

Approving Estate Settlement Agreements

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1

By the numbers...



2

By the numbers...

- Estate files opened in North Carolina....

YEAR	# of Filings
2025-2026	83,380
2024-2025	86,876
2023-2024	86,390
2022-2023	86,805
2021-2022	90,461

- 131,587 estate cases pending in FY 2026.

So what?

- Many of these conflicts will become court cases.
- Many of these litigants will ultimately settle.
 - For some...
 - Private settlement agreement (contract).
 - For others...
 - Request court approval.
 - Require court approval as a condition to agreement becoming effective.

Why get court approval?

*Not required in most situations.**

**Exception: caveat settlements require court approval. G.S. 31-37.1.*

Reasons litigants ask for court approval anyway:

- ✓ Increase likelihood of follow through.
- ✓ Subject parties to court's contempt power.
- ✓ Shorten statute of limitations to set aside/challenge the agreement.
- ✓ Support certain tax outcomes.
- ✓ Alter estate accountings with the clerk.

What do you do?



Goals for this Session

1. Set the Table

- ✓ Identify parties
- ✓ Identify common estate disputes

2. Develop a Framework for Review & Approval of Estate Settlement Agreements

a. Confirm Jurisdiction

- ✓ Has jurisdiction been invoked?
- ✓ Examine different “lanes” of estate subject matter jurisdiction

b. Apply Family Settlement Agreement Analysis

- ✓ Examine Family Settlement Agreement (FSA) Doctrine
- ✓ Other Situations



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Approving Estate Settlement Agreements

Setting the Table



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Two Types of Estates

Testate Estate - If the deceased person ("decedent") died with a valid, probated will, the decedent's assets pass pursuant to the terms of that will.

Intestate Estate - If the decedent dies without a valid, probated will, the decedent's assets pass pursuant to the law of intestacy, codified in G.S. Chapter 29.



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Who benefits from an estate?

- **Devisees** - The persons who inherit from a will.
- **Heirs** - The persons who inherit under the intestacy laws.

Collectively... let's refer to both as ***beneficiaries***.



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Who can be a beneficiary?

- Natural Persons
- Entities
 - Charities
 - Churches, schools, religious orgs, non-profits, private foundations, donor-advised funds, etc.
 - Trusts
 - Settlor (Creator)
 - Trustee (Person in charge)
 - Beneficiary (Person who benefits)
 1. Current
 2. Future/Remainder*

Persons with Special Rights

- Surviving spouses
 - Have multiple rights they can choose to exercise after a spouse dies.
 - Examples: filing for a year's allowance, an elective share, or a life estate in real property.
 - Can waive rights in a contract (pre- or post-nuptial agreement).
- Children
 - Child's allowance.
 - Unintentionally omitted/afterborn children.
- Creditors
 - Have a right to make a claim within a specified period of time.
 - Can litigate if claim is unjustly denied.

Persons Who are Left Out of Wills and Trusts

“Any party interested in the estate”

- Comes from caveat (will contest) law.
- Pecuniary or beneficial interest in decedent's estate that is detrimentally affected by will.

- *In re Ashley's Will*, 1974, 208 S.E.2d 398, 23 N.C.App. 176, certiorari denied 210 S.E.2d 56, 286 N.C. 335.

Examples:

- Intestate heirs
- Devisees of another will



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Persons in Charge

- **Executor** – Fiduciary who administers testate estate.
- **Administrator** – Fiduciary who administers intestate estate.

Collectively **Personal Representative (PR)**.

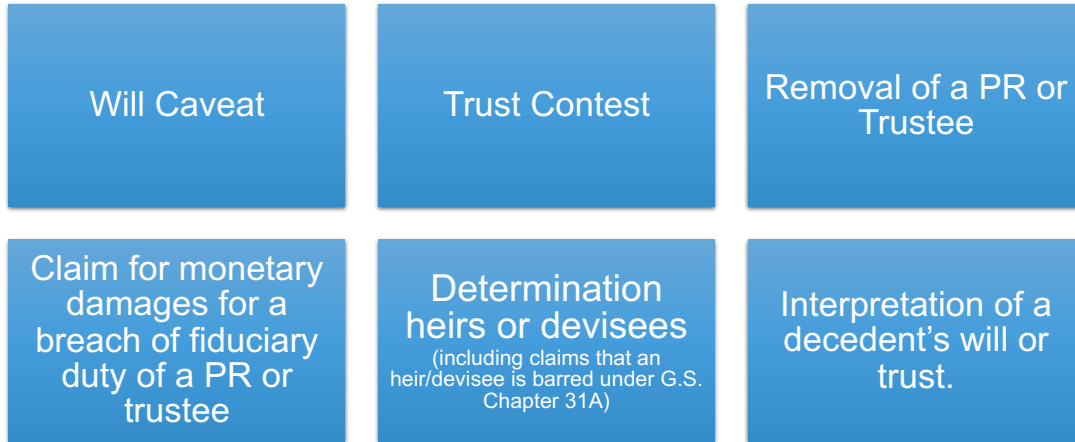
- PR's job:
 - Send notice to creditors; Pay valid creditor claims.
 - Distribute assets to beneficiaries as will or G.S. Chapter 29 requires.

- **Trustee** – Fiduciary who administers a trust.



