

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

5 [S 566]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**

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

10 *§ 16.1-106.1. Withdrawal of appeal in civil cases.*

11 *A. A party who has appealed a final judgment or order rendered by a general district court or a*
 12 *juvenile and domestic relations district court in a civil case may seek to withdraw that appeal at any*
 13 *time.*

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 16 *perfect the appeal, the appeal may be withdrawn by filing in the district court that entered the judgment*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 When the appeal is withdrawn in the district court, the judgment or order*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

20 *2. After the appeal is perfected by posting a required appeal bond or paying required costs, or after*
 21 *10 days have elapsed since the entry of the judgment or order when no appeal bond or costs are*
 22 *required to perfect the appeal, an appealing party may request that the appeal be withdrawn by filing in*
 23 *the circuit court and serving, in person or by first-class mail, on all parties or their counsel a written*
 24 *notice of intent to withdraw the appeal.*

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

31 *C. At the hearing, the circuit court shall determine whether any party objects to the proposed*
 32 *withdrawal. A party may object to the withdrawal of an appeal by filing in the circuit court and serving,*
 33 *in person or by first-class mail, on all parties or their counsel a written notice of objection to*
 34 *withdrawal of the appeal. If such a written objection is filed and served within a reasonable period after*
 35 *service of the notice of intent to withdraw the appeal, upon a showing of good cause by the party*
 36 *objecting to the withdrawal of the appeal, the circuit court may decline to permit the withdrawal of the*
 37 *appeal. If no such written objection is timely filed, the appeal shall be deemed to be withdrawn and,*
 38 *subject to subsections E and F, the circuit court shall enter an order disposing of the case in*
 39 *accordance with the judgment or order entered in the district court.*

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

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

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

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

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

55 *In addition, the circuit court shall enter such order as may be appropriate to conclude all matters*
 56 *arising out of the appeal from the general district court.*

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

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

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

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

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

76 *§ 16.1-107. Requirements for appeal.*

77 *No appeal shall be allowed unless and until the party applying for the same or someone for him*
 78 *shall give bond, in an amount and with sufficient surety approved by the judge or by his clerk if there*
 79 *is one, to abide by such judgment as may be rendered on appeal if such appeal is perfected, or if not so*
 80 *perfected or if withdrawn pursuant to § 16.1-106.1, then to satisfy the judgment of the court in which it*
 81 *was rendered. Such bond shall be posted within 30 days from the date of judgment, except for an appeal*
 82 *from the judgment of a general district court on an unlawful detainer pursuant to § 8.01-129. However,*
 83 *no appeal bond shall be required of a plaintiff in a civil case where the defendant has not asserted a*
 84 *counterclaim, the Commonwealth or when an appeal is proper to protect the estate of a decedent, an*
 85 *infant, a convict, or an insane person, or the interest of a county, city, town or transportation district*
 86 *created pursuant to Chapter 45 (§ 15.2-4500 et seq.) of Title 15.2. In all civil cases, except trespass,*
 87 *ejectment or any action involving the recovering rents, no indigent person shall be required to post an*
 88 *appeal bond.*

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

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

99 *§ 16.1-298. Effect of petition for or pendency of appeal; bail.*

100 *A. Except as provided herein, a petition for or the pendency of an appeal or writ of error shall not*
 101 *suspend any judgment, order or decree of the juvenile court nor operate to discharge any child*
 102 *concerned or involved in the case from the custody of the court or other person, institution or agency to*
 103 *which the child has been committed unless so ordered by the judge of the juvenile court, the judge of a*
 104 *circuit court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court or a*
 105 *judge or justice thereof.*

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

108 *1. In cases of delinquency in which the final order of the juvenile court is pursuant to subdivision 8,*
 109 *9, 10, 12, 14, or 15 of § 16.1-278.8.*

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

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

112 *Such suspension as is provided for in this subsection shall not apply to (i) an order for support of a*
 113 *spouse, parent or child or to a preliminary protective order issued pursuant to § 16.1-253, (ii) an order*
 114 *disposing of a motion to reconsider relating to participation in continuing programs pursuant to*
 115 *§ 16.1-289.1, (iii) a protective order in cases of family abuse issued pursuant to § 16.1-279.1 or a*
 116 *protective order entered in conjunction with a disposition pursuant to §§ 16.1-278.2, 16.1-278.4,*
 117 *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)*

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

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

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

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

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