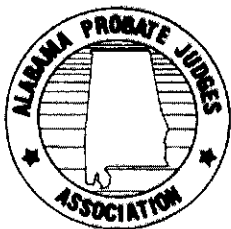


Overview of Removals, Transfers, and Appeals

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OVERVIEW OF REMOVALS, TRANSFERS AND APPEALS FROM PROBATE COURTS TO CIRCUIT COURTS[©]

by

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I. GENERAL OVERVIEW OF PROBATE COURTS' JURISDICTION

Ala. Const. Article VI, § 144 (1901) provides in pertinent part as follows:

There shall be a probate court in each county which shall have general jurisdiction of orphans' business, and of adoptions, and with power to grant letters testamentary, and of administration, and of guardianships, and shall have such further jurisdiction as may be provided by law . . .

Id.

Ala. Code § 12-13-1 (1975) provides in pertinent part as follows:

- (a) The probate court shall have original and general jurisdiction as to all matters mentioned in this section and shall have original and general jurisdiction as to all other matters which may be conferred upon them by statute, unless the statute so conferring jurisdiction expressly makes the jurisdiction special or limited.
- (b) The probate court shall have original and general jurisdiction over the following matters:
 - (1) The probate of wills.
 - (2) The granting of letters testamentary and of administration and the real or revocation of the same.
 - (3) All controversies in relation to the right of executorship or of administration.
 - (4) The settlement of accounts of executors and administrators.
 - (5) The sale and disposition of the real and personal property belonging to and the distribution of intestate's estates.

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- (6) The appointment and removal of guardians for minors and persons of unsound mind.
 - (7) All controversies as to the right of guardianship and the settlement of guardians' accounts.
 - (8) The allotment of dower in land in the cases provided by law.
 - (9) The partition of lands within in their counties.
 - (10) The change of the name of any person residing in their county, upon his filing a declaration in writing, signed by him, stating the name by which he is known and the name to which he wishes it to be changed.
 - (11) Such other cases as jurisdiction is or may be given to such courts by law in all cases to be exercised in the manner prescribed by law.
- (c) All orders, judgments and decrees of probate courts shall be accorded the same validity and presumptions which are accorded to judgments and orders of other courts of general jurisdiction.

Id.

A quick listing of the primary judicial matters assigned to Alabama probate courts and the reference to the *Code of Alabama* (1975) is as follows:

Determination of Claims for Exemptions from Executions, Attachments and Garnishments (Title 6, Article 10)²
 Name Changes and Legitimation (Titles 12 and 26, Article 11)
 Eminent Domain - Condemnation of Land (Title 18)
 Trusts³ (Title 19)
 Involuntary Commitment of Seriously Mentally Ill Persons (Title 22)
 Protective Proceedings - Guardianship and Conservatorship Proceedings (Title 26, Articles 2 and 2A)
 Adoptions (Title 26, Article 10)
 Disposition of a Deceased Person (Title 34, Chapter 13)⁴
 Partition of Real Property (Title 35)
 Partition of Crops (Title 35)
 Redemption of Land Sold For Nonpayment of Ad Valorem Taxes (Title 40)
 Estate Administration (Title 43)

²These exemptions should not be confused with the homestead and exempt property allowances or family allowance provided in Title 43. See *Ala. Code* §§ 43-8-110,111 and 112 (1975).

³Only probate courts with "equity jurisdiction" - see discussion below.

⁴It should be noted that *Ala. Code* § 34-13-11(1975) references "court of competent jurisdiction" - not probate court and there is no definition of "court of competent jurisdiction."

Alabama circuit courts exercise "general superintendence" over probate courts. *Ala. Code* § 12-11-30 (1975).

II PROBATE JUDGES WHO ARE LAWYERS

Jefferson and Mobile Counties

By local acts the probate courts of Jefferson and Mobile Counties have concurrent jurisdiction with the circuit courts of said counties in estate administration and protective proceedings (guardianship and conservatorship proceedings). These local acts also address appeals from these probate courts. The judges of probate of Jefferson and Mobile Counties are required to be lawyers.