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Common Estate/Inheritance Disputes



Approving Estate Settlement Agreements

Developing a Framework for Review & Approval

Part 1: Confirm Jurisdiction

Two Fundamental Questions



Has the court's jurisdiction been invoked?



Does the court have subject matter jurisdiction over the matter in dispute?



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17

Part 1: Has jurisdiction been invoked?

Confirming Jurisdiction



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18

Invoking the court's jurisdiction

- A court's subject matter jurisdiction over a particular case is invoked by a **pleading**.
 - *Hoke Cnty. Bd. of Educ. v. State*, 389 N.C. 198, 256, 927 S.E.2d 600, 638 (2026), citing *Boseman v. Jarrell*, 364 N.C. 537, 546, 704 S.E.2d 494, 501 (2010).
- If a party has not properly invoked the trial court's subject matter jurisdiction over a claim, then the trial court is not empowered to rule on that claim.
 - *Hoke Cnty. Bd. of Educ. v. State*, 389 N.C. 198, 256, 927 S.E.2d 600, 638 (2026); *Eudy v. Eudy*, 288 N.C. 71, 75, 215 S.E.2d 782, 785 (1975), *overruled on other grounds by*, *Quick v. Quick*, 305 N.C. 446, 290 S.E.2d 653 (1982); *Miller v. McConnell*, 226 N.C. 28, 35, 36 S.E.2d 722, 726 (1946).



Invoking the court's jurisdiction (cont'd.)

- Subject matter jurisdiction is a matter of law and *cannot be conferred by the consent of the parties*.
 - *Hoke Cnty. Bd. of Educ. v. State*, 389 N.C. 198, 254–55, 927 S.E.2d 600, 637 (2026); *In re K.J.L.*, 363 N.C. 343, 345–46, 677 S.E.2d 835, 837 (2009); *In re T.R.P.*, 360 N.C. 588, 595, 636 S.E.2d 787, 793 (2006).
- Where there is no jurisdiction of the subject matter the whole proceeding is void ab initio and may be treated as a nullity anywhere, at any time, and for any purpose.
 - *Hoke Cnty. Bd. of Educ. v. State*, 389 N.C. 198, 254–55, 927 S.E.2d 600, 637 (2026); *High v. Pearce*, 220 N.C. 266, 17 S.E.2d 108, 112 (1941), citing *Clark v. Carolina Homes*, 189 N.C. 703, 128 S.E. 20 (1925); *Carter v. Rountree*, 109 N.C. 29, 13 S.E. 716 (1891).



Checklist: Has jurisdiction been invoked?

1. **Ask** → Is there a pending action/proceeding before you?
2. **Examine** what's been filed: (various types, may look different in each case)
 - ✓ Caveat
 - ✓ Complaint
 - ✓ Declaratory Judgment
 - ✓ Transfer of Estate or Trust Proceeding (E-file)
 - ✓ Special Proceeding by consent under G.S. 1-400(?)

What doesn't invoke the court's jurisdiction?

✗ *Presenting a settlement agreement/consent order only.*

Part 2: Does the court have subject matter jurisdiction over the matter in dispute?

Confirming Jurisdiction

Estates Jurisdiction: Overlapping & Complex

- *Estate Administration – Clerk only*

Estate & Trust Disputes – Clerk only,* Judge only,* or Both*

**Depends on the type of claim.*

- *General Litigation – Judge only*

Jurisdiction can be Exclusive or Non-Exclusive



- **Exclusive:** The court has the power to decide a case to the exclusion of all other courts.
- **Non-exclusive:** Jurisdiction that can be exercised by more than one court over the same subject matter.

Lane I – Exclusive Jurisdiction of the Clerk

- Governing statute: G.S. 28A-2-4(a)1,2, 3
- Covers 4 areas:
 1. Probate of wills.
 2. Granting and revoking of letters testamentary and letters of administration, or other proper letters of authority.
 3. Determination of the elective share for a surviving spouse as provided in G.S. 30-3.1.
 4. *AND...All other estate proceedings (matters “initiated by petition related to the administration, distribution, or settlement of an estate”) except those listed in G.S. 28A-2-4(a)(4).***

G.S. 28A-2-4(a)

Lane I

- (a) The clerks of superior court of this State, as ex officio judges of probate, shall have original jurisdiction of estate proceedings. Except as provided in subdivision (4) of this subsection, the jurisdiction of the clerk of superior court is exclusive. Estate proceedings include, but are not limited to, the following:
- 1) Probate of wills.
 - 2) Granting and revoking of letters testamentary and letters of administration, or other proper letters of authority for the administration of estates.
 - 3) Determination of the elective share for a surviving spouse as provided in G.S. 30-3.1.
 - 4) Proceedings to ascertain heirs or devisees, to approve settlement agreements pursuant to G.S. 28A-2-10, to determine questions of construction of wills, to determine priority among creditors, to determine whether a person is in possession of property belonging to an estate, to order the recovery of property of the estate in possession of third parties, to determine a claim for relief regarding the disposition of community property at death as provided in Article 5 of Chapter 30 of the General Statutes, and to determine the existence or nonexistence of any immunity, power, privilege, duty, or right.

