

CHAPTER 296.

DISPOSITION OF LANDS OF WARDS; SPECIFIC PERFORMANCE; CHANGE OF NAMES; ESTABLISH HEIRSHIPS.

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296.01 Conveyance of lands held in trust by persons under disability. Whenever any minor or person incompetent to manage his affairs shall be seized or possessed of any lands or interest therein by way of mortgage or in trust only for others, the circuit or county court of the proper county may, upon the petition of the guardian of such minor or incompetent person or of any person in any way interested in such real estate, make an order authorizing or compelling such minor or incompetent person to convey and assure such lands or interest therein to any person entitled thereto, in such manner as the court shall direct.

296.02 Specific performance. The circuit and county court shall have power to authorize or compel the specific performance of any contract made by any person who may die or become incompetent before the performance thereof, by any minor heir or devisee or other person, or by such incompetent person or his guardian, on the petition of the executors or administrators of such deceased person, the guardian of such incompetent person or of any other person interested in such contract.

Note: The findings of the trial court that the contract was made will not be overthrown on appeal unless contrary to the clear preponderance of the evidence. Statements of decedent to the effect that the niece and her husband had no claim to the farm were self-serving declarations and incompetent. Decedent's statements, having the character of admissions of the existence of the oral contract, that the farm would go to the niece on his death were competent and properly received as declarations against interest. Estate of Powell, 206 W 513, 240 NW 122.

The contract relied on not being one for the conveyance of decedent's entire inter-

est in the land, but being for the conveyance of an undivided interest, claimant's joint occupancy of the land with decedent was sufficient possession under the contract to support specific performance. In such case, a part of the consideration for the contract having been that the son would continue to stay on the land during the father's lifetime, the contract was not fully performed by the son until the father's death; and the action for specific performance having been brought after the father died without performing is not barred by 330.18 (4), nor by laches. Estate of Shinoe, 212 W 481, 250 NW 505.

296.03 Specific performance; order for conveyance. No order authorizing or directing any such conveyance or the performance of any such contract shall be made until after hearing the parties and being satisfied that such conveyance ought to be made or such contract ought to be performed. The court may, by such order, direct the guardian of such minor or incompetent person, or a special guardian appointed in such proceeding, to execute any conveyance or to do any other act which is necessary to carry such order into effect.

296.04 Specific performance; who may bring action; executor and heir to convey. Whenever any person who is bound to convey any real estate or interest therein shall die

before making the conveyance, the person entitled thereto, or if he be dead then his personal representatives or any person who would have been entitled to the estate under him as heir, devisee or otherwise, in case the conveyance had been made according to the terms of the contract may maintain an action in the circuit or county court to enforce a specific performance of the contract by the heirs, devisees or the executor or administrator of such deceased vendor. If it shall appear that the plaintiff is entitled to have a conveyance of such real estate, the court may require such executor or administrator to convey the estate in like manner as the deceased person might or ought to have done if living; and, if the heirs or devisees of such deceased person or any of them shall be within the state and made parties to such action, the court may require them, instead of the executor or administrator, to convey the estate or may require them to join with the executor or administrator in such conveyance; or the court may, by its judgment, pass the title to such real estate to the plaintiff without any conveyance; and every conveyance or judgment so made shall be effectual to pass the estate contracted for as fully as if the vendor had executed the conveyance.

296.05 Specific performance; judgment recorded in register of deeds' office; effect. A copy of such judgment, directing such conveyance or passing the title to the plaintiff, duly certified by the clerk and recorded in the office of the register of deeds in the county where the lands lie, shall give the person entitled to such conveyance a right to the possession of the lands contracted for and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of such judgment. The court may enforce such judgment by any proper proceedings therein.

296.06 Realty of wards; grounds for mortgage, sale, lease. Any real estate, or interest therein belonging to a minor or to a person incompetent to manage his affairs may be sold, mortgaged or leased:

(1) When the personal property and the income of the real estate of such minor or incompetent person are together insufficient for the payment of his debts or for the maintenance and education of himself and family;

(2) When the interests of such minor or incompetent person require or will be substantially promoted by such disposition on account of such real estate or interest therein being exposed to waste or dilapidation, or being unproductive, or for other peculiar reasons or circumstances.

