

May 2012

PROBATE Wills: Probate Court: Jurisdiction

Georgia State University Law Review

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Recommended Citation

Georgia State University Law Review, *PROBATE Wills: Probate Court: Jurisdiction*, 1 GA. ST. U. L. REV. (2012).
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PROBATE

Wills: Probate Court: Jurisdiction

CODE SECTIONS:	O.C.G.A. §§ 53-3-13 (amended), 53-3-60 (new) and 53-3-61 (new)
BILL NUMBER:	HB 735
ACT NUMBER:	768
SUMMARY:	The Act requires that notice of a petition to probate a will in solemn form be served upon propounders and beneficiaries under another will of the testator. It gives the probate court original jurisdiction to vacate, set aside or amend an order admitting a will to probate. It establishes the form of the petition and notice requirements.

History

Prior law required that notice to probate a will in solemn form be given only to the heirs at law. However, this Code section was held unconstitutional by the Georgia Supreme Court in *McKnight v. Boggs*,¹ because it violated the due process requirement by not requiring that “notice be given to propounders and beneficiaries of another purported will of the decedent . . . [previously filed] for probate within the same county.”² O.C.G.A. §§ 53-3-60 and 53-3-61 were added in response to *In re Lott*.³

HB 735

O.C.G.A. § 53-3-13(a) requires that “due notice be given to all the heirs at law and the propounders and beneficiaries under any other purported will of the testator as to which probate proceedings are pending in this state.”

Subsection (b) requires the applicant to state if he has knowledge of any other proceeding in reference to the probate of the testator’s will pending in the State. If the petitioner has such knowledge, he must give the “names and addresses of the propounders and the names, ages, and addresses of the beneficiaries under the other purported will.” Other sub-

1. 253 Ga. 537, 538, 322 S.E.2d 283, 284 (1984).

2. *Id.* at 538, 322 S.E.2d at 284 (1984).

3. 171 Ga. App. 25, 318 S.E.2d 688 (1984).

sections have been added in response to the *McKnight v. Boggs*⁴ decision. Subsection (d) provides that notice be served on the propounders and beneficiaries of the other purported wills in the same manner as provided for heirs at law. Subsection (e) provides for specific notice procedures. The petitioner is required to exercise reasonable diligence in determining the whereabouts of the beneficiaries, acting guardians of the property and trustees. Notice is not required to an heir whose interest will not vest "until the passage of time or the occurrence of a contingency." Subsection (f) allows the court to appoint a guardian ad litem to represent any beneficiary who is not adequately represented.

The 1985 amendments and additions to O.C.G.A. § 53-3-13 protect parties with a legally protectable interest in the probate proceedings of a will and the notice requirement will allow them to respond to the proceedings.

O.C.G.A. § 53-3-60 was added in response to the *In re Lott* decision. The probate court is granted jurisdiction to amend, vacate, or set aside any of its prior orders admitting a will to probate in situations in which a will has already been probated and a new codicil or will is found. These actions must be combined with a petition to probate in solemn form the new codicil or will. O.C.G.A. § 53-3-61 sets out the procedures for filing a verified petition setting forth the allegations which support the action to amend, vacate or set aside.

4. 253 Ga. 537, 322 S.E.2d 283 (1984).