Lane II – Original, Non-Exclusive Jurisdiction of the Clerk (+ Superior Court)

- Governing statute: G.S. 28A-2-4(a)(4)
- Covers 7 types of proceedings:
 1. Ascertain heirs or devisees.
 2. Approve settlement agreements *per G.S. 28A-2-10*.
 3. Determine questions of construction of wills.
 4. Determine priority among creditors.
 5. Determine whether a person is in possession of estate property.
 6. Order recovery of estate property.
 7. Determine the existence or nonexistence of any immunity, power, privilege, duty, or right.

G.S. 28A-2-4(a)

- (a) The clerks of superior court of this State, as ex officio judges of probate, shall have original jurisdiction of estate proceedings. Except as provided in subdivision (4) of this subsection, the jurisdiction of the clerk of superior court is exclusive. Estate proceedings include, but are not limited to, the following:
- 1) Probate of wills.
 - 2) Granting and revoking of letters testamentary and letters of administration, or other proper letters of authority for the administration of estates.
 - 3) Determination of the elective share for a surviving spouse as provided in G.S. 30-3.1.
 - 4) Proceedings to ascertain heirs or devisees, to approve settlement agreements pursuant to G.S. 28A-2-10, to determine questions of construction of wills, to determine priority among creditors, to determine whether a person is in possession of property belonging to an estate, to order the recovery of property of the estate in possession of third parties, to determine a claim for relief regarding the disposition of community property at death as provided in Article 5 of Chapter 30 of the General Statutes, and to determine the existence or nonexistence of any immunity, power, privilege, duty, or right.

G.S. 28A-2-4(a) - Superior Court receives via Transfer

- (4) Proceedings to ascertain heirs or devisees, to approve settlement agreements pursuant to G.S. 28A-2-10, to determine questions of construction of wills, to determine priority among creditors, to determine whether a person is in possession of property belonging to an estate, to order the recovery of property of the estate in possession of third parties, to determine a claim for relief regarding the disposition of community property at death as provided in Article 5 of Chapter 30 of the General Statutes, and to determine the existence or nonexistence of any immunity, power, privilege, duty, or right. Any party or the clerk of superior court may file a notice of transfer of a proceeding pursuant to this subdivision to the Superior Court Division of the General Court of Justice as provided in G.S. 28A-2-6(h). In the absence of a transfer to superior court, Article 26 of Chapter 1 of the General Statutes applies to an estate proceeding pending before the clerk of superior court to the extent consistent with this Article.

Lane II – Superior Court receives via Transfer

“Any party or the clerk of superior court may file a notice of transfer of a proceeding pursuant to this subdivision to the Superior Court Division of the General Court of Justice as provided in G.S. 28A-2-6(h).27.”

G.S. 28A-2-4(a)(4).

- **Parties** - Must serve a notice of transfer within thirty (30) days after being served a copy of the pleading requesting the relief.
- **Clerk** - Must serve the notice of transfer (1) prior to or at the first hearing and (2) prior to the parties' presentation of evidence.

Lane III – Exclusive Jurisdiction of Superior Court

- Governing statute: G.S. 28A-2-204(c)
- *Clerk has no authority to determine these matters.*
- Covers 6 key areas:
 1. Actions by/against creditors or debtors of an estate, except as provided in Article 19 of Ch. 28A.
 2. Claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence.
 3. Caveats, except as provided under G.S. 31-36.
 4. Proceeding to determine proper county of venue as provided in G.S. 28A-3-2.
 5. Recovery of property transferred or conveyed by a decedent with intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).
 6. Actions for reformation or modification of wills under Article 10 of G.S. Chapter 31.



31

G.S. 28A-2-4(c)

- c) Without otherwise limiting the jurisdiction of the Superior Court Division of the General Court of Justice, the clerk of superior court does not have jurisdiction under subsection (a) or (b) of this section or G.S. 28A-2-5 of the following:
- (1) Actions by or against creditors or debtors of an estate, except as provided in Article 19 of this Chapter.
 - (2) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence.
 - (3) Caveats, except as provided under G.S. 31-36.
 - (4) Proceedings to determine proper county of venue as provided in G.S. 28A-3-2.
 - (5) Recovery of property transferred or conveyed by a decedent with intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).
 - (6) Actions for reformation or modification of wills under Article 10 of Chapter 31 of the General Statutes.



Lane III

32

Lane IV – Superior Court “Mixed Bag” Jurisdiction

- Governing statute: G.S. 28A-2-6(f), (g), (h), (i)
- Superior court can acquire jurisdiction through **consolidation** of action/proceeding or **joinder** of claims.
- Combination of any of these:
 - **Lane I** if claims are consolidated/joined to other claims,
 - **Lane II** if transferred to Superior Court, joined to other claims, or consolidated with another action,
 - **Lane III**, and/or
 - **Other** controversies Superior Court has jurisdiction over.
- **Superior court has subject matter jurisdiction of the combined claims.**



33

G.S. 28A-2-6

(f) **Consolidation.** - When an estate proceeding pending before the clerk of superior court and a civil action pending before the Superior Court Division of the General Court of Justice involve a common question of law or fact, upon the court's motion or motion of a party to either the estate proceeding or the civil action, a superior court judge may order a consolidation of the estate proceeding and civil action, and the judge may make orders concerning proceedings therein as may tend to avoid unnecessary cost or delay. Upon the entry of an order consolidating an estate proceeding and civil action, the jurisdiction for all matters pending in both the estate proceeding and the civil action shall be vested in the superior court.