Shelby, Pickens and Houston Counties

By a local *constitutional* provision, the probate court of Shelby County has "equity jurisdiction concurrent with that of the circuit court in cases originally filed in the Probate Court of Shelby County if the judge of probate is licensed to practice law in the State of Alabama The judge of probate shall possess the power and authority of a circuit court judge trying the case and the case shall be treated in all respects in the same manner as a case filed in circuit court." *ALA. CONST. (1901) Amend. 758.*

The judge of probate of Shelby County is required to be a lawyer.

The *Alabama Constitution* (1901) was amended in 2010 verbatim to add the same provision with regard to Pickens County. Pickens County differs from Shelby County in that the judge of probate of Pickens County is NOT required to be a lawyer.

The *Alabama Constitution* (1901) has been amended in verbatim to add the same provision with regard to Houston County that exists for Shelby and Pickens Counties. Currently the judge of probate of Houston County is NOT required to be a lawyer.

Involuntary Commitment of Seriously Mentally Ill Persons

If the judge of probate is a lawyer then the appeal of the probate court's commitment decision lies with the Alabama Court of Civil Appeals. If the judge of probate is NOT a lawyer, then the "appeal" of the probate court's commitment decision lies with the circuit court, where the respondent is entitled to a trial *de novo*. *Ala. Code* § 22-52-15 (1975) (SEE BELOW). Currently it is estimated that there are 21 Alabama judges of probate who are lawyers.

III ESTATE ADMINISTRATION

Removal

Ala. Code § 12-11-41 (1975) provides as follows:

The administration of any estate may be removed from the probate court to the circuit court at any time before a final settlement thereof, by any heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed of any such estate, without assigning any special equity; and an order of removal must be made by the court, upon the filing of a sworn petition by any such heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed of any such estate, reciting that the petitioner is such heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed and that, in the opinion of the petitioner, such estate can be better administered in the circuit court than in the probate court.

Id.

Intestate estates can't be removed to circuit court for administration until letters of administration have been issued by the probate court. *Ex parte Casey*, 88 So.3d 822 (Ala. 2012).

Appointment of special administrator *ad colligendum* for estate was insufficient to initiate general administration of the estate in probate court, and thus circuit court lacked jurisdiction over purported administration of decedent's estate and could not remove matter from probate court, absent initiation of the administration of estate by the probate court's appointment of a personal representative and the grant of letters of administration *cum testamento annexo* to the appointed personal representative. *Ex parte Baker*, 183 So.3d 139 (Ala. 2015).

Testate estates can't be removed to circuit court for administration until letters testamentary have been issued by the probate court. *DuBose v. Weaver*, 68 So.3d 814 (Ala. 2011).

Once an estate administration has been removed from a probate court to a circuit court - it stays in circuit court for its duration unless the matter is pending in Jefferson, Shelby or Mobile Counties (see herein below). In all Alabama counties, an improper removal may be corrected by the circuit court remanding the cause to the probate court. See *McCraw v. Cooper*, 215 Ala. 51 (1926) and *Gardner v. Gardner*, 244 Ala. 107 (1943).

The petition for removal is properly filed in the circuit court. Upon notice of such filing the probate court can NOT take any further action in said cause until the circuit court has ruled upon the removal petition. *Ex parte Terry*, 957 So.2d 455 (Ala. 2006). See also *Daniel v. Moya*, 224 So.3d 115 (Ala. 2016).

Probate court's order of removal was ineffective to invoke the circuit court's jurisdiction over the administration of the estate, and therefore, circuit court's judgment in will contest was void; there was no indication that any party filed a petition for removal in the circuit court or that the circuit court ever entered an order removing the administration of the estate from the probate court, and procedure for removal was not altered in any way by fact that probate court had concurrent jurisdiction with circuit court. *McElroy v. McElroy*, ___ So.3d ___, 2017 WL 6397653 (Ala. 2017).

Once the probate court has scheduled a hearing on a final settlement petition, an estate administration can NOT be removed to circuit court. *Ex parte Terry*, 985 So.2d 400 (Ala. 2007).

