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SENATE BILL NO. 1016

Offered January 9, 2013

Prefiled January 8, 2013

A BILL to amend and reenact §§ 16.1-106 and 16.1-298 of the Code of Virginia, relating to subsequent protective orders; exempt from stay pending appeal.

Patron—Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-106 and 16.1-298 of the Code of Virginia are amended and reenacted as follows:****§ 16.1-106. Appeals from courts not of record in civil cases.**

From any order entered or judgment rendered in a court not of record in a civil case in which the matter in controversy is of greater value than ~~fifty dollars~~ \$50, exclusive of interest, any attorney's attorney fees contracted for in the instrument, and costs, or when the case involves the constitutionality or validity of a statute of the Commonwealth, or of an ordinance or bylaw of a municipal corporation, or of the enforcement of rights and privileges conferred by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), or of a protective order pursuant to § 19.2-152.10, there shall be an appeal of right, if taken within ~~ten~~ 10 days after such order or judgment, to a court of record. Such appeal shall be to a court of record having jurisdiction within the territory of the court from which the appeal is taken and shall be heard de novo.

The court from which an appeal is sought may refuse to suspend the execution of a judgment ~~which~~ that refuses, grants, modifies, or dissolves an injunction in a case brought pursuant to § 2.2-3713 of the Virginia Freedom of Information Act. A protective order issued pursuant to § 19.2-152.10, *including a protective order required by § 18.2-60.4*, shall remain in effect upon petition for or the pendency of an appeal or writ of error unless ordered suspended by the judge of a circuit court or so directed in a writ of supersedeas by the Court of Appeals or the Supreme Court.

§ 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~~ 18 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, *including a protective order required by § 16.1-253.2*, 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 16.1-278.14*, (iv) a protective order issued pursuant to § 19.2-152.10, *including a protective order required by § 18.2-60.4*, 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.

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