Family Law Update
Cases Decided Between
October 15, 2025, and June 3, 2026

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PSS and Alimony
Cases Decided Between October 15, 2025, and June 3, 2026

Dependent spouse determination; amount and duration of alimony; marital misconduct; retirement funds as income.

- A dependent spouse is a spouse who is "actually substantially dependent upon the other spouse for [] maintenance and support or is substantially in need of maintenance and support from the other spouse."
- A trial court must make findings of fact addressing each party's employment, income, and reasonable monthly needs and expenses to support a conclusion that one spouse is a dependent spouse and the other spouse is a supporting spouse.
- The trial court did not err when it concluded wife was a dependent spouse, when husband admitted in pleadings that wife was a dependent spouse, did not argue to the trial court that wife was not a dependent spouse, and failed to challenge any of the trial court's findings as to wife's expenses, income, and estate on appeal.
- The amount and duration of alimony is left to the sound discretion of the trial court and will not be disturbed on appeal absent a manifest abuse of discretion.
- To determine the amount of an alimony award, the trial court must consider "all relevant factors" including those found in G.S. 50-16.3A(b).
- When the trial court finds that during the marriage the parties had established a practice of making significant retirement contributions each year and "their historical custom of savings was an important part of their accustomed standard of living," to require a dependent spouse to stop reinvesting in her IRA in order to use those funds as income would be contrary to the parties' established practice of retirement savings.
- The trial court was not required to impute income to a dependent spouse for not electing early retirement to begin receiving Social Security benefits. The trial court had discretion to accept or reject as credible supporting spouse's evidence on dependent spouse's potential income from Social Security benefits.
- A prevailing purpose of an alimony award is to support the dependent spouse to allow the opportunity to enjoy the accustomed standard of living the parties enjoyed during the marriage. In cases where parties enjoyed an extravagant lifestyle during the marriage, the trial court does not abuse its discretion including those expenses in a party's "reasonable needs" when setting an alimony award.
- G.S. 50-16.3A(b) requires the trial court to consider a spouse's marital misconduct when making an alimony award and requires that a dependent spouse be awarded alimony if a supporting spouse is found to have committed illicit sexual behavior during the marriage before the date of separation.
- The trial court did not abuse its discretion and improperly "punish" husband for his illicit sexual behavior during the marriage when it set the duration of its alimony award but gave proper consideration to that factor as G.S. 50-16.3A(a) requires.

Allport v. Allport, ___ N.C. App. ___, 924 S.E.2d 376 (November 5, 2025), PDR filed 12/9/2025 (on the issue of the trial court's treatment of and findings on wife's IRA and SS benefits). The trial court entered a permanent alimony order directing husband to pay $14,767.52 per month to wife until the death of either party or wife's cohabitation or remarriage. During the marriage, the parties established a "very high standard of living." Husband was found to have committed "illicit sexual behavior" after engaging in a years long affair during the marriage. Husband appealed.

Husband first challenged the trial court's conclusion that wife was a dependent spouse. Husband argued that the trial court did not consider all income sources available to wife, failed to consider her earning capacity, grossly inflated her reasonable needs, and improperly considered husband's marital misconduct when making its dependency determination. The trial court found that husband had admitted in his pleadings that wife was a dependent spouse and that husband was a supporting spouse. Husband had not challenged any of the trial court's findings of fact. Further, the court of appeals noted that husband had not argued to the trial court that wife was not a dependent spouse. The court of appeals held that the trial court's unchallenged findings of fact as to each party's employment, income, and reasonable monthly needs and expenses "abundantly support" the trial court's conclusion that wife was a dependent spouse.

<u>Husband's challenge to calculation of wife's income.</u> G.S. 50-16.3A(b) requires the trial court to consider the "amount and sources of earned and unearned income of both spouses, including but not limited to earnings, dividends, and benefits such as medical, retirement, insurance, social security, or others" when making an alimony award. Husband argued that the trial court erred by excluding from wife's income a sum he alleged she could withdraw from an IRA account based on his expert's use of a simulation and projections of the future performance of the account. Husband also argued the trial court erred when it did not consider income wife could receive from Social Security benefits if she elected to retire early, also based on husband's expert's testimony. According to the court of appeals, the trial court did not err calculating wife's income. The trial court found as fact that during the marriage the parties had established a custom of savings and a practice of making significant retirement savings and "no credible evidence was presented that wife has depressed her income in bad faith and there is, therefore, no basis to impute income to wife." The trial court was not required to accept the testimony of husband's expert, nor order wife to deplete her estate or opt for early retirement to meet her reasonable needs and expenses. Wife could only make future contributions to the account from earned income, which she did not have since leaving her employment to care for the parties' children.

The dissenting judge found the trial court's findings inadequate as to wife's IRA and Social Security benefits and would have vacated the trial court's order and remanded for additional findings as to these two potential income sources.

<u>Valuation of wife's estate.</u> Husband also argued that the trial court incorrectly valued wife's estate thereby increasing husband's alimony obligation. The parties resolved their equitable distribution claim by consent order, which included a finding that "each party has an estate of between two and three million dollars." The court of appeals found no error in the trial court reliance on this finding in its alimony order to value wife's estate.

<u>Wife's reasonable expenses.</u> Husband also challenged the trial court's findings regarding wife's expenses as artificially inflated and not reasonable, and therefore an abuse of discretion. The court of appeals disagreed, stating again that husband had not challenged any of the trial court's detailed findings of fact as unsupported by the evidence, and that a prevailing purpose of an alimony award is to support the

dependent spouse and permit that spouse to enjoy the accustomed standard of living enjoyed during the marriage, at least to the extent a supporting spouse's income can support it. The trial court's findings established that the parties enjoyed an extravagant lifestyle during the marriage, and the trial court does not abuse its discretion including those expenses in a party's reasonable needs when calculating an alimony award.

<u>Wife's earning capacity.</u> The court of appeals disagreed with husband's argument that the trial court should have assessed wife's earning capacity. According to the court of appeals, the trial court's unchallenged and binding finding of fact that there was no credible evidence that wife depressed her income in bad faith was sufficient to defeat his argument. Other unchallenged findings also showed that the trial court considered that wife was close to retirement age, had left the workforce to support the parties' children, sustained recent injuries, and was unable to work as an attorney due to her inactive status from the bar.

<u>Duration of the award.</u> As to the duration of the award, husband argued the trial court did not sufficiently explain its reasoning for awarding alimony until the death of either party or wife's remarriage or cohabitation, failed to consider future changes to the needs and incomes of both parties, and that the duration of the award was an improper punishment for husband's marital misconduct. The court of appeals rejected these arguments, pointing to the trial court's extensive findings of fact on the factors found in G.S. 50-16.3A(b), and noting that those factors also require a trial court to consider a party's marital misconduct. Other findings addressed husband's remarriage and financial support of his new family, the earning capacities of the parties, their age and physical health, wife's role in supporting her family while defendant completed his medical education and training, her absence from the workforce to support her family at home, her present inability to practice law again, and the parties accustomed standard of living during the marriage.

Dependent spouse determination; civil contempt

- A trial court shall award alimony to a dependent spouse upon finding that one spouse is dependent, the other is supporting, and that an award is equitable after considering all relevant factors, including those contained in G.S. 50-16.3A(b).
- A "dependent spouse" is a spouse who is actually substantially dependent upon the other spouse for maintenance and support or is substantially in need of maintenance and support from the other spouse.
- An order concluding that plaintiff was not a dependent spouse with no findings of fact regarding plaintiff's monthly expenses or income, the accustomed standard of living established during the marriage, or defendant's ability to provide support was insufficient to demonstrate that the trial court properly considered the required statutory considerations.
- A general incorporation of all findings of fact from other court documents or orders is not sufficiently specific to demonstrate the trial court considered all required statutory factors in determining whether an award of alimony is equitable under the circumstances, and these findings of fact cannot be considered in determining whether the court's findings of fact are adequate under GS 50-16.3A.
- A trial court's mere conclusion that defendant "is not in willful contempt of court" with no findings of fact addressing whether the underlying order remained in effect, or whether

defendant had complied or had the ability to comply with the order prevents an appellate court from reviewing the trial court's decision and requires remand.

Taylor v. Taylor, ___ N.C. App. ___, 923 S.E.2d 277 (November 5, 2025). After the parties separated, plaintiff filed claims for postseparation support, equitable distribution, and alimony. The parties reached an agreement on postseparation support, and the trial court entered a consent order requiring defendant to pay plaintiff monthly support. Plaintiff later filed a motion for contempt alleging defendant had failed to make payments consistently. The trial court entered an order concluding that (1) plaintiff was not a dependent spouse and therefore not entitled to alimony, and (2) defendant was not in contempt of the post-separation support order. The court of appeals vacated and remanded the trial court's order for insufficient findings of fact. A summary of the holding regarding contempt is found in the contempt section of this update.

G.S. 50-16.3A requires a trial court to award alimony to a dependent spouse upon finding one spouse is dependent, the other spouse is supporting, and that an award is equitable after considering all relevant factors contained in G.S. 50-163A(b). The trial court's order concluding plaintiff was not a dependent spouse and denying alimony contained "no findings regarding Plaintiff's monthly income or expenses, her accustomed standard of living, or Defendant's ability to provide support." Findings that plaintiff received cash assets in equitable distribution and "is not a dependent spouse" were insufficient to demonstrate that the trial judge had considered the statutory factors.

Calculation of alimony award

- The trial court's calculation of plaintiff's total monthly income for purposes of alimony was incorrect because it was based on an incorrect child support award.
- The trial court incorrectly calculated defendant's income for purposes of alimony because the trial court did not account for mandatory deductions, including taxes and social security, and made no findings as to why those deductions were not factored into its calculation of defendant's ability to pay the alimony award.
- The trial court did not abuse its discretion when it added child support received to plaintiff's income and deducted the same from defendant's income.

Chan v. Severn, ___ N.C. App. ___ (Apr. 1, 2026). The trial court entered an order requiring defendant to pay an alimony award and a child support award to plaintiff. Disposition of the child support issue is covered in the child support section of this update. In its calculations of the parties' income and expenses, the trial court relied in part on the child support the court had ordered. Because the defendant's child support obligation was incorrect, plaintiff's total monthly income which included child support received was also incorrect. Further, the trial court incorrectly calculated defendant's income because it did not include mandatory deductions, including taxes and social security when considering the income he had available to pay an alimony award. The trial court did not abuse its discretion when it added the child support plaintiff received to her income and deducted the same from defendant's income. The court of appeals ordered the trial court to reconsider the alimony award and duration on remand.

Refiled alimony claim and dismissal for failure to pay costs pursuant to Rule 41(d)

- Rule 41(d) orders a trial court to dismiss an action refiled by plaintiff for the same claim against the same defendant after being voluntarily dismissed pursuant to Rule 41(a) if plaintiff was ordered to pay costs in the prior action and failed to do so.
- Where a plaintiff was ordered to pay costs pursuant to Rule 41(d) within 30 days of the entry of an order and attempted to pay those costs on day 33, Rule 6(e) did not extend the time to make the payment from 30 days to 33 days because service by mail is not what triggered the 30-day period for payment.

Blackmon v. Blackmon, ___ N.C. App. ___ (April 15, 2026). Husband filed an action against wife and wife filed a counterclaim for alimony. Wife voluntarily dismissed her counterclaim for alimony. Almost a year later, wife filed an action seeking alimony and attorney fees from husband. Husband filed a motion pursuant to Rule 41(d) to direct wife to pay the costs associated with her alimony counterclaim in the prior action. The trial court entered an order directing wife to make payment to husband for the costs to be paid "within 30 days of the entry of this Order." Wife attempted to pay husband 33 days later, but husband refused payment because "the time period had run out." Husband moved to dismiss wife's action based on her failure to pay the costs within the time required by the order and the trial court granted the motion. Wife appealed.

On appeal, Wife argued that Rule 6(e) operated to extend the time she had to pay the costs by three days, and therefore her payment on day 33 was timely. The court of appeals disagreed. The court of appeals held that Rule 6(e) does add three days to the time by which a party must act when the triggering event starting the clock is "the service of a notice or other paper." Here, the service of the order to pay costs was not what triggered wife's obligation to pay the costs. Therefore, according to the court of appeals, wife was required to pay the costs by day 30 and did not do so. The trial court correctly dismissed her action.

Calculation of supporting spouse's income

- A trial court's findings on the parties' income and expenses for purposes of alimony must be based on competent evidence presented at the hearing on the alimony claim.
- Where a trial court has relied on financial evidence presented at a separate child support hearing to calculate an alimony award, the evidence presented at the child support hearing cannot support the alimony order's findings.

Ahdi v. Ahdi, ___ N.C. App. ___ (May 20, 2026). Defendant appeals three orders: an equitable distribution and alimony order, an order denying a post-trial motion, and a civil contempt order. Because it vacated the equitable distribution and alimony order, the court of appeals did not reach defendant's arguments on his post-trial motion. Discussion of the appeal of the equitable distribution order is included in the equitable distribution section of this update, and discussion of the civil contempt order is found in the contempt of court section. The relevant procedural background and facts are included with each substantive discussion.

The parties were married in 2007 and separated on September 12, 2021. The trial court entered an equitable distribution and alimony order, awarding mother alimony. On appeal, father argued that the trial court's findings on the parties' incomes and expenses were not supported by the evidence. The court of appeals noted a lack of evidence in the record, including financial affidavits and a binder of documents mother referenced in court, none of which were offered or admitted as exhibits. Therefore, the court of appeals had only mother's testimony as available evidence, as father did not appear at the hearing. Mother's testimony about her monthly income at the hearing was conflicting, ranging from $6,400 to $6,900, and the trial court found that her gross monthly income was $5,132.85, with a net monthly income of $1,433.19 and references an attached affidavit that was not attached. Further, her testimony as to father's income did not support its findings as to his income and the trial court's order dismissing father's post-trial motion showed it had relied on information provided in a child support hearing to calculate his monthly income for purposes of alimony. The trial court erred when it relied upon financial evidence presented at a hearing other than the alimony hearing. The court of appeals vacated the alimony portion of the trial court's order and remanded with instructions for the trial court to receive evidence on the parties' income and expenses and to enter a new order.

Child Support
Cases Decided Between October 15, 2025, and June 3, 2026

Compliance with appellate court's mandate on remand; authority of a substitute judge on remand; rent-free housing as income; attorney fees as sanctions.

