domiciled or in the parish of the last matrimonial domicile; a proceeding for change of custody may be brought in the parish where the original decree was rendered or in the parish where the person awarded custody is domiciled; if that person is no longer domiciled in the state, then the proceeding may also be brought in the parish where the person seeking custody is domiciled. The article also provides for transfer of the proceeding to another court where the proceeding might have been brought if such a transfer would be in the interest of justice and for the convenience of the parties and witnesses. Prior to the enactment of this article, no provision in the Code of Civil Procedure governed venue in custody proceedings; the problems caused by the absence of such a provision may be illustrated by two cases decided before the adoption of this article.

In *Parker v. Parker*,¹ a judgment of separation rendered in Bienville Parish awarded custody to the mother. A subsequent divorce decree rendered in East Baton Rouge Parish in favor of the father affirmed the award of custody to the mother. Thereafter, the father filed a rule for change of custody in East Baton Rouge, where he was domiciled. The mother objected to venue on the grounds that she and the child were domiciled in Bienville Parish. The trial court sustained the objection, and the court of appeal affirmed. The court reasoned that, in light of the recent Louisiana Supreme Court decision in *Lewis v. Lewis*,² it could no longer follow the court-created rule that venue for change of custody was where the divorce decree had been rendered if that decree made an award of custody.³ In *Lewis*, the court held that an action for separation or divorce but was an independent action based on the obligation of parentage. Citing *Howard v. Howard*,⁴ which had applied *Lewis* similarly, the court in *Parker* applied the same reasoning to an action for change of custody. Since under

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1. 432 So. 2d 1010 (La. App. 1st Cir. 1983).

2. 404 So. 2d 1230 (La. 1981).

3. *Sims v. Sims*, 388 So. 2d 428 (La. App. 2d Cir.), writ denied, 394 So. 2d 612 (La. 1980); *Dupre v. Pelotto*, 336 So. 2d 329 (La. App. 1st Cir. 1976); *Hopkins v. Hopkins*, 300 So. 2d 661 (La. App. 3d Cir. 1974); *Caldwell v. Gilbert*, 253 So. 2d 639 (La. App. 3d Cir. 1971).

4. 409 So. 2d 279 (La. App. 4th Cir. 1981).

this reasoning the prior exception was no longer applicable, the court could only follow the basic rule of venue⁵—that the action must be brought in the parish of the defendant's domicile, Bienville Parish.

Under article 74.2, the father could have filed the action for change of custody in East Baton Rouge Parish, where the custody award had been confirmed by the divorce decree, or in Bienville Parish, where the mother who had been granted custody was domiciled. Either parish would have been proper because each court had an interest in the children and had access to the information necessary to reach a decision on custody—the East Baton Rouge Parish Court because that is where the decree was confirmed, and the Bienville Parish Court because that is where the children and custodial parent were living.

In the second case, also styled *Parker v. Parker*⁶ but unrelated to the first case, the parties had been judicially separated by a judgment rendered in Jefferson Parish, and, by consent, custody was given to the mother. A judgment of divorce was rendered in Iberia Parish, and custody originally was given to the father but later was changed to the mother. The father filed for change of custody in Jefferson Parish, and the mother objected to jurisdiction and venue on the grounds that she, and therefore also the child, were domiciled in Colorado. The trial court rejected both objections and awarded custody to the father. On appeal, the fourth circuit affirmed the finding of jurisdiction on the grounds that the child and his parents had a significant connection with Louisiana; thus, Louisiana could assert jurisdiction under the Uniform Child Custody Jurisdiction Act⁷ even if the mother had established domicile in Colorado—a fact not clearly established by the record. On the issue of venue, the court concluded that Jefferson Parish was a proper venue, regardless of the child's domicile, for two reasons: The child was living there with his grandparents and attending school when the action was filed, and the judgment of separation had been rendered there. Furthermore, had there been no change of domicile, the child might still be domiciled in Jefferson Parish.

