

§ 1-301.3. Appeal of trust and estate matters determined by clerk.

(a) **Applicability.** – This section applies to matters arising in the administration of trusts and of estates of decedents, incompetents, and minors. G.S. 1-301.2 applies in the conduct of a special proceeding when a special proceeding is required in a matter relating to the administration of an estate.

(b) **Clerk to Decide Estate Matters.** – In matters covered by this section, the clerk shall determine all issues of fact and law. The clerk shall enter an order or judgment, as appropriate, containing findings of fact and conclusions of law supporting the order or judgment.

(c) **Appeal to Superior Court.** – A party aggrieved by an order or judgment of the clerk may appeal to the superior court by filing a written notice of the appeal with the clerk within 10 days of service of the order on that party. If a timely motion is made by any party for relief under Rule 52(b) or 59 of the Rules of Civil Procedure, the 10-day period for taking appeal is tolled as to all parties. Upon entry of an order disposing of the motion, the 10-day period then runs as to each party from its service upon that party. The notice of appeal shall contain a short and plain statement of the basis for the appeal. Unless otherwise provided by law, a judge of the superior court or the clerk may issue a stay of the order or judgment upon the appellant's posting an appropriate bond set by the judge or clerk issuing the stay. While the appeal is pending, the clerk retains authority to enter orders affecting the administration of the estate, subject to any order entered by a judge of the superior court limiting that authority.

(d) **Duty of Judge on Appeal.** – Upon appeal, the judge of the superior court shall review the order or judgment of the clerk for the purpose of determining only the following:

- (1) Whether the findings of fact are supported by the evidence.
- (2) Whether the conclusions of law are supported by the findings of facts.
- (3) Whether the order or judgment is consistent with the conclusions of law and applicable law.

It is not necessary for a party to object to the admission or exclusion of evidence before the clerk in order to preserve the right to assign error on appeal to its admission or exclusion. If the judge finds prejudicial error in the admission or exclusion of evidence, the judge, in the judge's discretion, shall either remand the matter to the clerk for a subsequent hearing or resolve the matter on the basis of the record. If the record is insufficient, the judge may receive additional evidence on the factual issue in question. The judge may continue the case if necessary to allow the parties time to prepare for a hearing to receive additional evidence. If the judge retains jurisdiction and either excludes evidence that was considered by the clerk or considers new evidence that was not considered by the clerk, then the judge shall review issues of fact and law de novo based on the record from the hearing below, as modified by the court, and any new evidence heard by the court.

(e) **Remand After Disposition of Issue on Appeal.** – The judge, upon determining the matter appealed from the clerk, shall remand the case to the clerk for such further action as is necessary to administer the estate.

(f) **Recording of Estate Matters.** – In the discretion of the clerk or upon request by a party, all hearings and other matters covered by this section shall be recorded by an electronic recording device. A transcript of the proceedings may be ordered by a party, by the clerk, or by the presiding judge. If a recordation is not made, the clerk shall submit to the superior court a summary of the evidence presented to the clerk. (1999-216, s. 1; 2011-344, s. 1; 2021-53, s. 3.5.)