

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 14
Committee Substitute Favorable 2/23/89

Short Title: Assignment of Year's Allowance.

(Public)

Sponsors:

Referred to:

January 13, 1989

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE ASSIGNMENT OF THE YEAR'S ALLOWANCE TO THE SURVIVING SPOUSE AND CERTAIN SURVIVING CHILDREN OF THE DECEASED, WHEN THE ALLOWANCE IS ASSIGNED BY A MAGISTRATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 30-19 reads as rewritten:

"§ 30-19. Value of property ascertained.

The value of the personal property assigned to the surviving spouse and children shall be ascertained by a magistrate ~~and two persons qualified to act as jurors~~ of the county in which administration was granted or the will probated."

Sec. 2. G.S. 30-20 reads as rewritten:

"§ 30-20. Procedure for assignment.

Upon the application of the surviving spouse, ~~or whenever it shall appear that a child is entitled to an allowance as provided by G.S. 30-17, the personal representative of the deceased shall apply to a child by his guardian or next friend, or the personal representative of the deceased,~~ the clerk of superior court of the county in which the deceased resided ~~to shall~~ assign the inquiry to a magistrate of the county. The magistrate ~~shall summon two persons qualified to act as jurors, who, having been sworn by the magistrate to act impartially as commissioners shall, with him,~~ ascertain the person or persons entitled to an allowance according to the provisions of this Article, and determine the money or other personal property of the estate, and pay over to or assign to the surviving spouse and to the children, if any, so much thereof as they shall be entitled to as provided in this Article. Any deficiencies shall be made up from any of the

1 personal property of the deceased, and if the personal property of the estate shall be
2 insufficient to satisfy such allowance, the clerk of the superior court shall enter
3 judgment against the personal representative for the amount of such deficiency, to be
4 paid when a sufficiency of such assets shall come into his hands."

5 Sec. 3. G.S. 30-21 reads as rewritten:

6 **"§ 30-21. Report of ~~commissioners~~magistrate.**

7 The ~~commissioners~~magistrate shall make and sign three lists of the money or other
8 personal property assigned to each person, stating their quantity and value, and the
9 deficiency to be paid by the personal representative. Where the allowance is to the
10 surviving spouse, one of these lists shall be delivered to him. Where the allowance is to
11 a child, one of these lists shall be delivered to the surviving parent with whom the child
12 is living; or to the child's guardian or next friend if the child is not living with said
13 surviving parent; or to the child if said child is not living with the surviving parent and
14 has no guardian or next friend. One list shall be delivered to the personal representative.
15 One list shall be returned by the magistrate, within 20 days after the assignment, to the
16 superior court of the county in which administration was granted or the will probated,
17 and the clerk shall file and record the same, together with any judgment entered
18 pursuant to G.S. 30-20."

19 Sec. 4. G.S. 30-23 reads as rewritten:

20 **"§ 30-23. Right of appeal.**

21 The personal representative, or the surviving spouse, or child by his guardian or next
22 friend, or any creditor, legatee or heir of the deceased, may appeal from the finding of
23 the ~~commissioners~~magistrate to the superior court of the county, and, within 10 days
24 after the assignment, cite the adverse party to appear before such court on a certain day,
25 not less than five nor exceeding 10 days after the service of the citation."

26 Sec. 5. G.S. 30-24 reads as rewritten:

27 **"§ 30-24. Hearing on appeal.**

28 At or before the day named, the appellant shall file with the clerk a copy of the
29 assignment and a statement of his exceptions thereto, and the issues thereby raised shall
30 be decided as other issues are directed to be. When the issues shall have been decided,
31 judgment shall be entered accordingly, if it may be without injustice, without remitting
32 the proceedings to the ~~commissioners~~magistrate."

33 Sec. 6. This act shall become effective October 1, 1989, and shall apply to
34 applications for the assignment of a year's allowance made on or after that date.