296.07 Realty of wards or incompetents; application for sale or incumbrance. The application for such disposition must be made to the circuit or county court of the county in which such real estate or some part thereof is situated or to the presiding judge of either court by petition of the general guardian of the minor or of such incompetent person or by any relative or other person in behalf of either. Such petition must be verified and must set forth the facts which would authorize the selling, mortgaging or leasing of such real estate or some part thereof for one or more of the reasons set forth in section 296.06. If a sale is sought on behalf of some but not all, of the minors in any case where an action for partition would lie, the whole tract may be sold and the proceeds applied as directed in section 296.17; but the share of those who do not join in the application shall be paid to their guardians.

296.08 Realty of wards; guardian; bond; prosecution of breach. (1) (a) When such application is made on behalf of a minor, who has no general guardian, the court or presiding judge must appoint some suitable person special guardian of such minor in the proceeding; such special guardian shall give a bond to the judge of the court, to be filed in the county court or with the clerk of the circuit court, in such sum, with such sureties, and in such form as the county or circuit court or judge shall direct, conditioned for the faithful performance of the trust reposed, for paying over, investing, or accounting for all moneys that shall be received by such guardian, according to law and for observance of the directions of the court in relation to the said trust.

(b) When the minor shall have a general guardian, such general guardian may be appointed special guardian in said matter; or, such general guardian, as such, may be authorized and empowered to act in and conduct such proceedings in the same manner, and with the same provisions as to an additional general guardian's bond, as is provided in said proceedings for the conduct thereof by the general guardian of incompetent persons.

(2) When such application is made on behalf of an incompetent person, the guardian of such incompetent person shall, in the discretion of the court, give a bond to the judge of the court to be filed in the county court or with the clerk of the circuit court, in such sum, additional to the guardian's original bond, as the court or judge may deem necessary, with such sureties and such conditions for the faithful performance of trust reposed as above prescribed by this section.

(3) In case of the breach of the conditions of such bond, it may be prosecuted for the benefit of the party injured without any direction therefor.

Note: Under the statutory scheme for the sale of lands of an incompetent person, moneys derived by a general guardian from such a sale are in the guardian's hands for all purposes. An obligation on an additional bond, furnished in connection with the sale of the ward's real estate, is general so as to render the surety on such bond liable for the failure of the guardian to pay over all moneys in his hands derived from the sale and all moneys due from him on final settlement. *Luce v. Fidelity & Casualty Co.*, 222 W 50, 268 NW 131.

296.09 Inquiry relative to sale or incumbrance. Upon the presentation of such petition and the filing of such bond the court or the presiding judge may proceed in a summary manner to inquire into the merits of such application or make an order referring it to some suitable person as referee to inquire into and report upon the matters contained in such petition, whose duty it shall be to examine into the truth of the representations made, to hear the parties interested in the property or otherwise interested in the application and report thereupon with all convenient speed.

296.10 Order for lease, mortgage, sale. If, after an examination of the matter by the court or judge to which application is made, without a reference, or on the coming in of the report of the referee, and on examination of the matter, it shall satisfactorily appear that a disposition of any part of the real estate of such minor or incompetent person or any interest therein is necessary and proper, for any of the causes mentioned in section 296.06 such court or judge shall make an order directing and authorizing the guardian to contract for the leasing, mortgaging or sale of such real estate or interest therein or of such part thereof as the court or judge shall deem proper in such manner and with such restrictions as shall be deemed expedient.

296.11 Contract for lease, mortgage, sale; approval. No lease, mortgage or sale shall be made until an agreement therefor shall have been entered into by such guardian subject to the approval of the proper court or judge. Upon the confirmation of such agreement by such court or judge the guardian must execute a lease, mortgage or deed as directed by the order of confirmation.

Note: A guardian has authority to lease approval under 319.35. *Haas v. Welch*, 207 W lands of his ward without judicial license or 84, 240 NW 789.

296.12 Wards; other disposal of real estate; acquisition of real estate. The courts and judges mentioned in this chapter are further empowered and authorized to make any other disposition of the real estate of any minor or other ward mentioned herein and to authorize the purchase in the name of such ward of any real estate within the state of Wisconsin when it shall be made to appear to such court or judge that such proposed disposition or purchase will substantially promote the interests of any such ward, provided that no debt shall be incurred or assumed by such ward for the purpose of any such real estate. The provisions of this chapter are applicable to all proceedings under this section.