(g) **Joinder.** - In any civil action pending before the Superior Court Division of the General Court of Justice, the party asserting a claim for relief as an original claim, counterclaim, crossclaim, or third-party claim may join, either as independent or alternative claims, as many claims, legal or equitable, as the party may have against the opposing party, notwithstanding the fact that such claims may otherwise be within the exclusive jurisdiction of the clerk of superior court.

Lane IV



34

Lane V – Other/Common Law Remedies

- Other matters not specified in Chapters 28A, 29, 30, 31, 31A, 36C.
- Examples:
 - Tortious interference with inheritance
 - Civil conspiracy
 - Fraud
 - Constructive Fraud
 - Conversion
 - Unjust Enrichment
 - Common law family settlement agreements*

Five Different “Lanes” of FSAs

- I. Clerk Only
- II. Clerk + Superior Court
- III. Superior Court Only
- IV. Superior Court “Mixed Bag”
- V. Other/Common Law Remedies

What's my lane? Clerk's Perspective

Type	I. CLERK ONLY Original, exclusive jurisdiction G.S. 28A-2-4(a)1,2, 3 G.S. 28A-2-10	II. CLERK + SUPERIOR CT Clerk has non-exclusive jurisdiction G.S. 28A-2-4(a)(4) G.S. 28A-2-10	III. SUPERIOR CT ONLY G.S. 28A-2-4(c)	IV. SUPERIOR CT "MIXED BAG" G.S. 28A-2-6(f), (g), (h), (i)	V. OTHER / COMMON LAW REMEDIES
Can Clerk approve?	YES	YES	NO	NO	NO

What's my lane? Judge's Perspective

Type	I. CLERK ONLY Original, exclusive jurisdiction G.S. 28A-2-4(a)1,2, 3 G.S. 28A-2-10	II. CLERK + SUPERIOR CT Clerk has non-exclusive jurisdiction G.S. 28A-2-4(a)(4) G.S. 28A-2-10	III. SUPERIOR CT ONLY G.S. 28A-2-4(c)	IV. SUPERIOR CT "MIXED BAG" G.S. 28A-2-6(f), (g), (h), (i)	V. OTHER / COMMON LAW REMEDIES
Can Superior Court Judge approve?	NO, unless it's (i) a caveat, or (ii) part of a Lane IV claim.	YES, if (i) transferred to superior court, or (ii) joined to Lane III claims.	YES	YES	YES

Developing a Framework for Review & Approval

Part 2: Apply Family Settlement Agreement Analysis



39

Estate Settlement Agreements and NC Courts

Agreements between family members and beneficiaries concerning an estate or inheritance issue:

- Have been traditionally favored by NC courts
- Recognized in NC common law since 1835
 - *Bailey v. Wilson*, 21 N.C. 182, 191 (1835).
 - 55+ cases from 1835 – 2020.
- Come with additional requirements beyond an ordinary consent judgment.

The agreements are referred to as ***Family Settlement Agreements*** (FSAs).

- Jurisprudence: Family Settlement Agreement Doctrine



40

What is a Family Settlement Agreement?

What is an FSA?

“They are *made by members of a family**....They are made in recognition of facts and circumstances known, often, only to those who have lived in the sacred family circle, and which a just family pride would not expose to those who neither understand nor appreciate them....”

Tise v. Hicks, 191 N.C. 609 (1926).

What does an FSA do?

“...They proceed from a desire on the part of all who participate in them **to adjust property rights**, not upon strict legal principles, however just, but upon such terms as will prevent possible family dissensions, and will tend to strengthen the ties of family affection.”

Tise v. Hicks, 191 N.C. 609 (1926).



43

How do courts feel about them?

- “The **law ought to, and does, respect such settlements**; it does not require that they shall be made in accord with strict rules of law; nor will they be set aside because of objections based upon mere technicalities.”
- “Family settlements ... when fairly made, and when they do not prejudice the rights of creditors, are **favorites of the law.**”

Tise v. Hicks, 191 N.C. 609 (1926).

- Encourage settlement of family disputes through FSAs to promote peace, goodwill, and harmony.
- Sound public policy looks to ending litigation speedily.

Spencer v. McCleneghan, 202 N.C. 662 (1932).



44

Examples of FSAs:

- Children of decedent agreed to reimburse son for advances made to parents for their care, deducting the amount from their intestate shares of inherited property. *Tise v. Hicks*, 191 N.C. 609 (1926).
- Widow agreed to accept buyout in testamentary trust in exchange for her life interest. *Spencer v. McCleneghan*, 202 N.C. 662 (1932).
- Children agreed not to require accounting of mom's assets during the time son lived with her in exchange for not probating any will made by mom during that time. *In re Pendergrass' Will*, 251 N.C. 737 (1960).
- Surviving spouse and decedent's children agreed to satisfy spousal allowance out of sale proceeds of real property. *Est. of Giddens*, 841 S.E.2d 302 (N.C. Ct. App. 2020).

FSA Characteristics

The question for the court:

- Is it proper for parties to compromise and adjust terms of the will (or trust or other estate disposition)?

Spencer v. McCleneghan, 202 N.C. 662 (1932).

Five Characteristics of an FSA:

1. Bona fide controversy.
2. All beneficiaries are parties.
3. Protects the rights of minors and incompetent adults.
4. Fairly made.
5. Rights of creditors not impaired.

