
CIVIL LAW UPDATE & REVIEW

LEGISLATION

In 2018 GS 42-46 was amended by adding 2 new sections providing:

(i) Out-of-Pocket Expenses. – In addition to the late fees referenced in subsections (a) and (b) of this section and the administrative fees of a landlord referenced in subsections (e) through (g) of this section, a landlord is also permitted to charge and recover from a tenant the following actual out-of-pocket expenses: (1) Filing fees charged by the court. (2) Costs for service of process pursuant to G.S. 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure and G.S. 42-29. (3) Reasonable attorneys' fees actually incurred, pursuant to a written lease, not to exceed fifteen percent (15%) of the amount owed by the tenant, or fifteen percent (15%) of the monthly rent stated in the lease if the eviction is based on a default other than the nonpayment of rent.

(j) The out-of-pocket expenses listed in subsection (i) of this section are allowed to be included by the landlord in the amount required to cure a default.

In 2018, GS 122C-263.1 was amended as follows:

The kinds of professionals who, with training and certification, can do the first IVC exam and send petitions to the magistrate by fax (the clinician procedure) will expand from LCSWs, LCASs, and psych nurses to include licensed professional counselors (LPCs), physician's assistants (PAs) and nurse practitioners. DHHS will be required to annually submit a list to the Chief District Court Judge for each judicial district a list of these certified first commitment examiners so that magistrates can know, when receiving a petition signed by Jane Doe, LCSW, that Jane Doe is not simply any LCSW, but an LCSW who has been trained and certified to be a first IVC examiner (and thus qualified to submit a petition and exam form without appearing personally).

In 2018, GS 122C-251(g) was amended as follows:

Each county will be required to have an "involuntary commitment transportation plan." This plan may designate persons other than law enforcement officers to receive custody orders and perform custody and transportation in the circumstances outlined in the "plan." So, magistrates should be on the look out for this because it could (emphasis on "could") affect who they issue the custody order to in some circumstances. These plans must be submitted to the magistrates in the county's judicial district. Further, if any plan does affect who magistrates will issue orders to, then those magistrates must participate in developing such a plan.

Both amendments become effective October 1, 2019.

Pending Legislation of Particular Interest:

HB 416 would allow judges and justices elected to office prior to age 72 to complete their term of office even if that extends past age 72.

HB 154 reintroduces 2017 proposed legislation directing AOC to develop a code of conduct for magistrates, creating disciplinary procedure for magistrates found guilty of misconduct with potential

consequences of letter of caution, written reprimand, or suspension without pay for maximum of 10 days, requiring appointment of chief magistrates in all counties, and changing term of office from Feb. 1 to Jan. 31 of even-numbered years.

CASE LAW

Constructive eviction: Even in a commercial lease, which is not governed by the RRAA, a landlord makes an implied warranty that the premises are fit for the tenant's "quiet" or "beneficial" enjoyment. Where jewelry store owner made repeated complaints to LL of "foul odor" interfering with business to no avail, owner was entitled to consider lease terminated and vacate property based on constructive eviction theory, and to judgment awarding damages including lost profits. Borovsky v. Kimco Realty, 821 SE2d 640 (COA filed 10/16/18).

Direct criminal contempt: Trial judge did not err in finding criminal defendant in direct criminal contempt when defendant "used two fingers and his thumb in the shape of a gun point at his own head or hand while looking directly at the witness testifying on stand and mouthing something" inaudible, causing witness to cease testifying. Court did not err in finding this behavior willful, and holding that it interrupted court proceedings. State v. Baker, 817 SE2d 907 (COA, filed 7/3/2018).

GS 50C: Trial judge erred in ordering defendant to surrender firearms and revoking his concealed carry permit. While GS Ch. 50B authorizes this restriction, no such authorization appears in GS Ch. 50C. Furthermore, such an order was not appropriate under "catch-all provision" allowing "other relief deemed necessary and appropriate" where no evidence was presented related to firearms and court's order was entered without notice to defendant that such restriction was being contemplated by court. Russell V. Wofford, 816 SE2d 909 (COA, filed 6/19/2018).

IVC: In an unpublished opinion from Buncombe County, the Court of Appeals considered the following statements in an IVC petition: [Respondent was s]tating he has 'plans for Tennessee' [sic]. Passively resisting officers. Stated he has '9 thousand dollars to pay for his tennessee [sic] plans' – only had a bit over 3 dollars in change. Refusing to comply with officers in regards to information, gave officers incorrect information in regards to identity and date of birth" The Court found these facts insufficient to show that the person was dangerous to himself or others and reversed the district court's commitment order. In the Matter of M.L., (COA, filed 10/16/2018).

Damages: The collateral-source rule prohibits a negligent defendant from having damages offset by amount plaintiff receives from his own insurance company pursuant to under-insured motorist coverage. Hairston v. Harward, 821 SE2d 384 (2018).