- A trial court is bound by the mandate of an appellate court on remand. However, the decision as to whether to take new evidence is generally a matter left in the discretion of the trial court so long as the reviewing court's mandate does not specify otherwise.
- The need for additional evidence on remand depends on the reasons for remand and the facts and issues the trial court must address in its new order.
- To establish child support pursuant to G.S. 50-13.4, a trial court must make findings about the parties' ability to provide child support at the time the order is made or modified. If such evidence is not in the record, the trial court must take new evidence after an appeal.
- The trial court correctly concluded that after four years passed during the appeal of a 2017 order modifying support it was obligated to take new evidence on remand to determine the reasonable needs of the children for maintenance and support and to enter an order that addressed the current circumstances of the parties and the children.
- The trial court acted within its authority to modify the parties' 2013 consent order and establish support effective from plaintiff's 2017 motion to modify through the trial court's hearing after appeal on remand, and it did not abuse its discretion setting a different support amount from the date of its new order moving forward where it made findings to show that the income of the parties and the needs of the children increased in the months before the modification hearing, and the findings supported the amount of support ordered.
- In determining mother's income, the trial court properly considered the rent-free housing provided to her by her mother. The trial court also acted within its discretion when it reduced the rental value of that housing to account for the mother's contribution to the expenses of the household in the form of paying the phone bill, paying for groceries, and doing household chores.
- Where the trial court denied defendant's motion for a protective order made under Rule 26(c) of the Rules of Civil Procedure and entered an order compelling defendant to provide the discovery sought, the trial court had authority pursuant to Rule 37(b) to sanction defendant when he failed to comply with that order compelling discovery.

Kincheloe v. Kincheloe, ___ N.C. App. ___ , 924 S.E.2d 496 (November 5, 2025). This is the second time this child support case reached the court of appeals. In *Kincheloe I*, the court of appeals reversed the trial court's order modifying a 2013 consent order and remanded the case for entry of a new order. The opinion stated: "If either party requests additional hearing after remand, the trial court shall receive additional evidence prior to entry of a new order. If neither party requests additional hearing, the trial court may enter a new order based solely upon the existing record."

On remand, the trial judge who entered the *Kincheloe I* child support order voluntarily disqualified herself from the case. Pursuant to Rule 63 of the Rules of Civil Procedure, the chief district court judge handled the remand of the case.

Plaintiff sought financial information from defendant by subpoena for the time period after the last hearing before the trial court prior to the appeal until the time of the new hearing on remand.

Defendant moved to dismiss plaintiff's motion under Rule 12(b)(1) and (6), arguing that pursuant to the court of appeals mandate, the trial court only had the authority to address the circumstances that existed when the trial court considered plaintiff's 2017 motion to modify prior to the appeal.

The chief district court judge denied defendant's motion to dismiss, determined that by plaintiff's actions on remand she had requested an additional hearing, and ordered a new hearing. The trial court stated that the court of appeals "did not otherwise specify or limit the scope of the evidence that may be received at the hearing on remand, leaving that decision entirely within the trial court's discretion." The trial court ruled that it would consider additional evidence and allow the parties to present evidence on the children's current needs.

Defendant provided some of the updated financial information requested by plaintiff but refused to produce documents from several years, and in response, plaintiff filed a motion for sanctions requesting that the trial court prohibit defendant from presenting evidence of his expenses and requiring him to pay plaintiff's attorney fees in prosecuting the motion. The trial court did not prohibit defendant from presenting evidence but ordered him to produce certain financial statements and reimburse plaintiff the attorney fees that resulted from her motion for sanctions.

Following a hearing before the chief district court judge that concluded on Sept. 1, 2022, the chief judge concluded there had been a substantial change in circumstances between the entry of the 2013 consent order and plaintiff's 2017 motion to modify. The trial court ordered defendant to pay $1902 in monthly support effective from the date mother filed her motion to modify in 2017 through the date of the hearing before the chief district court judge in 2022. After the date of the hearing before the chief district court judge, defendant's obligation increased to $2602.66. The trial court based the change in the support obligation on an increase in the income of the parties and an increase in the needs of the children which occurred in 2022.

On appeal, defendant's primary argument was that the trial court failed to comply with the court of appeals' mandate in *Kincheloe I*. Specifically, defendant challenged the trial court's conclusion of law that it was obligated to take evidence on remand to determine the current reasonable needs of the children for maintenance and support and the relative ability of the parties to provide support and to enter an order that addressed the current circumstances. Defendant argued that because the mandate did not require a new hearing, the trial court did not have the authority to hear evidence outside the scope of the 2017 motion to modify that was the subject of the *Kincheloe I* appeal.

The court of appeals disagreed and found that the mandate in *Kincheloe I* required the trial court to conduct a new evidentiary hearing if requested by either party. Because plaintiff requested a hearing, the trial court was required to conduct a hearing. The need for additional evidence on remand is generally a matter left in the discretion of the trial court so long as the reviewing court's mandate does not specify otherwise. In this case, because the chief judge did not conduct the original hearing, the chief judge was required to take new evidence to support a new support order. The chief judge could not rely on evidence in the record because the chief judge did not hear that evidence.

Defendant also argued that the trial court abused its discretion when it ordered one monthly amount of support for the time period between the original motion to modify in 2017 and Aug. 2022, and a higher amount beginning Aug. 2022 forward in time. The court of appeals held that the change in the amount of prospective support was supported by evidence of an increase in the income of the parties and an increase in the needs of the children. As the amount of support set by the trial court was supported by evidence of the income of the parties and the reasonable needs of the children, the trial court did not abuse its discretion in setting a higher amount of support after August 2022.

Defendant challenged the children's expenses as disproportionally high compared with the parties' incomes when extrapolated from the amounts set by the guidelines. The court of appeals rejected the argument noting that in cases above the child support guidelines the trial court must make a discretionary determination based on the factors in G.S. 50-13.4(c) and the special circumstances of the particular parties to determine the reasonable expenses. The way the trial court determined the children's expenses in this case was not so arbitrary that it could not have been the result of a reasoned decision.

Defendant's final argument was that the trial court erred by concluding plaintiff was entitled to attorney fees as a sanction under Rule 37(b) of the Rules of Civil Procedure, which addresses sanctions for failure to make discovery. He argued that because plaintiff never requested an order to compel discovery pursuant to Rule 37(a), the trial court had no authority to order sanctions pursuant to Rule 37(b). The court of appeals disagreed, holding that a trial court is permitted to order sanctions under Rule 37(b) for a violation of an order compelling discovery entered after the denial of a motion for a protective order, as happened in this case. The trial court's findings on the amount of attorney fees awarded to plaintiff were unchallenged and binding and not an abuse of discretion.

Court ordered support and unincorporated separation agreement; *Pataky* presumption; sufficiency of findings to award attorney fees

- Where parties agree upon an amount for the support and maintenance of their minor children in an unincorporated separation agreement, either party can request that the trial court set child support pursuant to Chapter 50, but there is a presumption that the amount mutually agreed upon is just and reasonable in the absence of evidence to the contrary. This is the *Pataky* presumption. The trial court must set support in the amount provided in the agreement unless the presumption is rebutted with evidence that the agreed upon amount is not reasonable, considering the current needs of the children and all the factors set forth in GS 50-13.4(c).
- The *Pataky* presumption of reasonableness does not apply when the parties have executed an unincorporated separation agreement that explicitly provides that either party may seek a judicial determination of child support based on a change in circumstances.
- A trial court may apportion uninsured medical and dental expenses either by including the expenses as extraordinary expenses in the Guideline calculation of support, which will result in the expense being divided pro rata between the parties, or by ordering each party to pay a percentage of the expenses in addition to the Guideline support payment.
- Including the same expense as an extraordinary expense in a prospective child support calculation and as a separate obligation is an abuse of discretion and required remand for recalculation.

- G.S. 50-13.6 permits a trial court to award attorney fees in a child support action to an interested party acting in good faith who has insufficient means to defray the expense of the suit. A party has insufficient means to defray the expense of a suit "when they are unable to employ adequate counsel in order to proceed as litigant to meet the other spouse as litigant in the suit".
- There was sufficient evidence to support the trial court's finding that mother had the means to defray a portion, but not all, of the expense of the suit where mother's monthly income was $4,880 and the reasonable value of her attorney's service to her was at least $75,615.

Brown v. Miller, ___ N.C. App. ___, 925 S.E.2d 624 (December 17, 2025). The parties entered an unincorporated "Contract of Separation, Property Settlement, Alimony, Child Custody and Support Agreement." The agreement established father's child support obligation to mother and stated that "each party understands that in the event of a substantial change in circumstances, child support shall be subject to modification by a court of competent jurisdiction."

Mother subsequently filed a complaint for custody and a motion for attorney's fees resulting in a temporary custody order that required each party to equally share the child's therapy expenses.

When father did not pay the therapy expenses as required by the temporary custody order, mother filed a motion in the cause alleging violations of the support provisions of the separation agreement and requesting judicially determined child support and attorney fees.
The trial court thereafter entered a permanent support order establishing father's monthly support obligation in accordance with the child support Guidelines. In calculating the Guideline obligation, the trial court included the child's uninsured medical expenses as an extraordinary expense. The prospective child support obligation set by the court was made payable from the date of mother's complaint seeking support. The trial court also calculated and ordered father to pay arrears accumulated because of his failure to pay his share of the unreimbursed medical expenses in accordance with the custody order. The trial court also ordered father to pay a portion of wife's attorney fees.

Father appealed.

He first argued that the trial court had failed to apply the *Pataky* analysis to the support amount established in the parties' separation agreement before establishing a support obligation pursuant to the Guidelines. The court of appeals disagreed. The parties' agreement stated that "each party understands that in the event of a substantial change in circumstances, child support shall be subject to modification by a court of competent jurisdiction" and according to the court of appeals, "this provision plainly evinces the parties' intent that they would both have the option to unilaterally solicit a judicial determination of child support." The court of appeals held that where the parties have executed an unincorporated separation agreement that explicitly provides that either party may seek a judicial determination of child support, the *Pataky* presumption of reasonableness is not necessary to protect the bargained-for benefits of the parties' contract.

Father also challenged the trial court's calculation of his child support obligation on the basis that the trial court included the father's share of the child's uninsured medical expenses as both an extraordinary expense in the calculation of father's obligation under the Guidelines as well as in the calculation of what he owed in arrears from the time he was obligated under the temporary custody order. The court of appeals agreed and remanded to the trial court for recalculation. To the extent the two orders covered the same period of time, the trial court's order resulting in a double counting of father's responsibility for the uninsured expenses.

Finally, the court of appeals addressed father's argument that the trial court improperly awarded attorney fees to mother because the trial court did not make proper findings that mother had insufficient means to defray the costs of the action. A party has insufficient means to defray the expense of a suit when they are unable to employ counsel sufficient to proceed as litigant to meet the other spouse as litigant in the suit. Awarding attorney fees pursuant to G.S. 50-13.6 does not require that one party be a dependent spouse and one party a supporting spouse and the trial court is not obligated to compare the parties' relative estates when considering whether to award attorney fees in a child support or child custody action. Whether to compare estates is within the trial court's discretion. Based on mother's testimony, the trial court found her monthly income to be $4,880.22 and based on her attorney's affidavit, the reasonable attorney fees she incurred to be $75,615.75. The trial court awarded mother less than half of those fees, finding that she had "sufficient means to defray a portion, but not all" of the attorney fees related to her claims.

Imputed income; date of income for retroactive and prospective child support; work-related childcare expenses; arrears reduced to judgment

- A party's capacity to earn may be the basis of a child support award if the trial court finds that the party deliberately depressed their income or otherwise acted in deliberate disregard of their obligation to provide reasonable support for their child.
- Prospective support is payable from the time of the filing of the complaint for support and is based on the income of the parties at the time of the support hearing. Retroactive support can be determined by applying the Guidelines to the income of the parties on a date before the filing of the complaint for support. The date will be the date the parties became liable for the support of the child, or three years before the complaint was filed, whichever is less. In this case, retroactive support should have been determined by the income of the parties on the date of separation, and prospective support should have been determined based on income of the parties on the date of the support hearing.
- Reasonable childcare costs that are or will be paid by a parent due to employment or a job search are added to the basic child support obligation when support is governed by the Guidelines.

Nzewunwah v. Nzewunwah, ___ N.C. App. ___, 925 S.E.2d 633 (December 17, 2025). The trial court entered a support order in which it directed father to pay $3,902 to mother in monthly prospective child support after imputing income to father, with payments due beginning on the date the parties separated. The trial court then reduced the $84,790 in support owed by the father at the time the support order was entered to judgment and placed a lien on any real property he owned. Father appealed.

On appeal, father challenged the trial court's use of imputed income to calculate his support obligation. After the parties' date of separation, father voluntarily left his job and became self-employed. In his testimony, father acknowledged that prior to leaving his job while he was still fully employed, he did not pay support, and that he had engaged in international travel for pleasure after leaving his job. The trial court found as fact that father's testimony at trial was not credible and that he acted in bad faith. The court of appeals agreed and held that the trial court had not abused its discretion in so finding and affirmed the decision to impute income to him.

Father also challenged the trial court's use of his income on the parties' date of separation to determine his prospective child support obligation. According to the court of appeals, the trial court correctly used father's income at the date of separation to determine his retroactive child support obligation (the amount of support he owed between the date of separation and the filing of the complaint for support) but held that the trial court should have used his income on the date of the support hearing to calculate his prospective child support obligation (the amount of support he owed for the time of the filing of the complaint for support forward in time). The court of appeals remanded this issue to the trial court for recalculation.

Father argued that the trial court erred by including the cost of live-in nanny care and a Montessori school in mother's reasonable work-related childcare expenses. The court of appeals affirmed the cost of live-in nanny care as a reasonable work-related expense based on mother's testimony that due to her employment in emergency medicine and atypical working hours, she was unable to use standard daycare services. However, the court of appeals held that the trial court's finding that the cost of the child's attendance at a Montessori school was a reasonable work-related childcare expense was unsupported by competent evidence. Mother testified that at the time of the hearing, the child had not been accepted into the school and there was no evidence in the record that he was set to begin attending the school. Therefore, the court of appeals said it was improper to include this expense.

Father finally argued that the trial court erred by reducing the amount of support he owed for the time before the entry of the support order to judgment and placing a lien on any real property he owned pursuant to G.S. 50-13.4(f)(8). G.S. 50-13.4(f) sets out remedies to enforce child support and permits a judgment for child support to be a lien against real property if the judgment expressly so provides, sets out the amount of the lien in a sum certain, and adequately describes the real property affected. In this case, the trial court's order stated the amount was reduced to judgment, and that the judgment should be docketed "in Forsyth County, North Carolina, and in any other jurisdiction where Father resides, is employed or owns property with interest running on the same at the legal rate." This court of appeals held that this language did not adequately describe the specific real property affected as required by G.S. 50-13.4(f) and remanded this issue to the trial court for further clarification.

Temporary v. permanent support order; deviation; past income

- A temporary child support order did not become permanent by operation of time despite a delay of several years where plaintiff consistently and timely calendared the claim for hearing, the parties consented to multiple continuances (many to accommodate defendant's counsel), and the parties were attempting to mediate the child support issue during the delay.
- A trial court's order of removal that removed plaintiff's child support case "from the trial docket of active cases" administratively closed the case but did not end the case on the merits and did not render a temporary child support order a permanent order.

- A trial court is permitted to use an obligor's past income to calculate their support obligation if their current income information is incomplete or unreliable.
- The trial court's use of defendant's 2023 income tax returns in 2025 was not error where the 2023 returns were the most recent verified financial information available.
- It was error for the trial court to order defendant's prospective child support obligation effective as of any day other than the filing date plaintiff's child support claim without making the appropriate findings to deviate from the Guidelines.