#1 Bona Fide Controversy (BFC).

- A will or trust should not be altered in an FSA just because the parties are dissatisfied.
 - *Lenoir Rhyne Coll. v. Thorne*, 13 N.C. App. 27 (1971); *Wagner v. Honbaier*, 248 N.C. 363 (1958).
- Need for a real basis and compelling reason for a compromise.
 - *Reynolds v. Reynolds*, 208 N.C. 578 (1935).
- Filing of a caveat may not be enough—the outcome must be in doubt sufficient for parties to accept modification rather than risk continuing litigation.
 - *In re Pendergrass' Will*, 251 N.C. 737 (1960).
- BFC must be apparent...
 - From the record.
 - *O'Neil v. O'Neil I*, 271 N.C. 106 (July 1967); *In re Pendergrass' Will*, 251 N.C. 737 (1960).
 - From all the facts and circumstances surrounding the dispute itself.
 - *Holt v. Holt*, 304 N.C. 137 (1981).



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#1 – BFC: Additional Considerations

Is there consideration?

- FSA must be supported by consideration, because FSAs are a “species of contract.”
 - *Holt v. Holt*, 304 N.C. 137 (1981). Links consideration with BFC.
- Not mentioned in most cases.
- Exchange of promises when BFC is present appears to be sufficient.
- Is there an exigency/emergency not contemplated by the testator?
 - *Redwine v. Clodfelter*, 226 N.C. 366 (1946); *Lenoir Rhyne Coll. v. Thorne*, 13 N.C. App. 27 (1971), *Sigmund Sternberger Found., Inc. v. Tannenbaum*, 273 N.C. 658 (1968).
- Occurs in settlements involving a trust.



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50

#2 All Beneficiaries are Parties.

- What does ALL beneficiaries mean?
 - Includes minors and incompetent adults
 - Can also include unborn beneficiaries
- How can minor/incompetent/unborn parties be represented?
 - Appointment of GAL.
 - Virtual Representation under NC Uniform Trust Code (Article 3, Chapter 36C.)
- What if a beneficiary is missing?
 - Court cannot approve, *In re Outen*, 77 N.C. App. 818 (1985). (FSA is not valid if not all who receive under the will join in the agreement)

Cases

- *Beck v. Beck*, 36 N.C. App. 774 (1978); *Spencer v. McCleneghan*, 202 N.C. 662 (1932).



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51

#3 Protect the Rights of Minors and Incompetent Adults.

- The welfare of infants is the guiding star in determining the reasonableness and validity of an FSA.
 - *Wachovia Bank & Tr. Co. v. Buchan*, 256 N.C. 142 (1962); *Wagner v. Honbaier*, 248 N.C. 363 (1958); *Redwine v. Clodfelter*, 226 N.C. 366 (1946); *Carter v. Kempton*, 233 N.C. 1 (1950).
- Concept includes unborn beneficiaries and anyone that cannot represent their own interest (i.e., incompetent adults).
- Standard: best interest of the minor/unborn/incompetent adult.
 - *Reynolds v. Reynolds*, 208 N.C. 578 (1935).

Other cases

- *Spencer v. McCleneghan*, 202 N.C. 662 (1932); *Redwine v. Clodfelter*, 226 N.C. 366 (1946); (3) *Carter*, 233 N.C. 1; and (4) *O'Neil I*, 271 N.C. 106



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52

#4 - Fairly Made.

- There must be no fraud, misrepresentation, or mistake.
 - *Beck v. Beck*, 36 N.C. App. 774 (1978).
- Includes an assumption of transparency—must be fairly and “openly” made.
 - *Est. of Giddens*, 841 S.E. 2d 302 (N.C. Ct. App. 2020).
- Must be reasonable and cannot involve any fraud.
 - *Bohannon v. Trotman*, 214 N.C. 706 (1939).

Also see:

- *Holt v. Holt*, 304 N.C. 137 (1981); *Tise v. Hicks*, 191 N.C. 609 (1926). *Reynolds v. Reynolds*, 208 N.C. 578 (1935); *Spencer v. McCleneghan*, 202 N.C. 662 (1932)



#5 - Rights of Creditors not Impaired.

- Rights of creditors should not be impaired or prejudiced.
- What does this mean?
 - Cases don't give much guidance.
 - Consider whether the agreement:
 - Removes creditor's due process
 - Places assets outside of the claims process outlined in G.S. Chapter 28A, Article 19

Cases:

- *Holt v. Holt*, 304 N.C. 137 (1981); *Beck v. Beck*, 36 N.C. App. 774 (1978); *Reese v. Carson*, 3 N.C. App. 99 (1968); *Bohannon v. Trotman*, 214 N.C. 706 (1939); *Tise v. Hicks*, 191 N.C. 609 (1926).



Additionally...

- No specific formalities are required for executing an FSA.
- Absence of counsel does not defeat an otherwise valid FSA.

Beck v. Beck, 36 N.C. App. 774 (1978).

Special Situations

Basic Framework for Reviewing Estate Settlement Agreement – FSA Analysis

1. Bona fide controversy.
2. All beneficiaries are parties.
3. Protects the rights of minors and incompetent adults.
4. Fairly made.
5. Rights of creditors not impaired.

