

## CASE STUDY NO. 1

Lafayette Wilson married a second time late in life. He had an adult daughter, Annette, from his first marriage. His second wife, Marguerite, had a son, Wesley, from a previous marriage. Wesley lived with Lafayette and Marguerite in Lafayette's ante bellum home. Lafayette was quite fond of Wesley, and in 1994, made a will in which he left the home to Wesley. Marguerite predeceased Lafayette. When Lafayette died in 1999, Annette probated a 1999 will, in which her father left his entire estate to her. Wesley filed a caveat, alleging that the 1999 will was procured by Annette's undue influence on Lafayette. The caveat was successful, and the trial court entered judgment declaring the 1999 will void, and ordering the estate distributed by intestate succession. Wesley then sued Annette. He claimed monetary relief consisting of the value of the inheritance that was lost as a result of Annette's undue influence on Lafayette. Annette asserted the judgment in the caveat in bar of the claim.

1. What (if any) rule of preclusion applies?
2. Was there a final judgment?
3. Was there identity of parties?
4. What was the claim in the caveat?
5. Is it the same claim as asserted in the lawsuit?
6. Could the first will have been put in issue in the caveat?

[Wilder v. Hill]

## CASE STUDY NO. 2

A real estate developer has acquired a previously undeveloped tract in a good location for residential subdivision. After the acquisition, the owner of the property across the highway claims ownership of a strip of the land on the developer's side which, if true, would landlock the developer's tract. After the neighbor turns down the developer's offer to purchase the strip, the developer proceeds to develop the tract. The neighbor then sues the developer in trespass and seeks injunctive relief against the

developer's entry upon the strip. The developer answers and counterclaims for a declaratory judgment that he is the owner of the strip. It is undisputed that title to each tract is traced to a common owner, that the descriptions in the deeds in the chains of title, which are by course and distance, cannot be reconciled; that the developer's deed places the boundary on the highway right-of-way; that the neighbor's deed places the boundary beyond the right-of-way on the developer's side; and that the description in the neighbor's deed traces to an older source. However, the developer relies on a deed in his chain of title, a "commissioner's deed," which resulted from a partition by sale of land owned by heirs of the common source of title. The neighbor's predecessor in title was a party to the partition proceeding. A consent judgment was entered in that proceeding. The judgment described the parcel being partitioned, and that same description was used in the commissioner's deed and each deed in the developer's chain of title thereafter. The developer alleges that the consent judgment is *res judicata*.

1. Is the developer in privity with a party to the partition proceeding?
2. Is the neighbor in privity with a party to the partition proceeding?
3. Does res judicata apply?  
-identity of claim?
4. If not, what about collateral estoppel?  
-identity of issue? -full and fair opportunity?  
-actually litigated?  
-actually determined?  
-necessary to judgment?

### CASE STUDY 3

Following a physical domestic confrontation, Ellen Lester applied for and obtained an ex parte 50B Domestic Violence Order against her husband, Dwayne. Dwayne denied that he had caused the confrontation, and counterclaimed seeking a DVO against Ellen, contending that she caused it. After a hearing, the District Court judge found that Ellen had initiated the confrontation, denied her motion for DVO and granted Dwayne's motion. Subsequently, Ellen instituted action for child custody and support, and Dwayne counterclaimed for the same relief. These claims were brought on for hearing before another District Court judge. Ellen alleged that Dwayne was a violent person, unfit to have custody, and proffered evidence that he had started the confrontation that generated the applications for DVOs. Dwayne objected, and asserted the order determining that Ellen had instigated the confrontation in bar of re-litigation of the question.

1. Does res judicata apply?
2. Why or why not?
3. Does collateral estoppel apply?
4. Why or why not?
  - identity of issue?
  - issue actually litigated?
  - issue actually determined?
  - necessary to judgment?
  - full and fair opportunity?

[Doyle v. Doyle, \_\_ N.C.App. \_\_, 626 S.E.2d 845, 848 (2006)]

#### CASE STUDY NO. 4

Shan Carter and two accomplices, a Mr. Temony and a Mr. White, broke into the homes of Keith Richardson and Tyrone Baker. Carter made off with \$35,000 of Mr. Baker's money. Mr. Baker set about to find out who stole his little nest egg. Mr. Baker was not above use of questionable tactics in his quest, because at one point he kidnapped and beat Mr. White in an attempt to learn where his stash of cash was, apparently without success. Mr. White warned Mr. Carter and Mr. Temony about Mr. Baker. Later on, Mr. Richardson found out that Carter, Temony and White had burglarized his house. He angrily confronted Mr. Carter, and for his trouble was rewarded with a gunshot wound in the arm. Still later, Mr. Baker confronted Mr. Carter and Mr. Temony, the latter being slugged to the ground by Mr. Baker. Mr. Carter, however, pulled a revolver and began shooting. Mr. Baker ran, and Mr. Carter pursued, firing his gun at Mr. Baker. He connected twice, Baker's leg and torso. Mr. Baker collapsed and died shortly thereafter. Tragically, one of the bullets struck the windshield of a car operated by Ms. Greene, and then the head of her eight-year-old son, Demetrius, causing his death. Mr. Carter was indicted for the first-degree murders of Tyrone Baker and Demetrius Greene.