In 2011 the Alabama Legislature [*Ala. Acts* 2011-528] enacted *Ala. Code* § 12-11-41.1 (1975), which applies **ONLY** to **Jefferson, Mobile and Shelby Counties** at this time:

(a) *In any county where the judge of probate is required to be learned in the law*, the administration of any estate may be removed from the probate court to the circuit court pursuant to Section 12-11-41 at any time before a proceeding for final settlement thereof is commenced in probate court by any heir, devisee, legatee, distributee, executor, administrator, or administrator with the will annexed of the estate, without assigning any special equity. The circuit court *shall* remand the administration of an estate transferred pursuant to this section to the probate court if the circuit court finds that the removal was sought for the purpose of improper delay or did not comply with applicable law. The circuit court *may* remand the administration of an estate pursuant to this section to the probate court if the circuit court finds that any of the following apply:

- (1) The circuit court has issued a final order or judgment on all contested matters pending before the circuit court in the administration of the estate and the time for an appeal of the order or judgment has expired without an appeal being filed or, if an appeal was filed, after the final adjudication of the appeal.
- (2) All interested parties or their representatives request the estate administration be remanded to probate court.

(b) Nothing in subsection (a) shall prevent the administration of an estate from being removed again to the circuit court pursuant to Section 12-11-41 after the administration has been remanded to the probate court as provided above.

Id. (emphasis added).

Estate Claim Litigation

Probate courts have jurisdiction to hear claim objections that arise during the course of estate administration. There is no right to trial by jury as to claim objections. Either party in a claim

objection may appeal a probate court's judgment regarding a claim to the circuit court of the county in which the estate administration is pending, where the parties shall receive a trial *de novo* and trial by jury (if such is requested). *Ala. Code* § 43-2-354 (1975). See *Hines v. Enis*, 39 So.3d 1164 (Ala.Civ.App. 2009) and *State v. Elliott*, 246 Ala. 439 (1945).

Will Contests

A. Before The Probate Of A Will

A will, *before the probate thereof*, may be contested by any person interested therein, or by any person, who, if the testator had died intestate, would have been an heir or distributee of his estate. The contest must be in writing. Trial by jury is available if requested. *Ala. Code* § 43-8-190 (1975).

Upon written demand of any party to the contest *at the time of filing the initial pleading*, the probate court must transfer the contest to the circuit court. After a final, nonappealable determination of the contest has been obtained, the circuit court shall forward the transcript and all pleadings of the contest to the probate court and the probate court resumes administration of the estate. *Ala. Code* § 43-8-198 (1975).

The Jefferson, Mobile, Shelby, Pickens and Houston County Probate Courts have the authority to conduct trials by jury.

B. After The Probate Of A Will In Probate Court

Any person interested in any will *who has not contested the same previously*, may, at any time within the six (6) months after the admission of the subject will to probate, contest the validity of the same **BY FILING A COMPLAINT IN THE CIRCUIT COURT IN THE COUNTY IN WHICH SUCH WILL WAS PROBATED**. *Ala. Code* § 43-8-199 (1975). The right to trial by jury exists. *Ala. Code* § 43-8-202 (1975).

Strict compliance with the will contest statutes is required to quicken jurisdiction in the appropriate court. See *Boshell v. Lay*, 596 So.2d 581 (Ala. 1992), *Evans v. Waddell*, 689 So.2d 23 (Ala. 1997), *Ex parte Barrows*, 892 So.2d 914 (Ala. 1994), *Bond v. Pylant*, 3 So.3d 852 (Ala. 2008), and *Johnson v. Neal*, 39 So.3d 1040 (Ala. 2009).

The Jefferson, Mobile, Shelby, Houston and Pickens County Probate Courts have jurisdiction of will contests that are filed after a will has been admitted to probate and the right to trial by jury remains available.

Correction of Settlement Mistakes By Probate Court

Ala. Code § 12-11-60 (1975) provides in pertinent part as follows:

(a) When any error of law or fact has occurred in the settlement of any estate of a decedent to the injury of any party, without any fault or neglect on his part, such party may correct such error by filing a complaint in the circuit court within two years after the final settlement thereof. The evidence filed in the probate court in relation to such settlement must be received as evidence in the circuit court, with such other evidence as may be adduced. A failure to appeal from the decree of the probate court shall not be held to be such fault or neglect as will bar the plaintiff the remedy herein provided.

(b) The limitations of subsection (a) of this section do not extend to infants or persons of unsound mind who are allowed two years after the termination of their respective disabilities, but in no case to exceed 20 years.

Id.

