

§ 1-301.2. Transfer or appeal of special proceedings; exceptions.

(a) **Applicability.** – This section applies to special proceedings heard by the clerk of superior court in the exercise of the judicial powers of that office. If this section conflicts with a specific provision of the General Statutes, that specific provision of the General Statutes controls.

(b) **Transfer.** – Except as provided in subsections (g) and (h) of this section, when an issue of fact, an equitable defense, or a request for equitable relief is raised in a pleading in a special proceeding or in a pleading or written motion in an adoption proceeding, the clerk shall transfer the proceeding to the appropriate court. In court, the proceeding is subject to the provisions in the General Statutes and to the rules that apply to actions initially filed in that court.

(c) **Duty of Judge on Transfer.** – Whenever a special proceeding is transferred to a court pursuant to subsection (b) of this section, the judge may hear and determine all matters in controversy in the special proceeding, unless it appears to the judge that justice would be more efficiently administered by the judge's disposing of only the matter leading to the transfer and remanding the special proceeding to the clerk.

(d) **Clerk to Decide All Issues.** – If a special proceeding is not transferred or is remanded to the clerk after an appeal or transfer, the clerk shall decide all matters in controversy to dispose of the proceeding.

(e) **Appeal of Clerk's Decisions.** – A party aggrieved by an order or judgment of a clerk that finally disposed of a special proceeding, may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a hearing de novo. Under G.S. 46A-85(a), however, a party may appeal an order confirming the partition sale of real property within 10 days of the order becoming final. Notice of appeal shall be in writing and shall be filed with the clerk. The order or judgment of the clerk remains in effect until it is modified or replaced by an order or judgment of a judge. A judge of the court to which the appeal lies or the clerk may issue a stay of the order or judgment upon the appellant's posting of an appropriate bond set by the judge or clerk issuing the stay. Any matter previously transferred and determined by the court shall not be relitigated in a hearing de novo under this subsection.

(f) **Service.** – Notwithstanding the service requirement of G.S. 1A-1, Rule 58, orders of the clerk shall be served on other parties only if otherwise required by law.

(g) **Exception for Incompetency and Foreclosure Proceedings and Proceedings to Permit Sterilization for Medical Necessity.** –

(1) Proceedings for adjudication of incompetency or restoration of competency under Chapter 35A of the General Statutes, or proceedings to determine whether a guardian may consent to the sterilization of a ward with a mental illness or intellectual disability under G.S. 35A-1245, shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Appeals from orders entered in these proceedings are governed by Chapter 35A of the General Statutes to the extent that the provisions of that Chapter conflict with this section.

(2) Foreclosure proceedings under Article 2A of Chapter 45 of the General Statutes shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Equitable issues may be raised only as provided in G.S. 45-21.34. Appeals from orders entered in these proceedings are governed by Article 2A of Chapter 45 of the General Statutes to the extent that the provisions of that Article conflict with this section.

(h) **Exception for Partition Proceedings.** – Notwithstanding the provisions of subsection (b) of this section, the issue whether to order the actual partition or the sale in lieu of partition of real property that is the subject of a partition proceeding shall not be transferred and shall be determined by the clerk. The clerk's order determining this issue, though not a final order, may be appealed pursuant to subsection (e) of this section. (C.C.P., c. 115; Code, s. 256; 1903, c. 566;

Rev., ss. 588, 717; C.S., ss. 634, 758; 1971, c. 381, s. 12; 1995, c. 88, s. 2; 1999-216, s. 1; 2003-13, s. 2; 2009-362, s. 5; 2018-47, s. 1(a); 2020-23, s. 4.)