

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

STATE OF LOUISIANA

No. 2015-655

Division "L"

Section "6"

THOMAS MILTON BENSON, JR.

Filed: _____

Deputy Clerk

JUDGMENT

This matter came for trial on Monday, June 1, 2015. The trial lasted until Friday, June 12, 2015, with a two day recess intermittent. Petitioners, Renee Benson, Rita LeBlanc, and Ryan LeBlanc, filed a Petition of Interdiction regarding their father/grandfather, Thomas Milton Benson, Jr. The parties are represented as follows:

RANDALL SMITH AND STEPHEN GELE

Smith & Fawer, LLC

201 St. Charles Avenue #3702

New Orleans, Louisiana 70170

Attorneys for Petitioners, Renee Benson, Rita LeBlanc, and Ryan LeBlanc

And

SANFORD L. MICHELMAN

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15760 Ventura Boulevard, 5th Floor

Encino, California 91436

Attorney for Petitioners, Renee Benson, Rita LeBlanc, and Ryan LeBlanc

And

PHILLIP WHITTMANN, JAMES GULOTTA, JR., AND MATTHEW S. ALMON

Stone Pigman, LLC

546 Carondelet Street

New Orleans, Louisiana 70130

Attorneys for Defendant, Thomas Milton Benson, Jr.


IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment in favor of defendant, Thomas Milton Benson, Jr. and against Petitioners, Renee Benson, Rita LeBlanc, and Ryan LeBlanc, dismissing Petitioners' suit at their cost, with prejudice.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Petitioners' prayer that Renee Benson be appointed as curatrix of Tom Benson's property and person be and is hereby **DENIED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Petitioners' prayer that Rita LeBlanc be appointed as under curatrix of Tom Benson's property and person be and is hereby **DENIED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all other relief sought by Petitioners herein be and is hereby **DENIED**.

ORDER, READ, AND SIGNED, this 18th day of June, 2015,
New Orleans, Louisiana.


JUDGE KERN A. REESE
DIVISION "L"

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REASONS FOR JUDGMENT

Petitioners, Renee Benson, Rita LeBlanc, and Ryan LeBlanc, filed a petition herein on January 22, 2015, seeking to have their father and grandfather, respectively, Thomas Milton Benson, Jr. (hereinafter Tom Benson), fully interdicted, alleging he has sustained an infirmity that renders him unable to consistently make reasoned decisions regarding the care of his person and his property, or to communicate those decisions, and whose interests cannot be protected by less restrictive means. La. C.C. art. 389.

Petitioners alleged that Tom Benson, who is currently eighty-seven years old, experienced a decline in his health over the last two years, particularly in 2014. Starting in May 2014, Tom Benson had several surgical procedures to repair a torn meniscus in his left knee. The last one was performed on November 21, 2014. Tom Benson was not his usual self after these procedures. The procedure in September 2014 was particularly debilitating, rendering him immobile, relegating him to a wheelchair, and requiring twenty-four hour nursing assistance for his care. Additionally, he was prescribed a number of medications for his various maladies, including narcotic pain medication.

Besides his health issues, there were ever changing dynamics in his familial relationships. The decisions he undertook between December 2, 2014 and January 7, 2015, coupled with his health issues, precipitated the filing of this petition and the allegations made that defendant had evidently lost his ability to make reasoned decisions and was subjected to undue influence by his current spouse, Gayle Benson.

The court conducted the procedurally mandated summary proceedings, commencing on June 1, 2015 and ending on June 12, 2015, pursuant to articles 4546 and 4547 of the Louisiana Code of Civil Procedure. In keeping with La. C.C.P. art. 4545, the court appointed not one, but three physicians to examine the defendant. Following the procedures outlined in the Louisiana

Medical Malpractice statutes, the court allowed the petitioners and the defendant to each select one examiner. The petitioners chose Ted Bloch, III, M.D., a court qualified expert in geriatric psychiatry. The defendant selected John Thompson, Jr., M.D., a court qualified expert in general psychiatry and forensic psychiatry. Both physicians then chose Kenneth M. Sakauye, M.D., a court qualified expert in geriatric psychiatry, as the third member of the examination team. The court perceived this to be the best way to secure in depth opinions on the medical issues presented and to insure equity to all parties.

The court also allowed the parties to testify if they desired, and to call three additional collateral witnesses. Petitioners chose to call, in addition to themselves, the following individuals: Tom Roddy, a longtime friend and business associate of Tom Benson, Takiyah Daniels, the chief nurse of defendant's home health team from September 2014 to March 2015, and Teresa Trent, the Bensons' former housekeeper. The defendant chose to call: Dennis Lauscha, the president of the New Orleans Saints, Gayle Benson, the defendant's spouse, and Paul Cordes, the defendant's estate counsel. Dr. Ted Bloch testified during petitioners' case in chief, while Drs. John Thompson, Jr. and Kenneth M. Sakauye testified on behalf of the defendant.

In an effort to have a complete perspective of the case, the court performed, what has been called, a "Watermeier hearing" with the defendant, Tom Benson. The court conducted the hearing at the defendant's office on Airline Highway in Jefferson Parish on April 20, 2015. As in a typical Watermeier hearing, the court conducted the questioning solely, with counsel for both petitioners and defendant present. Counsel were not allowed to question the defendant. The questioning lasted for one hour and was recorded for appellate review should the need arise. The court's interpretation of La. C.C.P. art. 4547 afforded the defendant the right to testify if he so chose; however, the court also ruled that the defendant had the right not to testify. The defendant acquiesced in being interviewed by the court, but otherwise chose not to testify.