If the action for change of custody were brought under article 74.2, the result would be different. The father could bring the action for change of custody in Iberia Parish, where the divorce and custody decree in favor of the mother was rendered, because that court would continue to have an interest in the welfare of the minor. If the mother were not domiciled in Louisiana, then the action also could be brought in the parish where the father was domiciled—Lafourche Parish. If the mother were domiciled in Louisiana, then the action could be brought in the parish of her

5. LA. CODE CIV. P. art. 42.

6. 424 So. 2d 479 (La. App. 5th Cir. 1982), writ denied, 427 So. 2d 1198 (La. 1983).

7. LA. R.S. 13:1702(A)(2) (1983).

domicile as well as in Iberia Parish, but it could not be filed in Lafourche Parish. Jefferson Parish would be proper venue only if it were the parish of the mother's domicile.

PRESCRIPTION

In *State Farm Mutual Automobile Insurance Co. v. Farnsworth*,⁸ an automobile insurer, as subrogee of the rights of its insured, filed a timely action against the insurer and driver of one of the vehicles involved in the rear-end collision to recover the payments made to the plaintiff's insured. The accident occurred on July 19, 1978, and the suit was filed on July 19, 1979. On August 23, 1979, the defendant's insurer filed a third-party demand against the driver, the owner, and the insurer of the other vehicle involved in the collision, seeking indemnification and contribution. The third-party defendants filed an answer, asserting defenses to the principal claim. On August 12, 1980, the plaintiff filed an amended petition alleging that the third-party defendants were solidarily liable with the original defendants. The trial court rejected the third-party defendants' objection of prescription and, after trial, found those defendants solely liable to the plaintiff. The court of appeal, affirming the ruling of the trial court on the issue of prescription, found that the third-party demand was timely filed within the ninety-day period provided by article 1067 of the Code of Civil Procedure.⁹ Thus the third-party defendants had received the kind of notice which fulfilled the purpose of the prescription statutes—protecting a defendant from stale claims and from the loss of relevant evidence. The third-party demand gave the third-party defendants formal notice of the claim being asserted by the plaintiff; in fact, those defendants had asserted their defenses even before the plaintiff amended the petition to name them as co-defendants. The court did not consider it important that the third-party defendants had not received notice within the year because such notice is not required. Louisiana Revised Statutes 9:5801 requires only that the claim be filed timely; here, the third-party demand had been timely filed.

Ordinarily, prescription on the plaintiff's tort claim against the third-party defendants could be interrupted in one of two ways. First, by filing the claim in a court of competent jurisdiction and venue within one year of the accident, prescription is interrupted even though a defendant may not receive formal notice through service of process until after the year has run. Ordinarily, a defendant in such a situation receives notice within a short time after filing; this brief delay in notification does not thwart the objective of the prescription statutes—protecting the defendant from stale claims. Furthermore, to require service of process within the year

8. 425 So. 2d 827 (La. App. 5th Cir. 1982).

9. LA. CODE CIV. P. art. 1067.

would expose the plaintiff's claim to the risks and delays which ordinarily accompany service of process. In balancing the risks to the plaintiff against the interests of the defendant in receiving prompt notice of the claim, the decision was made in favor of the plaintiff. The second way prescription could be interrupted is by filing a timely claim against a defendant who is bound *in solido* with the third-party defendants.¹⁰ Prescription is interrupted even though the third-party defendants might not receive formal notice of the claim until months or even years after the one-year period has expired. Each defendant is considered liable for the whole obligation, and the filing of a formal demand for payment of the obligation interrupts prescription on that obligation as to each obligor.¹¹ But if the original defendant is found to be not liable, as happened in this case, then prescription would not have been interrupted as to the subsequently joined and solely liable defendant.¹²

These principles were applied in *Carona v. Radwin*,¹³ a case involving a third-party demand filed within the one-year period and an amended petition naming the third-party defendant codefendant filed after the one-year period had run. In ruling on the third-party defendant's plea of prescription, the fourth circuit could not apply the principles of solidarity because the original defendant had been found not liable; nevertheless, the court rejected the plea of prescription on the grounds that the third-party demand supplied the requisite notice within the one-year prescriptive period that the third party's negligence allegedly was a cause of the plaintiff's injuries. The subsequently served amended petition simply reasserted those allegations.