Flores v. Gutierrez, ___ N.C. App. ___, 927 S.E.2d 50 (Feb. 4, 2026). After separating in 2018, plaintiff filed a complaint for custody, child support, and equitable distribution in January 2020. The parties entered agreements establishing defendant's child support obligation in August 2022 and again in May 2024. After the matter came on for hearing in 2022, the trial court entered an order of removal "removing the case from the trial docket of active cases … without prejudice to previous orders … and without prejudice to the entry of motions and orders in the future." Plaintiff's claim was again noticed for hearing but continued numerous times over the next fifteen months by consent of the parties and due to the unavailability of counsel. In January 2025, the trial court entered a permanent child support order requiring defendant to pay a monthly support obligation as of January 1, 2025, and a monthly arrears payment for the period of May 1, 2024, through January 1, 2025. Plaintiff appealed.

Plaintiff argued that the trial court erred by treating the August 2022 order as a permanent order. The court of appeals concluded that the order stated it was temporary, was entered without prejudice to either party, and stated a reconvening time in the relatively near future. Because plaintiff consistently and timely calendared her claim for hearing and the continuances occurred by consent or to accommodate defendant's counsel, the delay was reasonable and the order did not become permanent by operation of time. Additionally, the trial court's order of removal that removed plaintiff's child support case "from the trial docket of active cases" administratively closed the case but was not a decision on the merits and did not render a temporary child support order permanent.

Plaintiff also challenged the trial court's use of 2023 financial information to calculate defendant's income at the time of the 2025 hearing. Plaintiff argued the trial court should have disregarded all defendant's proposed business expenses when calculating his income because he did not submit current documentation during the 2025 hearing. The court of appeals explained that reliance on past income is permitted when current documentation is incomplete or unreliable and held that the trial court did not err when it used the most recent verified financial information.

Finally, plaintiff argued that the trial court erred by awarding support beginning in May 2024, the effective end date of the August 2022 order, and not the date plaintiff filed her claim. The court of appeals agreed and vacated the child support order. The Guidelines presumptively apply to the time period between the filing of a complaint for child support and the hearing date. The existence of a temporary child support order does not alter the presumption that a permanent prospective child support obligation begins at filing. Because the trial court made no findings to support deviating from the Guidelines, awarding support from a date other than the filing date was error.

Civil contempt; present ability to pay; "springing" orders

- To hold a person in civil contempt the trial court must find that the person is able to comply with the underlying order or is able to take reasonable measures that would enable compliance with the order.
- A trial court may require a person to take future action but cannot order immediate arrest and incarceration based on the failure to comply without also holding a hearing and considering the party's present ability to comply at the time of the commitment.

Roybal v. Raulli, ___ N.C. App. ___, 927 S.E.2d 413 (Feb. 4, 2026). Father appealed the trial court's Amended Commitment Order for Civil Contempt, entered as a result of father's failure to pay his child support obligation under a 2021 consent order. A summary of the holding on the custody issue is found in the custody section of this update.

Mother filed a motion for contempt in 2021, and the trial court entered a contempt order holding father in civil contempt in December 2022. The contempt order required father to pay mother $4,600 each month for five months and to appear at the trial court's calendar call each month with proof of payment. The order stated that if father failed to pay the amount and/or failed to appear at the calendar call, "an order for his arrest shall be issued by this court at calendar call and Father shall surrender himself at said time and be incarcerated until such payment is made."

Father appeared in January 2023 but had not paid mother and was immediately taken into custody. Father was ultimately released for reasons related to his military service, but his contempt was not purged.

The court of appeals held that a trial court can order a person to complete future actions, but it cannot order that person automatically committed for civil contempt based on their failure to comply without holding a hearing and considering the person's actual ability to comply at the time of commitment. Father was given no notice of his opportunity to show why he should not be held in contempt during the calendar call he was required to attend. Even though father had a pattern of failing to pay his child support obligation, every order for commitment for civil contempt requires a finding of the alleged contemnor's present ability to comply at the time the order of commitment and purge is entered. Because the trial court entered the Amended Commitment Order without holding a hearing to determine whether father had the actual present ability to comply, the order was reversed.

Calculation of guideline support

- Because the trial court's findings regarding plaintiff's income and plaintiff's childcare expenses were unsupported by competent evidence its child support and arrearage calculations were incorrect.
- The trial court's calculations of plaintiff's total monthly income for purposes of alimony was incorrect because it was based on an incorrect child support award.
- The trial court incorrectly calculated defendant's gross income for purposes of alimony because the trial court did not account for mandatory deductions, including taxes and social security, and made no findings as to why those deductions were not factored into its calculation of defendant's ability to pay the alimony award.

Chan v. Severn, ___ N.C. App. ___ (Apr. 1, 2026). The trial court entered an order requiring defendant to pay an alimony award and a child support award consistent with the Guidelines to plaintiff. Disposition of the alimony issues is discussed in the alimony section of this update. On appeal, defendant argued that the trial court miscalculated plaintiff's income which led to an incorrect award. The court of appeals agreed and held that the trial court's findings related to plaintiff's income for two different years were not supported by competent evidence. The trial court's finding of plaintiff's monthly income did not align with the yearly income reported in plaintiff's W-2s and income tax returns. Similarly, the trial court erred in its findings as to the parties' childcare expenses for several years and plaintiff's extraordinary expenses in that the amounts in the order were not consistent with the evidence offered. Because these incorrect figures were the basis for the trial court's calculation of guideline support award and calculation of defendant's arrears, the child support order was vacated and remanded.

Gross monthly income calculation

- A trial court's calculation of a party's gross monthly income must be supported by competent evidence.
- Where a trial court deducted Social Security and 401(k) withdrawals when calculating a party's gross monthly income and there is no testimony or documentary evidence to support those figures, the findings are not supported by competent evidence and must be recalculated on remand.

MacDonald v. MacDonald, ___ N.C. App. ___ (May 6, 2026). The trial court found that after the parties separated, plaintiff owed a duty of support for the parties' children pursuant to Worksheet A of the guidelines. Plaintiff failed to provide any evidence of her personal income in the child support action, so all the evidence before the court as to plaintiff's income was offered by defendant. The trial court found that plaintiff owed $58,572.00 in retroactive and prospective child support and ordered her to pay $1,500.00 monthly. This appeal also contained equitable distribution issues which are covered in the equitable distribution section of this update.

On appeal, plaintiff challenged the trial court's calculation of defendant's income, arguing that his Social Security and 401(k) withdrawal amounts the trial court deducted from his gross monthly income were unsupported by the evidence. Because no testimony or documentary evidence contained the figures the trial court used, the court of appeals agreed. The court of appeals remanded for the limited purpose of determining defendant's income and to recalculate plaintiff's child support obligation.

Child Custody

Cases Decided Between October 15, 2025, and June 3, 2026

Required findings when there is evidence of domestic violence

- G.S. 50-13.2(a) requires that the trial court consider and make specific findings about evidence of acts of domestic violence between the parties in a custody case. Upon finding a history of domestic violence, GS 50-13.2(b) authorizes the trial court to include in the custody order provisions authorized by Chapter 50B for inclusion in a DVPO.
- Where mother presented evidence of a history of domestic violence through her testimony recounting specific instances of threats and violence by the father, a DVPO against the father, and father's conviction of assault on a female, the trial court erred when it entered a custody order without the specific findings required by GS 50-13.2(a).

Faircloth v. Faircloth, unpublished opinion, ___ N.C. App. ___, 921 S.E.2d 218 (October 15, 2025). Defendant mother appealed a custody order granting joint physical and legal custody of their two children. Among other things, mother argued that the trial court erred by failing to make specific findings of fact relating to her evidence of domestic violence between the parties and father's conviction for assault on a female. The court of appeals agreed and remanded the case to the trial court for additional findings.

G.S. 50-13.2(a) states:
"[i]n making the [best interest] determination, the court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party. An order for custody must include written findings of fact that reflect the consideration of each of these factors and that support the determination of what is in the best interest of the child."

In addition, G.S. 50-13.2(b) states:
"If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2), and (3)." [these are the statutes setting out relief available in a DVPO]

Sufficiency of findings of fact in denying modification; civil contempt; Rule 41(b) dismissal

- In a nonjury trial, a motion for involuntary dismissal under Rule 41(b) is the proper mechanism to move to dismiss after the close of plaintiff's evidence on the ground that plaintiff has shown no right to relief. A directed verdict is appropriate only in a jury trial.
- When ruling on a motion to modify custody, a trial court must make separate findings of fact and conclusions of law to support its decision, and a bare conclusion that a party "failed to meet his burden of showing a substantial change in circumstances impacting the minor children's best interest" is insufficient.
- A trial court must include findings of fact to support its decision to dismiss specific portions of an order to show cause for contempt.

Brutus v. Broido, ___ N.C. App. ___, 924 S.E.2d 491 (November 5, 2025). The trial court entered an amended permanent custody order which awarded sole legal custody of the minor children to plaintiff, with limited visitation to defendant on alternating weekends, Christmas, and the children's birthdays. Defendant filed a motion to modify custody and a motion for an order to show cause. The trial court issued an order to appear and show cause to plaintiff and heard it at the same time it heard the motion to modify. After a two-day hearing, the trial court granted plaintiff's motion for a directed verdict, concluding that defendant failed to show a substantial change in circumstances affecting the welfare of the children. The trial court found plaintiff in civil contempt for violating certain parts of the amended permanent custody order but "dismissed" other contentions in the show cause order.

On appeal, defendant argued that the trial court should not have directed a verdict for the plaintiff but should have instead considered defendant's motion as a motion for an involuntary dismissal pursuant to Rule 41(b). The court of appeals agreed, holding that a motion for a directed verdict is appropriate only in jury trials.

After reviewing the order as an involuntary dismissal, the court of appeals held that the order contained insufficient findings to support the conclusion that there had been no substantial change in circumstances impacting the minor children requiring a custody modification. The order of dismissal stated only that "while there was evidence of a change of circumstances, the Court found that there was no nexus between a substantial change in circumstances and the welfare of the minor child as required by North Carolina law." The court of appeals held this statement insufficient and remanded the matter to the trial court for further findings of fact.

The appellate court also held that the order dismissing portions of the order to show cause also contained insufficient findings of fact to show why the trial court dismissed these allegations.

Nonparent standing to intervene; custody modification; criminal contempt

- A nonparent claiming standing to assert a custody claim against a parent must allege facts demonstrating a sufficient relationship with the child and then must demonstrate that the parent has acted in a manner inconsistent with his or her protected status as a parent.
- G.S. 50-13.5(j) applies to visitation claims by grandparents, and it not relevant to claims for custody by nonparent third parties.
- Intervenor had standing to seek custody despite the trial court's erroneous invocation of G.S. 501-3.5(j) based on the unchallenged findings that intervenor had been a source of physical, financial, and emotional support for the minor child, had a parent-like relationship with the child, and that plaintiff had brought intervenor into the family unit and voluntarily ceded paramount decision-making authority over the child to intervenor without creating an expectation that the relationship would be terminated.
- Before a child custody order may be modified, the evidence must demonstrate a connection between the substantial change in circumstances and the welfare of the child, and the trial court must make findings of fact regarding that connection.
- A stipulation by the parties that there has been a substantial change in circumstances is invalid because parties generally cannot stipulate a conclusion of law.
- Findings that there was "a breakdown in communication between the parties regarding care, custody, and control of the child" that "affected the minor child in that he has exhibited difficulty in transitioning between households, becoming emotional and clingy" did not establish a sufficient connection between the change in circumstances and the welfare of the child. The findings did not show the connection between the child's behavior and the breakdown in communication between the parties.
- Appeal from a finding of criminal contempt made by a judicial officer inferior to a superior court judge is by hearing de novo before a superior court judge, not the court of appeals.

Bullins v. Riddle, ___ N.C. App. ___, 925 S.E.2d 250 (November 19, 2025). The trial court entered orders permitting a nonparent to intervene, awarding joint legal and physical custody to mother and intervenor, modifying custody to award primary legal and physical custody to intervenor, and holding mother in criminal contempt for violating the custody order.

In December 2019, mother and father entered a consent order giving mother sole legal and physical custody of the minor child, born in July 2019. In July 2020, mother's former partner filed a motion to intervene in the custody action. Intervenor alleged, and the trial court found, that she had been a “primary source of physical, financial, and emotional support for the minor child since birth” and that mother had “voluntarily ceded paramount decision-making authority over the minor child without creating an expectation that the relationship would be terminated.” The trial court concluded intervenor had standing pursuant to G.S. “50-13.5(j)” and granted the motion. The trial court also entered several temporary orders awarding custody, incorporated a list of parenting guidelines it required the parties to follow, and ruled upon a motion to modify custody filed by intervenor. Mother appealed.

On appeal, mother challenged the trial court’s reliance on G.S. 50-13.5(j) since intervenor is not a grandparent of the child. The court of appeals agreed that the trial court had erroneously relied on G.S. 50-13.5(j) but stated that the trial court’s unchallenged findings of fact that intervenor had shared parenting time with mother after they ended their relationship, that intervenor had a parent-like relationship with the child, and that mother had brought intervenor into the family unit and voluntarily ceded decision-making authority over the child without creating an expectation that the relationship would be terminated were sufficient to support the conclusion that intervenor had standing to seek custody pursuant to G.S. 50-13.1. The dissenting judge would have held that the trial court’s reliance on G.S. 50-13.5(j) was error and argued that the majority improperly constructed an argument based on G.S. 50-13.1(a) for intervenor, who did not appeal or appear in mother’s appeal.

Mother next appealed the trial court’s grant of intervenor’s motion to modify. In its order modifying custody, the trial court found that there had been a breakdown in the communication between the mother and intervenor regarding care, custody, and control of the child on both major issues involving school and medication and minor issues, such as haircuts. The trial court also found as fact that the breakdown had “affected the minor child in that he has exhibited difficulty in transitioning between households, becoming emotional and clingy.” According to the court of appeals, this did not establish a sufficient nexus between the change in the mother and intervenor’s communication and the child’s difficult transitions between homes. The court of appeals held that “it was incumbent upon the trial court to make a finding explaining why this reason specifically had caused the dysregulation, which it failed to do.”

The court of appeals also noted that both parties stipulated before the trial court that there had been a substantial change in circumstances but held the stipulation invalid because it was a stipulation to a conclusion of law. Parties can stipulate to facts, but stipulations to conclusions of law generally are invalid.

The court of appeals dismissed mother’s final argument regarding the order finding her in criminal contempt, holding that the court did not have jurisdiction to consider the appeal. Appeal from an order of criminal contempt in district court is to superior court, not the court of appeals.

Sufficiency of the findings of fact; relocation

- When both parents are fit and proper to share custody, the trial court must make findings resolving the primary disputes between the parties and explain why awarding custody to one parent or the other is in the minor child’s best interest.
- A custody order will not fail simply because the trial court neglected to use the specific term “best interest of the child” if the order makes detailed findings of fact from which an appellate court can determine that the order is in the best interest of the child.

- Findings of fact that do not resolve the primary disputes raised by the parties and fail to show how the disputed issues factor into a best interest analysis are insufficient.
- A trial court is not required to make findings of fact on every *Ramirez-Barker* factor when entering a custody order involving relocation, but those factors will be "highly relevant to the best interest of the child in nearly all" cases involving relocation.
- Where the only findings of fact regarding relocation involved the custodial parent's family support network but did not address how relocation was in the best interest of the child, the findings did not support a conclusion of law that relocation was in the best interest of the child.

