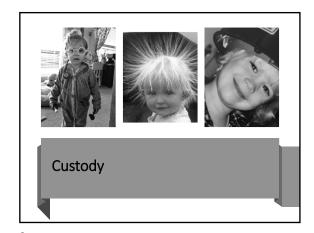
Family Law Update

May 2020



Today's Custody Topics......

- Best Interest Findings
- Modification
- Grandparents

GS 50-13.01: NC public policy to.....

- $^{\prime\prime}(1)$ Encourage focused, good faith, and child-centered parenting agreements to reduce needless litigation over child custody matters and to promote the best interest of the child.
- (2) Encourage parents to take responsibility for their child by setting the expectation that parenthood will be a significant and ongoing responsibility.
- (3) Encourage programs and court practices that reflect the active and ongoing participation of both parents in the child's life and contact with both parents when such is in the child's best interest, regardless of the parents' present marital status, subject to laws regarding abuse, neglect, and dependency.
- (4) Encourage both parents to share equitably in the rights and responsibilities of raising their child, even after dissolution of marriage or unwed relationship.
- (5) Encourage each parent to establish and maintain a healthy relationship with the other parent when such is determined to be in the best interest of the child, taking into account mental illness, substance abuse, domestic violence, or any other factor the court deems appropriate."

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Best Interest

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- "Custody is to be awarded to the person who will best promote the interest and welfare of the $\mbox{child}.$ " GS 50-13.2(a)
- The "polar star" which guides the discretion of the judges is the welfare and needs
 of the child.
 - In re Pearl, 305 NC 640 (1982)
- Judge must determine the environment that will "best encourage full development of the child's physical, mental, emotional, moral and spiritual faculties."

 In re Pearl, 305 NC 640 (1982)

• Hinson v. Hinson (p.2)

- Findings in custody order must state how the parenting plan meets the needs of the child; facts must be linked to the welfare of the child.
- "[T]he trial court made findings that mother unilaterally withdrew the children from one school and moved them to another but there were no further findings to show whether the move was good or bad for the children. In addition, there were findings that father worked a 24-hour shift every third day and mom worked part-time 16 hours a week but did not indicate whether either fact supported the trial court determination that father should have primary custody. ..."

Best Interest: Required **Findings** of Fact

Best Interest: Required Findings of Fact

- Paynich v. Vestal (p. 4)
 - Restricting parent to supervised visitation requires findings that parent is unfit or that the restriction is necessary for the welfare of the child
 - GS 50-13.5(i)
 - · Restriction on parent's access to school and medical records must be linked to child's welfare

Relocation: Required Findings of Fact • Tuel v. Tuel (p. 5) · Required findings when relocation is at issue include those set out in Ramirez-Barker v. Barker, 107 NC App 71 (1992)

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Ramirez-Barker factors

"In exercising its discretion in determining the best interest of the child in a relocation case, factors appropriately considered by the trial court include but are not limited to:

- the advantages of the relocation in terms of its capacity to improve the life of the child;
- · the motives of the custodial parent in seeking the move;
- the likelihood that the custodial parent will comply with visitation orders when he or she is no longer subject to the jurisdiction of the courts of North Carolina;
- the integrity of the noncustodial parent in resisting the relocation;
- and the likelihood that a realistic visitation schedule can be arranged which will
 preserve and foster the parental relationship with the noncustodial parent. "

Ramirez-Barker

"Although most relocations will present both advantages and disadvantages for the child, when the disadvantages are $\,$ outweighed by the advantages, as determined and weighed by the trial court, the trial court is well within its discretion to permit the relocation."

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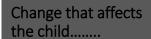
Tuel v. Tuel.....

A custody order is not "fatally deficient if the trial court fails to make explicit findings addressing each and every Ramirez-Barker factor...[T]he court's primary concern is the furtherance of the welfare and best interests of the child and its placement in the home environment that will be most conducive of the full development of its physical, mental and moral faculties.... Nonetheless, these factors will be highly relevant to the best interest of the child in nearly all of these situations.'

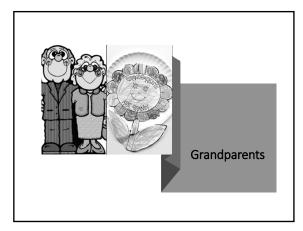
Modification: Required Findings

- A substantial change
- That affects the welfare of the child, and
- · A modification of the existing order is in the best interest of the child

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- Improvement in life of a parent has a self-evident impact on the child 222
 - Deanes v. Deanes (p.3)
 - Padilla v. Whitley de Padilla (p.9)
 - But cf. Hinson (p.2)



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Graham v. Jones (p. 7)

- Father of children dies
- · Children live with mother
- Paternal grandparents file complaint seeking custody or visitation
- Can court give paternal grandparents custody or visitation?

Grandparent custody and visitation

Grandparent custody and visitation

Visitation

Grandparent custody and visitation

Visitation

Grandparent custody and visitation

Visitation

Grandparent custody and visitation sin child's best interest

GS 50-13.2(b1) and GS 50-13.5(j)

Visitation only

Only as part of an on-going dispute between parents

Visitation only

After a relative or step-parent adoption

Visitation is in child's best interest

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Attorney fees

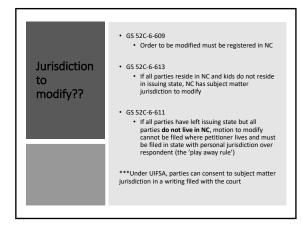
- GS 50-13.6
 - "In an action or proceeding for the custody or support,
 or both, of a minor child, including a motion in the cause
 for the modification or revocation of an existing order
 for custody or support, or both, the court may in its
 discretion order payment of reasonable attorney's fees
 to an interested party acting in good faith who has
 insufficient means to defray the expense of the suit."
- Can grandparents seeking visitation under grandparent visitation statute be ordered to pay fees?
 - Sullivan v. Woody (p. 8)



