HOUSE BILL 760

Unofficial Copy D3 HB 1374/98 - JUD 1999 Regular Session 9lr1488

By: Delegates Finifter and Dembrow

Introduced and read first time: February 12, 1999

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concer	ning
-----------------	------

2 Orphans' Court - Appeals - Stay of Proceedings

- 3 FOR the purpose of providing that an appeal from an orphans' court or a circuit court
- 4 stays all proceedings in the orphans' court concerning the issue appealed;
- 5 repealing a provision of law that provides that a certain appeal from an orphans'
- 6 court to the Court of Special Appeals does not stay any proceedings in the
- 7 orphans' court under certain circumstances; providing for the application of this
- 8 Act; and generally relating to stay of the orphans' court proceedings in case of
- 9 appeals.
- 10 BY repealing and reenacting, without amendments,
- 11 Article Courts and Judicial Proceedings
- 12 Section 12-501 and 12-502
- 13 Annotated Code of Maryland
- 14 (1998 Replacement Volume)
- 15 BY repealing
- 16 Article Courts and Judicial Proceedings
- 17 Section 12-701(a)
- 18 Annotated Code of Maryland
- 19 (1998 Replacement Volume)
- 20 BY adding to
- 21 Article Courts and Judicial Proceedings
- 22 Section 12-701(a)
- 23 Annotated Code of Maryland
- 24 (1998 Replacement Volume)
- 25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
- 26 MARYLAND, That the Laws of Maryland read as follows:

1

Article - Courts and Judicial Proceedings

- 2 12-501.
- 3 A party may appeal to the Court of Special Appeals from a final judgment of an
- 4 orphans' court. However, if the final judgment was given or made in a summary
- 5 proceeding, and on the testimony of witnesses, an appeal is not allowed under this
- 6 section unless the party desiring to appeal immediately gives notice of his intention to
- 7 appeal and requests that the testimony be reduced to writing. In such case the
- 8 testimony shall be reduced to writing at the cost of the party requesting it.
- 9 12-502.
- 10 (a) (1) Instead of a direct appeal to the Court of Special Appeals pursuant to
- 11 § 12-501 of this subtitle, a party may appeal to the circuit court for the county from
- 12 a final judgment of an orphans' court. The appeal shall be heard de novo by the circuit
- 13 court. The de novo appeal shall be treated as if it were a new proceeding and as if
- 14 there had never been a prior hearing or judgment by the orphans' court. The circuit
- 15 court shall give judgment according to the equity of the matter.
- 16 (2) This subsection does not apply to Harford County or Montgomery
- 17 County.
- 18 (b) An appeal pursuant to this section shall be taken by filing an order for
- 19 appeal with the register of wills within 30 days after the date of the final judgment
- 20 from which the appeal is taken. Within 30 days thereafter the register of wills shall
- 21 transmit all pleadings and orders of the proceedings to the court to which the appeal
- 22 is taken, unless the orphans' court from which the appeal is taken extends the time
- 23 for transmitting these pleadings and orders.
- 24 12-701.
- 25 [(a) (1) An appeal from a final judgment of a court of law to which issues
- 26 have been sent from an orphans' court stays all proceedings in the orphans' court
- 27 concerning the subject of the issues.
- 28 (2) A direct appeal from an orphans' court pursuant to § 12-501 does not
- 29 stay any proceedings in the orphans' court which may with propriety be carried on
- 30 before the appeal is decided, if the court can provide for conforming to the decision of
- 31 the appellate court, whether the decision eventually is for or against the appellant.]
- 32 (A) AN APPEAL FROM AN ORPHANS' COURT OR A CIRCUIT COURT STAYS ALL
- 33 PROCEEDINGS IN THE ORPHANS' COURT CONCERNING THE ISSUE APPEALED.
- 34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all
- 35 appeals that are filed on or after the effective date of this Act.
- 36 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 37 October 1, 1999.