

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 88
SENATE BILL 108

AN ACT TO PROVIDE THAT ADOPTIONS SHALL BE IN THE DISTRICT COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-272 reads as rewritten:

"§ 1-272. Appeal from clerk to judge.

Except for appeals from judgments of the clerk of superior court in adoption proceedings, Appeals-appeals lie to the judge of the superior court having jurisdiction, either in session or vacation, from judgments of the clerk of the superior court in all matters of law or legal inference. Appeals from judgments of the clerk of superior court in adoption proceedings lie to the judge of the district court having jurisdiction, either in session or vacation. In case of such transfer or appeal neither party need give an undertaking for costs; and the clerk shall transmit, on the transfer or appeal, to the ~~superior~~ court, or to the judge thereof, the pleadings, or other papers, on which the issues of fact or of law arise. An appeal must be taken within 10 days after the entry of the order or judgment of the clerk upon due notice in writing to be served on the appellee and a copy of which shall be filed with the clerk of the superior court. But an appeal can only be taken by a party aggrieved, who appeared and moved for, or opposed, the order or judgment appealed from, or who, being entitled to be heard thereon, had no opportunity of being heard, which fact may be shown by affidavit or other proof."

Sec. 2. G.S. 1-273 reads as rewritten:

"§ 1-273. Clerk to transfer issues of fact to civil issue docket.

(a) Except as provided in subsection (b) of this section, If-if issues of law and of fact, or of fact only, are raised before the clerk, ~~he-the clerk~~ shall transfer the case to the civil issue docket for trial of the issues at the next ensuing session of the superior court.

(b) If issues of law and of fact, or of fact only, are raised before the clerk in adoption proceedings, then the clerk shall transfer the case to the civil issue docket for trial of the issues at the next ensuing session of the district court."

Sec. 3. G.S. 48-4(a) reads as rewritten:

"(a) Any person over 18 years of age may petition in a special proceeding in the ~~superior~~-district court to adopt a minor child and may also petition for a change of the name of such child. If the petitioner has a husband or wife living, competent to join in the petition, such spouse shall join in the petition."

Sec. 4. G.S. 48-12 is amended by adding the following new subsection to read:

"(d) If the child who is the subject of the adoption is also the subject of a pending district court case or proceeding under Chapter 7A of the General Statutes, then the district court having jurisdiction under Chapter 7A shall retain jurisdiction until the final order of adoption is entered."

Sec. 5. G.S. 48-15(a) reads as rewritten:

"(a) The caption of the petition shall be substantially as follows:

STATE OF NORTH CAROLINA
IN THE ~~SUPERIOR~~-DISTRICT COURT
COUNTY
BEFORE THE CLERK

(Full name of adopting father)

and

PETITION FOR ADOPTION

(Full name of adopting mother)

FOR THE ADOPTION OF

(Full name of child as used in proceeding)".

Sec. 6. G.S. 48-26 reads as rewritten:

"§ 48-26. Procedure for opening record for necessary information.

(a) Any necessary information in the files or the record of an adoption proceeding may be disclosed, to the party requiring it, upon a written motion in the cause before the clerk of original jurisdiction. The movant must serve a copy of the motion, with proof of service, upon the Department of Human Resources, and the county department of social services or the licensed child placing agency which prepared the report in response to the order of reference issued pursuant to G.S. 48-16. The clerk of superior court shall give at least five days' notice to the Department of Human Resources and county department of social services or licensed child placing agency of every hearing on this motion, whether the hearing is before the clerk or a judge of the ~~superior~~-district court, and the Department of Human Resources and the county department of social services or licensed child placing agency shall be entitled to appear and be heard in response to the motion. After hearing, the clerk may issue an order to open the record. Such order must be reviewed by a judge of the ~~superior~~-district court and if, in the opinion of said judge, it be to the best interest of the child or of the public to have such information disclosed, ~~he~~-the judge may approve the order to open the record.

(b) The original order to open the record must be filed with the proceedings in the office of the clerk of the superior court. If the clerk shall refuse to issue such order, the party requesting such order may appeal to the judge who may order that the record be opened, if, in ~~his~~-the judge's opinion, it be to the best interest of the child or of the public."

Sec. 7. G.S. 7A-246 reads as rewritten:

"§ 7A-246. Special proceedings; ~~exception;~~ exceptions; guardianship and trust administration.

The superior court division is the proper division, without regard to the amount in controversy, for the hearing and trial of all special proceedings except proceedings under the Protection of the Abused, Neglected or Exploited Disabled Adult Act (Chapter 108A, Article 6, of the General Statutes), ~~except~~ proceedings for involuntary commitment to treatment facilities (Chapter ~~122, 122C, Article 5A, 5,~~ of the General Statutes), adoption proceedings (Chapter 48 of the General Statutes) and of all proceedings involving the appointment of guardians and the administration by legal guardians and trustees of express trusts of the estates of their wards and beneficiaries, according to the practice and procedure provided by law for the particular proceeding."

Sec. 8. G.S. 7A-251 reads as rewritten:

"§ 7A-251. Appeal from clerk to judge.

(a) In all matters properly cognizable in the superior court division which are heard originally before the clerk of superior court, appeals lie to the judge of superior court having jurisdiction from all orders and judgments of the clerk for review in all matters of law or legal inference, in accordance with the procedure provided in Chapter 1 of the General Statutes.

(b) In all matters properly cognizable in the district court division which are heard originally before the clerk of superior court, appeals lie to the judge of district court having jurisdiction from all orders and judgments of the clerk for review in all matters of law or legal inference, in accordance with the procedure provided in Chapter 1 of the General Statutes."

Sec. 9. This act becomes effective October 1, 1995, and applies to adoption petitions filed on or after that date.

In the General Assembly read three times and ratified this the 18th day of May, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives