

CHAPTER 630

PROCEEDINGS AUXILIARY TO EXECUTION

Referred to in §441.17, 537.5104

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630.1 Debtor examined.

When execution against the property of a judgment debtor, or one of several debtors in the same judgment, has been issued from the district court or an appellate court to the sheriff of the county where such debtor resides, or if the debtor does not reside in the state, to the sheriff of the county where the judgment was rendered, and execution issued thereon is returned unsatisfied in whole or in part, the owner of the judgment is entitled to an order for the appearance and examination of the debtor.

[C51, §1953; R60, §3375; C73, §3135; C97, §4072; C24, 27, 31, 35, 39, §11800; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.1]

630.2 Affidavit as to property.

The like order may be obtained at any time after the issuing of an execution, upon proof, by the affidavit of the party or otherwise, to the satisfaction of the court who is to grant the same, that any judgment debtor has property which the debtor unjustly refuses to apply towards the satisfaction of the judgment.

[C51, §1954; R60, §3376; C73, §3136; C97, §4073; C24, 27, 31, 35, 39, §11801; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.2]

630.3 By whom order granted.

Such order may be made by the district court in which the judgment was rendered, or by the district court of the county to which execution has been issued. The debtor may be required to appear and answer before either of such courts, or before a referee appointed for that purpose by the court who issued the order, to report either the evidence or the facts.

[C51, §1955; R60, §3377, 3385; C73, §3137; C97, §4074; C24, 27, 31, 35, 39, §11802; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.3]

630.3A Hearing to determine judgment debtor's income.

At any time after the rendition of judgment the court, upon application of the judgment creditor or the judgment debtor and upon notice to the adverse party as the court shall direct, shall conduct a hearing to determine the reasonably expected annual earnings of the judgment debtor for the current calendar year and the applicable limitation upon garnishment as provided in section 642.21. The court shall also consider in the interest of justice whether a greater amount than provided in section 642.21 shall be exempt from garnishment. In making the determination the court shall consider the age, number and circumstances of the dependents of the debtor, existing federal poverty level guidelines, the debtor's maintenance and support needs, the debtor's other financial obligations and any other relevant information. An order reducing the garnishment may be modified or vacated upon the application of a party to the court, notice to the adverse party, and a showing

at a hearing of changed circumstances. An additional filing fee shall not be assessed for proceedings under this section.

84 Acts, ch 1239, §8

Referred to in §642.14

630.4 Debtor interrogated.

The debtor, on the debtor's appearance, may be interrogated in relation to any facts calculated to show the amount of the debtor's property, or the disposition which has been made of it, or any other matter pertaining to the purpose for which the examination is permitted to be made. The interrogatories and answers shall be reduced to writing and preserved by the court or officer before whom they are taken. All examinations and answers under this chapter shall be on oath.

[C51, §1956; R60, §3378; C73, §3138; C97, §4075; C24, 27, 31, 35, 39, §11803; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.4]

630.5 Witnesses examined.

Witnesses may be required by order of the court or by subpoenas from the referee, to appear and testify upon any proceedings under this chapter, in the same manner as upon the trial of an issue.

[R60, §3379; C73, §3139; C97, §4076; C24, 27, 31, 35, 39, §11804; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.5]

630.6 Disposition of property.

If any property, rights, or credits subject to execution are thus ascertained, an execution may be issued and the same levied upon. The court may order any property of the judgment debtor not exempt, in the hands of the debtor or others or due the debtor, to be delivered up, or in any other mode applied towards the satisfaction of the judgment.

[C51, §1957; R60, §3380; C73, §3140; C97, §4077; C24, 27, 31, 35, 39, §11805; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.6]

630.7 Receiver — injunction.

The court may also, by order, appoint the sheriff of the proper county or other suitable person, a receiver of the property of the judgment debtor, or by injunction forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, or any interference therewith.

[R60, §3381; C73, §3141; C97, §4078; C24, 27, 31, 35, 39, §11806; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.7]

Referred to in §331.653

630.8 Equitable interest sold.

If it shall appear that the judgment debtor has any equitable interest in real estate in the county in which proceedings are had, as mortgagor, mortgagee, or otherwise, and the interest of said debtor can be ascertained as between the debtor and the person holding the legal estate or having any lien on or interest in the same, without controversy as to the interest of such person, the receiver may be ordered to sell and convey the same, or the debtor's equitable interest therein, in the same manner as is provided for the sale of real estate upon execution.

[R60, §3382; C73, §3142; C97, §4079; C24, 27, 31, 35, 39, §11807; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.8]

[P] Sale of real estate, §626.74 et seq.

630.9 Sheriff as receiver.

If the sheriff is appointed receiver, the sheriff and the sheriff's sureties shall be liable on the sheriff's official bond for the faithful discharge of the sheriff's duties as such.

