

CHAPTER 59

APPELLATE PROCEEDINGS

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59.04 Appeal from order granting new trial.—Upon the entry of an order granting a new trial, the party aggrieved may prosecute an appeal to the proper appellate court without waiting for final judgment. If the judgment is reversed, the appellate court may direct that final judgment be entered in the trial court for the party obtaining the verdict unless a motion in arrest of judgment or for a judgment notwithstanding the verdict be made and prevail.

History.—RS 1267; GS 1695; RGS 2905; CGL 4615; s. 4, ch. 22854, 1945; s. 1, ch. 71-316.

59.041 Harmless error; effect.—No judgment shall be set aside or reversed, or new trial granted by any court of the state in any cause, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence or for error as to any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire case it shall appear that the error complained of has resulted in a miscarriage of justice. This section shall be liberally construed.

History.—s. 1, ch. 6223, 1911; RGS 2612; CGL 4499; s. 14, ch. 67-254.
Note.—Former s. 54.23.

59.06 Matters reviewable on appeal.—

(1) **WHAT MAY BE ASSIGNED AS ERROR.**—All judgments and orders made in any action wherein the trial court:

- (a) May allow or refuse to allow any motion:
 1. For a new trial or rehearing,
 2. For leave to amend pleadings,
 3. For leave to file new or additional pleadings,
 4. To amend the record, or
 5. For continuance of the action; or
- (b) Shall sustain or overrule any motion to dismiss the action

may be assigned as error upon any appeal from the final judgment or order in the action. The appellate court shall hear and determine the matter so assigned under like rules as in other actions.

(2) **EFFECT OF PLEADING OVER OR AMENDING.** Pleading over or amending pleadings after order upon motion to dismiss shall not waive the right to have the judgment or order reviewed.

History.—s. 1, ch. 521, 1853; s. 1, ch. 3430, 1883; RS 1265; GS 1693; RGS 2903; CGL 4608; s. 6, ch. 22854, 1945; s. 2, ch. 71-316.

59.081 Time for invoking appellate jurisdiction of any court.—

(1) The time within which and the method by which the jurisdiction of any court in this state possessed of power to review the action of any other court, commission, officer or bureau may be invoked by appeal, certiorari, petition for review or other process by whatever name designated, and the manner of computing such time shall be prescribed by rule of the Supreme Court.

(2) Failure to invoke the jurisdiction of any such court within the time prescribed by such rules shall divest such court of jurisdiction to review such cause.

History.—ss. 1, 2, 3, ch. 67-175; ss. 29, 30, ch. 69-52; s. 16, ch. 71-355.

59.13 Supersedeas on petition for certiorari.—

When it appears to the trial court that a petition for certiorari has been or is about to be applied for in an appellate court, the trial court may grant a supersedeas upon petitioner giving a good and sufficient bond, conditioned that the petition shall be duly presented to the appellate court within the time prescribed by the Florida Rules of Appellate Procedure and to pay all costs, damages, and expenses occasioned by reason of the stay of proceedings with such other and further conditions as may be fixed by the trial court in the event the order or judgment for which a review is sought is not quashed, modified or reversed.

History.—ss. 1, 7, Feb. 10, 1832; Feb. 17, 1833; Feb. 12, 1836, ss. 3, 4, ch. 521, 1852; RS 1272, 1458; s. 1, ch. 4917, 1901; GS 1701, 1909; RGS 2911, 3170; CGL 4621, 4962; s. 13, ch. 22854, 1945; ss. 3, 5, ch. 71-316.

Note.—Consolidation with former ss. 67.04 and 67.05.

59.15 Proceedings in pais; authentication.—Proceedings in pais, not stenographically reported, may be authenticated by recitals in orders, judgments, or decrees, of the trial court, or of the judge thereof, or by a stipulation by the interested parties.

History.—s. 68, Nov. 23, 1828; s. 1, ch. 138, 1848; RS 1268; GS 1696; s. 10, ch. 738, 1919; RGS 2906; CGL 4616; s. 15, ch. 22854, 1945; s. 5, ch. 71-316.

59.29 Amendment of appellate proceedings.—

The appellate court may, at any time, in the furtherance of justice, upon such terms as may be just, permit appellate proceedings to be amended.

History.—s. 2, ch. 11890, 1927; CGL 4636; s. 29, ch. 22854, 1945.

59.33 Quashing appeals; power of appellate court.

Appellate courts shall have power to quash appeals in all cases in which appeals do not lie, or where they are taken against good faith or merely for delay, and may decree in such case damages against the appellant not exceeding 10 percent.

History.—s. 13, Feb. 10, 1832; s. 50, ch. 1096, 1861; RS 1279; GS 1709; s. 13, ch. 5998, 1909; RGS 2920; CGL 4639; s. 33, ch. 22854, 1945.

59.35 Judgment; power of appellate court to direct a new trial upon one or more issues.—

An appellate court may, in reversing a judgment of a lower court brought before it for review by appeal, by the order of reversal, if the error for which reversal is sought is such as to require a new trial, direct that a new trial be had on all the issues shown by the record or upon a part of such issues only. When a reversal is had, with direction

for new trial on a part of the issues, all other issues shall be deemed settled conclusively in favor of the appellee.

History.—s. 1, ch. 6467, 1913; RGS 2921; CGL 4640; s. 35, ch. 22854, 1945.

59.45 Misconception of remedy; Supreme Court.—

If an appeal be improvidently taken where the remedy might have been more properly sought by certiorari, this alone shall not be a ground for dismissal; but the notice of appeal and the record thereon shall be regarded and acted on as a petition for certiorari duly presented to the Supreme Court.

History.—s. 1, ch. 23826, 1947.

59.46 Attorney's fees.—In the absence of an expressed contrary intent, any provision of a statute or of a contract entered into after October 1, 1977, providing for the payment of attorney's fees to the prevailing party shall be construed to include the payment of attorney's fees to the prevailing party on appeal.

History.—s. 1, ch. 73-84; s. 1, ch. 77-76; s. 1, ch. 83-214.