

Civil Law Update & Review

Small Claims/Civil Procedure

Lowrey v. Choice Hotels Intern'l, 2021 NCCOA-436 (unpublished). A domestic corporation “resides” in the county where (1) its registered office or principal office is located, or (2) it maintains a place of business. If a domestic corporation has no residence under (1) or (2), its residence is in any county in which it regularly carries on business. G.S. 1-79. A domestic corporation “maintains a place of business” in a county if it (1) conducts business activities, and (2) owns some equipment, fixtures, and furnishings” in that county. Terry v. Cheesecake Factory, 253 NC App 216 (2017).

Sprinke v. Johnson, 2021 NCCOA-402. Even though service of process may have complied with legal requirements, fact that defendant never received notice of trial was grounds for setting aside judgment for \$2,294,000, including \$1,500,000 in punitive damages.

Brown v. Patel, 2021 NCCOA-342. A claim asserted in a complaint but not addressed in the judgment may not be re-asserted in subsequent lawsuit. See blog post at <https://civil.sog.unc.edu/only-one-bite-at-the-apple-and-small-claims-court-counts/>.

Angarita v. Edwards, 2021-NCCOA-846. Judicial official’s inadvertent checking or failing to check boxes on a form judgment could be corrected -- even though the defendant was not present when the judgment was modified – as a clerical error under Rule 60(a) where court’s other findings and evidence in record indicated the omission was an oversight.

Torts

Curlee v. Johnson, 2021-NC-32. General rule is that LL is not liable for injuries to third parties by tenants’ animal, unless (1) LL knew the animal posed a danger before injury occurred, and (2) retained sufficient control over premises to remove the animal. Evidence that tenants took precautions to restrain dog and posted “Beware of Dog” sign was insufficient to establish LL’s constructive knowledge that tenants were harboring a dog with dangerous propensities.

Landlord-Tenant Law

G.S. 42-34.1(a) was amended to clarify that a tenant has a grace period of five business days to pay rent to clerk to maintain stay of SE judgment pending appeal.

Bradley v. Tapia, 2021 NCCOA-190 (unpublished). Unfortunately, a good example of judicial confusion related to “simple LL-T relationship.”

Ethics

In re Pool, 2021-NCSC-61. Chief District Court Judge engaged in willful misconduct prejudicial to the administration of justice in a number of ways, including inappropriate flirtatious/sexual behavior on social media and while at work. The Supreme Court censured, rather than removed, respondent, noting his lengthy record of distinguished service, his expression of remorse, his resignation, and a recent diagnosis of progressive terminal dementia disorder which can cause a loss of control of sexual impulses. Despite this diagnosis, the court said, the critical question is not the intention of the respondent, but rather the probable effect of the conduct on knowledgeable observers, making this conduct willful and the judge unfit to serve.

In re Brooks, 2021-NCSC-36. The respondent is a district court judge who engaged in willful misconduct prejudicial to the administration of justice by (1) serving as executor for two estates of decedents not related to him; (2) collecting substantial fees for this service, and (3) failing to report this income as required by the CJC. The Supreme Court agreed

with the Commission's findings and conclusions, but disagreed with its recommendation of censure, instead imposing a one-month suspension without compensation. The Court pointed out that his service as an executor occurred in his own judicial district, that such service is specifically prohibited in the CJC, and that failing to report even legitimate income is in and of itself a serious violation of the CJC.

Protective Orders/GS Chs. 50B & 50C

Hahn v. Hahn, 2021-NCCOA-856 (unpublished) Evidence was insufficient to establish that defendant had committed an act of DV either by placing the plaintiff in fear of imminent bodily injury or by placing her in fear of continued harassment giving rise to substantial emotional distress. There was abundant evidence of "multiple angry and agitated confrontations" by defendant, but no evidence that plaintiff actually feared such injury or suffered substantial emotional distress.

D.C. v. D.C., 2021-NCCOA-493. Action by two minor children against step-mother for DVPO. Trial judge denied request for DVPO without providing reasons for denial (and was thus reversed by COA). Following denial, trial judge made comments causing appellate court to point out that actions for custody and DVPO are not mutually exclusive, and that law requires issuance of DVPO if an act of DV has occurred.

Weller v. Jackson, 2021-NCCOA-484 (unpublished) Trial court erred in issuing civil no-contact order under GS 50C based on defendant's comments on social media about – rather than to—plaintiff (citing St v. Shackelford, 264 NCA 542 (2019), (which dealt with meaning of harassment in context of criminal law)).

Related to the Job

S.L. 2021-146 (effective 1/1/2021) requires magistrates to complete 12 hours of continuing education each year to be eligible for re-appointment. Requires satisfactory completion of in-service training courses (which may be remote or in-person) provided by SOG or other qualified educational organization. The required training shall be "in the civil and criminal duties of a magistrate, including but not limited to" six subjects: (1) setting conditions of pretrial release, (2) impaired driving laws, (3) issuing criminal processes, (4) issuing search warrants, (5) technology, and (6) orders of protection.

S.L. 2021-47 (effective 10/1/2021) enacts G.S. 7A-171.3 directing AOC to develop rules of conduct for magistrates which include (1) standards of professional conduct and timeliness; (2) required duties and responsibilities; and (3) methods for ethical decision making.

Arroya v. Southwood Realty Co., U.S. District Crt, M.D. NC (2021 WL 3733120). Action (related to SE case) against large number of defendants, including two magistrates. Claims against magistrates were essentially that they misapplied the law related to the CARES Act, erroneously refused to consider evidence offered by plaintiff, and abused their discretion. Court quickly disposed of these claims, saying, "Judges have absolute immunity for their judicial actions."

Wynn v. Frederick, 2021-NCCOA-356. Good discussion of sovereign and judicial immunity as applicable to actions against magistrates in their official and personal capacities.