296.13 Platting realty of wards before sale. Whenever an order shall have been made for the sale of any such real estate and it shall be made to appear to the court or judge that the interest of the minor or other ward would be promoted by platting such real estate the court or judge may, by order, authorize the guardian either alone or together with the cotenants, if any, or other owners, to make and acknowledge a plat of such real estate in the manner prescribed in chapter 236. A plat made pursuant to such order, certified and acknowledged in manner and form prescribed in said chapter and approved by the court or presiding judge, shall be as valid and effectual as if made by such minor when of full age or by such incompetent person when of sound memory and understanding. After such plat shall have been duly made and recorded such guardians may make separate sales of any lot or lots, according to such plat, or of such ward's interest therein in the manner above prescribed.

296.14 Realty of wards; will or conveyance not disregarded. No real estate or interest therein shall be sold, mortgaged or leased under the provisions of this chapter contrary to the provisions of any will by which the same was devised or of any conveyance by which the same was transferred to such minor or incompetent person.

296.15 Realty of wards, validity of the conveyance. Every deed, mortgage, lease or other conveyance made in good faith by the guardian of a minor or incompetent person, pursuant to any order or judgment of the county or circuit court or the presiding judge of either, made under the provisions of this chapter, shall be as valid and effectual as if made by such minor when of full age or by such incompetent person when of sound memory and understanding.

296.16 Realty of wards; effect of sale; proceeds realty. No sale of the real estate of any minor or incompetent person shall give to such minor or incompetent person any other or greater interest or estate in the proceeds of such sale than he had in the estate so sold; but the said proceeds shall be deemed real estate of the same nature as the property sold.

296.17 Realty of wards, proceeds, how applied; accounts; order of circuit filed in county court. (1) The court or judge shall make an order for the application and disposition of the proceeds of any such sale or mortgage, and of the income derived from the investment thereof and of the rent accruing upon any such lease, and direct the investment of any portion thereof belonging to such minor or incompetent person which is not needed for the payment of debts or the immediate support of himself and family, so as to secure the same for the benefit of such minor or incompetent person, and shall direct a return of such investment to be made on oath as soon as may be, and shall require accounts to be rendered periodically by any guardian or other person who may be intrusted with the disposition of such proceeds or the income thereof.

(2) When such order is made by a circuit court or circuit judge a certified copy thereof, of the return of the investments made in pursuance thereof and of the accounts rendered by any guardian or other person shall be made by the clerk of said court and filed in the county court of the proper county. If any such guardian or other person shall fail or neglect to make a proper return or to render such accounts as the order of the circuit court or judge thereof requires such court or judge shall cause the proper county court to be informed of the fact and such court shall thereupon have the same authority to call the guardian or other person so in default to account, and the same procedure shall apply as if the entire proceedings were had in the county court.

296.18 Ward's estate is subject to particular estates. (1) If the real estate or interest therein of any minor or any incompetent person which is directed to be sold is subject to an estate for life or for years in the whole or any part thereof the order for the sale may, in the discretion of the court or presiding judge, direct that such estate shall be sold, with the reversionary estate or interest of the minor or incompetent person.

(2) After such sale the court or judge must ascertain the present value of such estate according to the law applicable to annuities and direct the payment of such sum in gross, or the investment of the proceeds or the proper portion thereof and the payment of the interest therefrom to the person having such particular estate until the expiration thereof.

296.19 Ward's particular estate, disposition. Where the interest of the minor or incompetent person in real estate consists of an estate for life or for years the court or presiding judge may, by order, authorize his guardian to join with the person holding the reversionary estate in a conveyance of the property to which such interest attaches, so as to fully convey the particular estate, on receiving from the proceeds of the sale a gross sum in satisfaction of such estate or such proceeds or the proper portion thereof to be invested, and the interest thereon paid to the person having such estate until the termination thereof; in either case the amount to be ascertained as prescribed in section 296.18. When the proceeds or a proportionate part of such proceeds is received by the guardian for investment, the order of the court or presiding judge must provide for the investment thereof until termination of the particular estate, and then for the payment thereof to the person entitled thereto.

296.20 Minor, or incompetent, ward of the court. From the time of application on behalf of a minor or of an incompetent person having no guardian for the disposition of his property he shall be considered the ward of the court in which the application is made, so far as it relates to property, its proceeds and income.