IV PROTECTIVE PROCEEDINGS (GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS)

Removal

Ala. Code § 26-2-2 (1975) provides in pertinent part as follows:

The administration or conduct of any guardianship or conservatorship of a minor or incapacitated person may be removed from the probate court to the circuit court, *at any time before the final settlement thereof* by the guardian or conservator of any such guardianship or conservatorship or guardian ad litem or next friend of such ward or anyone entitled to support out of the estate of such ward without assigning any special equity, and an order of removal must be made by the court or judge upon the filing of a sworn petition by any such guardian or conservator or guardian ad litem or next friend for the ward or such person entitled to support out of the estate of such ward, reciting in what capacity the petitioner acts and that in the opinion of the petitioner such guardianship or conservatorship can be better administered in the circuit court than in the probate court.

Id.

Letters of guardianship and/or conservatorship must be issued by the probate court before the circuit court can remove such proceedings to the circuit court. See *Ex parte Coffee County Dept. of Human Resources*, 771 So.2d 485 (Ala.Civ.App. 2000) and *Ex parte Casey*, 88 So.3d 822 (Ala. 2012).

Note further - there is a distinction between *temporary* letters of guardianship and/or conservatorship and letters of guardianship and/or conservatorship.

In 2011 the Alabama Legislature [*Ala. Acts* 2011-528] added *Ala. Code* § 26-2-3 (1975), which applies ONLY to Jefferson, Mobile and Shelby Counties at this time:

- (a) *In any county where the judge of probate is required to be learned in the law, the administration or conduct of any guardianship or conservatorship of a minor or incapacitated person may be removed from the probate court to the circuit court pursuant to Section 26-2-2 at any time before the final settlement thereof is commenced in probate court by the guardian or conservator of any such guardianship or conservatorship or guardian ad litem or next friend of such ward or anyone entitled to support out of the estate of such ward without assigning any special equity. The circuit court shall remand the administration of a guardianship or conservatorship transferred pursuant to this section to the probate court if the circuit court finds that the removal was sought for the purpose of improper delay or did not comply with applicable law. The circuit court may remand the administration of a guardianship or conservatorship pursuant to this section to the probate court if the circuit court finds that any of the following apply:*
 - (1) The circuit court has issued a final order or judgment on all contested matters pending before the circuit court in the administration of the guardianship or conservatorship and the time for an appeal of the order or judgment has expired without an appeal being filed, or, if an appeal was filed, after the final adjudication of the appeal.
 - (2) All interested parties or their representatives request the administration of the guardianship or conservatorship be remanded to probate court.
- (b) Nothing in subsection (a) shall prevent the administration of a guardianship or conservatorship from being removed again to the circuit court pursuant to Section 26-2-2 after the administration has been remanded to the probate court as provided above.

Id. (emphasis added).

It is commonly understood that the references to removal of protective proceedings until a final settlement is commenced in the probate court stated in *Ala. Code* §§ 26-2-2 and (3) (1975) are interpreted in the same manner as said term is interpreted in regards to *Ala. Code* §12-11-41 (1975) (discussed above).

Correction of Settlement Mistakes By Probate Court

Ala. Code § 12-11-60 (1975) provides in pertinent part as follows:

(a) When any error of law or fact has occurred in the settlement of any estate of a decedent to the injury of any party, without any fault or neglect on his part, such party may correct such error by filing a complaint in the circuit court within two years after the final settlement thereof. The evidence filed in the probate court in relation to such settlement must be received as evidence in the circuit court, with such other evidence as may be adduced. A failure to appeal from the decree of the probate court shall not be held to be such fault or neglect as will bar the plaintiff the remedy herein provided.

(b) The limitations of subsection (a) of this section do not extend to infants or persons of unsound mind who are allowed two years after the termination of their respective disabilities, but in no case to exceed 20 years.

(c) *Errors of law or fact in the settlement of accounts of guardians may be corrected in the circuit court according to the provisions of subsections (a) and (b) of this section.*

Id. (emphasis added).

Note - prior to the enactment of the Alabama Uniform Guardianship and Protective Proceedings Act in 1987 (*Ala. Acts* 1987-590) Alabama law only provided for "guardians" - not "guardians of the person" and "conservators" (the current terminology). Presumably *Ala. Code* § 12-11-60(c) (1975) now refers to conservatorship proceedings.

