

SENATE BILL No. 355

AN ACT concerning the probate code; relating to appeals; amending K.S.A. 59-2401, 59-2402a and 59-2408 and repealing the existing sections; also repealing K.S.A. 59-2407.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) An appeal by an interested party from a district magistrate judge to a district judge may be taken no later than 10 days from any final order, judgment or decree entered in any proceeding pursuant to:

(1) The Kansas adoption and relinquishment act (K.S.A. 59-2111 et seq., and amendments thereto);

(2) the care and treatment act for mentally ill persons (K.S.A. 59-2945 et seq., and amendments thereto);

(3) the care and treatment act for persons with an alcohol or substance abuse problem (K.S.A. 59-29b45 et seq., and amendments thereto); or

(4) the act for obtaining a guardian or conservator, or both (K.S.A. 59-3050 et seq., and amendments thereto). The appeal shall be heard no later than 30 days from the date the notice of appeal is filed. If no record was made of the proceedings, the trial shall be de novo. Except as provided further, if a record was made of the proceedings, the district judge shall conduct the appeal on the record. Upon motion of any party to the proceedings, the district judge may hold a trial de novo.

(b) An appeal by an interested party from the district court to an appellate court shall be taken pursuant to article 21 of chapter 60 of the Kansas Statutes Annotated from any final order judgment or decree entered in any proceeding pursuant to:

(1) The Kansas adoption and relinquishment act (K.S.A. 59-2111 et seq., and amendments thereto);

(2) the care and treatment act for mentally ill persons (K.S.A. 59-2945 et seq., and amendments thereto);

(3) the sexually violent predator act (K.S.A. 59-29a01 et seq., and amendments thereto);

(4) the care and treatment act for persons with an alcohol or substance abuse problem (K.S.A. 59-29b45 et seq., and amendments thereto); or

(5) the act for obtaining a guardian or conservator, or both (K.S.A. 59-3050 et seq., and amendments thereto). Except for cases otherwise specifically provided for by law, appeals under this section shall have priority over all others.

(c) Pending the determination of an appeal pursuant to section (a) or (b) of this section, any order appealed from shall continue in force unless modified by temporary orders entered by the court hearing the appeal. The supersedeas bond provided for in K.S.A. 60-2103, and amendments thereto, shall not stay proceedings under an appeal from the district court to an appellate court.

(d) In an appeal taken pursuant to section (a) or (b) of this section, the court from which the appeal is taken may require an appropriate party, other than the state of Kansas, any subdivision thereof, and all cities and counties in this state, to file a bond in such sum and with such sureties as may be fixed and approved by the court to ensure that the appeal will be prosecuted without unnecessary delay and to ensure the payment of all judgments and any sums, damages and costs that may be adjudged against that party.

(e) As used in this section, "interested party" means:

(1) The parent in a proceeding pursuant to the Kansas adoption and relinquishment act (K.S.A. 59-2111 et seq., and amendments thereto);

(2) the patient under the care and treatment act for mentally ill persons (K.S.A. 59-2945 et seq., and amendments thereto);

(3) the patient under the care and treatment act for persons with an alcohol or substance abuse problem (K.S.A. 59-29b45 et seq., and amendments thereto);

(4) the person adjudicated a sexually violent predator under the sexually violent predator act (K.S.A. 59-29a01 et seq., and amendments thereto);

(5) the ward or conservatee under the act for obtaining a guardian or conservator, or both (K.S.A. 59-3050 et seq., and amendments thereto);

(6) the parent of a minor person adjudicated a ward or conservatee

under the act for obtaining a guardian or conservator, or both (K.S.A. 59-3050 et seq., and amendments thereto);

(7) the petitioner in the case on appeal; and

(8) any other person granted interested party status by the court from which the appeal is being taken.

(f) This section shall be part of and supplemental to the Kansas probate code.

Sec. 2. K.S.A. 59-2401 is hereby amended to read as follows: 59-2401. (a) An appeal *from a district magistrate judge to a district judge* may be taken ~~within~~ *no later than* 30 days from the date of entry of any of the following orders, judgments; or decrees ~~and decisions~~ *in any case involving a decedent's estate*:

(1) An order admitting or refusing to admit a will to probate.

(2) *An order finding or refusing to find that there is a valid consent to a will.*

(3) An order appointing, refusing to appoint, removing or refusing to remove a fiduciary other than a special administrator.

~~(3)~~ (4) An order setting apart or refusing to set apart a homestead or other property, or making or refusing to make an allowance of exempt property to the spouse and minor children.

~~(4)~~ (5) An order determining, refusing to determine, transferring or refusing to transfer venue.

~~(5)~~ (6) An order allowing or disallowing a demand, in whole or in part, when the amount in controversy exceeds ~~\$500~~ \$5,000.

~~(6)~~ (7) An order authorizing, refusing to authorize, confirming or refusing to confirm the sale, lease or mortgage of real estate.

~~(7) Judgments for waste.~~

(8) An order directing or refusing to direct a conveyance or lease of real estate under contract.

(9) *Judgments for waste.*

~~(9)~~ (10) An order directing or refusing to direct the payment of a legacy or distributive share.

~~(10)~~ (11) An order allowing or refusing to allow an account of a fiduciary or any part thereof.

