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COURTS

Appeal Process: Probate Court and Traffic Cases

CODE SECTIONS: O.C.G.A. §§ 5-3-2(b) (new), 5-3-29 (amended), 5-4-1(b) (new), 5-5-1(b) (new), 5-6-33(a)(2) (new), 15-9-120—15-9-126 (new), 19-3-40(f) (amended), 24-8-21(e) (amended), 29-5-11(a) (amended), 31-20-3(6) (amended), 37-3-150 (amended), 37-4-110 (amended), 37-7-150 (amended), 37-8-34(j) (amended), 40-13-28 (amended), 44-9-59(b) (amended), 49-4-172 (amended), 53-3-22(a) (amended), 53-3-23 (amended), 53-5-21(d) (amended), 53-7-97(b) (amended), 53-7-187 (amended), 53-8-42 (amended), and 53-9-26 (amended)

BILL NUMBER: HB 1367

ACT NUMBER: 1530

SUMMARY: The Act amends rules and procedures applying to probate courts serving counties of more than 150,000 population and having experienced judges. Probate courts thus defined can correct errors and grant new trials, and either party to a civil case in such a probate court may demand a jury trial. Decisions from such courts are to be appealed directly to the court of appeals or supreme court, and de novo appeals to the superior court are eliminated. The Act also amends several Code sections to conform with these revisions by providing an exception where the Code would otherwise provide for appeal from the probate court to the superior court. The Act specifically retains the route of appeal from probate court to the superior court for cases involving motor vehicle and traffic offenses, but eliminates de novo trial in the superior court.

History

Under prior law, only the superior, state, and city courts could correct errors and grant new trials.¹ More importantly, an appeal of a decision by any probate court was directed to the appropriate superior court.² Most appeals were reviewed de novo in the superior court, with either party "entitled to be heard on the whole merits of the case."³ Such de novo appeals, requiring the retrial of cases already tried by probate courts, were duplicative and burdensome to superior court judges, prompting the Governor's Judicial Process Review Commission to recommend curtailing de novo appeals.⁴ A particular problem, not originally addressed by the Commission, was the fact that some defendants convicted of driving under the influence were using de novo appeals as a means to obtain a second trial before a jury.⁵

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To effect a reduction in de novo appeals, the Act creates a new Article 6 of the Code providing that certain probate courts serving populous counties and having experienced judges will follow the laws and rules of practice and procedure applicable to superior courts.⁶ To be covered by the Article 6 provisions, a probate court must be located in a county with a population greater than 150,000 and have a judge who has been admitted to practice law for a minimum of seven years.⁷ Currently, probate courts in fewer than ten counties are subject to the new provisions.⁸

Under the new O.C.G.A. § 15-9-121, a party to a civil case in such a probate court may demand a jury trial. O.C.G.A. §§ 15-9-122 through 15-9-125 require such probate courts to follow the same laws and rules as the superior courts relating to trial practice, pleadings, procedures and evidence, appellate practice and procedures, execution and enforcement of judgments, and jury selection. O.C.G.A. § 15-9-123 provides that the decision of the probate court may be appealed to the court of appeals or the supreme court in accordance with the provisions of Title 5, Article 6.

1. O.C.G.A. § 5-5-1 (1982).

2. O.C.G.A. § 5-3-2 (1982).

3. O.C.G.A. § 5-3-29 (1982).

4. Justice 2000, Report of the Governor's Judicial Process Review Commission at 13, 14 (1985).

5. *Ga. Legislators to Tackle Problem of Court Reform*, Atlanta Const., Dec. 30, 1985, at 1A, col. 5.

6. O.C.G.A. §§ 15-9-120—15-9-126 (Supp. 1986).

7. O.C.G.A. § 15-9-120(2) (1986).

8. Interview with Tricia Doss, Staff Writer, Governor's Criminal Justice Coordinating Council, in Atlanta (May 23, 1986). These counties currently include Fulton, Muscogee, DeKalb, Cobb, Bibb, Clayton, and Chatham. In Richmond and Gwinnett counties, which meet the population requirement, the probate judges are not attorneys. Interview with Marty Wilson, Office of Legislative Counsel, in Atlanta (June 30, 1986).