Cohen v. Hefetz, __ N.C. App. __, 927 S.E.2d 397 (Feb. 4, 2026). Father appealed from a permanent custody order granting mother primary physical custody and permitting her to relocate to Israel with the minor child. The parties' dispute centered around mother's proposed move to Israel, whether doing so was safe for the minor child because of the war in the area, and the effect such a move would have on the child's relationship with his father. Although the trial court made approximately 100 findings of fact, its findings were largely recitations of testimony, did not ultimately adjudicate and resolve the parties' disputes, and did not explain how granting primary physical custody to mother was in the best interest of the child. Recognizing the parties' disputes in the findings without resolving the conflicts was insufficient.

To guide the trial court on remand, the court of appeals also addressed father's argument that the trial court's findings did not make adequate findings of fact on the *Ramirez-Barker* factors when it decided to permit mother to relocate with the child. *Ramirez-Barker v. Barker*, 107 NC App 71 (1992). The court of appeals explained that a trial court does not need to make a finding of fact on every *Ramirez-Barker* factor, but its findings must demonstrate that the court's primary concern was the furtherance of the welfare and best interests of the child. In this case, the trial court's findings did not show that the trial court weighed the advantages and disadvantages of relocation as they pertained to the best interest of the child but rather showed that its primary consideration was based on the existence of mother's family support network in Israel. Without more, those findings were insufficient to support the conclusion that relocation is in the best interests of the child.

Continuance/stay pursuant to Servicemembers Civil Relief Act

- A trial court has no discretion and must grant a stay to a servicemember when the servicemember has satisfied the conditions outlined in 50 U.S.C. 3932(b)(2) of the Servicemembers Civil Relief Act (SCRA).
- Plaintiff's request for a continuance due to required military training was a request for a stay pursuant to the SCRA.
- 50 U.S.C. 3932(b)(2) requires a servicemember to provide "a letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear" and "a letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter."
- A memorandum from plaintiff's commanding officer, plaintiff's training schedule, and an email from the commanding officer containing the terms "mandatory," "required," and "an obligation" satisfied these conditions.

- The court of appeals reviews a trial court's denial of a motion to continue based on the SCRA de novo.
- The trial court erred when it denied a motion to continue pursuant to the SCRA and that error deprived father of his right to appear and oppose mother's motion to modify custody and required a new hearing.

Roybal v. Raulli, ___ N.C. App. ___, 927 S.E.2d 413 (Feb. 4, 2026). This was the second appeal in this child custody and support matter. The court of appeals also reviewed a contempt ruling by the trial court and a summary of the holding on the civil contempt issue is found in both the child support and contempt sections of this update. The custody issue presented in this case was an issue of first impression in North Carolina, arising under the federal Servicemembers Civil Relief Act (SCRA) and the conditions under which a servicemember is entitled to a stay or continuance under 50 U.S.C. 3932(b)(2).

What does the SCRA require when the servicemember has notice of the civil proceeding?

Section 3932 provides that, at any stage of the proceeding before final judgment the court may upon its own motion, and **shall** upon motion of the service member, stay the proceeding for *not less than* 90 days if:

1. A letter or other communication establishes that a servicemember's military duty requirements materially affect the servicemember's ability to appear and gives a date when the servicemember will be available to appear; and

2. A letter or other communication from the servicemember's commanding officer shows that the servicemember's military duty prevents appearance and that leave is not authorized for the servicemember at the time of the letter.

If the initial Section 3932 stay is granted, a servicemember can request an additional stay "based on continuing material effect of military duty on the servicemember's ability to appear." 50 U.S.C. sec. 3932(d)(1). In support of the request for additional time, the court must receive letters or communications containing the same information required for the first stay request. If the court refuses additional time, the court must appoint an attorney for the servicemember before proceeding with the case. 50 U.S.C. 3932(d)(2).

Roybal v. Raulli

Plaintiff was a staff sergeant in the U.S. Army Reserves. At the times relevant to this appeal, the parties were operating under three custody orders: one custody order for each of their two minor children and an additional order entered by consent. A memorandum drafted by plaintiff's commanding officer and filed by plaintiff established that plaintiff was scheduled to deploy to Africa in October 2023 and was required to attend all mandatory training sessions scheduled before that deployment. The memorandum stated that plaintiff's presence for the trainings was "vital for unit preparedness and for the success of this mission in support of the national interest." Subsequent directives from plaintiff's commanding officers set out the dates of the required trainings.

Defendant filed a motion to modify custody and noticed the hearing for a date when plaintiff was not required to be in training. However, two days prior to the hearing, plaintiff filed a motion to continue the hearing based on changes to his mandatory training schedule. He attached to his motion an email from his commanding officer stating the new dates of training, which included the day of the hearing on mother's motion to modify. On the date of the modification hearing, plaintiff was not present, nor was he represented by counsel. Defendant's counsel argued plaintiff was not entitled to a continuance pursuant to the SCRA because plaintiff was not on active duty military service, and she informed the court that she had run a military status report online and the report did not indicate plaintiff was on active duty. The attorney presented to the court the "Status Report Pursuant to the Servicemembers' Civil Relief Act" but did not present an affidavit. The trial court denied plaintiff's motion to continue and held a hearing on defendant's motion to modify. The trial court modified custody to grant defendant sole legal custody of the children.

The court of appeals decided that plaintiff's request for a continuance was a request for a stay pursuant to the SCRA. Because the materials filed by plaintiff before and along with his motion for a continuance satisfied the requirements of 50 USCA 3932(b)(2), the court of appeals held that the trial court was required to grant the continuance "for a period not less than 90 days." When the conditions for a stay are met, the trial court does not have discretion to deny the request.

Applying de novo review, the court of appeals examined the relevant definitions, and held that federal law does not require that a servicemember be deployed or stationed abroad for the SCRA to apply. Mandatory training duty is active duty for the purpose of applying terms of the SCRA. 10 U.S.C. sec. 101(d). Further, the memorandum from plaintiff's commanding officer, the training schedule, and the email from plaintiff's commanding officer satisfied the requirements in 50 U.S.C. 3932(b)(2). The materials used the terms "mandatory," "required," and "an obligation" and were sufficient to establish that plaintiff's presence at the training was required.

The fact that plaintiff's name did not appear in a called "Status Report Pursuant to Servicemembers Civil Relief Act" was not dispositive; the form itself stated that the report may not include all active duty servicemembers who qualify for protection by the SCRA and recommended further verification if a person does not appear on the list. Most importantly, there was no actual dispute that plaintiff was at military training when the hearing on defendant's motion to modify took place. Because plaintiff provided his training schedule to the trial court, the court of appeals held that the trial court had the information necessary to determine when plaintiff could be available for the hearing.

The court of appeals also held that, to be entitled to relief on appeal based on a trial court's erroneous denial of a motion to continue based on the SCRA, the service member must show prejudice resulting from the trial court error. In this case, the appellate court held that the trial court's failure to grant plaintiff's request for a continuance was prejudicial in that the trial court made findings of fact relevant to the motion to modify without plaintiff having the opportunity to be present to oppose defendant's motion, or to present evidence, which resulted in an order modifying custody and granting mother sole legal custody. The only remedy for this error was to vacate the modification order and remand to the trial court for a new hearing.

Modification of a temporary custody order

- A trial court can modify a temporary custody order using the best interests standard but can modify a permanent custody order only upon a showing of a substantial change in circumstances.
- A trial court errs when it modifies a permanent order when it concludes at the same time that there has not been any substantial change in circumstances.

Hylemon v. Grossoehme, ___ N.C. App. ___ (April 1, 2026). After plaintiff filed a complaint for child custody, the parties entered into five temporary custody consent orders over the course of several years. The fifth order granted joint legal custody of the minor child to the parties, and primary physical custody to defendant and secondary physical custody on a graduated schedule to plaintiff. A later order for emergency custody granted plaintiff temporary sole legal and physical custody. The trial court then entered an additional temporary custody order finding that it was in the best interest of the child for the parties to have joint legal custody and for plaintiff to have primary legal custody.
After a hearing, the trial court entered a "Permanent Order on Visitation" on December 4, 2023 incorporating the provisions found in prior orders relating to the secondary physical custody schedule and stating that the order "shall be the permanent order of this court, subject to modification only upon the filing of a motion alleging a substantial change in circumstances affecting the welfare of the minor child and an order of this court finding such a substantial change."

One year later, defendant filed a motion to modify and motion to show cause. Defendant's motions were heard on February 24, 2025, and in the resulting order, the trial court concluded that prior to the date of the hearing "the matter was temporary in nature" and therefore "the standard is the best interests of the minor child." The trial court next concluded that no substantial change in circumstances had occurred and modified the provisions relating to defendant's second custody of the child. Defendant appealed.

On appeal, defendant argued that the trial court erroneously overlooked the permanent order entered in December 2023 when it concluded that "the matter was temporary in nature" and then modified the terms of the order incorrectly when it using the best interests standard. The court of appeals agreed with defendant. The custody order before the trial court at the February 24, 2025, hearing was the permanent order entered December 4, 2023. When the trial court also concluded that there was no substantial change in circumstances, it was error for the court to modify the permanent order.

Subject matter jurisdiction; UCCJEA

- G.S. 50A-201(a) provides the exclusive jurisdictional basis for a North Carolina court making an initial child custody determination and a trial court must meet the requirements of at least one subsection of G.S. 50A-201(a)(1)-(4) to have subject matter jurisdiction.
- North Carolina lacked home state jurisdiction to make an initial custody determination for a two-month-old child born in London who lived in London with defendant-mother for his whole life where there had been no allegation that the United Kingdom's child custody law violates fundamental principles of human rights.

- North Carolina lacked significant-connection jurisdiction to make an initial custody determination for a two-month-old child whose home state is the United Kingdom and there was no evidence that the United Kingdom declined to exercise jurisdiction.
- North Carolina lacked jurisdiction to make an initial custody determination for a child whose home state was the United Kingdom where there was no evidence that plaintiff brought suit in the United Kingdom and that the United Kingdom had declined to exercise jurisdiction.
- North Carolina lacked jurisdiction by necessity to make an initial custody determination for a child where the United Kingdom had home state jurisdiction and significant connection jurisdiction.

Bonomo v. Shabat, ___ N.C. App. ___ (April 1, 2026). Plaintiff father filed a verified complaint to establish paternity and for child custody in Wake County, N.C. Plaintiff was a resident of Wake County for more than six months immediately preceding the filing of the complaint. Defendant mother was a U.S. citizen employed by the U.S. Department of State and working in London, the United Kingdom. At the commencement of the action, the minor child was two months old and had been living with defendant mother in London since birth. Defendant moved to dismiss plaintiff's complaint based on lack of subject matter jurisdiction. The trial court denied defendant's motion concluding that North Carolina had jurisdiction to make an initial custody determination under G.S. 50A-201(a)(2). Defendant appealed.

The court of appeals addressed each subsection of G.S. 50A-201(a) and concluded that North Carolina did not have subject matter jurisdiction. N.C. was not the child's home state because the child was under six months old, was born in London, and had lived there with defendant mother since birth. There was no evidence that the child's home state declined to exercise jurisdiction, nor did the defendant and child have a "significant connection" with N.C. The trial court's conclusion that "presumably substantial evidence is available in this State about the Plaintiff's ability to house, find North Carolina pediatricians, schools, etc. while the child is in his care" was not supported by evidence and was "ineffective as a matter of law." N.C. also could not exercise jurisdiction as a result of all courts with jurisdiction declining to exercise it because no evidence existed that the U.K. had declined to exercise jurisdiction. N.C. could not exercise jurisdiction by necessity under (a)(4) because the U.K. had home state and significant connection jurisdiction. Plaintiff's allegation that defendant stated that she would claim "diplomatic immunity" was not sufficient to support a finding the U.K. could not exercise jurisdiction over an initial custody determination.

Third party custody

- Where appellant has failed to provide the appellate court with full transcripts and any exhibits in the record on appeal, the court of appeals assumed the trial court's findings of fact are supported by the evidence.
- A trial court's findings of fact describing the conditions of mother's home, including unsanitary conditions and lack of food for the children, were sufficient to show trial court's consideration of the children's best interests and its conclusion that mother was an unfit parent.
- The trial court was not required to find a substantial change in circumstances before entering a permanent custody order after a temporary custody order was in place.
- A delay of two years between the custody hearing and entry of the permanent custody order, though outside of Family Court Time Standards, was not prejudicial and did not entitle mother

to appellate relief where she took no action before the trial court and raised the issue for the first time on appeal.

Price v. Price, ___ N.C. App. ___ (May 6, 2026). Mother filed an action for child custody against father. The trial court entered a temporary order without prejudice to either party permitting grandparents to intervene, granting joint legal custody to mother, father, and grandparents and primary physical custody to grandparents and visitation with mother. After hearing, the trial court entered a permanent custody order which contained fifty-five detailed findings and seventeen conclusions of law and determined that mother and father had neglected the children, were not fit and proper persons to have custody and had acted inconsistently with their constitutionally protected status as parents. The trial court found the grandparents to be fit and proper persons to have custody and granted sole legal and primary physical custody to them, with limited visitation to mother and father.

On appeal, mother challenged many of the trial court's findings of fact but failed to include full transcripts or any exhibits in the record on appeal. The court of appeals held that it was unable to review mother's arguments and assumed the trial court's findings of fact were supported by competent evidence because of the deficient record. The court of appeals also held that it could not review mother's argument that the temporary order had become a permanent order due to the deficient record on appeal. The trial court's fifty-five findings of fact describing the conditions of mother's home, the availability of food, the cleanliness of the children when in her care, and her living arrangement with persons involved in a DSS investigation supported its consideration of the children's best interests and its conclusion that mother was an unfit person to have custody. Finally, mother could not show that a delay of two years between the custody hearing and entry of the permanent custody order was prejudicial. There was nothing in the record to demonstrate that mother had taken any action at the trial court level to request that the trial court enter the order, did not request a status conference, and did not file a writ of mandamus. The court of appeals did note that it was not approving a two-year delay and reiterated the Family Court Time Standard establishing that orders should be entered within thirty days of a hearing.

Modification; sufficiency of findings to support best interest determination

- Trial court did not err when it concluded that a substantial change in circumstances had occurred and that modification of custody was in the best interests of the children.
- Trial court did not abuse its discretion in determining that primary physical custody to mother was in the best interests of the children.
- Findings that (1) mother remained primary parent managing children's daily activities and responsibilities, (2) parents' communication difficulties negatively impacted children's participation in activities, and (3) children would benefit from a routine school-year schedule were sufficient to support the trial court's best interest determination.

Raburn v. Cook, __ N.C. App. __ (June 3, 2026). The trial court found that a substantial change in circumstances had occurred since the prior order, based on the children's maturation and increased extracurricular participation, father's relocation closer to them, and his flexible work schedule permitting him weekday parenting time. The trial court concluded that it was in the best interests of the children to grant primary physical custody to mother, awarding father alternating weeks during the summer and alternating weekends during the school year.