· Criminal or civil?? • "[Father] is hereby ordered into Today's Child Support Topics..... custody of the Sheriff ... for a period of thirty (30) days which shall be suspended by [father] abiding by the terms of this child support as herein set above or until such time as he • Contempt Contempt • Modification purges himself of contempt." • Medical Support · Can the court also order that father be arrested immediately upon the failure to pay support as required? 19 20 • Support obligation terminates when Unger v. Unger (p.10) child is emancipated • Emancipation only occurs upon entry of court order of emancipation or Morris v. • Specific term of incarceration makes this a criminal upon child's marriage contempt adjudication Vested support arrears cannot be modified (forgiven) Powell (p. 13)• GS 50-13.10 • Order containing legal errors is not necessarily a void • Honest belief that his support obligation terminated when child left home supported conclusion that • It is a violation of Due Process to order respondent father was not in civil contempt arrested for failing to comply with terms of suspended sentence without a hearing 21 22 Mom, dad and kids live in Washington when child support order entered (Order #1) Washington order recognizes 'scrivener's error' (Order #2) Modification: Washington enters "Corrected Order" Hart v. Hart (Order #3) • Hardy v. Hardy (p. 14) (p.11) Mom and kids move to NC Contempt • Walker v. Surles Mom registers Washington support order, filing only Order #1 and Order #2 • (unpublished, p. 15) procedure · Dad moves to NC · Dad files motion to modify

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Hart v. Hart (p. 11)

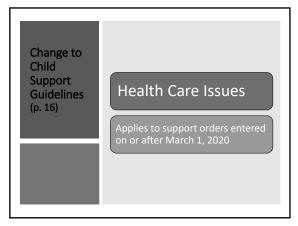
 NC has subject matter jurisdiction under UIFSA
 All parties and kids live in NC when motion filed

 Registration process is procedural and not a matter of subject matter jurisdiction

 Mom 'substantially complied' with registration process

 Increase in dad's time with kids resulting from his move to NC was a substantial change in circumstances justifying modification of support

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"The court must order either parent to obtain and maintain medical health care coverage for a child if it is actually and currently available to the parent at a reasonable cost. Health care coverage includes fee for service, health maintenance organization, preferred provider organization, and other kinds of private health insurance and public health care coverage, such as Medicaid, under which medical services can

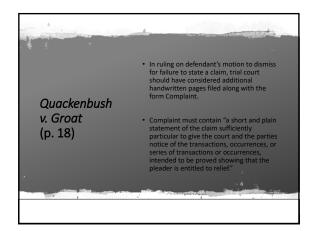
be provided to the dependent child."

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• "In compliance with 45 C.F.R. section 303.8(d), the need to provide for the child's health care needs in a support order, through health insurance or other means, is a substantial change in circumstances warranting modification of a child support order, regardless of whether an adjustment in the amount of support is necessary."



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Cf. Martin v. Martin, 832 SE2d 191 (2019)

• In Martin, "[t]his Court determined that the trial court should not have based a finding of domestic violence solely on evidence presented by the plaintiff at trial which she had not mentioned in the complaint, based upon defendant's objection to that evidence at trial."





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Alimony

Crago v.
Crago
(p. 20)

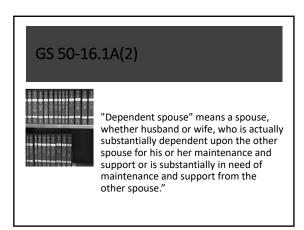
From trial court:

"Husband is representing himself and the first two sentences of his closing argument was "how is she [Wife] dependent upon me if she has a \$1,000,000.00"

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Required considerations

- (1) the accustomed standard of living of the parties prior to the separation,
- (2) the income and expenses of each of the parties at the time of the trial,
- (3) the value of the estates, if any, of both spouses at the time of the hearing, and
- (4) "the length of [the] marriage and the contribution each party has made to the financial status of the family over the years."
 - Hunt v. Hunt, 112 NC App 722
 (1993), quoting Williams v. Williams,
 299 NC 174 (1980)

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"[T]he trial court consideration of the 'estates' of the parties is intended primarily for the purpose of providing it with another guide in evaluating the earnings and earning capacity of the parties, and not for the purpose of determining capability of self-support through estate depletion." Williams v. Williams 299 NC 174 (1980)

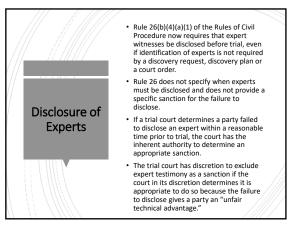
Alimony order must be supported by findings on all factors in GS 50-16.3A about which evidence is presented

 Reasonable needs of dependent spouse must be determined in light of the accustomed standard of living during marriage

 Dependent spouse not "entitled to same lifestyle as supporting spouse" but reasonable needs are not limited to actual needs at time of trial

 Retirement savings may be a reasonable need if parties had pattern of saving during marriage

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Equitable Distribution

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 Wife purchased life insurance policy on life of former husband – the father of her children · Wife married plaintiff husband • Premiums paid on insurance policy during the marriage, some with Crago marital funds again • Former husband dies • Wife receives \$1,000,000 life (p. 24)insurance proceeds • Wife and plaintiff husband separate while most of the funds are still in wife's bank account Are the insurance proceeds marital property?

Rejected use of the 'analytic' approach
 Classify according to what funds are intended to replace

 Applied 'mechanistic approach' to classify funds as marital property
 Funds meet the definition of marital property and do not meet the definition of separate property
 Funds might be both marital and separate property but wife failed to present evidence of her separate contribution

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