The important fact in *Carona* is that the third-party defendant had received notice of the claim within the one-year period. Later cases have refused to find that prescription is interrupted where the third-party demand is filed after the one-year period has expired.¹⁴ But the court in *Farnsworth*, although citing *Carona*, did not consider notice within the prescriptive period important; it looked only to a timely filing of the action. In so doing, the court has increased a tortfeasor's exposure to suit. In reaching its decision, the court found that the third-party demand was timely because it was filed within ninety days from service of the principal demand in accordance with article 1067 of the Code of Civil Procedure, which provides that an incidental action which is not barred by

10. LA. CIV. CODE art. 2097.

11. LA. CIV. CODE art. 2091.

12. See *Trahan v. Liberty Mutual Ins. Co.*, 314 So. 2d 350 (La. 1975); *Gibson v. Exxon Corp.*, 360 So. 2d 230 (La. App. 1st Cir. 1978); *Small v. Caterpillar Mfg. Co.*, 319 So. 2d 843 (La. App. 1st Cir. 1975).

13. 195 So. 2d 465 (La. App. 4th Cir.), *cert. denied*, 250 La. 639, 197 So. 2d 897 (1967).

14. *Brady v. Bernard*, 230 So. 2d 413 (La. App. 4th Cir. 1970); *Ward v. Aucoin*, 222 So. 2d 628 (La. App. 4th Cir. 1969).

prescription at the time the principal demand is filed is not barred by prescription if filed within ninety days from service of the principal demand. However, since prescription does not begin to run on a claim for indemnification or contribution until the defendant is cast in judgment, a third-party demand asserting such a claim would not be barred by prescription even if filed more than ninety days after service of the principal demand. In fact, the only limitation on the filing of a third-party demand is whether the filing of that demand will adversely affect trial of the principal action; a third-party demand may be filed at any time before answer to the principal demand is filed and may be filed thereafter with the permission of the court if it will not retard the progress of the principal action.¹⁵ Therefore, a third-party demand could be filed timely long after the one-year period had expired. Under the reasoning of *Farnsworth*, the third-party defendant could then be joined as a codefendant by the plaintiff. This result seems to be at odds with the purpose of the prescription statutes, *i.e.*, to protect the defendant from stale claims, and, before *Farnsworth*, it had been possible only under the exception for solidary obligors.

PRESCRIPTION—MEDICAL MALPRACTICE ACT

Louisiana's Medical Malpractice Act¹⁶ provides that the filing of a claim with the medical review panel suspends prescription until ninety days following the issuance of the opinion by the panel. In *Kaltenbacher v. Jefferson Parish Service District*,¹⁷ the panel rendered its opinion in July, 1980, and a copy of the opinion was sent by regular mail to plaintiff's attorney on September 7, 1980. Because he had moved, however, he did not learn of the opinion until February 9, 1981. A copy of the opinion was sent by certified mail to all parties as required by statute¹⁸ on May 7, 1981. Suit was filed on July 31, 1981, and defendant filed a plea of prescription. In ruling on this issue, the court interpreted "issuance of the opinion" to mean receipt by the plaintiff of the opinion of the panel by registered or certified mail, explaining that certified or registered mail provides proof that plaintiff has received notice of the opinion and also provides a fixed point from which to determine the time left for filing suit. By choosing this interpretation, the court also is requiring that the plaintiff receive actual notice of the decision of the panel.

DISCOVERY—REQUEST TO ADMIT

On appeal from a judgment in a suit on an open account, the plain-

15. LA. CODE CIV. P. art. 1033.

16. LA. R.S. 40:1299.47(A) (Supp. 1983).

17. 424 So. 2d 434 (La. App. 5th Cir. 1983).

18. LA. R.S. 40:1299.47(J) (Supp. 1983).

tiff in *D.H. Holmes Co. v. Dronet*¹⁹ argued that judgment should have been granted for the full amount because the defendant failed to answer plaintiff's request for admissions. In reply the third circuit stated:

In our view, failure to answer under Article 1467 does not per se result in requests for admissions being deemed an admission of the facts sought to be established. This device should not be applied to a controverted legal issue which goes to the heart of the merits of a case.²⁰

The court further stated that the defendant had denied the debt in his answer and in his answer to interrogatories, therefore placing the burden of proving each element of his claim on the plaintiff. The court then found that the plaintiff had met this burden and amended the judgment to allow the plaintiff the full amount demanded.

