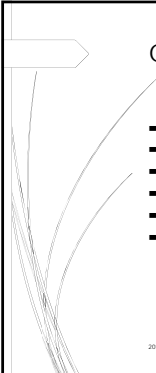


Ex Parte DVPOs

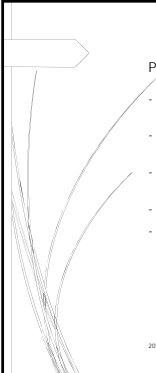
2019



Objectives

- Follow correct procedure
- State the legal question you must resolve
- Be familiar with substantive law governing your decision
- Identify the two "special interest" topics you may be required to address
- Knowledgeably discuss relevant evidentiary issues
- Be able to effectuate your decision by correctly completing order form and doing appropriate follow-through with plaintiff

2019



Procedure

- Statute often unclear/incomplete
- Local practice quite variable
- Every civil action begins with filing complaint
- Hearing is mandatory
- Sometimes additional forms are required

2019

Exercise #1

Tables 1, 3, 5: Citizen walks into office at 4 PM, having been sent by clerk

Tables 2 & 4: Citizen walks into office at 11 PM, having been sent by LEO

- What are the first three things you say/do?
- What forms do you need?

2019

The Ultimate Legal Question

Does it clearly appear from specific facts shown that there is a danger of acts of DV against the plaintiff or a minor child residing with or in the custody of the plaintiff?

2019

Remember that "personal relationship" is required.

- Married or used to be,
- Live together as though married, or used to
- Have a child in common
- Parent/child or g-parent/g-child (but child must be 16)
- Current or former household members
- Opposite sex in dating relationship

2019

What's a "dating relationship"?

- "Parties are romantically involved over time and on a continuous basis during the course of the relationship."
- NOT a casual acquaintance or ordinary business or social fraternization
- "Dating relationship" should be interpreted broadly to cover a wide range of romantic relationships, with "only the least intimate of personal relationships" excluded.
- There is no magic minimum. Courts should consider all circumstances, including any of the following which might apply:



2019

Consider these factors:

- 1. Was there a minimal social interpersonal bonding of the parties over and above [that of] mere casual [acquaintances or ordinary] fraternization?
- 2. How long did the alleged dating activities continue prior to the acts of domestic violence alleged?
- 3. What were the nature and frequency of the parties' interactions?
- 4. What were the parties' ongoing expectations with respect to the relationship, either individually or jointly?
- 5. Did the parties demonstrate an affirmation of their relationship before others by statement or conduct?
- 6. Are there any other reasons unique to the case that support or detract from a finding that a "dating relationship" exists?

Thomas v. Williams, NC COA (7/7/2015)

2019

What is "an act of domestic violence?"

Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:

- (1) Attempting to cause bodily injury, or intentionally causing bodily injury; or
- (2) Placing the aggrieved party or a member of the aggrieved party's family or household in [subjective] fear of
imminent serious bodily injury
or continued harassment, as defined in G.S. 14-277.3A, that rises to such a level as to inflict substantial emotional distress;
- (3) Committing any act defined in G.S. 14-27.21 through G.S. 14-27.33.

2019

Let's Practice!

Your table will work together on your assigned case to determine whether:

1. An act of domestic violence has occurred. Be prepared to explain your answer, identifying the act you considered the strongest contender and the reasons for your group's decision.
2. There is a danger of acts of DV. What facts indicate such danger, and are those facts compelling enough to rise to the level of "clearly appear from specific facts shown"?

Identify one fact that could be added, removed, or changed that would change your decision.

2019

Protecting People from Danger

Assume you determined that an ex parte DVPO is warranted (even if you had to change a fact to get there). What restrictions do you "deem necessary to protect" the litigant and/or child? Be prepared to explain the connection between the specific danger and the restriction.

2019

Must ask about ownership and/or access to firearms, ammunition, along with identifying information, in addition to permits to purchase and/or to carry concealed.



2019

Your interview must cover whether defendant

- has used or threatened to use a deadly weapon, or has a pattern of prior conduct involving the use or threatened use of a firearm against a person;
- has made threats to seriously injure or kill plaintiff or minor child;
- has threatened suicide;
- has inflicted serious injuries on plaintiff or child.

2019

Custody: GS 50B-2(c1)

"[A] temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse.

If the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse,

upon request of the aggrieved party,

the magistrate shall consider and may order the other party to

-stay away from a minor child, or

-to return a minor child to, or

-not remove a minor child from, the physical care of a parent or person in loco parentis.


If the magistrate finds that the order is in the best interest of the minor child and is necessary for the safety of the minor child.

2019

Requests for custody: consider the possibilities


- Plaintiff may be making a false allegation in order to gain an advantage in a custody dispute.
- Plaintiff may be attempting to use the DVPO action as a substitute for a custody case.
- Plaintiff may have genuine concerns about the safety and well-being of the children that, impartially assessed, fall short of "substantial risk" of injury.
- Plaintiff's decision to leave relationship and seek DVPO is motivated, either entirely or in large part, by defendant's threats or actions directed at children.
- Defendant is angry/devastated/desperate about separation and plaintiff has justified concerns about children's safety.

2019




Evidentiary Issues
What are the rules about the evidence you can consider?

2019



Completing the Order Form

2019



Following Through

2019
