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HOUSE BILL NO. 2566

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact §§ 16.1-107 and 16.1-298 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-106.1, relating to the withdrawal of appeals from general district courts or juvenile and domestic relations district courts.

Patrons—Shannon and Rust

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-107 and 16.1-298 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-106.1 as follows:

§ 16.1-106.1. Withdrawal of appeal in civil cases.

A. A party who has noted an appeal to a final judgment rendered by a general district court or a juvenile and domestic relations district court in a civil case may withdraw that appeal at any time before the appeal is heard on its merits in circuit court. A party withdrawing an appeal shall give reasonable written notice of withdrawal to the court and counsel of record for all parties. The appeal shall be deemed withdrawn upon the filing of the written notice of withdrawal in the circuit court. If the appeal has been noted by more than one party, all parties noting the appeal shall concur in the withdrawal.

B. Upon the withdrawal of the appeal, the judgment rendered by the general district court or the juvenile and domestic relations district court shall have the same legal effect as if no appeal had ever been noted.

C. If a party who has appealed a judgment of a district court fails to appear in person on the date set for trial in the circuit court, the circuit court judge may, upon the motion of any party and in the court's discretion, treat the appeal as withdrawn pursuant to subsection B. Upon the nonappearance of all parties the court may in its discretion deem the appeal withdrawn without a motion.

D. If the appeal is withdrawn after the case has been docketed in the circuit court, the circuit court shall enter an order remanding the case to the district court. The clerk of the circuit court shall tax the costs as provided by statute and return the case papers to the district court clerk's office.

E. If the appeal is withdrawn before the case has been docketed in the circuit court, only the costs applicable in the district court shall be charged.

F. Upon the withdrawal of the appeal, the disposition of any bond posted to perfect such an appeal and any claim for attorney's fees or sanctions authorized by law arising from the appeal shall be determined by the circuit court or by the district court from which the case was appealed, upon the timely request of a party to the proceeding.

§ 16.1-107. Requirements for appeal.

No appeal shall be allowed unless and until the party applying for the same or someone for him shall give bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment as may be rendered on appeal if such appeal is perfected, or if not so perfected or if withdrawn pursuant to § 16.1-106.1, then to satisfy the judgment of the court in which it was rendered. However, no appeal bond shall be required of a plaintiff in a civil case where the defendant has not asserted a counterclaim, the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict, or an insane person, or the interest of a county, city, town or transportation district created pursuant to Chapter 45 (§ 15.2-4500 et seq.) of Title 15.2.

If such bond is furnished by or on behalf of any party against whom judgment has been rendered for money or property or both, the bond shall be conditioned for the performance and satisfaction of such judgment or order as may be entered against such party on appeal, and for the payment of all costs and damages which may be awarded against him in the appellate court. If the appeal is by a party against whom there is no recovery except for costs, the bond shall be conditioned for the payment of such costs and damages as may be awarded against him on the appeal.

In addition to the foregoing, any party applying for appeal shall, within 30 days from the date of the judgment, pay to the clerk of the court from which the appeal is taken the amount of the writ tax of the court to which the appeal is taken and costs as required by subdivision A 13 of § 17.1-275, including all fees for service of process of the notice of appeal in the circuit court pursuant to § 16.1-112.

§ 16.1-298. Effect of petition for or pendency of appeal; bail.

A. Except as provided herein, a petition for or the pendency of an appeal or writ of error shall not

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59 suspend any judgment, order or decree of the juvenile court nor operate to discharge any child
60 concerned or involved in the case from the custody of the court or other person, institution or agency to
61 which the child has been committed unless so ordered by the judge of the juvenile court, the judge of a
62 circuit court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court or a
63 judge or justice thereof.

64 B. The judgment, order or decree of the juvenile court shall be suspended upon a petition for or the
65 pendency of an appeal or writ of error:

66 1. In cases of delinquency in which the final order of the juvenile court is pursuant to subdivision 8,
67 9, 10, 12, 14, or 15 of § 16.1-278.8.

68 2. In cases involving a child and any local ordinance.

69 3. In cases involving any person over the age of eighteen years.

70 Such suspension as is provided for in this subsection shall not apply to (i) an order for support of a
71 spouse, parent or child or to a preliminary protective order issued pursuant to § 16.1-253, (ii) an order
72 disposing of a motion to reconsider relating to participation in continuing programs pursuant to
73 § 16.1-289.1, (iii) a protective order in cases of family abuse issued pursuant to § 16.1-279.1 or a
74 protective order entered in conjunction with a disposition pursuant to §§ 16.1-278.2, 16.1-278.4,
75 16.1-278.5, 16.1-278.6, or § 16.1-278.8, ~~or~~ (iv) a protective order issued pursuant to § 19.2-152.10, *or*
76 (v) *an order pertaining to the custody or visitation of a minor child*, unless so ordered by the judge of a
77 circuit court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court.

78 C. In cases where the order of the juvenile court is suspended pursuant to subsection B hereof or by
79 order of the juvenile court or the circuit court, bail may be required as provided for in § 16.1-135.

80 D. *In accordance with § 16.1-106.1, in the event the appeal is resolved in the circuit court without*
81 *the circuit court reaching a judgment on the merits of the underlying petition, other than by nonsuit*
82 *pursuant to § 8.01-380, or if the appeal is withdrawn, the judgment, order or decree rendered by the*
83 *juvenile and domestic relations district court shall have the same legal effect as if no appeal had taken*
84 *place. If an appeal is withdrawn, court-appointed counsel and any court-appointed guardian ad litem*
85 *shall, absent further order of the court, be relieved of any further obligation respecting the matter for*
86 *which they were appointed.*

87 E. *All orders that were entered by a juvenile and domestic relations district court prior to July 1,*
88 *2007, appealed to a circuit court, and where no judgment, order, or decree was entered on the merits of*
89 *the underlying petition in circuit court shall have the same effect as if no appeal had taken place, except*
90 *as to matters pending on the docket of a circuit court as of July 1, 2007.*