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SENATE BILL NO. 566

Offered January 9, 2008

Prefiled January 9, 2008

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 withdrawal of appeals from general district courts or juvenile and domestic relations district courts.

Patron—Obenshain

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 appealed a final judgment or order rendered by a general district court or a juvenile and domestic relations district court in a civil case may seek to withdraw that appeal at any time.

1. If the appeal has not been perfected by posting a required appeal bond or paying required costs, or within 10 days after entry of the judgment or order when no appeal bond or costs are required to perfect the appeal, the appeal may be withdrawn by filing in the district court that entered the judgment or order and serving, in person or by first-class mail, on all parties or their counsel a written notice of intent to withdraw the appeal. When the appeal is withdrawn in the district court, the judgment or order of the district court shall have the same effect as if no appeal had been noted.

2. After the appeal is perfected by posting a required appeal bond or paying required costs, or after 10 days have elapsed since the entry of the judgment or order when no appeal bond or costs are required to perfect the appeal, an appealing party may request that the appeal be withdrawn by filing in the circuit court and serving, in person or by first-class mail, on all parties or their counsel a written notice of intent to withdraw the appeal.

B. Upon receipt of a notice of intent to withdraw an appeal filed in the circuit court, any party to the appeal, or the circuit court on its own motion, may give notice of a hearing, which shall be scheduled no later than the date set by the circuit court for trial of the appeal. Unless the hearing is scheduled at the time previously set for trial of the appeal, notice of the hearing shall be given, in person or by first-class mail, to all parties or their counsel, any non-party who has posted an appeal bond, and, when appropriate, the Department of Social Services, Division of Child Support Enforcement.

C. At the hearing, the circuit court shall determine whether any party objects to the proposed withdrawal. A party may object to the withdrawal of an appeal by filing in the circuit court and serving, in person or by first-class mail, on all parties or their counsel a written notice of objection to withdrawal of the appeal. If such a written objection is filed and served within a reasonable period after service of the notice of intent to withdraw the appeal, the appeal shall not be withdrawn and the case shall proceed in the circuit court. If no such written objection is timely filed, the appeal shall be deemed to be withdrawn and, subject to subsections E and F, the circuit court shall enter an order disposing of the case in accordance with the judgment or order entered in the district court.

D. If a party who has appealed a judgment or order of a district court fails to appear in circuit court either at the time for setting the appeal for trial or on the trial date, the circuit court may, upon the motion of any party, enter an order treating the appeal as withdrawn and disposing of the case in accordance with this section. If no party appears for trial, the court may deem the appeal to be withdrawn without a motion and enter an order disposing of the case in accordance with this section.

E. Upon the withdrawal of an appeal from a general district court, the circuit court shall, upon request of a party who did not appeal the judgment or order, determine whether, as a result of the appeal, a party has a right to additional relief in the circuit court which has accrued since the appeal was noted, including but not limited to attorneys' fees provided for by contract or statute. Subject to any rights of a surety pursuant to § 16.1-110, the circuit court shall also order its clerk to disburse any cash bond posted to perfect the appeal as follows:

1. First, to the clerk of the court to cover taxable costs in the circuit court as provided by statute;

2. Second, to the prevailing party in an amount sufficient to satisfy any judgment or order entered in the general district court and any additional relief granted by the circuit court; and

3. Third, the balance, if any, to the person who posted the bond in the general district court.

In addition, the circuit court shall enter such order as may be appropriate to conclude all matters

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arising out of the appeal from the general district court.

F. Upon the withdrawal of an appeal from a juvenile and domestic relations district court, the circuit court shall, upon request of a party who did not appeal the judgment or order, determine whether, as a result of the appeal, a party has a right to additional relief in the circuit court which has accrued since the appeal was noted, including but not limited to attorneys' fees provided for by contract or statute. Subject to any rights of a surety pursuant to § 16.1-110, the circuit court shall also order its clerk to disburse any cash bond posted to perfect the appeal as follows:

1. First, to the clerk of the court to cover taxable costs in the circuit court as provided by statute;

2. Second, to the prevailing party in an amount sufficient to satisfy any judgment or order entered in the juvenile and domestic relations district court and any additional relief granted by the circuit court; and

3. Third, the balance, if any, to the person who posted the bond in the juvenile and domestic relations district court.

In addition, the circuit court shall enter such order as may be appropriate to conclude all matters arising out of the petition or motion filed in the juvenile and domestic relations district court and the appeal in circuit court, consistent with the judgment or order entered in the juvenile and domestic relations district court, as modified by the grant of any additional relief by the circuit court pursuant to this subsection. Unless the circuit court orders that the case remain in the circuit court, the case shall be remanded to the juvenile and domestic relations district court for purposes of enforcement and future modification and shall be subject to all the requirements of § 16.1-297.

§ 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. Such bond shall be posted within 30 days from the date of judgment, except for an appeal from the judgment of a general district court on an unlawful detainer pursuant to § 8.01-129. 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. In all civil cases, except trespass, ejectment or any action involving the recovering rents, no indigent person shall be required to post an appeal bond.

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

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

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

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

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

Such suspension as is provided for in this subsection shall not apply to (i) an order for support of a spouse, parent or child or to a preliminary protective order issued pursuant to § 16.1-253, (ii) an order disposing of a motion to reconsider relating to participation in continuing programs pursuant to § 16.1-289.1, (iii) a protective order in cases of family abuse issued pursuant to § 16.1-279.1 or a protective order entered in conjunction with a disposition pursuant to §§ 16.1-278.2, 16.1-278.4, 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 (v)*

an order pertaining to the custody, visitation, or placement of a minor child, unless so ordered by the judge of a circuit court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court.

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

D. If an appeal to the circuit court is withdrawn in accordance with § 16.1-106.1, the judgment, order, or decree rendered by the juvenile court shall have the same legal effect as if no appeal had been noted, except as to the disposition of any bond in circuit court or as modified by the circuit court pursuant to subsection F of § 16.1-106.1. If an appeal is withdrawn, any court-appointed counsel or court-appointed guardian ad litem shall, absent further order of the court, be relieved of any further obligation respecting the matter for which they were appointed.

E. Except as to matters pending on the docket of a circuit court as of July 1, 2008, all orders that were entered by a juvenile and domestic relations district court prior to July 1, 2008, and appealed to a circuit court, where the appeal was withdrawn, shall have the same effect as if no appeal had been noted.

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