296.21 Estate of incompetent, lease, etc., of. The real estate of an incompetent person shall not be leased for more than five years, or mortgaged or disposed of otherwise than is hereinbefore authorized and directed.

296.22 to 296.24 [*Repealed by 1929 c. 270*]

296.25 Nonresident wards, foreign guardian to convey estate; special guardian. (1) When any minor or incompetent person residing without this state shall own any right, title or interest in or to any real estate in this state and shall have a guardian or conservator who shall have been appointed in the state, territory or district or country where he resides and no guardian appointed in this state, the foreign guardian or conservator may file a copy of his appointment, authenticated so as to make the same receivable in evidence, in the circuit or county court in the county in which the real estate of such infant or incompetent person is situated.

(2) Upon such filing and proper application such foreign guardian or conservator may be licensed by the court or presiding judge to lease, mortgage, or sell the real estate of his ward in said county, or any portion thereof, or interest therein, in the same manner and upon the same terms and conditions and for the same purposes as prescribed in this chapter in the case of a guardian appointed in this state. And such court, or the presiding judge thereof may, upon the petition of such foreign guardian or conservator, appoint some suitable person residing in this state, special guardian of such minor or incompetent person to make such lease, mortgage or sale in the manner provided by this chapter.

(3) In case a special guardian shall be appointed the moneys arising from such lease, mortgage or sale shall be paid out and disposed of or invested as may be directed by the court or judge appointing such special guardian. The duly authenticated copy of the appointment of any guardian or conservator appointed in any other state, district, territory or country together with a duly authenticated copy of the appointment of the special guardian of such minor or incompetent person, shall also be properly recorded and tract indexed at the ward's expense in the office of the register of deeds of the county in which such real estate is situated.

296.26 Future estates may be sold. Any real estate or interest therein which may at any time in the future be owned or possessed by any after-born child or by any person, whether in being or not, known or unknown, who shall or may become interested therein under and by virtue of any deed or other instrument, or by any last will and testament, may be sold, mortgaged, leased or otherwise disposed of as provided in sections 296.26 to 296.35.

296.27 Future estates, application for sale. The application for such disposition may be made to the circuit, county or superior court of the county in which such real estate or some part or interest therein is situated, or to the circuit judge in vacation, by the verified petition of any one or more of the parties having any title to or interest in said land. If any petitioners are minors, the petition shall be signed by their general guardian. Such petition must set forth facts which would authorize the selling, mortgaging, leasing or otherwise disposing of such real estate or some part thereof, or interest therein, for one or more of the reasons set forth in section 296.06. Such lands or interests therein shall be sold, mortgaged, leased or otherwise disposed of in such manner as will best promote the interests of those concerned, whether in being or not, and whether their interests are present or contingent. Notice of such application shall be given to all parties having any title to or interest in said lands, who are living at the time of such petition, except those who have joined in the petition at least ten days prior to the date of the hearing of such application, by service of the same in the manner provided in chapter 262 for the service of the summons in a civil action.

296.28 Future estates, sale, referee bond. Upon such application being made the court or circuit judge must appoint some suitable person as referee, under whose direction the sale, mortgaging, leasing or other disposition of said lands or interest shall be made, which referee shall give a bond to the judge of the court in such amount, with such sureties and in such form as the court or circuit judge shall direct, conditioned as provided in section 296.08. All proceedings had prior to June 7, 1913, under this chapter in county courts not having civil jurisdiction are hereby legalized.

296.29 Future estates, sale, examination and report. Upon the filing of such bond, the court or the circuit judge may proceed in a summary manner to inquire into the merits of such application, or make an order directing the referee to inquire into and report upon the matters contained in such petition, and he shall examine into the truth of the representations made, hear the parties interested in the property or otherwise interested in the application, and report thereupon with all convenient speed.

296.30 Future estates, order for disposition. If, after such summary examination or on the coming in of the report of the referee, and on examination of the matter it shall satisfactorily appear that a sale, mortgage, lease or other disposition of the whole or any part of the said real estate or interest therein is necessary or proper, the court or the circuit judge shall make an order directing the sale, mortgaging, leasing or other disposition of such real estate or interest therein or of such part thereof as the court or judge shall deem proper to be made by the referee, in such manner and with such restrictions as shall be deemed expedient.