Protection of Aged Adults and Adults with a Disability

Ala. Code §§ 38-9-1, *et. seq.* (1975) vests jurisdiction of "adult protective services proceeding" cases in the circuit court. *Ala. Code* § 38-9-6 (g) (1975) authorizes the circuit court to appoint a guardian and/or conservator for a person determined by the circuit court to be in need of protective services. Said guardian and/or conservator is to have the "same powers, duties, and obligations, including having a bond, as a guardian of an incapacitated person or a conservator under the Alabama Uniform Guardianship and Protective Proceedings Act"

This statutory provision is the one exception to the rule that Alabama probate courts are the only courts that are empowered to appoint a guardian and/or conservator. It should be noted that if the circuit court appoints a guardian and/or conservator - the circuit court is: (1) unable to transfer the case to the probate court, and (2) responsible for seeing that any conservator complies with all of the various requirements of Titles 26 and 26A of the *Code of Alabama* (1975), such as filing an inventory, posting a bond, filing a supplemental inventory as additional assets are discovered, filing

a partial settlement every three (3) years, obtaining court approval before the sale of real and/or personal property, etc.

V. EMINENT DOMAIN

Ala. Code § 18-1A-283 (1975) provides as follows:

Any of the parties may appeal from the order of condemnation to the circuit court of the county within 30 days from the making of the order of condemnation by filing in the probate court rendering that judgment a written notice of appeal, a copy of which shall be served on the opposite party or his attorney, and on such appeal, the trial shall be de novo, and it shall be necessary to send up the proceedings only as to the parties appearing or against whom an appeal is taken.

Id.

Ala. Code § 18-1A-286 (1975) provides as follows:

If the probate court refuses to grant the application, the applicant shall have a right of appeal to the circuit court upon giving security for costs, to be approved by the judge of probate, and upon such appeal the trial shall be de novo. Upon any appeal taken to the circuit court under this section, if such circuit court determines that the application should be granted, it shall immediately proceed either to have the damages and compensation assessed as provided in Section 18-1A-151 or grant the condemnor the right of entry upon deposit of the amount of its approved offer into circuit court together with a bond in double the amount as provided in Section 18-1A-284. In such latter event the valuation issue shall be determined as provided in Section 18-1A-151 as may be set by the circuit court.

Id.

VI. ADOPTIONS

Probate courts have original jurisdiction over adoption proceedings. If any party whose consent is required fails to consent or is unable to consent, the proceedings will be transferred to the court having jurisdiction over juvenile matters for the limited purpose of termination of parental rights. *Ala. Code* § 26-10A-3 (1975). If a biological parent doesn't consent to a proposed adoption and the probate court determines that said biological parent impliedly consented to the proposed adoption, there is no basis to transfer such case to the juvenile court for termination of parental rights. *Ex parte A.M.P.*, 997 So.2d 1008 (Ala. 2008). Appeals in adoption cases are to the Alabama Court of Civil Appeals. *Ala. Code* § 12-3-10 (1975) and *Matter of Hicks*, 495 So.2d 691 (Ala.Civ.App. 1986).

VII. TRUSTS

In 2006 the Alabama Legislature enacted the Alabama Uniform Trust Code [*Ala. Code* § 19-3B-101, *et seq.* (1975)]. This Code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. *Ala. Code* § 19-3B-102 (1975).

Ala. Code § 19-3B-203 (1975) provides as follows:

- (a) Except as provided in subsection (b), the circuit court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.
- (b) A probate court granted statutory equitable jurisdiction has concurrent jurisdiction with the circuit court in any proceeding involving a testamentary or inter vivos trust.

Id.

Accordingly, Jefferson, Mobile, Shelby, Houston and Pickens⁵ County Probate Courts have jurisdiction concurrent with the circuit court in any proceeding concerning trusts.

It should be noted that there is no statutory provision for removal or transfer of trust administration matters from probate courts to circuit courts.