[R60, §3383; C73, §3143; C97, §4080; C24, 27, 31, 35, 39, §11808; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.9]

Referred to in §331.653

630.10 Continuance.

The court or referee acting under the provisions of this chapter shall have power to continue the proceedings from time to time until they shall be completed.

[R60, §3384; C73, §3144; C97, §4081; C24, 27, 31, 35, 39, §11809; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.10]

630.11 Debtor failing to appear — contempt.

Should the judgment debtor fail to appear after being personally served with notice to that effect, or should the debtor fail to make full answers to all proper interrogatories propounded to the debtor, the debtor will be guilty of contempt, and may be arrested and imprisoned until the debtor complies with the requirements of the law in this respect. If any person, party, or witness disobey an order of the court, judge, or referee, duly served, such person, party, or witness may be punished as for contempt.

[C51, §1958; R60, §3386; C73, §3145; C97, §4082; C24, 27, 31, 35, 39, §11810; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.11]

[P] Contempts, chapter 665

630.12 Service of order.

The order mentioned herein shall be in writing and signed by the court, judge, or referee making the same, and be served in the same manner as an original notice in other cases.

[R60, §3387; C73, §3146; C97, §4083; C24, 27, 31, 35, 39, §11811; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.12]

630.13 Compensation.

Sheriffs, referees, receivers, and witnesses shall receive such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and the collection thereof from such party or parties as ought to pay the same shall be enforced by an order or execution.

[R60, §3388; C73, §3147; C97, §4084; C24, 27, 31, 35, 39, §11812; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.13]

630.14 Warrant of arrest.

Upon proof, to the satisfaction of the court or judge authorized to grant the order aforesaid, that there is danger that the defendant will leave the state, or that the defendant will hide, such court or judge, instead of the order, may issue a warrant for the arrest of the debtor, and for bringing the debtor forthwith before the court or judge, upon which being done, the debtor may be examined in the same manner and with the like effect as is above provided.

[C51, §1959; R60, §3389; C73, §3148; C97, §4085; C24, 27, 31, 35, 39, §11813; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.14]

[P] Approval of warrant and expenses, §70A.12, 70A.13

630.15 Bond.

Upon being brought before the court or judge, the debtor may enter into an undertaking in such sum as the court or officer shall prescribe, with one or more sureties, that the debtor will attend from time to time for examination before the court or judge as shall be directed, and will not, in the meantime, dispose of the debtor's property, or any part thereof; in default whereof the debtor shall continue under arrest, and may be committed to jail for safekeeping until the examination shall be concluded.

[R60, §3390; C73, §3149; C97, §4086; C24, 27, 31, 35, 39, §11814; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.15]

630.16 Equitable proceedings.

At any time after the rendition of a judgment, an action by equitable proceedings may be brought to subject any property, money, rights, credits, or interest therein belonging to the defendant to the satisfaction of such judgment. In such action, persons indebted to the

judgment debtor, or holding any property or money in which such debtor has any interest, or the evidences of securities for the same, may be made defendants.

[R60, §3391; C73, §3150; C97, §4087; C24, 27, 31, 35, 39, §11815; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.16]

Referred to in §630.18

[P] Grantor deemed equitable owner, §639.30

630.17 Answers verified — petition taken as true.

The answers of all defendants shall be verified by their own oath, and not by that of an agent or attorney, and the court shall enforce full and explicit discoveries in such answers by process of contempt; or, upon failure to answer the petition, or any part thereof, as fully and explicitly as the court may require, the same, or such part not thus answered, shall be deemed true, and such order made or judgment rendered as the nature of the case may require.

[R60, §3392; C73, §3151; C97, §4088; C24, 27, 31, 35, 39, §11816; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.17]

Referred to in §630.18

[P] Contempts, chapter 665

630.18 Lien created.

In the case contemplated in sections 630.16 and 630.17, a lien shall be created on the property of the judgment debtor, or the debtor's interest therein, in the hands of any defendant or under the defendant's control, which is sufficiently described in the petition, from the time of the service of notice and copy of the petition on the defendant holding or controlling such property or any interest therein.

[R60, §3393, 3394; C73, §3152; C97, §4089; C24, 27, 31, 35, 39, §11817; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.18]

630.19 Surrender of property enforced.

The court shall enforce the surrender of the money or securities therefor, or of any other property of the defendant in the execution, which may be discovered in the action, and for this purpose may commit to jail any defendant or garnishee failing or refusing to make such surrender until it shall be done, or the court is satisfied that it is out of the defendant's or garnishee's power to do so.

[R60, §3395; C73, §3153; C97, §4090; C24, 27, 31, 35, 39, §11818; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.19]

[P] Analogous provisions, §633.112, 680.10