296.31 Future estates, approval of conveyance. No such sale, mortgage, lease or other disposition of said property shall be made until an agreement therefor shall be entered into by such referee, subject to the approval of the court or the circuit judge. Upon the confirmation of such agreement by such court or judge, the said referee must execute a deed, mortgage, lease or other instrument of conveyance as directed by the said order of confirmation.

296.32 Future estates, approved conveyance vests title. Every deed, mortgage, lease or other conveyance made in good faith by the referee pursuant to any order or judgment of the court or the circuit judge, made under the provisions of sections 296.26 to 296.35 shall be valid and effectual to vest in the purchaser, mortgagee, lessee or other party under such conveyance, a good and sufficient title as against all persons having, or who may have, any title to or interest or estate in the said lands, whether in being or not, under or by virtue of the terms of any deed or other instrument, or under and by virtue of any last will and testament, and the court may require any or all parties who are living having any interest in said lands to join said referee in the execution of said instrument of conveyance and release all their interests therein.

296.33 Proceeds deemed real estate. No sale, mortgage, lease or other conveyance made as aforesaid of the real estate or any interest therein of any person, whether in being or not, shall give to such person any other or greater interest or estate in the proceeds of such sale, mortgaging or other disposition of said lands or interest therein than he had in the estate so sold or disposed of but the said proceeds shall be deemed real estate of the same nature as the property sold.

296.34 Future estates, proceeds placed in trust. The proceeds of the said sale, mortgage, lease or other conveyance of said real estate, after payment under the direction of the court or the circuit judge of the costs and expenses of the said proceedings, shall be paid to some designated trustee, and held, invested and disposed of in such manner and for such time as shall be designated by said court, or circuit judge, for the benefit of such person or persons as may be or become interested in said lands or interests under and by virtue of said deed or other instrument or said will and testament, and the said proceeds, as well as the interest and income thereof, shall at all times abide the order of said court.

296.35 Future estates, disposal, proceeding in rem. The proceeding under sections 296.26 to 296.35 shall be deemed to be a proceeding in rem against the land or interest therein, and the final order providing for the sale, mortgaging, leasing or other disposition of the same shall operate directly on said land and shall be as valid, effectual and binding as though the party to be affected thereby were then living or had a present vested interest in the same.

296.36 Changing names, court procedure. Any resident of this state, whether a minor or of full age, may, upon petition to the circuit court of the county where he resides and upon filing a copy of the notice, with proof of the publication thereof, as required by section 296.42, if no sufficient cause be shown to the contrary, have his name changed or established by order of said court. If the person whose name is to be changed is a minor under the age of 14 years, such petition may be made by: (a) both parents, if living, or the survivor of them; (b) the guardian or person having legal custody of such minor if both parents are dead or if the parental rights have been terminated by judicial proceedings; (c) the mother, if the minor is illegitimate. Such order shall be entered at length upon the records of the court and a copy thereof, duly certified, shall be filed in the office of the register of deeds of such county, who shall make an entry thereof in a book to be kept by such register. If the person whose name is changed was born in the state of Wisconsin, a notice shall be filed with the state registrar of vital statistics containing such information as the registrar shall require; the state registrar shall then add such information to the birth certificate or other records and direct the register of deeds and the local registrar to make similar additions. No person engaged in the practice of any profession for which a license is required by the state shall change his Christian or given name or his surname to any other Christian or given name or any other surname than that under which he was originally licensed in such profession in this or any other state. This prohibition against a change of name by a person engaged in the practice of any profession does not apply to a change of name resulting from marriage or divorce. [1941 c. 259; 1943 c. 372]

296.37 to 296.40 [Repealed by 1943 c. 372]

296.41 Heirship, courts may establish. The circuit court may by order establish any minor or adult person as the legal heir of another person of full age, both resident of the state, upon a petition setting forth their names and residence and the reasons for such action, signed by the person desiring him to be so established, and when such proposed heir is over the age of fourteen years, also signed by him, and the notice hereinafter required, with proof of the publication thereof. Such order shall be entered at length upon the records of the court.

296.42 Heirship, change of name, notice of application. Before making an application to the court for changing or establishing a name or establishing an heirship the applicant must cause a notice thereof, stating therein the nature of the application, the time and place when and where the same will be made, to be published once each week in a newspaper printed in the county where such application will be made, or if there be none in such county, then in the official state paper for at least six weeks successively.