VIII. INVOLUNTARY COMMITMENT OF SERIOUSLY MENTALLY ILL PERSONS

Ala. Code § 22-52-15 (1975) addresses appeals of initial commitment decisions by Alabama probate courts. This section provides as follows:

An appeal from an order of the probate court granting a petition seeking to commit a respondent to the custody of the department or designated mental health facility as the court may order *lies to the circuit court for trial de novo unless the probate judge who granted the petition was learned in the law, in which case the appeal lies to the Alabama Court of Civil Appeals on the record*. Notice of appeal shall be given in writing to the probate judge within five days after the respondent has received actual notice of the granting of the petition and shall be accompanied by security for costs, to be approved by the probate judge, unless the probate judge finds that the respondent is indigent, in which case no security for costs shall be required. Upon the filing of a notice of appeal, the probate judge shall determine and enter an order setting forth the limitations to be placed upon the liberty of the respondent pending

⁵It should be noted that the Shelby, Houston and Pickens County Probate Courts have equity jurisdiction pursuant to Constitutional provisions - not by statute. Presumably these courts have jurisdiction to hear trust matters.

the appeal. Upon the filing of a notice of appeal, the probate judge shall certify the record to the clerk of the reviewing court. The petition shall be set for hearing by the reviewing court within 60 days of the date the notice of appeal is filed in the probate court, and such hearing shall not be continued except upon motion in writing by the respondent for good cause. The costs of the proceedings in the reviewing court shall be taxed in the same manner as in the probate court. All requirements relative to hearings in probate court shall apply to appeals heard in the circuit court.

Id. (emphasis added).

IX. NAME CHANGES AND LEGITIMATION

Ala. Code §12-13-1 (1975) provides that Alabama probate courts have jurisdiction over the change of persons' names, where said persons reside in their jurisdiction. A probate court's jurisdiction to change the legal name of a minor is limited to legitimation proceedings and does not exist if another court has exercised jurisdiction as to the minor in a domestic relations or juvenile proceeding. See *Russell v. Fuqua*, 176 So.3d 1224 (Ala. 2015). *Ala. Code* § 26-11-1, *et. seq.* (1975) addresses legitimation and a father's request to change the name of a bastard child upon legitimation. Alabama circuit courts have no appellate jurisdiction as to such causes.

X. PARTITION OF REAL PROPERTY

Alabama circuit courts and probate courts have joint jurisdiction with regard to partition and division of real property located within their respective jurisdictions. See *Ala. Code* §§ 35-6-20 and 40 (1975). Alabama circuit courts have appellate jurisdiction of probate courts' decisions relating to the division or partition of real or personal property. *Ala. Code* § 12-22-21(7) (1975). Such an appeal must be taken within 42 days and the decree, judgment or order may be stayed upon execution, within 14 days, of a supersedeas bond. *Ala. Code* § 12-22-21(7) (1975).

It should also be noted that *Ala. Code* § 35-6-50 (1975) provides that if there is any fraud or undue influence employed by any of the parties to obtain an unfair partition or allotment of real property in an partition action maintained in probate court, such partition may be annulled by the circuit court on a complaint filed within five (5) years after the allotment by the probate court.

XI. PARTITION OF CROPS

Jurisdiction to hear partition of crop causes of actions is vested in Alabama probate courts. A jury trial right exists with regard to such actions and there is no transfer or removal to circuit court provision should a jury trial be requested by a party in interest. Appeals of crop partition decisions are vested in the Alabama circuit courts. *Ala. Code* § 35-6-124 (1975) provides as follows:

Any of the parties, within 10 days thereafter, may appeal to the circuit or supreme court from the decree of partition or sale, or from a decree confirming or setting aside the commissioners' report, under the regulations governing appeals in other cases from decrees of the probate court to the circuit or supreme court; and such decree

may be superseded pending the appeal by the appellant, on giving bond in double the amount of the value of the interests of the other parties in the crops, with sufficient surety, to be approved by the judge of probate, and with condition to have the crops forthcoming to abide the decree to be finally rendered in the cause, and in the event of his failure to do so, to pay all costs and damages arising therefrom.

Id.

XII APPEALS

General

Ala. Code § 12-22-20 (1975) provides as follows:

An appeal lies to the circuit court or Supreme Court from any final decree of the probate court, or from any final judgment, order or decree of the probate judge; and, in all cases where it may of right be done, the appellate court shall render such decree, order or judgment as the probate court ought to have rendered.

