

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 908

Short Title: Suits and Appeals by Paupers.

(Public)

Sponsors: Representative Michaux.

Referred to: Judiciary I.

April 13, 1993

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES THAT ADDRESS SUITS BROUGHT BY
PAUPERS AND APPEALS PROSECUTED BY PAUPERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-110 reads as rewritten:

"§ 1-110. Suit as a pauper; counsel.

Any superior or district court judge or clerk of the superior court may authorize a person to sue as a pauper in their respective courts when ~~he proves, by one or more witnesses, that he has a good cause of action, and the person~~ makes affidavit that he is unable to comply with the provisions of G.S. 1-109. A person is presumed to be a pauper within the meaning of this section if the person makes an affidavit that the person:

- (1) Receives food stamps,
- (2) Receives Aid to Families with Dependent Children (AFDC),
- (3) Receives Supplemental Security Income (SSI),
- (4) Received Medicaid,
- (5) Is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons, or
- (6) Is represented by private counsel working on the behalf of or under the auspices of a legal services organization under subdivision (5) of this subsection.

and the clerk of the superior court shall authorize this person to sue as a pauper. A superior or district court judge may, in the judge's discretion, authorize a person who is not presumed to be a pauper under subdivisions (1) through (6) of this subsection to sue

1 as a pauper in the judge's court. The court to which such summons is returnable may
2 assign to the person suing as a pauper learned counsel, who shall prosecute his action.
3 The court to which such summons is returnable may dismiss the case:

- 4 (1) If the allegations contained in the affidavit are determined to be untrue;
5 or
6 (2) If the court is satisfied that the action is frivolous or malicious,
7 and the court costs of such action may be charged to the person suing as a pauper."

8 Sec. 2. G.S. 7A-228(b1) reads as rewritten:

9 "(b1) A person desiring to appeal as a pauper shall, within 10 days of entry of
10 judgment by the magistrate, file an affidavit that he is unable by reason of his poverty to
11 pay the costs of appeal and proves, by one or more witnesses, that he has a meritorious cause
12 of action or defense. ~~appeal.~~ Within 20 days after entry of judgment, a superior or district
13 court judge, magistrate, or the clerk of the superior court may authorize a person to
14 appeal to district court as a pauper.

15 A person desiring to appeal as a pauper is presumed to be unable by reason of his
16 poverty to pay the costs of appeal if the person:

- 17 (1) Receives food stamps,
18 (2) Receives Aid to Families with Dependent Children (AFDC),
19 (3) Receives Supplemental Security Income (SSI),
20 (4) Receives Medicaid,
21 (5) Is represented by a legal services organization that has as its primary
22 purpose the furnishing of legal services to indigent persons, or
23 (6) Is represented by private counsel working on behalf of or under the
24 auspices of such organization,

25 and in such case the clerk of superior court shall authorize a person to appeal to district
26 court as a pauper. A superior or district court judge or the clerk of the superior court
27 may, in his discretion, authorize a person who is not presumed to be a pauper under
28 subdivisions (1) through (6) of this subsection to proceed as a pauper if such person
29 cannot pay the costs of appeal. A district court judge may dismiss the appeal if the
30 allegations contained in the affidavit are determined to be untrue, or if the judge is
31 satisfied that the action is frivolous or malicious; and in such case the judgment of the
32 magistrate shall be affirmed and court costs of such action may be charged to the person
33 appealing as a pauper."

34 Sec. 3. G.S. 1-288 reads as rewritten:

35 **"§ 1-288. Appeals in forma pauperis; clerk's fees.**

36 When any party to a civil action tried and determined in the superior or district court
37 at the time of trial or special proceeding desires an appeal from the judgment rendered
38 in the action to the Appellate Division, and is unable, by reason of his poverty, to make
39 the deposit or to give the security required by law for ~~said~~ the appeal, it shall be the duty
40 of the judge or clerk of said court to make an order allowing ~~said~~ the party to appeal
41 from the judgment to the Appellate Division as in other cases of appeal, without giving
42 security therefor. The party desiring to appeal from the judgment or order in a civil
43 action or special proceeding shall, within 30 days after the entry of the judgment or
44 order, make affidavit that he is unable by reason of his poverty to give the security

1 required by law, and that he is advised by a practicing attorney that there is error in
2 matter of law in the decision of the court in ~~said~~the action. The affidavit must be
3 accompanied by a written statement from a practicing attorney of said court that he has
4 examined the affiant's case, and is of opinion that the decision of the court, in ~~said~~the
5 action, is contrary to law. A person is presumed to be unable, by reason of poverty, to
6 give the security required by law for the appeal, if the person makes affidavit that the
7 person:

8 (1) Receives food stamps,

9 (2) Receives Aid to Families with Dependent Children (AFDC),

10 (3) Receives Supplemental Security Income (SSI),

11 (4) Receives Medicaid,

12 (5) Is represented by a legal services organization that has as its primary
13 purpose the furnishing of legal services to indigent persons, or

14 (6) Is represented by private counsel working on behalf of or under the
15 auspices of such organization,

16 and in such case the clerk of superior court shall make an order allowing the party to
17 appeal without giving security as long as all other requirements contained in this section
18 are satisfied. The superior or district court judge or the clerk of the superior court may,
19 in his discretion, make an order allowing a party who is not presumed under
20 subdivisions (1) through (6) of this section to be unable, by reason of poverty, to give
21 security to appeal to the Appellate Division without giving security. Nothing contained
22 in this section deprives the clerk of the superior court of his right to demand his fees for
23 his certificate and seal as now allowed by law in such cases. Provided, that where the
24 judge or the clerk has made an order allowing the appellant to appeal as a pauper and
25 the appeal has been filed in the Appellate Division, and an error or omission has been
26 made in the affidavit or certificate of counsel, and the error is called to the attention of
27 the court before the hearing of the argument of the case, the court shall permit an
28 amended affidavit or certificate to be filed correcting the error or omission."

29 Sec. 4. This act becomes effective October 1, 1994, and applies to all suits or
30 appeals prosecuted on or after that date.