The Act amended Title 5 of the Code (relating to appeal and error) to conform with the new Article 6 by providing that any civil case decided in a probate court subject to Article 6 may *not* be appealed to the superior court.⁹ The writ of certiorari to a superior court is made unavailable for civil cases in probate courts covered by Article 6.¹⁰ Furthermore, such probate courts are empowered "to correct errors and grant new trials in civil cases" in accordance with the rules and procedures used by the superior courts.¹¹

An important provision of the Act amends O.C.G.A. § 40-13-28 relating to appeals in cases involving traffic and motor vehicle offenses. The amended Code section retains the right to appeal to the superior court in such cases, without regard to whether the probate court meets the Article 6 criteria. However, the amended provision specifically eliminates *de novo* appeal to the superior court, requiring instead that the appeal be on the record certified by the probate court. In the original version of HB 1367, this was the only provision eliminating *de novo* appeals.¹² However, the Senate Committee on Judiciary and Constitutional Law substituted the more comprehensive version which was enacted.¹³

The Act also amended various sections of the Code to conform with these revisions by providing an exception where the Code would otherwise provide for appeal from the probate court to the superior court. For example, O.C.G.A. § 19-3-40, regarding premarital blood testing, was amended to provide that a probate court's refusal to issue a marriage license may be appealed to the superior court "[e]xcept as provided in Article 6 of Chapter 9 of Title 15."¹⁴

The sections of Title 53 relating to wills, trusts and estate administration were amended by deleting language specifically providing for appeal to the superior court. The retained language in each section, although varying somewhat in wording, provides for appeal to be in the manner provided by law in other cases. (This general language will thus apply whether or not the probate court is one defined under O.C.G.A. § 15-9-120(2)). The Code sections thus amended are those concerning recovery

9. O.C.G.A. § 5-3-2(b) (Supp. 1986). This change greatly reduces *de novo* appeals since they are available under O.C.G.A. § 5-3-29 when the appeal is to the superior court. O.C.G.A. § 5-3-29 (Supp. 1986).

10. O.C.G.A. § 5-4-1(b) (Supp. 1986).

11. O.C.G.A. § 5-5-1(b) (Supp. 1986).

12. HB 1367, 1986 Ga. Gen. Assem.

13. HB 1367 (SCS), 1986 Ga. Gen. Assem.

14. O.C.G.A. § 19-3-40(f) (Supp. 1986). Other Code sections amended in the same manner are: O.C.G.A. § 24-8-21 (regarding summary establishment of lost papers in the probate court); O.C.G.A. § 29-5-11 (regarding appeals from guardianship orders); O.C.G.A. § 31-20-3 (regarding sterilization of mentally incompetent persons); O.C.G.A. § 44-9-59 (regarding procedures for removing obstructions to a private way); O.C.G.A. § 49-4-172 (regarding appointment or removal of personal representatives to manage public assistance payments); and O.C.G.A. § 53-3-22 (regarding approval of certain settlement agreements relating to wills, trusts and administration of estates).

of executor's expenses,¹⁵ approvals of conveyances or encumbrances,¹⁶ procedures to compel making of title,¹⁷ private conveyances of easements and rights of way,¹⁸ and the return of conservators upon the reappearance of a missing person.¹⁹ One section of Title 53, concerning objections and appeals in intermediate and final reports, was amended by specifically eliminating the right of appeal to the superior court when the case comes under the provisions of the new Article 6.²⁰

Title 37 of the Code (concerning mental health) contains provisions for appealing hearing officer or probate court orders by mentally ill patients,²¹ alcoholic or drug abuse patients,²² and mentally retarded patients,²³ and for appealing the involuntary commitment of alcoholics.²⁴ The Act also conformed these sections of the Code to the new law by providing an exception to the right to appeal to the superior court when the decision is by a probate court defined in O.C.G.A. § 15-9-120(2).

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15. O.C.G.A. § 53-3-23 (Supp. 1986).
 16. O.C.G.A. § 53-5-21 (Supp. 1986).
 17. O.C.G.A. § 53-7-97 (Supp. 1986).
 18. O.C.G.A. § 53-8-42 (Supp. 1986).
 19. O.C.G.A. § 53-9-26 (Supp. 1986).
 20. O.C.G.A. § 53-7-187 (Supp. 1986).
 21. O.C.G.A. § 37-7-150 (Supp. 1986).
 22. O.C.G.A. § 37-4-150 (Supp. 1986).
 23. O.C.G.A. § 37-4-110 (Supp. 1986).
 24. O.C.G.A. § 37-8-34 (Supp. 1986).