In ruling on the effect to be given to the defendant's failure to answer the request for admissions, the court relied on *Entron, Inc. v. Callais Cablevision, Inc.*,²¹ which had held that, in the light of the 1966 Louisiana Supreme Court case of *Voisin v. Luke*,²² a request for admissions could not be applied to a disputed legal issue which goes to the heart of the merits of the case. This position, however, was rejected expressly by the supreme court in *Succession of Rock v. Allstate Life Insurance Co.*,²³ in which the succession of the deceased sued to recover on a policy insuring the lives of employees against accidental death. The request for admissions served on the defendant covered all of the important factual issues in the case—the existence of the policy covering employees, that the deceased was an employee, that he was covered at the time of his death, that his death was accidental, that the defendant had failed to pay the amount of the policy to the succession, and that the succession was the proper beneficiary. When the defendant failed to serve answers to these requests, the supreme court concluded that under article 1496 of the Code of Civil Procedure the admissions are "facts of record which courts must recognize."²⁴ The defendant had relied on *Voisin*, but the supreme court interpreted that case as being one in which the defendant had denied the request for admissions through the verified exceptions which had been filed.

Thus, it seems clear in the light of *Succession of Rock* that a request for admissions can be used to establish a fact, even if it goes to the heart of the case. This is in accord with the purpose of the request to admit—

19. 432 So. 2d 1135 (La. App. 3d Cir. 1983).

20. *Id.* at 1136.

21. 307 So. 2d 787 (La. App. 1st Cir. 1975).

22. 249 La. 796, 191 So. 2d 503 (1966).

23. 340 So. 2d 1325 (La. 1977).

24. *Id.* at 1331.

to eliminate those facts which are undisputed and thus to reduce the scope of the trial. The correct procedure for an opponent who disputes the fact as to which the request has been made is to serve an answer denying the requested admission. Article 1467 of the Code of Civil Procedure states:

A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Article 1472, deny the matter or set forth reasons why he cannot admit or deny it.

Whether the failure to serve answers to the request for admission constitutes an admission is uncertain. Article 1467 seems clear that it does: "The matter is admitted unless, within fifteen days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter" However, the court in *Dronet* stated that the failure to answer does not per se result in the admission of the facts sought to be established. This position finds support in the supreme court cases of *Voisin* and *Succession of Rock*. In *Voisin*, the defendant filed verified exceptions denying the matters addressed in the requested admission within fifteen days of the service of the requests. Rejecting a subsequently filed answer to the request for admissions as untimely, the trial court granted plaintiff's motion for summary judgment based on the facts deemed to be admitted by the defendants through their failure to answer. The judgment was affirmed on appeal but reversed by the supreme court, which ruled that it was error for the trial court to grant a summary judgment on the basis of defendant's admissions of fact, where the defendant had denied those facts in his answer to the petition, in his exceptions, in his untimely answer to the request, and in his answer to the motion for summary judgment. The court concluded that a technical application of the article would be unfair—the defendant had vigorously contested the matters addressed in the requests—and that a pleading error should not cost the defendant his trial on the merits, especially when the plaintiff knew through other pleadings that the defendant disputed these facts. In *Succession of Rock*, the supreme court allowed the defendant's failure to serve a timely answer to the request to admit to serve as an admission of the facts covered in the request because, unlike the situation in *Voisin*, the defendant had filed no pleadings contesting any of the factual issues in the case. Apparently, the court in *Dronet* concluded that the defendant's answer to the petition and answers to the interrogatories could substitute for the answer to the request to admit. Unfortunately, however, the court cited neither *Voisin* nor *Succession of Rock* as authority; rather, it concluded that this device should not be applied to a controverted issue in the case.

Certainly the provisions of articles 1466 and 1467 of the Code of

Civil Procedure should not be applied strictly if to do so would be unfair, as where the defendant files an untimely answer to requests, but these provisions should not be totally ignored. Ordinarily, an answer to the petition or answers to interrogatories cannot serve as a sufficient substitute for an answer to a request to admit, because each has a different function. The answer to the petition, filed early in the proceedings before any discovery has occurred, is intended as an initial response to the petition; it is generally a denial of almost all of the allegations in the petition, usually on the grounds of insufficient information. The request to admit, which is used later in the proceedings and after discovery, is intended to narrow the scope of the issues from what was originally established in the petition and answer. Interrogatories seek information, and favorable answers can be used at trial as admissions by a party to establish a disputed fact, but the purpose of the request to admit is to eliminate from the trial those facts on which there is no dispute. If it is to fulfill its purpose, the opponent should be required to respond to the request.