During the same general time frame, Mr. Carter was charged with the first degree murder of Donald Brunson. He was convicted of first-degree murder, kidnapping, and robbery with a dangerous weapon. That trial preceded the trial of the Baker and Greene murders. The State offered evidence in the sentencing phase of the (e)(11) aggravator based on the Baker and Greene murders. The Brunson jury found the existence of that aggravator, but recommended life.

Thereafter, the Baker and Greene murders were tried, jointly and capitally. Mr. Carter moved to dismiss the charges, because the Baker and Greene murders had been used against him by the State in the Burton murder trial. Among other things, he argued that

because the Brunson jury recommended life, the issue whether he could be sentenced to death for the Baker and Greene murders had been litigated, and re-litigation was barred by collateral estoppel.

Identity of parties

Identity of issue

Actually litigated

Actually determined

Necessary to judgment

Full and fair opportunity

State v. Carter, 357 N.C. 345 (2003)

## CASE STUDY NO. 5

In the aftermath of Hurricane Floyd, Gov. Hunt declared an emergency and called out the National Guard to assist local authorities to restore and maintain order. Some Guardsmen were deployed to coastal areas for patrolling beaches. A Guardsman was assigned to beach patrol duty on Oak Island. Three civilians were looking for a thrill, and talked him into giving them a ride in his HUMVEE. The Guardsman got a little carried away. He gunned the HUMVEE over a dune, lost control and flipped it. He was thrown from the vehicle and killed, and the civilians were all injured.

The civilians filed suit against the Guardsman's estate in state court, and instituted a Tort Claims Act claim against the State in the Industrial Commission. In both, they alleged "gross negligence"<sup>1</sup> as a basis for recovery.

Before any disposition in state court, the Industrial Commission denied the claims, and in the process, determined that the Guardsman was negligent, but that such negligence was not "gross negligence." The decision was not appealed.

The defendant in the state court action asserted the Industrial Commission's determination of no "gross negligence" in bar of re-litigation of that issue.

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<sup>1</sup> Sovereign immunity is not waived by the State for negligence during "emergency management" activities. N.C.G.S. § 166A-14(a). However, an exception exists for "gross negligence." Id.

1. Res judicata of collateral estoppel?
2. Necessary to the judgment?

[Gregory v. Penland, \_\_ N.C. \_\_, \_\_ S.E.2d \_\_ [2006 N.C. App. LEXIS 1981 (COA 05-885, Sept. 19, 2006)]]

## CASE STUDY NO. 6

Underwood was the long-time attorney for the Smith family and co-trustee testamentary trusts of which family members were beneficiaries. The administration of the trusts was unremarkable until an annual disbursement to beneficiaries was substantially less than expected, and the beneficiaries complained. At Underwood's urging, family corporations were formed to receive real estate assets from the trusts, in part to reduce income taxes on the sale or disposition of those properties.

It turned out that the paucity of the distribution was caused by a rather substantial income tax bill, attributed to Underwood's neglect of IRS requirements for S-Corp. status. The beneficiaries and the corporation sued Underwood and an accountant and accounting firm for professional negligence and breach of fiduciary duty. The beneficiaries sought injunctive relief against Underwood, to require an accounting and provide access to trust documents. They also sought to remove Underwood as co-trustee.

The motion for a preliminary injunction and petition to remove Underwood as co-trustee were consolidated with a related special proceeding and were denied by the trial court. The trial court's denial of the petition to remove defendant Underwood as co-trustee was subsequently upheld.

The other claims were tried to a jury. Underwood moved for a directed verdict dismissing plaintiffs' claims to recover trustee commissions and attorney's fees, on grounds that these claims were barred by collateral estoppel. He asserted that these "issues" were litigated in the earlier proceeding to remove him as co-trustee.

Were they issues litigated?

The Court of Appeals said "no." Disgorgement is a remedy only when a trustee is removed. See N.C. Gen. Stat. § 32-50(j) (1996). So, if an issue cannot be litigated, it is not necessary to the judgment; and if it is litigated anyway, it is of no effect.

[Smith v. Underwood, 127 N.C.App. 1, \_\_ S.E.2d \_\_ (1997)]

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