Scenarios where usual FSA analysis does not apply:

1. Settlements resulting from a caveat.
2. Settlements where clerk's approval/disapproval has been appealed.

G.S. 31-37.1 - Caveat Settlements

- *FSA Modification:* Removes the requirements that “all beneficiaries” be parties to the agreement.

§ 31-37.1. Settlement agreement; filing of judgment.

(a) Prior to an entry of judgment by the superior court in a caveat proceeding, the parties may enter into a settlement agreement, which must be approved by the superior court. Upon approval of a settlement agreement, the court shall enter judgment, without a verdict by a jury, in accordance with the terms of the settlement agreement. The consent of interested parties who are not aligned as parties pursuant to G.S. 31-33 is not necessary for a settlement agreement under this section.



G.S. 31-37.1 - Caveat Settlements

- Removes the requirements that “all beneficiaries” be parties to the agreement.
- Court approval of agreement is still required.
- Revised framework for caveat settlements:
 1. Bona fide controversy.
 2. ~~All beneficiaries are parties.~~ *Aligned parties to the caveat.*
 3. Protects the rights of minors and incompetent adults.
 4. Fairly made.
 5. Rights of creditors not impaired.



G.S. 28A-2-10 – Settlements Approved by the Clerk

§ 28A-2-10. Approval of settlement agreements by the clerk.

The clerk shall have the authority, in the clerk's discretion, to consider and approve settlement agreements where the following apply:

- (1) The controversy arises with respect to a matter over which the clerk has jurisdiction.
- (2) The controversy arose in good faith.

Nothing herein shall be construed as giving a clerk the authority to approve a settlement agreement modifying the terms of a last will and testament or resolving a caveat of a last will and testament. (2011-344, s. 4.)



G.S. 28A-2-10 – Settlements Approved by the Clerk

- *FSA Modification:*
 - Clerk may approve settlement agreements over which the clerk has jurisdiction, so long as the controversy arose in good faith, but the clerk cannot approve a settlement agreement modifying the terms of a last will and testament or resolving a caveat of a last will and testament.
- Revised framework for clerk-approved settlements:
 1. *Clerk must have jurisdiction over the matter.*
 2. Bona fide controversy.
 3. All beneficiaries are parties.
 4. Protects the rights of minors and incompetent adults.
 5. Fairly made.
 6. Rights of creditors not impaired.
 7. *No modifying a will or resolving a caveat.*





G.S. 28A-2-10 – Settlements Approved by the Clerk

- *On appeal from the clerk*

§ 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.



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G.S. 1-301-3: Standard of Review on Appeal

(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.



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On appeal from clerk

- G.S. 1-301.3 applies
 - Review is on the record*
 - Superior court sits as an appellate court

Therefore...

- Superior court is limited to the standard of the clerk in 28A-2-10
 - Appeal does not expand jurisdiction to approve.
- Apply clerk's restricted FSA analysis:
 1. *Clerk must have jurisdiction over the matter.*
 2. Bona fide controversy.
 3. All beneficiaries are parties.
 4. Protects the rights of minors and incompetent adults.
 5. Fairly made.
 6. Rights of creditors not impaired.
 7. *No modifying a will or resolving a caveat.*



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65

Approving Estate Settlement Agreements

Review



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66

Framework for Review & Approval of Estate Settlement Agreements – STEP ONE

Confirm Jurisdiction

- ✓ Has jurisdiction been invoked?
 - Is there a pleading or proceeding before you?
 - Proposed order alone is NOT enough to invoke jurisdiction.
- ✓ Do you have subject matter jurisdiction over the “lane” identified in the pleading?
 - I. Clerk Only
 - II. Clerk + Superior Court
 - III. Superior Court Only
 - IV. Superior Court “Mixed Bag”
 - V. Other/Common Law Remedies



Framework for Review & Approval of Estate Settlement Agreements – STEP TWO

Apply Family Settlement Agreement Analysis

- Are the FSA elements present?
 1. Bona fide controversy.
 2. All beneficiaries are parties.
 3. Protects the rights of minors and incompetent adults.
 4. Fairly made.
 5. Rights of creditors not impaired.

Situation that requires modified FSA analysis?

- Caveats
- Settlements on appeal from the clerk



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69



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70

§ 28A-2-4. Subject matter jurisdiction of the clerk of superior court in estate proceedings.

(a) The clerks of superior court of this State, as ex officio judges of probate, shall have original jurisdiction of estate proceedings. Except as provided in subdivision (4) of this subsection, the jurisdiction of the clerk of superior court is exclusive. Estate proceedings include, but are not limited to, the following:

- (1) Probate of wills.
- (2) Granting and revoking of letters testamentary and letters of administration, or other proper letters of authority for the administration of estates.
- (3) Determination of the elective share for a surviving spouse as provided in G.S. 30-3.1.
- (4) Proceedings to ascertain heirs or devisees, to approve settlement agreements pursuant to G.S. 28A-2-10, to determine questions of construction of wills, to determine priority among creditors, to determine whether a person is in possession of property belonging to an estate, to order the recovery of property of the estate in possession of third parties, to determine a claim for relief regarding the disposition of community property at death as provided in Article 5 of Chapter 30 of the General Statutes, and to determine the existence or nonexistence of any immunity, power, privilege, duty, or right. Any party or the clerk of superior court may file a notice of transfer of a proceeding pursuant to this subdivision to the Superior Court Division of the General Court of Justice as provided in G.S. 28A-2-6(h). In the absence of a transfer to superior court, Article 26 of Chapter 1 of the General Statutes applies to an estate proceeding pending before the clerk of superior court to the extent consistent with this Article.