Father appealed, arguing that the trial court erred by not awarding the parents equal physical custody. The court of appeals upheld the trial court's determination as a reasonable, discretionary judgment supported by the findings. The court of appeals further noted that the absence of any finding of unfitness does not compel equal physical custody, and that the finding of a substantial change in circumstances does not compel the trial court to adopt the requested modifications of the moving party.

Domestic Violence
Cases Decided Between October 15, 2025, and June 3, 2026

Mutual DVPOs; continued harassment rising to a level inflicting substantial emotional distress.

- Continued harassment, as defined in G.S. 14-277.3A, that rises to such a level as to inflict substantial emotional distress is an act of domestic violence.
- Harassment is knowing conduct directed at a specific person that torments, terrorizes, or terrifies that person and serves no legitimate purpose.
- The trial court's findings of fact as to plaintiff's history of threats of suicide if the parties were to break up and attempts of suicide after previous break ups, coupled with findings that plaintiff had possession of and access to firearms, and findings that plaintiff looked through defendant's phone and social media, supported the trial court's finding that plaintiff's actions served no legitimate purpose and were intended to harass defendant.
- G.S. 50B-3 requires that a trial court entering "mutual DVPOs" include detailed findings that each person acted as an aggressor, neither acted primarily in self-defense, and that the due process rights of each person were protected.
- Where trial court granted plaintiff's request for a DVPO restraining acts by defendant and granted defendant's counterclaim requesting a DVPO restraining acts by plaintiff, the trial court entered mutual restraining orders. The order on appeal was vacated because it was a mutual order without the findings required by GS 50B-3.

Shuler v. Donahue, ___ N.C. App. ___, 924 S.E.2d 526 (November 5, 2025). Plaintiff sought a domestic violence protective order (DVPO) against defendant, and defendant filed a counterclaim seeking a DVPO against plaintiff. The trial court ultimately entered two orders: one DVPO against defendant (using AOC-CV-306), and one DVPO against plaintiff (not using AOC-CV-306). Each order granted essentially the same protections to each party against the other. Plaintiff appealed the order entered against her. Defendant did not appeal. On appeal, plaintiff argued that certain portions of the trial court's findings of fact were not supported by the evidence and that the findings did not support the conclusion that she had committed an act of domestic violence against defendant. Plaintiff also argued that the trial court did not make sufficient findings to support entry of a "mutual DVPO" pursuant to G.S. 50B-3.

The court of appeals first held that the trial court's findings regarding plaintiff's suicide attempts, gun ownership, acts of going through defendant's phone and social media, and alternatively seeking and shunning his attention and affection supported the trial court's conclusion of law that plaintiff committed an act of domestic violence that was knowing and directed at a specific person, which tormented, terrorized, or terrified that person and served no legitimate purpose.

As to plaintiff's argument regarding mutual DVPOs, because G.S. 50B-3 references but does not define "mutual" DVPOs, the court of appeals used the word's ordinary meaning and concluded that when read together the two DVPOs in this case constituted mutual orders because each party asserted a claim against the other, the claims were heard on the same date, and the trial court granted reciprocal protections to each party. Therefore, the trial court was required by G.S. 50B-3 to make "detailed findings of fact indicating that both parties acted as aggressors" and "neither party acted primarily in self-defense." The statute's requirements that both parties assert claims, and that the due process rights of each party were preserved were satisfied.

The court of appeals recognized that the relevant AOC form (AOC-CV-306) does not include the findings required for mutual DVPOs. Even so, G.S. 50B-3 makes such findings mandatory and the court of appeals remanded to the trial court for further findings, nothing that the effect of the opinion may be the trial court is unable to make the required findings for mutual DVPOs and that conduct which might otherwise support a DVPO if asserted in its own claim may fail in the context of mutual DVPOs.

Ex parte DVPOs and continuances

- A DVPO entered after notice and an opportunity to be heard is not merely an extension of a previously entered ex parte DVPO entered under G.S. 50B-2. It is an independent, separately issued protective order entered "for a fixed period of time not to exceed a year."
- The plain meaning of the one-year time limitation imposed by G.S. 50B-3(b) does not include the time that an ex parte order entered pursuant to G.S. 50B-2 was in effect.
- G.S. 50B-2, not G.S. 50B-3(b), governs the time limitations of ex parte DVPOs and requires that continuances of ex parte orders be limited to one extension of no more than 10 days unless all parties consent or good cause is shown.
- The trial court did not exceed its authority by entering a one-year DVPO that would expire on a date that was more than one year from the issuance of an ex parte order.

Hays v. Lewis, ___ N.C. App. ___, 925 S.E.2d 803 (January 7, 2026). The trial court entered an ex parte DVPO against defendant on March 8, 2024, effective until March 15, 2024, when a hearing on plaintiff's complaint was originally scheduled. On March 15, 2024, and on three separate occasions after that date, the trial court continued the hearing on plaintiff's request for a final DVPO and ordered that the ex parte order remain in effect, keeping the ex parte in effect until June 6, 2024, when the court conducted the trial on the merits of plaintiff's claim. The trial court concluded defendant had committed an act of domestic violence against plaintiff and entered a DVPO against defendant effective until June 6, 2025. Defendant appealed.

On appeal, defendant argued that G.S. 50B-3(b) prohibited the trial court from entering an order effective through June 6, 2025, because the original ex parte issued by the court was effective March 8, 2024, more than one year before the expiration of the final DVPO. Defendant contended that the one-year time limitation for a protective order contained in G.S. 50B-3(b) includes any time during which an ex parte order is in effect.

The court of appeals disagreed with defendant's interpretation of G.S. 50B-3(b). The court of appeals considered the plain meaning of G.S. 50B-3(b) which states that "[p]rotective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year." The appellate court held that G.S. 50B-3(b) requires that the one year begins upon "issuance of a DVPO entered after notice and an opportunity to be heard and does not include the time encompassed by an ex parte DVPO."

The court of appeals reaffirmed that ex parte orders and DVPOs are distinct. A DVPO entered after notice and an opportunity to be heard is not merely an extension of an existing ex parte DVPO. G.S. 50B-2(c)(5) explicitly addresses time limitations imposed on ex parte DVPOs and states that continuances "shall be limited to one extension of no more than 10 days unless all parties consent or good cause is shown." The legislature purposefully designed these provisions to protect defendants from prolonged ex parte orders and addressed them separately from G.S. 50B-3(b).

Sufficiency of the findings of fact; mere recitations

- When a trial court conducts a trial without a jury it must make appropriately detailed findings of fact pursuant to Rule 52 of the Rules of Civil Procedure.
- A trial court may incorporate documents and recitations in its order so long as the court has made a credibility determination about the recited evidence.
- The trial court did not improperly delegate its factfinding duty by incorporating plaintiff's unverified, typed statement into its DVPO where the trial court used the written statement in conjunction with plaintiff's testimony and struck portions that were not corroborated by testimony, "meaningfully altered" the written statement to reflect its thinking, struck through specific lines and whole paragraphs and adopted others as findings.
- The trial court sufficiently engaged with the written statement and transformed what would otherwise be improper "mere recitations" into proper evidentiary findings under Rule 52.

Jay v. Jay, ___ N.C. ___ (March 20, 2026), affirming 298 N.C. App. 50 (2025). Plaintiff filed an unverified complaint and motion for a domestic violence protective order (DVPO) against defendant and attached a written statement to her complaint in which she alleged, among other things, various instances of sexual abuse. At the hearing to consider her motion for a one-year order, plaintiff testified about several instances of serious injury resulting from violent sexual interaction with defendant. After hearing from both parties, the trial court found that plaintiff had proven her case by the greater weight of the evidence and the trial judge noted on the record that he had a copy of her written statement. In its order, the trial court stated "Violent sexual conduct. [Defendant] has caused physical injury to [Plaintiff]. Exhibit A is attached for further findings of fact by the court." The judge labeled the plaintiff's written statement "Exhibit A" and struck several lines and whole paragraphs. The judge initialed each piece of text he struck. Defendant appealed the trial court's order to the court of appeals.

The court of appeals majority held that the trial court did not err by incorporating plaintiff's written statement and that the trial court's findings were supported by competent evidence because the court had ample opportunity to consider the credibility of both parties and documentary evidence and testimony from both parties. The dissenting judge would have found that the findings were deficient under Rule 52 because the trial court adopted plaintiff's statement instead of making its own findings and the findings "were not sufficient to demonstrate the process of logical reasoning required by Rule 52." Defendant then appealed to the N.C. Supreme Court based on the dissent.

The supreme court agreed with the court of appeals majority. The supreme court stated that generally a trial court is permitted to incorporate documents and recitations in their orders, with some exceptions. A trial court may not rely solely on prior court orders and reports but must receive some oral testimony at the hearing and make an independent determination regarding the evidence presented. The supreme court stated that mere recitations alone are not sufficient to satisfy a trial court's factfinding responsibility but "may be transformed into a proper evidentiary finding when a trial court makes a credibility determination about the recited evidence." In this case, the trial court considered plaintiff's written statement in conjunction with her testimony at trial to evaluate the statement's credibility and meaningfully altered the statement to reflect the trial court's thinking. The trial court did not indiscriminately credit plaintiff's written statement. Rather it struck through specific lines and whole paragraphs that were not corroborated by the parties' testimony, adopted others, and signed off on each change made. The supreme court reiterated, however, that it is better practice for a trial court to make specific, express findings in the written order rather than referencing evidence in the record and stating that it is credible.

Equitable Distribution
Cases Decided Between October 15, 2025, and June 3, 2026

Valuation of marital LLC; valuation of residence

- The trial court erred when it valued and distributed a marital LLC without considering two bank accounts owned by the LLC.
- The trial court did not err by adopting an expert's valuation of a residence completed prior to a hurricane where the expert testified that values and desirability in the area remained the same after the hurricane and one of the parties testified that most of the repairs were made to the property with insurance proceeds.

Lawrence v. Lawrence, ___ N.C. App. ___, 926 S.E.2d 761 (Jan. 21, 2026). The trial court entered an equitable distribution order that valued and distributed a marital LLC and a residence in Florida. The trial court adopted plaintiff's expert's valuations as to both assets. The trial court distributed the company to plaintiff and the Florida residence to defendant. Defendant filed a motion to amend the findings of fact, which the trial court denied. Defendant appealed from the equitable distribution order and the denial of the motion to amend.

On appeal, defendant argued that the trial court erred by failing to distribute certain funds contained in two company bank accounts, or, in the alternative, that the trial court erroneously valued the company because plaintiff's expert's valuation did not consider the funds in the company accounts. The court of appeals agreed and reversed this portion of the trial court's equitable distribution order and its order denying the motion to amend because the trial court did not consider the business' accounts when it valued and distributed the LLC.

Defendant also argued that the trial court's findings of fact as to the value of the parties' Florida residence were not supported by competent evidence because plaintiff's expert did not reappraise the residence after it was damaged by Hurricane Ian. The trial court relied on plaintiff's expert's testimony to find that the hurricane caused some slowdown in the market, but that slowdown was temporary, and that the location of the house remained desirable. The trial court also relied on defendant's testimony that most repairs were made to the home using insurance proceeds. The trial court explicitly adopted the value offered by plaintiff's expert prior to the hurricane and found that the hurricane had "minimal impact" on current values. The court of appeals held that the fact that the home was not reappraised after the hurricane went to the weight rather than the competence of plaintiff's expert's testimony and that the trial court's findings were supported.

Classification of post-separation passive appreciation; divisible property

- Any increase or decrease in the value of marital property between the date of separation and the date of distribution is presumed to be divisible property subject to equitable distribution. If the trial court finds that a change in value is attributable to the post-separation actions of one spouse, and therefore active, then the change in value is not divisible property.
- Plaintiff's account statement dated six weeks prior to the hearing was not too remote to be competent evidence of the value of the stock account on the date of distribution.

- The trial court erred by failing to make any finding regarding plaintiff's evidence concerning the post-separation value of a marital stock account.

Cunningham v. Cunningham, ___ N.C. App. ___, 927 S.E.2d 46 (Feb. 4, 2026). The trial court classified a certain stock account as marital property. On the date of the parties' separation, the account had a value of $58,365. At the time of the equitable distribution hearing in May 2024, plaintiff offered into evidence a statement from January 2024 showing the value of the account was $184,737. Plaintiff argued that the increase in value was divisible property subject to equitable distribution. In its order, the trial court valued the account at $58,365, found that any post-separation appreciation was passive, and distributed it to defendant. The trial court made no findings concerning plaintiff's evidence as to the account's value since the date of separation.

On appeal, plaintiff argued that the trial court erred in its handling of the post-separation change in the value of the account. Plaintiff contended that the appreciation should have been classified as divisible property and that she was entitled to half of that appreciation. The court of appeals found that the appreciation fell within the definition of divisible property, and that plaintiff had the burden to offer evidence concerning the amount of the increase. At trial, plaintiff offered a January 2024 account statement showing the increase, but the trial court had made no finding on that evidence. The court of appeals held that although plaintiff's evidence was dated six weeks before the hearing, it was not so remote in time as to render it incompetent. Therefore, the trial court erred by making no findings concerning the post-separation value of the account. On remand, the trial court, in its discretion, could determine that plaintiff's evidence was not credible, but if the trial court finds the evidence credible, it must classify, value, and distribute the post-separation increase.

Corporation as intervenor

- A prospective intervenor seeking to intervene pursuant to Rule 24(a)(2) of the Rules of Civil Procedure must show (1) a direct and immediate interest relating to the property or transaction, (2) that denying intervention would practically impair protection of that interest, and (3) that the existing parties do not adequately represent that interest.
- An LLC seeking to intervene in an equitable distribution proceeding did not show it was not adequately represented by the parties when its sole shareholder was one of the parties to the equitable distribution proceeding, and the trial court would not be required to compel the company to take any action or refrain from taking any action in order to carry out its responsibility to value and distribute the LLC.

Roesel v. Roesel, ___ N.C. App. ___, 927 S.E.2d 739 (Feb. 18, 2026). Fenix Contracting, LLC, an insurance brokerage company formed by the parties during their marriage, filed a motion to intervene in the equitable distribution action pending between them. The parties agreed that Fenix was marital property and that defendant was the sole shareholder of Fenix. The trial court denied Fenix's motion to intervene on the basis that the court could "classify, value and distribute Fenix between the two existing parties to the action, without ordering Fenix itself to do anything (sell or buy assets, expand or contract advertising, etc.)." Fenix appealed.

Fenix argued that it had met the requirements of Rule 24 of the Rules of Civil Procedure for intervention of right and that the trial court should have granted its motion. Rule 24 requires a prospective intervenor to show (1) a direct and immediate interest relating to the property or transaction, (2) that denying intervention would practically impair protection of that interest, and (3) that the existing parties do not adequately represent that interest. The court of appeals held that Fenix failed to show that it was entitled to intervene and affirmed the trial court. Defendant was Fenix's sole shareholder and was a party to the equitable distribution proceeding. There was no showing that Fenix's interests were adverse to defendant's. The trial court could value and distribute the company without ordering Fenix to take any action.