As previously stated, article 389 of the Louisiana Civil Code succinctly sets forth the criterion for full interdiction, to wit:

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.

Louisiana Civil Code article 390 allows a limited interdiction, which was alternatively pled by the petitioners should the court deem full interdiction unwarranted.

The Civil Code makes it abundantly clear that “[f]ull interdiction is a last resort and, as a result, is warranted only when a person’s interests cannot be protected by less restrictive means...for example, his interests (1) are currently being protected by other legal arrangements, including a procuration, mandate or trust...” La. C.C. art. 389 Revision Comments - 2000(e).

The jurisprudence of the State of Louisiana has long held that interdiction is indeed a harsh remedy, even likened to a “civil death”. *Doll v. Doll*, 156 So.2d 275, 278 (La.App. 4 Cir. 1963). The burden of proof in interdiction cases is by clear and convincing evidence, a substantial burden indeed. La. C.C.P. art. 4548. In order to have a person fully interdicted, the party petitioning for the interdiction must prove, by clear and convincing evidence, that the person to be interdicted is mentally incapable of administering his estate and that he is unable to care for his person. *Interdiction of Lemmons*, 511 So.2d 57 (La.App. 3 Cir. 1987); See also *Interdiction of Cornwell v. Cornwell*, 702 So.2d 938 (La.App. 3 Cir. 1997).

The court has carefully reviewed the evidence and finds that petitioners filed this interdiction proceeding after Tom Benson made the drastic decision to alter his succession plans for ownership of his professional sports teams and allocation of his estate upon his demise. The petitioners deemed this to be illustrative of his inability to make reasoned decisions regarding his person and his property.

In his closing argument to the court, petitioners’ counsel, Randall Smith, argued that the defendant should be judged not on his best day, but on his worst day. The court found profundity in this comment. December 19, 2014 was one of Tom Benson’s worst days. He was about four weeks into his recovery from his last knee surgery, taking a plethora of medications, obviously in pain, and traveling about the Saints’ headquarters with a portable I.V. in tow. Yet, nonetheless, he realized the medications were “messing him up”. He asked Rita LeBlanc and Dennis Laushca rational, logical questions about his business operations and succession plans for over an hour. Unbeknownst to Rita LeBlanc, by that date, Tom Benson had begun exploring the prerequisites for making her his sole successor in the ownership of the Saints and Pelicans, although he would ultimately change his mind by December 27, 2014.

Takiyah Daniels, who the court found to be perhaps the most credible fact witness who appeared in this case, testified Tom Benson agonized over distancing himself from his family

members, cried about it, read the December 27, 2014 letter three times, and then decided to place his signature on the document. She testified that no one stood over him while he signed it. It was his decision.

Louisiana courts have held that just because a person has memory lapses does not mean the court should impose the harsh remedy of interdiction. *Interdiction of Lemmons*, 511 So.2d 57 (La.App. 3 Cir. 1987); *Interdiction of Salzer*, 482 So.2d 166 (La.App. 4 Cir. 1986). Additionally, in late 2014 into early 2015, Tom Benson was on a regimen of medication that required adjustment. By the time the court undertook the “Watermeier hearing” in April 2015, Tom Benson had clarity of thought and volition, despite some memory lapses, that led the court to conclude that the foggy state of December 2014 had cleared. *Interdiction of Clement*, 46 So.3d 804 (La.App. 2 Cir. 2010). He definitively affirmed the actions he took in December and January, unequivocally. He actually apologized to the court for a somewhat boisterous outburst stating his feelings. The court sat across the desk from the defendant, looked into his eyes, listened carefully to his responses, and concluded the capacity to make reasoned decisions was present. The evidence presented at the hearing corroborated this initial impression.

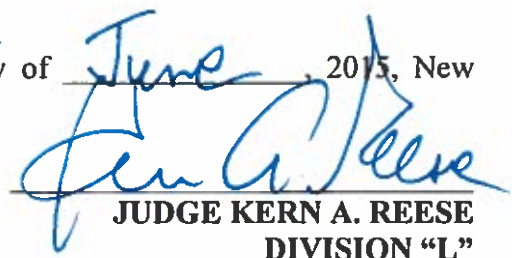
Additionally, at the hearing, Drs. Thompson and Sakaue opined that as an eighty-seven year old octogenarian, Tom Benson has sustained a mild cognitive impairment that has impacted his short term memory, but does not rob him of his own volition and ability to make reasoned decisions. They also opined he was not vulnerable to undue influence.

Conversely, Dr. Ted Bloch opined that Tom Benson’s impairment was moderate to severe, thereby warranting full interdiction.

The court has carefully considered all the evidence adduced at the hearing, all the pleadings filed in these proceedings, the testimony of the witnesses, and the arguments of counsel, and finds the defendant, Thomas Milton Benson, Jr., is able to make reasoned decisions as to his person and his property and therefore, this court WILL NOT order an interdiction of any kind in these proceedings.

The petitioners’ petition is DISMISSED at their cost, with prejudice.

ORDER, READ, AND SIGNED, this 18th day of June, 2015, New Orleans, Louisiana.


JUDGE KERN A. REESE
DIVISION “L”