JURY TRIAL—COSTS

In *Babin v. Ivy*,²⁵ the defendant timely requested a jury and posted the bond for costs. When the clerk billed the defendant for juror fees, cost of issuing jury notice, and cost for service of jury notices, the defendant requested a writ of mandamus from the trial court, which was denied. He then sought writs of mandamus and certiorari from the court of appeal. That court ruled that the bond supplied by the defendant covered the per diem and mileage costs of the jury²⁶ and that all other costs must be paid by "the party primarily responsible therefor."²⁷ Although the court felt that the defendant should be the party primarily responsible for these costs since the defendant had requested the jury, it nevertheless concluded that it was bound to follow the contrary interpretation of the supreme court²⁸ and held that the plaintiff is the party primarily responsible for paying the costs in the trial court, until a final judgment is rendered. The result in this case, although clearly correct under the law as it existed then, would be different under article 1734 of the Code of Civil Procedure, which, as amended by Act 534 of 1983, provides that "the amount of the bond is to cover all costs related to the trial by jury." Thus, under the facts of this case, the bond furnished by the defendant would cover not only the per diem and mileage expenses, but also the costs of prepar-

25. 432 So. 2d 281 (La. App. 1st Cir. 1983).

26. LA. R.S. 13:3049-:3050 (Supp. 1983).

27. LA. R.S. 13:843 (Supp. 1983).

28. *Meyers v. Basso*, 398 So. 2d 1026 (La. 1981); *Crespo v. Visla*, 152 La. 1088, 95 So. 256 (1922).

ing the notices, the costs of securing the notices, and any other costs related to the jury.

JURY TRIAL—MISTRIAL

When the plaintiff's suicide attempt prevented her from testifying at the close of her case, plaintiff's counsel moved for a mistrial, but the trial court dismissed her suit with prejudice on its own motion. The court of appeal affirmed the decision, but found error in the reasoning of the trial court.²⁹ After first noting that a trial judge is without power to dismiss a case on his own motion,³⁰ the court of appeal stated that the plaintiff's motion for a mistrial should have been interpreted as a motion for a dismissal without prejudice because the motion for a mistrial does not exist as a procedural device in civil cases in Louisiana,³¹ whereas the granting of a motion to dismiss, with or without prejudice, is within the discretion of the trial judge. The court then concluded that the trial court had not abused its discretion in dismissing the suit with prejudice.

The supreme court reversed,³² ruling first that under article 1671 of the Code of Civil Procedure the trial court has no discretion to dismiss with prejudice. The trial judge has authority either to grant the motion or to refuse to dismiss except with prejudice. If the plaintiff objects to a dismissal with prejudice, the case continues. Second, the court noted that "mistrial" is not unknown in civil cases in Louisiana,³³ and, although not expressly referred to in the Code of Civil Procedure, its use is authorized by article 191 of the Code of Civil Procedure, which provides that "[a] court possesses inherently all of the power necessary for the exercise of its jurisdiction even though not granted expressly by law."³⁴ The court concluded that under the facts in this case it was error to dismiss with prejudice and remanded the case for a new trial.

This ruling protects a plaintiff who moves for a dismissal without prejudice from the unexpected and unfair result of having his case dismissed with prejudice. In addition, by giving express recognition to the motion for a mistrial, the ruling makes it clear that the trial court may act on its own motion to insure a fair trial. Authority for the mistrial motion exists not only in article 191, as cited by the supreme court, but also in article 1631 of the Code of Civil Procedure, which provides that

29. *Spencer v. Children's Hospital*, 419 So. 2d 1307 (La. App. 4th Cir. 1982).

30. LA. CODE CIV. P. arts. 1671-1672.

31. In reaching this conclusion the court of appeal relied on the fact that it is not mentioned in the Code of Civil Procedure. The court did not discuss the numerous cases in which the term is used. See cases cited in *Spencer v. Children's Hospital*, 432 So. 2d 823, 825 nn.1-7 (La. 1983).