~~(11)~~ (12) A judgment or decree of partial or final distribution.

~~(12)~~ (13) An order compelling or refusing to compel a legatee or distributee to refund.

(14) *An order compelling or refusing to compel payments or contributions of property required to satisfy the elective share of a surviving spouse pursuant to K.S.A. 59-6a201 et seq., and amendments thereto.*

~~(13)~~ (15) An order directing or refusing to direct an allowance for the expenses of administration.

~~(14)~~ (16) An order vacating or refusing to vacate a previous appealable order, judgment, decree or decision.

~~(15)~~ (17) A decree determining or refusing to determine the heirs, devisees and legatees.

~~(16)~~ (18) An order adjudging a person in contempt *pursuant to K.S.A. 59-6a201 et seq., and amendments thereto.*

~~(17) An order adjudging or refusing to adjudge a person an impaired person.~~

~~(18) The granting or refusing to grant an order for treatment.~~

~~(19) An order granting or denying restoration to capacity.~~

(19) *An order finding or refusing to find that there is a valid settlement agreement.*

(20) An order granting or denying *final discharge of a fiduciary.*

~~(21) An order finding or refusing to find that there is a valid consent to a will.~~

~~(22) An order finding or refusing to find that there is a valid settlement agreement.~~

~~(23) An order decreeing or refusing to decree an adoption.~~

~~(24)~~ (21) *Any other final order, decision or judgment in any probate a proceeding involving a decedent's estate.*

~~(b) Notwithstanding the provisions of K.S.A. 60-2103 and amendments thereto relating to bonds, the appellant, other than the state or municipality or a fiduciary appealing on behalf of the estate, shall file in the court from which the appeal is taken a bond in such sum and with such sureties as may be fixed and approved by the court, conditioned that~~

~~the appellant will without unnecessary delay prosecute the appeal and pay all sums, damages and costs that may be adjudged against the appellant.~~

~~—(c) Except as otherwise provided in this section, appeals taken pursuant to this section shall be taken in the manner provided by chapter 60 of the Kansas Statutes Annotated for other civil cases.~~

(b) An appeal from the district court to an appellate court taken pursuant to this section shall be taken in the manner provided by chapter 60 of the Kansas Statutes Annotated for other civil cases.

(c) Pending the determination of an appeal pursuant to section (a) or (b) of this section, any order appealed from shall continue in force unless modified by temporary orders entered by the court hearing the appeal. The supersedeas bond provided for in K.S.A. 60-2103, and amendments thereto, shall not stay proceedings under an appeal from the district court to an appellate court.

(d) In an appeal taken pursuant to section (a) or (b) of this section, the court from which the appeal is taken may require an appropriate party, other than the state of Kansas, any subdivision thereof, and all cities and counties in this state, to file a bond in such sum and with such sureties as may be fixed and approved by the court to ensure that the appeal will be prosecuted without unnecessary delay and to ensure the payment of all judgments and any sums, damages and costs that may be adjudged against that party.

Sec. 3. K.S.A. 59-2402a is hereby amended to read as follows: 59-2402a. When a petition is filed in the district court and a district magistrate judge is assigned to hear such petition, any interested party may request the transfer of the matter to the chief judge for assignment to a district judge if the petition is:

- (1) To admit a will to probate;
- (2) to determine venue or a transfer of venue;
- (3) to allow any claim exceeding ~~\$500~~ \$5,000 in value;
- (4) for the sale, lease or mortgage of real estate;
- (5) for conveyance of real estate under contract;
- (6) for payment of a legacy or distributive share;
- (7) for partial or final distribution;
- (8) for an order compelling a legatee or distributee to refund;
- (9) for an order to determine heirs, devisees or legatees; or
- (10) for an order which involves construction of a will or other instrument.

When a request for such transfer is filed less than three days prior to the commencement of the hearing, the court shall assess the costs occasioned by the subpoena and attendance of witnesses against the party seeking the transfer. Such request may be included in any petition, answer or other pleading, or may be filed as a separate petition, and shall include an allegation that a bona fide controversy exists and that the transfer is not sought for the purpose of vexation or delay. Notice of such request shall be given as ordered by the court.

Sec. 4. K.S.A. 59-2408 is hereby amended to read as follows: 59-2408. *Except as provided for in section 1, and amendments thereto*, whenever an appeal has been taken from an order, judgment, decree or decision of a district magistrate judge, the district judge to which the appeal is assigned by the chief judge, without unnecessary delay, shall proceed to hear and determine all issues in the matter de novo and shall allow and may require pleadings to be filed or amended. The right to file new pleadings shall not be abridged or restricted by the pleadings filed, or by failure to file pleadings, in the proceedings before the district magistrate judge; nor shall the trial or the issues to be considered by the district judge be abridged or restricted by any failure to appear or by the evidence introduced, or the absence or insufficiency thereof, in the proceedings before the district magistrate judge.

~~All appeals from a district magistrate judge other than those from the allowance or disallowance of a demand, adjudging or refusing to adjudge a person an incapacitated person, and the granting, or refusing to grant, of an order for care or treatment, shall be tried by the court without a jury, but the court may call a jury in an advisory capacity or in a proper case may refer the matter or part thereof to a referee.~~

Sec. 5. K.S.A. 59-2401, 59-2402a, 59-2407 and 59-2408 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.