Unequal distribution; distribution factor 50-20(c)(12); federal veteran retirement benefit

- Marital fault or misconduct that is not related to the economic condition of the marriage is not germane to a division of marital property.
- The trial court erred by considering plaintiff's excessive alcohol use, domestic violence, death threats, and seizure of defendant's identity documents under G.S. 50-20(c)(12).
- A Survivor Benefit Plan is a federally managed benefit available to eligible military retirees whereby some retirement pay is withheld monthly to provide a spouse or other designate with monthly benefit upon the death of the participating serviceperson.
- How a Survivor Benefit Plan interacts with North Carolina's equitable distribution statute has not been addressed by a North Carolina appellate court.
- Because this issue was not argued at trial and was barely referenced in the record on appeal, the court of appeals declined to resolve it and instructed the trial court to hold a hearing on remand on the appropriate methods of classification, valuation, and distribution of the asset.

Wheeler v. Wheeler, ___ N.C. App. ___ (March 4, 2026). The trial court entered an equitable distribution order granting an unequal distribution in favor of defendant and ordering plaintiff to pay a distributive award. The trial court also ordered plaintiff to "maintain" Survivor Benefit Plan coverage with defendant named as the beneficiary. Plaintiff appealed.

After dismissing plaintiff's first argument as not properly preserved for review, the court of appeals addressed plaintiff's argument that the trial court improperly applied the distribution factors in G.S. 50-20(c) when awarding an unequal distribution in favor of defendant. The trial court supported its unequal distribution with findings made pursuant to G.S. 50-20(c)(1), (3), (7), and (12). Under G.S. 50-20(c)(12), the trial court's order read: "Plaintiff's excessive alcohol use and Domestic Violence, including taking [Defendant's] cards, ID, and passport as well as [Plaintiff's] threat to kill [Defendant] during the marriage." These actions did not relate to the economic condition of the marriage and were therefore not properly considered when dividing the marital property. Because the appellate court could not determine the weight the trial court assigned to any particular distribution factor, the order had to be vacated and remanded.

Plaintiff also contended that the trial court's decision to order plaintiff to "maintain Survivor Benefit Plan Coverage with Defendant as the beneficiary" was error. A Survivor Benefit Plan is a federally managed benefit available to eligible military retirees whereby some retirement pay is withheld monthly to provide a spouse or other designate with monthly benefit upon the death of the participating serviceperson. Plaintiff argued that there was no evidence about this plan introduced at trial to support the trial court classifying it as marital property or ordering plaintiff to maintain it. The court of appeals disagreed, pointing out that although no testimony was given about the plan, plaintiff's retirement statement was introduced and included information about the plan, and that the parties had stipulated that a portion of plaintiff's retired pay was subject to division. The court of appeals held that the trial court acted within its authority to classify the Survivor Benefit Plan coverage as marital property and order plaintiff to maintain it. However, because no appellate court had resolved how the equitable distribution statute interacts with a federally administered benefit such as this, and the issue was not argued at the equitable distribution trial and was barely referenced in the record, on remand, the trial court was instructed to hold a hearing at which the parties may present arguments and evidence on how to classify, value, and distribute the Survivor Benefit Plan Coverage, and whether it is part of plaintiff's military retirement benefits or "a distinct asset subject to independent distribution." The court of appeals also stated that, "in its discretion, the trial court may reconsider whether Plaintiff may be required to 'maintain'" the plan as part of an equitable distribution order.

Classification; separate property; passive and active appreciation; valuation of a business

- Separate property is property "acquired by a spouse before marriage or acquired by a spouse by devise, descent, or gift during the course of the marriage" and is not distributed in equitable distribution.
- Passive appreciation of separate property during marriage is separate property and it is error for a trial court to classify it as marital.
- When equity in separate property is "developed during the marriage because of improvements or payments contributed to it by [the non-owning] spouse, that equity … could be marital property" if the trial court makes appropriate and supportable findings.
- Any increase in value of separate property between the date of marriage and the date of separation is presumptively marital property unless it is shown to be the result of passive appreciation.
- An increase in value of separate property remains separate property where the increase is attributable only to the use of separate funds.
- Remand was required where evidence presented at trial indicated that the appreciation of the separate property during the marriage occurred as the result of payments reducing the mortgage on the property that were made from rental income earned from the separate property. As passive income earned from separate property is separate property, the trial court must consider the evidence that might be sufficient to establish all appreciation of the property was separate property.
- Parties may stipulate the value of property and if they do so, they are bound by their stipulation and may not thereafter take an inconsistent position.
- To value a business, the trial court must use a sound valuation methodology and that methodology must be clear in the final judgment.
- The methodology should consider at a minimum, the business' (1) fixed assets including cash, furniture, equipment, and other supplies, (2) its other assets including accounts receivable and the value of any work in progress, (3) its goodwill, if any, and (4) its liabilities, and the judgment must clearly indicate the evidence on which the valuation is based.

Bailey v. Bailey, ___ N.C. App. ___ (March 18, 2026). At the time of the parties' marriage in 2015, plaintiff owned certain real property ("the Aberdeen property"), purchased in 2009. The parties stipulated that the Aberdeen property was valued at $177,000 on the date of the marriage, $248,000 on the date of separation, and $280,500 on the date the stipulations were signed. They also stipulated that the property was encumbered by a mortgage of $201,000.00 on the date of marriage, $174,183.36 on the date of separation, and $162,429.95 at the time of the stipulation. They also stipulated that a business plaintiff started during the marriage was marital property but did not stipulate the value of the business.

The trial court entered an equitable distribution judgment granting an unequal distribution in defendant's favor. The trial court found that the Aberdeen property had negative equity on the date of marriage and concluded that all value in the property on the date of separation was marital because it was the result of the mortgage reduction and appreciation during the marriage. The trial court distributed the Aberdeen property and all equity to defendant.

The court of appeals held that the trial court erred by classifying all appreciation of the Aberdeen property as marital and distributing plaintiff's separate property when there was evidence that some appreciation or all appreciation may have occurred as the result of mortgage reduction funded by rental income from the separate real property. If the "active" increase in value during the marriage was the result of a mortgage payment made with only with separate funds, the increase in value would not be marital property. The court of appeals ordered the trial court to reconsider the classification of the active contributions or appreciation on remand.

Plaintiff also challenged the trial court's valuation of the Aberdeen property because it failed to determine the property's value on the date of separation. The court of appeals held that because the parties had stipulated to the value of the Aberdeen property and the balance of the mortgage on the date of separation that stipulation established the Aberdeen property's value on the date of separation.

In its judgment, the trial court valued the business at $32,307 as of the date of separation and distributed it to plaintiff. The trial court valued the business by referencing an exhibit and considered bank statements and income tax returns for two years. The court of appeals concluded that the trial court erred in its valuation because its "bare findings" were "a mere enumeration of the factors considered by the trial court with no indication of how it valued each factor or the method it used" and included no assets of the business other than cash, no work in progress, or goodwill. Therefore, the court of appeals could not affirm that the trial court used a sound valuation method to reasonably approximate the value of the business on the date of separation.

Classification; valuation; stipulations

- Any material fact in controversy between the parties may be established by stipulation, and where a stipulation is "definite and certain" and no party has requested that it be set aside or requested to present evidence contrary to the fact stipulated, it is removed from dispute and the parties and the trial court are bound by the stipulation.
- Where the parties' stipulated that certain real property was marital by including it on a list in their pretrial order which only left value and distribution for the court decide, and agreed to the value later in the litigation, the trial court erred by concluding the property was a mixed asset with separate and marital components.
- A trial court can set aside a stipulation either by an explicit order or by allowing a party's request to present evidence different from a stipulation.
- When the value of separate property increases during the marriage and before separation, there is a presumption that the appreciation is active, and therefore marital property.

- A spouse seeking the marital classification first has the burden of proving there was an increase in the value of separate property during the marriage and before the date of separation.
- The spouse claiming that appreciation of separate property during the marriage was not active and is therefore separate property then has the burden of proving the increase in value was passive.
- When a trial court places a burden of proof on the wrong party and conflicting infrances can be drawn from the evidence, remand is appropriate so that the trial court can reconsider its findings with the burden on the correct party.

Biddle v. Biddle, ___ N.C. App. ___ (April 15, 2026). After the parties separated, plaintiff filed a complaint for equitable distribution and divorce from bed and board. The marital estate contained extensive assets. The parties stipulated to the classification, valuation, and distribution of many assets and identified the disagreements that required resolution by the trial court in their pretrial order. During the equitable distribution hearing, the parties orally stipulated to additional facts in dispute. The trial court entered an equitable distribution order, concluding that an equal division was equitable and distributed the marital and divisible assets as discussed below. Defendant appealed.

<u>Townhome</u>

In its order, the trial court classified the parties' townhome as a mixed asset with a separate component of $163,307 and a $126,693 marital value. In the parties' pretrial order, the townhome was included on a schedule which contained "a list of <u>marital</u> property upon which there was disagreement as to the distribution and disagreement as to value." At the equitable distribution hearing, the parties stipulated to the value of the townhome as $290,000. Because the parties had stipulated to its classification as a marital asset in the pretrial order, and stipulated to its value at the hearing, the trial court erred when it classified the townhome as a mixed asset. On remand, the court of appeals ordered the trial court to properly classify and value the townhome in accordance with the stipulations and noted that it could consider plaintiff's separate contribution to the townhome's purchase as a distributional factor. Judge Tyson dissented on this issue and would have affirmed the trial court's distribution order on the marital home.

<u>Checking account</u>

In its order, the trial court classified a checking account containing $12,465 on the date of separation as plaintiff's separate property. The court of appeals held that the trial court erred when it determined the account's entire value was plaintiff's separate property because at the equitable distribution trial, the parties stipulated that the account's marital value was $5,447.

<u>Marital residence</u>

After the parties filed their pretrial order and before the equitable distribution hearing, plaintiff filed a document called "Plaintiff's Notice of Amendment of his Equitable Distribution Affidavit and The Pretrial Order" stating that he had obtained a new appraisal of the former marital home. He moved to amend "item A-1 of the Pretrial Order" with the new value. Defendant filed "Defendant-Wife's Response in Opposition to Plaintiff-Husband's 'Notice' of Amendments and Motion in Limine." She objected to husband's unilateral amendment of the pretrial order. The trial court addressed the filings on the first day of the equitable distribution trial and ruled that it would consider the marital home's date of distribution value as reflected in the newer appraisal and would address any divisible property based upon the evidence.

Defendant argued the trial court erred by considering plaintiff's new appraisal of the home's value because the parties' stipulations addressed that fact and were not set aside by the trial court. The court of appeals held that the trial court had considered and granted plaintiff's request to amend the stipulations in the pretrial order and the fact that the court did not specifically rule that the stipulation should be set aside was not controlling. A request by a party for permission to present evidence in contradiction of a stipulation is not required to be presented in any particular form, the important inquiry is whether the party made the request and the trial court addressed the request. The court of appeals held that the trial court clearly considered plaintiff's motion, defendant's opposition, and ruled on their requests. Chief Judge Dillon dissented on this issue and concluded that the trial court erred by classifying the post-separation increase in value as divisible property because the parties stipulated that the home was entirely marital in nature.

<u>Rollover account</u>
In its order, the trial court found that a rollover account contained both separate and marital funds, and that plaintiff produced sufficient evidence to trace out his separate contributions, leaving $573,952.33 in marital and active appreciation of separate property. On appeal, defendant challenged the sufficiency of plaintiff's evidence to support this finding. The court of appeals held that an exhibit submitted by plaintiff at the hearing detailing the date, the amount, and the source of all deposits to the account was sufficient to support the finding even though the trial court attributed part of the contributions from an incorrect source of premarital retirement savings. The court of appeals upheld the trial court's findings as to the rollover account's marital and separate values at the date of separation, except for the erroneous reference.

<u>Investment accounts</u>
In its order, the trial court classified all post-marital investment gains in plaintiff's retirement accounts, which he owned prior to the marriage, as his sole and separate property. The trial court found that defendant had the burden to prove that any appreciation in these separate accounts was due to substantial services provided by the marital estate and therefore marital property. Defendant argued on appeal that the trial court erred when it placed the burden of proof on her to prove that the gains during the marriage were marital, because all appreciation of separate property during the marriage is presumed to be active and therefore marital. That means plaintiff had the burden to show the increase in value was passive and therefore separate property. The court of appeals agreed with defendant and held the error required remand for reconsideration with the burden placed on the correct party because there was evidence that supported conflicting inferences about whether the gains were active or passive.

Stipulations; valuation; sanctions pursuant to G.S. 50-21(e)

- Parties may stipulate to an asset's classification, valuation, and distribution in an equitable distribution proceeding and their stipulations limit the evidence needed and define the issues the trial court must decide.

- The trial court did not err when it did not distribute the postseparation increase in value of a retirement account as divisible property when there was no evidence of what caused the increased value. The court of appeals stated that a trial court is not obligated to speculate about what caused a change in the value of an asset from the date of separation to the date of distribution without evidence.
- G.S. 50-21(e) permits a trial court to sanction a party who has willfully obstructed or unreasonably delayed a pending equitable distribution proceeding when that obstruction is or would be prejudicial to the interests of the opposing party.
- When a trial court requires a party to pay an expert witness fee as a sanction pursuant to G.S. 50-21(e) the expert is not required to appear pursuant to a subpoena.

MacDonald v. MacDonald, ___ N.C. App. ___ (May 6, 20206). The trial court entered an order granting equitable distribution, imposing sanctions against plaintiff, and awarding child support to defendant. The child support issue is discussed in the child support section of this update.

Plaintiff-wife filed a complaint including a claim for equitable distribution. The parties and their counsel signed a final pretrial order in which they stipulated to the classification, valuation, and distribution of certain marital and divisible property. After a hearing on the issues not resolved by stipulation, the trial court entered an order distributing the remaining property and imposing sanctions on plaintiff on its own motion. Plaintiff appealed.

The court of appeals held that many of plaintiff's arguments on appeal challenged the sufficiency of the evidence and found that its findings were supported by competent evidence.

Plaintiff also challenged the trial court's treatment of an IRA/401(k) account. The parties stipulated the date of separation value of the account was $166,442 but disagreed as to distribution. At the date of distribution, defendant testified that the account's value was $255,000 and stated that he believed the origin of the increase was appreciation. The trial court concluded the account was defendant's sole and separate property. Plaintiff argued that the trial court erred by not distributing the increased value of the account as divisible property. The court of appeals disagreed and noted that plaintiff offered no evidence as to the nature of the increased value. The court stated that a trial court is not obligated to speculate about what caused a change in the value of an asset from the date of separation to the date of distribution without evidence.

<u>Sanctions order</u>

The trial court imposed sanctions on plaintiff pursuant to G.S. 50-21(e) based upon its findings that she had "willfully obstructed and unreasonably delayed" the proceedings, refused to provide multiple discovery responses requiring defendant to file multiple motions to compel, and other actions resulting in defendant being "extremely prejudiced in his ability to fully prepare for trial" and "forced to retain experts to locate the missing information [plaintiff] refused to provide." The trial court ordered plaintiff to pay the costs defendant incurred to hire a forensic accounting expert.