(b) Nothing in this section affects the right of a person to file an action in the Superior Court Division of the General Court of Justice for declaratory relief under Article 26 of Chapter 1 of the General Statutes. In the event that either the petitioner or the respondent in an estate proceeding requests declaratory relief under Article 26 of Chapter 1 of the General Statutes, either party may move for a transfer of the proceeding to the Superior Court Division of the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes. In the absence of a removal to superior court, Article 26 of Chapter 1 of the General Statutes applies to an estate proceeding to the extent consistent with this Article.

(c) Without otherwise limiting the jurisdiction of the Superior Court Division of the General Court of Justice, the clerk of superior court does not have jurisdiction under subsection (a) or (b) of this section or G.S. 28A-2-5 of the following:

- (1) Actions by or against creditors or debtors of an estate, except as provided in Article 19 of this Chapter.
- (2) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence.
- (3) Caveats, except as provided under G.S. 31-36.
- (4) Proceedings to determine proper county of venue as provided in G.S. 28A-3-2.
- (5) Recovery of property transferred or conveyed by a decedent with intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).
- (6) Actions for reformation or modification of wills under Article 10 of Chapter 31 of the General Statutes. (2011-344, s. 4; 2012-194, s. 12; 2017-102, s. 9; 2017-152, ss. 2(a), 3; 2019-243, s. 23; 2025-25, s. 52.)

§ 28A-2-6. Commencement of estate proceedings, pleadings, consolidation, and joinder.

(a) **Contested Estate Proceedings.** – Contested estate proceedings brought against adverse parties shall be commenced by petition in the existing estate administration file. All parties not joined as petitioners shall be joined as respondents. The clerk of superior court shall issue the estate proceeding summons to the respondents. The clerk of superior court may order that additional persons be joined as respondents and shall issue the estate proceeding summons to the additional persons. The estate proceeding summons shall notify a respondent to appear and answer the petition within 20 days after its service upon the respondents. The estate proceeding summons shall comply with the requirements set forth in G.S. 1-394 for a special proceeding summons except that the summons shall be titled "ESTATE PROCEEDING SUMMONS" and shall be served upon a respondent in accordance with G.S. 1A-1, Rule 4. After the time for responding to the petition or complaint has expired, any party or the clerk of superior court may give notice to all parties of a hearing.

(b) **Uncontested Estate Proceedings.** – Estate proceedings before the clerk of superior court that are uncontested may be decided without hearing according to practice and procedure provided by law and shall be commenced by the filing of a petition, setting forth the facts entitling the petitioners to relief and the nature of the relief demanded. In these proceedings, the clerk of superior court may hear and decide the petition summarily.

(c) **Pleadings.** – Any petition, response, or request for hearing in a contested estate proceeding before the clerk of superior court shall contain a short and plain statement of the claim that is sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions intended to be proved showing that the pleaders are entitled to relief, and a demand for judgment for the relief to which the pleader is entitled. Each averment should be simple, concise, and direct. No technical forms of motions or responses are required. A party may set forth two or more statements of a claim or defense alternatively or hypothetically. The signature of an attorney or party constitutes a certificate by that attorney or party that (i) the attorney or party has read the pleading, motion, or other paper; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. All motions, responses, and requests for hearing shall be so construed as to do substantial justice.

(d) **Extensions of Time.** – The clerk of superior court, for cause shown at any time in the clerk's discretion, with or without motion or notice, may enter an order enlarging the period of time within which an act is required or permitted in an estate proceeding, by any applicable rule of G.S. 1A-1, the Rules of Civil Procedure, or by order of the court, if the request is made before the expiration of the period originally prescribed, but not to exceed 10 days, provided that the court can enlarge the time for a period of more than 10 days for good cause shown, but only to the extent that the court in its discretion determines that justice requires. Upon motion made after the expiration of the specified period, the clerk of superior court may permit the act where the failure to act was the result of excusable neglect. Notwithstanding any other provision of this subsection, the parties to a proceeding may enter into binding stipulations, without approval of the clerk of superior court, enlarging the time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, not to exceed 30 days.

(e) **Rules of Civil Procedure.** – Unless the clerk of superior court otherwise directs, Rules 4, 5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, 45, 52(b), 56, 58, 59, and 65 of G.S. 1A-1, the Rules of Civil Procedure, shall apply to estate proceedings. Upon motion of a party or the clerk of superior court, the clerk may further direct that any or all of the remaining Rules of Civil Procedure shall apply, including, without limitation, discovery rules; however, nothing in Rule 17 requires the appointment of a guardian ad litem for a party represented except as provided in G.S. 28A-2-7. In

applying these Rules to an estate proceeding pending before the clerk of superior court, the term "judge" shall mean "clerk of superior court."

