

Domestic Violence: Recent Changes to Chapter 50B

The North Carolina General Assembly recently made two important changes to Chapter 50B regarding civil domestic violence protective orders. [S.L. 2017-92, "Domestic Violence Appeals and Modifications"](#), was effective October 1, 2017.

Enforcement of a DVPO during an appeal

The first change allows a DVPO to be enforced while the order is on appeal.

The normal rule is that the trial court loses jurisdiction to enforce a civil judgment when the judgment is appealed. [GS 1-294](#) states:

"When an appeal is perfected as provided by this Article it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure."

[S.L. 2017-92](#) adds new section GS 50B-4(g) to provide that:

"Notwithstanding the provisions of [G.S. 1-294](#), a valid protective order entered pursuant to this Chapter which has been appealed to the appellate division is enforceable in the trial court during the pendency of the appeal. Upon motion by the aggrieved party, the court of the appellate division in which the appeal is pending may stay an order of the trial court until the appeal is decided, if justice so requires."

There currently are similar statutory exceptions to [GS 1-294](#) for an order of child custody, [GS 50-13.3\(a\)](#)(custody order enforceable by civil contempt pending appeal), child support, [GS 50-13.4\(f\)\(9\)](#)(child support order enforceable by criminal or civil contempt pending appeal), and for alimony. [GS 50-16.7\(j\)](#) alimony order enforceable by criminal or civil contempt pending appeal).

This amendment probably applies to pending cases as well as to cases filed on or after October 1, 2017. See *Garner v. Garner*, 300 NC 715 (1980)(statutory amendments pertaining to procedure generally apply to pending litigation unless the legislation clearly indicates otherwise or the change impacts a vested right of a litigant).

Modification of a DVPO

The second change authorizes the court to amend a final DVPO for good cause.

The general rule is that civil judgments and orders that are final adjudications on the merits of a case are not subject to amendment. There are a couple of procedural exceptions. [Rule 59 of the Rules of Civil Procedure](#) allows a final judgment to be set aside or amended for just about any

reason when a request for relief is made or the court that entered the order acts on its own motion pursuant to that Rule within 10 days following the entry of the final judgment. In addition, [Rule 60 of the Rules of Civil Procedure](#) provides a mechanism to amend clerical errors in a final adjudication or set aside a civil judgment for the limited grounds specified in that Rule.

There also are specific statutes that provide for modification of certain types of domestic relations orders. [GS 50-13.7](#) provides that child support and child custody orders can be modified upon the filing of a motion and a showing of changed circumstances since the entry of the order sought to be amended, and [GS 50-16.9](#) allows the amendment of PSS and alimony orders under the same circumstances.

Until October 1, 2017, there was no mechanism to amend a civil DVPO. Protective orders could be set aside pursuant to Rule 60(b) in appropriate circumstances, see *Pope v. Pope*, 786 SE2d 373 (2016)(DVPO set aside pursuant to Rule 60(b)(5)), but the law did not allow the orders to be modified.

[S.L. 2017-92](#) creates new section [GS 50B-3\(b2\)](#) which states:

“Upon the written request of either party at a hearing after notice or service of process, the court may modify any protective order entered pursuant to this Chapter after a finding of good cause.”

So the new statute requires:

1. a request by a party that an existing DVPO be amended,
2. a hearing on that request, and
3. findings of fact to support the trial court’s conclusion that good cause exists to amend the DVPO. See *Ponder v. Ponder*, 786 SE2d 44 (2016)(renewal of a DVPO requires findings of fact to support the conclusion that good cause exists to renew).

The AOC has revised form CV-313 to include a motion to modify. See [Revised CV-313, Motion to Renew, Modify or Set Aside a DVPO](#). In addition, the AOC adopted new form [CV-326, Modified DVPO](#), acknowledging that a completely new DVPO should be entered to reflect any amendment made by the court. A new order replacing the existing order will protect against confusion that may result if the original order stays in place with the new order issued containing only the amended provisions.

What is ‘Good Cause’?

The new statute does not define good cause, leaving it within the discretion of the court to determine when the facts make amendment appropriate. When interpreting the provision in [GS 50B-3\(b\)](#) allowing a DVPO to be renewed for good cause, the court of appeals has made it clear that while the court has the discretion to determine when good cause exists, the trial court must

make findings of fact based on competent evidence sufficient to support the trial court's conclusion. *Ponder v. Ponder*, 786 SE2d 44 (2016).

Does this amendment allow modification of DVPOs entered before October 1, 2017?

The legislation states only that the amendment is “effective October 1, 2017” and it does not explicitly limit application of the change to cases filed or orders entered on or after that date. As stated above, the general rule is that statutory amendments pertaining to procedure apply to pending cases as well as cases filed on or after the effective date of the amendment unless the legislation specifically provides otherwise. See *Garner v. Garner*, 300 NC 715 (1980).

While it seems clear that this general rule will apply to make this amendment applicable to cases filed before October 1, 2017, it is not as clear that this general rule will apply to final DVPOs entered before October 1, 2017. The rule articulated by the court in *Garner* applies to pending cases, and there is at least an argument that once a final DVPO is entered, the case no longer is pending and plaintiff has a vested right to an order that was not subject to amendment when entered. See *Gardner* (new legislation cannot divest a person of a vested right granted by a court). However, it also may be argued that these cases remain pending until a DVPO is allowed to expire without renewal and the court no longer has jurisdiction to act in the case. See e.g. *Catawba County ex. rel. Rackley v. Loggins*, 804 SE2d 474 (NC Supreme Court 2017)(trial court retains subject matter jurisdiction in a child custody case until the child reaches majority even after ‘final’ custody order is entered).