G.S. 50-21(e) permits a trial court to sanction a party who has willfully obstructed or unreasonably delayed a pending equitable distribution proceeding when that obstruction is or would be prejudicial to the interests of the opposing party. Available sanctions include ordering the payment of reasonable expenses and damages incurred as a result of the willful obstruction or unreasonable delay. Defendant argued that because plaintiff's expert did not appear pursuant to a subpoena, the trial court's award was erroneous. The court of appeals declined to read a subpoena requirement into G.S. 50-21(e) and distinguished the trial court's imposition of G.S. 50-21(e) sanctions from the requirements a trial court must follow to award expert fees as costs.

Date of separation valuation of marital assets

- Marital assets are valued as of the date of separation by considering the asset's market value, if any, less the amount of any encumbrance that offsets or reduces the market value.
- The party claiming that property is marital property bears the burden as to the value of the property on the date of the parties' separation.
- Where a party's testimony as to the date of separation value of a marital asset was "minimal and cryptic" as well as "contradictory," the trial court's findings failed to resolve the discrepancy, and no other evidence of the asset's value was offered, there was insufficient evidence to support the net value of the asset at the date of separation.
- The valuation of a business will not be disturbed on appeal if the trial court "reasonably approximated the net value of the business and its goodwill, if any, based on competent evidence and a sound valuation method."
- A business' inventory and cash on hand are not a business' net value and a party's testimony as to only those values can not support a finding of a date of separation value of the business.
- When the evidence is insufficient to establish a marital asset's date of separation value, the trial court may decline to distribute the asset or appoint an expert to appraise the asset.
- Because both parties were at fault for the evidentiary deficiencies at the hearing, the court of appeals remanded for additional evidence as necessary to make findings on each asset's net value at the date of separation and the date of distribution.

Ahdi v. Ahdi, _ N.C. App. ___ (May 20, 2026). Defendant appeals three orders: an equitable distribution and alimony order, an order denying a post-trial motion, and a civil contempt order. Because it vacated the equitable distribution and alimony order, the court of appeals did not reach defendant's arguments on his post-trial motion. Discussion of the appeal of the alimony order is included in the alimony section of this update, and discussion of the civil contempt order is found in the contempt of court section. The relevant procedural background and facts are included with each substantive discussion.

The parties were married in 2007 and separated on September 12, 2021. The trial court entered an equitable distribution and alimony order on May 31, 2023, in which it found that an unequal division of the marital property was equitable and that an in-kind distribution would be impractical. The trial court ordered defendant-father to pay plaintiff-mother a distributive award of $100,000. As an initial matter, the court of appeals noted that the record was missing financial affidavits mother had prepared for herself and for father at the equitable distribution hearing and a binder of documents mother referenced in court, none of which were offered or admitted as exhibits. Therefore, the court of appeals had only mother's testimony as available evidence, as father did not appear at the hearing. The court of appeals also acknowledged the trial court's attempts to resolve the case expeditiously despite the parties' failure to comply with statutory rules as well as local rules for equitable distribution claims.

Next, the court of appeals addressed father's challenges to the valuation of several marital assets. On appeal, he argued that findings as to the three largest marital assets were absent altogether or lacked evidentiary support for their next values as of the date of separation. As to the marital home, the court of appeals found mother's testimony sufficient to support the trial court's finding as to the value of the home at the time of hearing, but the evidence did not support a date of separation value and required that the equitable distribution order be vacated. Similarly, no evidence was presented as to the date of separation value of land and the trial court's valuation of that asset was also unsupported. As to the marital business, mother's testimony as to the value of the inventory and cash on hand at the hearing were insufficient to support a finding of the business' date of separation net value.

Because both parties were at fault for the evidentiary deficiencies at the hearing, the court of appeals remanded for additional evidence as necessary to make findings on each asset's net value at the date of separation and the date of distribution. Remand on these valuation issues necessarily vacated the unequal distribution and distributive award.

Spousal Agreements
Cases Decided Between October 15, 2025, and June 3, 2026

Breach of separation agreement; doctrines of res judicata and merger

- An unincorporated separation agreement is enforced as any other contract, and specific performance is an available remedy where (1) the remedy at law is inadequate, (2) the obligated party is able to perform, and (3) the enforcing party has performed.
- A separation agreement can settle the question of alimony and the terms of the agreement are binding and not subject to modification by a court.
- Res judicata precludes a subsequent lawsuit involving the same claim, between the same parties or those in privity where there was a final judgment in an earlier suit, and bars all relevant and material matters which parties could have and should have brought forward in the earlier suit.
- Merger is a collateral aspect of res judicata which determines the scope of claims precluded from litigation by an existing judgment. All claims which plaintiff did bring or could have brought with reasonable diligence merge with the final judgment and may not be relitigated in a subsequent lawsuit.
- Because a breach of contract claim accrues at the time of the breach, plaintiff could not have forfeited rights to seek money damages for future payments of alimony by requesting specific performance in a prior lawsuit.
- Failure to pay alimony each month as required by a separation agreement amounts to multiple alleged wrongs against a plaintiff so the doctrine of merger does not operate to bar plaintiff from bringing successive suits.
- The trial court erred by granting defendant's motion for judgment on the pleadings on the basis that res judicata from plaintiff's unsuccessful previous suit seeking specific performance completely barred further attempts to enforce the alimony provisions of a separation agreement.

Cassida v. Cassida, ___ N.C. App. ___ (May 6, 2026). The parties entered into a separation agreement in 2018 requiring defendant to pay plaintiff monthly alimony for ten years. The agreement contained an enforcement provision providing that a complying spouse could enforce the agreement by an action for specific performance in the event of non-compliance. In 2019, plaintiff initiated an action for specific performance for breach of contract for defendant's failure to consistently pay alimony. Plaintiff did not seek money damages as an alternative remedy. The trial court entered an order in 2020 rejecting defendant's request to set aside the agreement as procedurally unconscionable, finding that plaintiff had complied with her portions of the agreement, and that defendant had failed to pay alimony for many months. The trial court also found that defendant did not have the financial ability to comply with the alimony provision and therefore plaintiff was not entitled to specific performance. Neither party appealed.

Plaintiff sued defendant in 2023 alleging again that defendant had breached the parties' separation agreement by failing to pay alimony. The complaint sought money damages but not specific performance. Defendant answered, alleging that some or all of plaintiff's claims were barred by res judicata because they were "an attempt to relitigate issues of facts decided, pursued, or abandoned" during plaintiff's 2019 suit and the trial court's 2020 order. Defendant then filed a motion for judgment on the pleadings contending that the "doctrine of merger and res judicata" barred plaintiff's pursuit of money damages for his alleged nonpayment of alimony and that the trial court's 2020 order "applied retroactively and prospectively to the current date and continues in effect." In an order entered in August 2024, the trial court granted defendant's motion for judgment on the pleadings, concluding that plaintiff had a full and fair opportunity to litigate in the first suit, failed to seek money damages at that time and that the doctrine of merger required all damages resulting from a single wrong be recovered in one lawsuit. The trial court ruled that, on these facts, defendant's failure to pay alimony revolved around a single wrong. The trial court also concluded that the doctrine of res judicata barred plaintiff's 2023 claim for money damages because plaintiff was attempting to litigate a claim for money damages that should have been brought in the first lawsuit between the parties: "This Court concludes that when a decree has ordered, or declined to order, compliance with a portion of a Separation Agreement, a parent cannot then bring a breach of contract action against the breaching party for the same obligations of the Separation Agreement that are subject the decree of specific performance."

The court of appeals reversed the trial court's 2024 order. The appellate court rejected defendant's argument that the 2020 order determined that defendant no longer had the obligation to pay alimony under the separation agreement in the "past, present, or future." In its 2020 order, the trial court correctly concluded that it had no authority to modify an unincorporated separation agreement and therefore, according to the court of appeals, that order could not set aside defendant's contractual obligations. Merger is a collateral aspect of res judicata which determines the scope of claims precluded by an existing judgment. Where a lawsuit results in a final judgment for plaintiff, all claims the plaintiff did bring or could have brought with reasonable diligence in the first lawsuit merge with the judgment and may not be relitigated in a subsequent lawsuit. Because a breach of contract claim accrues at the time the alleged breach occurs, plaintiff could not have forfeited rights to seek money damages for future payments of alimony by requesting specific performance in the initial suit. According to the court of appeals, failure to pay alimony each month as required by a separation agreement amounts to multiple wrongs suffered by plaintiff not a single wrong so merger did not operate to bar plaintiff from bringing successive suits. The court of appeals held that there is no legal authority that supports a rule that a denial of specific performance in a prior suit creates res judicata effects that permanently preclude a plaintiff from pursuing legal remedies such as filing one or more breach of contract actions for money damages upon additional failures to pay alimony under a separation agreement, obtaining money judgments against defendant, and executing those judgments. Accordingly, the trial court improperly concluded that plaintiff's claims were completely barred.

On remand, the court of appeals instructed the trial court to consider whether the doctrines of res judicata and merger acted as a partial bar to claims that had accrued at the time on plaintiff's first lawsuit.

Chapter 50C Civil No-Contact Orders
Cases Decided Between October 15, 2025, and June 3, 2026

Online behavior and unlawful conduct pursuant to Ch. 50C

- To enter a civil no-contact order pursuant to Chapter 50C a trial court must find that a defendant has committed an act of unlawful conduct against a victim. Unlawful conduct can be nonconsensual sexual conduct or stalking, with stalking defined as more than one occasion of following or otherwise harassing.
- When the actions alleged to constitute unlawful conduct occur online, there is a distinction between online posts written *about* a person and posts that are *sent directly to* a person.
- Online posts written *about* a person do not necessarily constitute unlawful conduct for purposes of Chapter 50C.
- Maintaining a social media page containing articles arguing that a candidate for mayor was not a suitable candidate was not online conduct *sent directly to* an individual and was not sufficient to support a civil no-contact order under G.S. Chapter 50C order which prohibited defendant from publicly writing, printing, or speaking plaintiff's name in any manner, and being within fifty yards of plaintiff.

Coble v. Ballentine, ___ N.C. App. ___ (April 15, 2026). Plaintiff and defendant knew each other and were each active in local politics. Plaintiff was a candidate for mayor for a time. Defendant created a social media page and a website opposing plaintiff's candidacy and wrote articles for the page. Plaintiff filed a complaint in 2025 seeking a civil no-contact order against defendant alleging that defendant harassed her online since 2022. The trial court found that defendant had committed unlawful conduct pursuant to G.S. Chapter 50C and entered an order prohibiting defendant from publicly writing, printing, or speaking plaintiff's name in any manner, and being within fifty yards of plaintiff. Defendant appealed.

The court of appeals cited an unpublished opinion, *Weller v. Jackson*, 279 N.C. App. 260, 2021 WL 4059970, at *3 (2021), in which the court had previously made a distinction between online posts made *about* an individual and online posts *sent directly to* an individual. Here, defendant posted online articles and opinions about plaintiff and her eligibility as mayor, purportedly to assist undecided voters, and were not directed to her. The fact that defendant wrote in the third person supported his claim that his online communications were about plaintiff, not directed at plaintiff. Therefore, according to the court of appeals, plaintiff did not carry her burden to show that defendant stalked or harassed plaintiff and the trial court's civil no-contact order was reversed.

Civil no-contact orders and personal jurisdiction

- When a defendant moves to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2), the standard by which the trial court must decide the motion depends upon what evidence the parties have put before the court.
- When a defendant offers no opposing evidence with a Rule 12(b)(2) motion, the trial court must decide whether plaintiff's allegations, taken as true, establish a prima facie showing that the court has personal jurisdiction over defendant.
- When a defendant offers opposing evidence to counter plaintiff's allegations, the trial court can no longer simply take those allegations as true but moves into a fact-finding role and must decide the question of personal jurisdiction by a preponderance of the evidence.

- An affidavit attached to a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction that did not deny, challenge, nor conflict with plaintiff's allegations or testimony did not create any factual issue for the trial court to decide and applying the prima facie standard was appropriate when specific personal jurisdiction was at issue.
- G.S. 1-74.5(4), N.C.'s long-arm statute, authorizes personal jurisdiction over a person in any action claiming injury to person or property within this state arising out of an act or omission outside this state by a defendant when solicitation or services activities were carried on within this state by or on behalf of the defendant.
- G.S. 1-74.5(4) defines a solicitation as "a request or appeal of any kind, direct or indirect, by oral, written, visual, electronic, or other communications, whether or not the communication originates from outside the state."
- Emails and telephone calls can be solicitations for purposes of the long-arm statute when the sender attempts to entice, convince, or cause the receiver to take some action.
- Defendant's calls to plaintiffs' employers, salespeople, and restaurants all constituted solicitations in that they appealed to other people in N.C. to take actions, like fire plaintiffs, call plaintiffs with sales offers, and send unwanted food deliveries to plaintiffs.
- Defendant's excessive contacts with plaintiffs and others in N.C. also satisfied the minimum contacts inquiry and authorized N.C.'s exercise of personal jurisdiction over defendant.

Greenhaus v. Goldstein, ___ N.C. App. ___ (May 6, 2026). Plaintiff-wife and Plaintiff-husband sought protective orders in Wake County pursuant to Chapters 50B and 50C, respectively, against defendant. Wife dated defendant roughly twenty years before initiation of the action and had been married to husband for thirteen years. In their respective complaints, plaintiffs alleged that beginning in 2022 defendant had sent an excessive number of harassing communications to them, their friends, family, employers and associates, including pornographic messages and statements about their child. Plaintiffs also alleged defendant had signed husband up for the delivery of multiple food orders from restaurants requiring payment on delivery and sales calls resulting in husband's phone ringing constantly. Defendant was served with the summonses and complaints at an address in Texas. The trial court granted ex parte orders in favor of both plaintiffs. Defendant moved to dismiss both complaints pursuant to Rule 12(b)(2) alleging that the trial court lacked personal jurisdiction. At the hearing, defendant offered an affidavit stating that he was a resident of Texas, had never been to N.C., has no plan to go to N.C., and no plan to conduct business with N.C. Plaintiffs appeared at the hearing and testified as to defendant's conduct. The trial court concluded it had personal jurisdiction over defendant, denied his motions to dismiss and permitted the matters to proceed to trial.

On appeal, defendant first argued that the trial court applied an incorrect standard of proof when it decided defendant's motions to dismiss. Defendant argued that the trial court applied a less stringent prima facie standard but should have applied a preponderance of the evidence standard. The majority held that because defendant's affidavit did not deny, contradict, or refute the allegations in plaintiff's complaints, there was no legal issue for the trial court to resolve and that the trial court correctly applied the prima facie standard. Taking defendant's allegations as true and taking plaintiffs' allegations as true, the facts support the legal conclusion that the trial court had specific personal jurisdiction over defendant. The dissenting judge would have held that, on these facts, the parties had presented competing evidence beyond affidavits on the issue of personal jurisdiction, requiring the trial judge to step into the fact-finding role and determine the weight and sufficiency of the evidence by a preponderance of the evidence.