(f) Consolidation. – When an estate proceeding pending before the clerk of superior court and a civil action pending before the Superior Court Division of the General Court of Justice involve a common question of law or fact, upon the court's motion or motion of a party to either the estate proceeding or the civil action, a superior court judge may order a consolidation of the estate proceeding and civil action, and the judge may make orders concerning proceedings therein as may tend to avoid unnecessary cost or delay. Upon the entry of an order consolidating an estate proceeding and civil action, the jurisdiction for all matters pending in both the estate proceeding and the civil action shall be vested in the superior court.

(g) Joinder. – In any civil action pending before the Superior Court Division of the General Court of Justice, the party asserting a claim for relief as an original claim, counterclaim, crossclaim, or third-party claim may join, either as independent or alternative claims, as many claims, legal or equitable, as the party may have against the opposing party, notwithstanding the fact that such claims may otherwise be within the exclusive jurisdiction of the clerk of superior court.

(h) Notice of Transfer. – A notice to transfer an estate proceeding brought pursuant to G.S. 28A-2-4(a)(4) must be served within 30 days after the moving party is served with a copy of the pleading requesting relief pursuant to G.S. 28A-2-4(a)(4), or in the case of the clerk of superior court, prior to or at the first hearing duly noticed in the estate proceeding and prior to the presentation of evidence by the parties, including a hearing at which an order of continuance is entered. Failure to timely serve a notice of transfer of an estate proceeding is a waiver of any objection to the clerk of superior court's exercise of jurisdiction over the estate proceeding then pending before the clerk. When a notice of transfer is duly served and filed, the clerk shall transfer the proceeding to the appropriate court. The proceeding after the transfer is subject to the provisions of the General Statutes and to the rules that apply to actions initially filed in the court to which the proceeding was transferred.

(i) Orders Upon Consolidation/Joinder/Transfer. – Upon the consolidation of an estate proceeding in a civil action, joinder of claims under subsection (f) or (g) of this section, or transfer to the Superior Court Division of the General Court of Justice pursuant to subsection (h) of this section, the clerk of superior court or judge may make appropriate orders to protect the interest of the parties and avoid unnecessary cost or delay. Notwithstanding the consolidation or joinder of claims under subsection (f) or (g) of this section, where the estate proceeding is transferred to the Superior Court Division of the General Court of Justice under subsection (h) of this section, the clerk of superior court's exclusive jurisdiction as set forth in G.S. 28A-2-4(a)(1) through (3) shall not be stayed unless so ordered by the court. (2011-344, s. 4; 2013-410, s. 6; 2020-69, s. 1.5; 2021-53, s. 3.2.)

§ 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.)

§ 28A-2-7. Representation of parties.

(a) Notwithstanding any other applicable rule of the Rules of Civil Procedure or provision of Chapter 1 of the General Statutes, in any contested or uncontested estate proceeding or special proceeding, whether brought before the clerk of superior court or in the Superior Court Division of the General Court of Justice, the parties shall be represented as provided in Article 3 of Chapter 36C of the General Statutes.

(b) In the case of any party represented by another as provided in subsection (a) of this section, service of process shall be made by serving such representative. (2011-344, s. 4.)

Article 3.

Representation.

§ 36C-3-301. Representation: basic effect.

(a) Notice to a person who may represent and bind another person under this Article has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this Article is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in G.S. 36C-4-411 and G.S. 36C-6-602, a person who under this Article may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(d) A settlor may not represent and bind a beneficiary under this Article with respect to the termination or modification of trust under G.S. 36C-4-411(a). (2005-192, s. 2.)

§ 36C-3-303. Representation by fiduciaries, parents, and other persons.

To the extent that there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute involving a trust:

- (1) A general guardian or a guardian of the estate may represent and bind the estate that the guardian controls.
- (2) Repealed by Session Laws 2007-106, s. 11, effective October 1, 2007.
- (3) An agent under a power of attorney having authority to act with respect to the particular question or dispute may represent and bind the principal.
- (4) A trustee may represent and bind the beneficiaries of the trust unless the question or dispute involves the internal affairs of the trust.
- (5) A personal representative of a decedent's estate may represent and bind persons interested in the estate.
- (6) A parent may represent and bind the parent's minor child if a general guardian or guardian of the estate for the child has not been appointed. If a disagreement arises between parents seeking to represent the same minor child, the parent who is a beneficiary of the trust that is the subject of the representation is entitled to represent the minor child or, if no parent is a beneficiary of the trust that is the subject of the representation, a parent who is a lineal descendant of the settlor is entitled to represent the minor child, or if no parent is a lineal descendant of the settlor, a guardian ad litem shall be appointed to represent the minor child.
- (7) A person may represent and bind that person's unborn issue. (2005-192, s. 2; 2007-106, s. 11.)

§ 36C-3-304. Representation by person having substantially identical interest.

Unless otherwise represented under this Article, a minor, an incompetent or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent that there is no conflict of interest between the representative and the person represented with respect to the particular question or dispute. (2005-192, s. 2; 2007-106, s. 12.)

§ 36C-3-305. Appointment of representative; scope of representation.

(a) If the court determines that an interest is not represented under this Article, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, an incompetent or unborn individual, or a person whose identity or location is unknown. A guardian ad litem may be appointed to represent several persons or interests.

(b) Any representative under this Article may act on behalf of the individual represented with respect to any matter arising under this Chapter, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a representative, including a guardian ad litem, may base a decision to consent to an action upon a finding that living members of the individual's family would generally benefit from that action. (2005-192, s. 2; 2007-106, s. 13.)