32. 432 So. 2d 823 (La. 1983).

33. *Id.* at 825 nn.1-7.

34. The court also cited Civil Code article 21.

"the court has the power to require that the proceedings shall be conducted with dignity and in an orderly and expeditious manner, and to control the proceedings at the trial, so that justice is done."

APPEALS

Article X, section 12 of the Louisiana Constitution provides in part: "The decision of a commission shall be subject to review of any question of law or fact upon appeal to the court of appeal wherein the commission is located, upon application filed with the commission within thirty days after its decision becomes final." If an application for appeal is mailed to the commission within thirty days but is not received until the thirty-first day because the thirtieth day was a Sunday, is the appeal timely? The Louisiana First Circuit Court of Appeals ruled that it was not timely in *Thomas v. Department of Corrections*.³⁵ The court interpreted the phrase "filed with the commission" to mean that the application must actually be deposited with the commission. Although article 5059 of the Code of Civil Procedure generally extends the period by a day if the last day is a legal holiday, the court ruled that the constitutional provision which requires filing (*i.e.*, deposit) within thirty calendar days is not affected by that article. Nor could the constitutional provision be affected by rule 2-13 of the Uniform Rules—Courts of Appeal, which treats a timely deposit in the mail as timely filing. This interpretation, although supportable in the language of article X, section 12, seems unduly strict. The principle that appeals are favored would have been served if the court had applied article 5059, which, while protecting the appeal, would have increased the thirty-day period by only a day or two at the most.

ACTION TO ANNUL—ADOPTION

When the father filed suit in 1980 in a Georgia court for change of custody, the mother answered that an adoption decree rendered in St. Tammany Parish on December 11, 1978 had terminated all of his parental rights. Eight months later, on January 27, 1981, the father filed an action in St. Tammany Parish to have the adoption decree declared null; the mother then filed an exception of prescription based on Louisiana Revised Statutes 9:440 which provides:

No action to annul a final decree of adoption rendered prior to July 31, 1974, for any reason, may be brought. No action to annul a final decree of adoption rendered prior to September 7, 1979, for any reason, shall be brought after a lapse of six months from September 7, 1979.

35. 430 So. 2d 1153 (La. App. 1st Cir. 1983), writ denied.

The trial court sustained the exception; the court of appeal affirmed, but the supreme court reversed.³⁶

Although the statute contains very broad language—"No action to annul . . . for any reason"—which seems to make it applicable in this case, the majority interpreted the statute as not protecting adoption decrees which may have been obtained fraudulently. Therefore, it did not affect the right of the husband to annul the decree on the grounds that it had been obtained by fraud or ill practices, provided he brought the action within one year of the discovery of the fraud or ill practices.³⁷ The court stated that the purposes of the statute and article 2004 of the Code of Civil Procedure were compatible—the statute was intended to protect the interests of the parties involved in the adoption proceedings by affording finality to the adoption decrees, while the purpose of the code article was to prevent a party from subverting the judicial process and thereby obtaining an unconscionable result. The court concluded that the protection afforded by section 440 should be given only to those decrees which have been obtained without fraud or ill practice.

The concurring opinion reached the same result for different reasons. Justice Dennis stated that the statute was intended to apply to any action to annul, including the one brought by the plaintiff in this case, but such an application would be unconstitutional because it would deprive the plaintiff of his most precious rights as a parent without affording him the fundamental protection of due process—notice and an opportunity to be heard.³⁸ The opinion concluded that the state's interest in making all adoption decrees final in order to create a stable environment for the children must yield to the right of the affected parent to participate in the proceeding.

The effect of this decision is that a decree will be protected under section 440 from a subsequent attack only if the procedures employed were in accord with the requirements of due process—that reasonable means were used to notify the affected parent and to give him an opportunity to protect his parental interests.³⁹ Otherwise, the judgment may be challenged under article 2004 of the Code of Civil Procedure on the grounds of fraud or ill practices.

36. *Stewart v. Goeb*, 432 So. 2d 246 (La. 1983).

37. LA. CODE CIV. P. art. 2004.

38. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

39. *Id.*