Id. The provisions of this section are general and not applicable where special provisions are passed to govern specific classes of cases. *Hines v. Enis*, 39 So.3d 1164 (Ala.Civ.App. 2009), *State v. Elliott*, 246 Ala. 439 (1945), and *Herring v. Griffin*, 211 Ala. 225 (1924). Further, except where by specific statute there is provision for a trial *de novo*, the appeal from a final judgment of a probate court to a circuit court does not allow for trial *de novo* in the circuit court; rather, the circuit court acts in an appellate capacity and may not substitute its judgment for that of the probate court. *Womack v. Estate of Womack*, 826 So.2d 138 (Ala. 2002).

Final and Non-Final Decrees

The test of a final decree is whether it is such an adjudication of the right involved as would be a bar to a subsequent renewal of the same application by the same party, on the same state of facts; and if it could be reconsidered at any time, without regard to the act of previous refusal then it is not a final decree within the meaning of *Ala. Code* § 12-22-20 (1975). *Ramaguano v. Crook*, 88 Ala. 450 (1890). Orders and decrees which are non-final in nature are reviewed by certiorari, mandamus or writ of prohibition, as the case may be. *Town of Flat Creek v. Alabama By-Products Corporation*, 245 Ala. 528 (1944).

Appeals to Circuit Court From Probate Court - General

The following types decisions are appealable from the probate court to the circuit court:

1. The decree, judgment or order on a contest as to the validity of a will, to be taken within 42 days after the determination of the contest - *Ala. Code* § 12-22-21(1) (1975).

2. The decree, judgment or order on an application claiming the right to execute a will or administer an estate, to be taken within 42 day after the determination UNLESS the application was denied because the applicant was deemed unfit to serve by reason of a conviction of an infamous crime or by reason of improvidence, intemperance or want of understanding, in which case the appeal must be taken within 7 days of the denial - *Ala. Code* § 12-22-21(2) (1975).
3. The decree, judgment or order removing an executor or administrator, in which case the appeal must be taken within 7 days of the removal - *Ala. Code* § 12-22-21(3) (1975).
4. By a legatee or person entitled to distribution - on a decision in proceedings instituted to compel the payment of a legacy or distributive share in which case the appeal must be taken within 42 days of the denial - *Ala. Code* § 12-22-21(4) (1975).
5. After a final settlement, upon any order, judgment or decree, made on such settlement, or respecting any item or matter thereof, or any previous settlement or item, or matter thereof, in which case the appeal must be taken within 42 days of the denial - *Ala. Code* § 12-22-21(5) (1975).
6. Upon any issue as to the insolvency of an estate and upon any issue as to the allowance of any claim against insolvent estates, in which case the appeal must be taken within 42 days of the determination of the issue - *Ala. Code* § 12-22-21(6) (1975).
7. On the application for a division or partition of real or personal property, in which case the appeal must be taken within 42 days and the decree, judgment or order may be stayed upon execution, within 14 days, of a supersedeas bond - *Ala. Code* § 12-22-21(7) (1975).

An appeal from the probate court may be taken to the circuit court only in the seven types of cases stated above. *SC Realty, Inc. v. Jefferson County, Tax Assessor*, 638 So.2d 1343 (Ala. Civ. App. 1993).

Appeals from Jefferson and Mobile County Probate Courts

The local acts relating to the Jefferson and Mobile County Probate Courts' jurisdiction contain provisions relating to appeals of the decisions of said courts.

Jefferson County

Ala. Act 1971-1144 provides in pertinent part as follows:

Section 4. Appeals may be taken from the orders, judgments and decrees of such a Probate Court, relating to the administration of such aforesaid estates, including decrees on partial settlements and rulings on demurrer, or otherwise relating to action

taken pursuant to jurisdiction conferred by this act, to the Supreme Court within thirty days from the decision of such a Probate Court on a motion for new trial, in the manner and form as is provided from the Probate Courts to the Supreme Court.

Id.

Mobile County

Ala. Acts 1991-131 provides in pertinent part as follows:

Section 5. That appeals from the orders, judgments and decrees of such Probate Courts, relating to the administration of such estates, including decrees on partial settlements, lie to the Supreme Court within the time period prescribed in the Alabama Rules of Appellate Procedure from the entry of the order, judgment or decree. Such appeals shall be made in accordance with said appellate rules.

Id.

There are no reported Alabama appellate cases regarding the interplay between the local acts relating to appeals from the Jefferson and Mobile County Probate Courts and *Ala. Code* § 12-22-21 (1975).