Defendant next argued that the trial court erred by concluding the long-arm statute permitted N.C. to exercise personal jurisdiction over him. G.S. 1-74.5(4), N.C.'s long-arm statute, authorizes personal jurisdiction over a person in any claiming injury to person or property within this state arising out of an act or omission outside this state by a defendant when solicitation or services activities were carried on within this state by or on behalf of the defendant. A solicitation is defined as "a request or appeal of any kind, direct or indirect, by oral, written, visual, electronic, or other communications, whether or not the communication originates from outside the state." The court of appeals held that defendant's communications were alleged to be of a solicitous nature because they were designed to cause another person to take some action, including making accusations to employers to get husband fired, placing husband's phone number on lists designed to cause salespeople to call his home constantly, and soliciting restaurants to deliver food on a cash delivery basis. Further, the court of appeals found that defendant's contact with plaintiffs and others in N.C. constituted minimum contacts with the state and that requiring defendant to defend the alleged conduct here did not offend traditional notions of fair play and substantial justice.

Contempt of Court
Cases Decided Between October 15, 2025, and June 3, 2026

Civil contempt to enforce a money judgment

- Civil contempt is not a permissible means of enforcing a money judgment resulting from a breach of contract action.

Pelc v. Pham, ___ N.C. App. ___, 923 S.E.2d 835 (October 15, 2025). The trial court entered an order concluding plaintiff father owed damages to defendant mother for his failure to meet his contractual obligation under the US Citizenship and Immigration Services form I-864 Affidavit of Support he signed when mother came from Australia to live with him in the United States. The trial court also concluded that father was liable to mother for her claim of unjust enrichment and attorney fees. After an appeal of that initial trial court order, the court of appeals vacated the original trial court order and remanded the matter to the trial court for a recalculation of the damages owed to mother.

In the new order entered by the trial court on remand, the trial court recalculated amounts due to mother and included in the order the statement that the order was "enforceable by the full contempt powers of this Court."

Plaintiff did not pay the amounts owed to defendant and defendant filed a motion for contempt. The trial court found plaintiff to be in civil contempt and required him to pay all amounts owed to purge himself of contempt or serve 90 days imprisonment. Plaintiff appealed, arguing the trial court erred by using its contempt authority to enforce a money judgment arising from a contractual obligation. The court of appeals agreed.

The court of appeals noted that although the parties were previously married, and that "this case has many common elements normally present in a domestic case", the underlying claim was not domestic in nature. The damages owed to defendant resulted from plaintiff's failure to meet his contractual obligation under a United States Citizenship and Immigration Services Affidavit of Support. G.S. 1-302 states that "[w]here a judgment requires the payment of money or the delivery of real or personal property it may be enforced in those respects by execution." The court of appeals held that "it has long been the general rule that judgment fixes the amount due and execution – not contempt proceedings – issues if not paid."

The appellate court also noted that Chapter 50 provides for the use of contempt to enforce child support money judgments but explained that this action resulted from mother's claims for breach of contract and unjust enrichment and not from claims pursuant to Chapter 50.

Civil contempt; required findings of fact

- A trial court's mere conclusion that defendant "is not in willful contempt of court" with no findings of fact addressing whether the underlying order remained in effect, and whether defendant had complied or had the ability to comply with the order prevents an appellate court from reviewing the trial court's civil contempt order and requires remand.

Taylor v. Taylor, ___ N.C. App. ___, 923 S.E.2d 277 (November 5, 2025). After the parties separated, plaintiff filed claims for postseparation support, equitable distribution, and alimony. The parties reached an agreement on postseparation support, and the trial court entered a consent order requiring defendant to pay plaintiff monthly support. Plaintiff later filed a motion for contempt alleging defendant had failed to make the required payments consistently. The trial court entered an order concluding that (1) plaintiff was not a dependent spouse and therefore not entitled to alimony, and (2) defendant was not in contempt of the post-separation support order. The court of appeals vacated and remanded the trial court's order for insufficient findings of fact. A summary of the holding regarding alimony is found in the alimony section of this update.

The trial court's finding and conclusion that defendant was "not in willful contempt of court" with no findings of fact addressing whether the postseparation support order was still in effect, whether defendant had complied or had the present ability to comply, and whether defendant's noncompliance was willful prevented the appellate court from reviewing the trial court's decision. The order was vacated and upon remand "the trial court shall consider and apply" G.S. 5A-21 and make the required findings of fact and conclusions of law. The appellate court noted that "sufficient evidence of payments and distributions were admitted to support the trial court's findings and conclusions."

Civil contempt; required findings of fact

- A trial court must make findings of fact to support a decision not to find a party in civil contempt.

Brutus v. Broido, ___ N.C. App. ___, 924 S.E.2d 491 (November 5, 2025). The trial court entered an amended permanent custody order which awarded sole legal custody of the minor children to plaintiff, with limited visitation to defendant on alternating weekends, Christmas, and the children's birthdays. Defendant filed a motion to modify custody and a motion for an order to show cause why plaintiff should not be held in civil contempt for violating the custody order. The trial court issued an order to appear and show cause to plaintiff and considered contempt along with the motion to modify. After a two-day hearing, the trial court denied defendant's motion to modify custody. The trial court found plaintiff in civil contempt for violating certain parts of the custody order but did not find plaintiff in civil contempt for denying defendant phone visitation on several different dates. The court of appeals held that the trial court erred when it failed to make findings of fact to support the decision not to find plaintiff in civil contempt for denying defendant phone calls and visitation on certain dates.

Appeal of criminal contempt order

- Appeal from a finding of criminal contempt made by a judicial officer inferior to a superior court judge is by hearing de novo before a superior court judge, not the court of appeals.

Bullins v. Riddle, ___ N.C. App. ___, 925 S.E.2d 250 (November 19, 2025). The trial court entered orders permitting a nonparent to intervene, awarding joint legal and physical custody to mother and intervenor, modifying custody to award primary legal and physical custody to intervenor, and holding mother in criminal contempt for violating the custody order. The court of appeals' treatment of the appeal of the order permitting intervention and modification of custody is discussed above in the custody section.

Mother also appealed the trial court's order finding her in criminal contempt for violating provisions of the order requiring her to communicate with intervenor about decisions made about the child. The court of appeals dismissed mother's appeal of this issue for lack of jurisdiction because G.S. 5A-17 requires that an "appeal from a finding of criminal contempt by a judicial officer inferior to a superior court judge is by hearing de novo before a superior court judge." The court of appeals had no jurisdiction to consider the appeal.

Civil contempt for violation of a temporary restraining order

- To find a party in civil contempt, one of the findings a trial court must make is that the non-complying party is able to comply with the order or able to take reasonable steps to comply. A party must also be able to comply or take reasonable steps to comply with any purge conditions ordered by a trial court.
- Reasonable measures that would enable a party to comply with an order include borrowing money, selling property, or liquidating other assets.
- Testimony that defendants had a financial interest in a corporate asset, that defendants could borrow against or sell that asset for an amount that would exceed purge payments and that several parties were interested in purchasing the asset was competent evidence to support the trial court's finding that defendants had the ability to take reasonable measures to comply.
- Imprisonment resulting from defiance of a court order and a finding of civil contempt does not violate the N.C. Constitution's prohibition on imprisonment for a debt.
- To support holding a party in civil contempt, the party must be in violation of the underlying order at the time of the show cause hearing. Past violations cannot support civil contempt.
- Defendants had the burden to show why they should not be held in civil contempt after the trial court issued its show cause order.

Southland Nat'l Ins. Corp. v. Lindberg, ___ N.C. App. ___, 924 S.E.2d 577 (December 3, 2025). The trial court entered an order holding defendant Lindberg and defendant Global Growth Holdings, LLC in civil contempt for violating a Temporary Restraining Order (TRO). The relevant provisions of the TRO prohibited defendants from selling, encumbering, or devaluing certain assets at issue in plaintiff's claim. The TRO was modified twice, after repeated violations, increasing restrictions on what actions defendants could take without prior approval from the appointed receiver. The trial court set a show cause hearing and ordered defendant Lindberg and a representative for Global Growth Holdings to personally appear. At the show cause hearing, Global Growth's Chief Operating Officer appeared, but defendant Lindberg did not. Defendant Global Growth put on evidence as to why it should not be held in civil contempt. Plaintiffs offered expert testimony demonstrating transfers of assets covered by the TRO and the expert witness' testimony that defendants had an asset that could be liquidated by sale in 6-12 months. The trial court entered an order finding defendants Lindberg and Global Growth in civil contempt for violating the TRO, ordered certain purge payments, and found that defendants had the ability to pay the purge payments by either using proceeds from the sale, or borrowing against their company interest.

On appeal, the court of appeals denied defendant's motion for judicial notice asking the court to take notice of a pending motion to dissolve the TRO and motion to discharge limited receiver and special master. The court of appeals held that the motion did not contain "well established and authoritatively settled" facts and did not bear on a fact crucial to the appeal of the civil contempt order and therefore it could not grant defendants' motion.

As to civil contempt, defendants argued that the trial court's finding that defendants had the present ability to comply with the purge conditions was not supported by competent evidence. Citing the trial court's findings of fact as to the credibility of plaintiff's expert and the ability of defendants to sell or borrow against a certain asset to purge their contempt, the court of appeals affirmed the trial court's finding that defendants had the ability to pay or the ability to take reasonable measures to make purge payments.

Defendants also argued that by ordering defendant Lindberg to pay $65.7 million in purge payments, the trial court violated Article I, Section 28 of the N.C. Constitution prohibiting imprisonment for debt, except in cases of fraud. The court of appeals held that Article I, Section 28 is not applicable where the court imprisons a defendant for willful disobedience of a court order because the imprisonment is not the result of an inability to pay, but defiance of a court order.

Defendants' final argument was that the trial court's contempt order was invalid because it was entered after defendants had purged themselves of any possible contempt and there was no competent evidence in the record establishing that defendants were in violation of the TRO on the date of the contempt hearing. The court of appeals disagreed. In this case, the trial court had entered an order finding probable cause to believe defendants were in civil contempt and therefore, defendants had burden to show why they were not in civil contempt. The trial court found the testimony of plaintiffs credible and defendants' evidence not credible, and defendants offered no evidence to show they had purged the contempt.

Direct criminal contempt; summary notice and opportunity to be heard

- A presiding judicial official may punish direct criminal contempt summarily or may defer adjudication. If proceedings are deferred, the judicial official must initiate a plenary proceeding for criminal contempt by issuing a show cause order and scheduling the matter for trial.
- Summary proceedings are appropriate when necessary to restore order or maintain the dignity and authority of the court; in a summary proceeding, sanctions for contempt must be imposed substantially contemporaneously with the contemptuous act.
- The trial court did not afford defendant a summary opportunity to respond substantially contemporaneously with the act of criminal contempt, so a plenary proceeding was required.

State v. Jacobs, ___ N.C. App. ___, 925 S.E.2d 364 (December 17, 2025). After defendant was convicted and sentenced for a criminal violation, he asked the trial court if he could "put a motion to appeal in." After the trial court answered that he could appeal, defendant responded "see you in federal court, bucko," which the trial court interpreted as a threat and responded "I'm going to hold you in contempt for that threat. I'm going to add 30 days [to the sentence already imposed]." Defendant and the trial court went back and forth with the trial court adding 30 days each time defendant responded, reaching six acts of contempt. After a 1-minute recess the judge clarified that he "felt like contempt was appropriate given … what the Court deemed to be a threat and then an ongoing response engaging the Court in debate and argument and further threat."

Defendant appeared before the trial court again the following day and the trial court again addressed the contempt charge. The trial court stated that it had not "decided in final" how it was going to handle the issue and gave defendant "an opportunity to be heard." Defendant argued his statement "see you in federal court, bucko" was not a threat and stated that he was only trying to exercise his right to appeal. The trial court entered judgment finding defendant's behavior warranted 6 consecutive 30-day sentences for direct criminal contempt. Defendant appealed.

The court of appeals held that, in response to an incident of direct criminal contempt, summary proceedings are permitted by G.S. 5A-14 when necessary to restore order or maintain the dignity and authority of the court and when the summary proceeding is held substantially contemporaneously with the act of direct contempt. In summary proceedings, the trial court must give the defendant notice of the contempt charges and allow defendant an opportunity to respond before imposing a sanction. In this case, the trial court did not give defendant the opportunity to respond before imposing each of the six 30-day sentences. While the trial court did allow defendant to respond the next day, at that point, summary proceedings were no longer appropriate because the proceeding was not held contemporaneously with the contemptuous acts. When the trial court decided to defer sentencing for the act of criminal contempt, plenary proceedings pursuant to G.S. 5A-15 were required.

Civil contempt; present ability to pay; "springing" orders

- To hold a person in civil contempt the trial court must find that the person is able to comply with the underlying order or is able to take reasonable measures that would enable compliance with the order.
- A trial court may require a person to take future actions but cannot order immediate arrest and incarceration based on the failure to comply without also holding a hearing and considering the party's present ability to comply at the time of the commitment.

Roybal v. Raulli, ___ N.C. App. ___, 927 S.E.2d 413 (Feb. 4, 2026). Father appealed the trial court's Amended Commitment Order for Civil Contempt, entered because of father's failure to pay his child support obligation under a 2021 consent order. A summary of the holding on the custody issue is found in the custody section of this update.

Mother filed a motion for contempt in 2021, and the trial court entered a contempt order holding father in civil contempt in December 2022. The contempt order required father to pay mother $4,600 each month for five months and appear at the Orange County calendar call each month with proof of payment. The order stated that if father failed to pay the amount and/or failed to appear at the calendar call, "an order for his arrest shall be issued by this court at calendar call and Father shall surrender himself at said time and be incarcerated until such payment is made." Father appeared in January 2023 but had not paid mother and was immediately taken into custody. Father was ultimately released for reasons related to his military service, but his contempt was not purged. The court of appeals held that a trial court can order a person to complete future actions, but it cannot order that person automatically committed for civil contempt based on their failure to comply without holding a hearing and considering the person's present ability to comply at the time of commitment. Father was given no notice of his opportunity to show why he should not be held in contempt during the calendar call he was required to attend. Even though Father had pattern of failing to pay his child support obligation, each order for commitment for civil contempt had to consider Father's present ability to pay when the commitment and purge was ordered. Because the trial court had not done that the Amended Commitment Order was reversed.

Civil contempt and non-parties; interlocutory orders

- G.S. 1-277(b) establishes a party's right to an immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of defendant but does not give a non-party a right to an immediate appeal of an interlocutory order relating to the trial court's jurisdiction over that nonparty.
- An appeal of any contempt order affects a substantial right and is immediately appealable because otherwise the alleged contemnor would be faced with complying with a potentially erroneous order or be subject to punishment by fine or imprisonment.
- A show cause order is one way a judicial official may initiate civil contempt proceedings and allows the alleged contemnor an opportunity to prepare a defense. It does not force an appellant to choose between complying with a possibly erroneous order or face punishment by fine or imprisonment.

Southland National Insurance Corporation v. Lindberg, ___ N.C. App. ___ (April 15, 2026). The trial court entered an order directing two non-parties, Alban and Gaddy, to appear and show cause why they should not be held in civil contempt. The issue arose in the context of litigation which had come before the court of appeals numerous times. During the litigation, a temporary restraining order (TRO) was entered prohibiting defendants and any third party acting in concert with defendants from taking certain actions involving the transfer of assets. A receiver appointed by the court alleged violations of the TRO by defendants and by Alban and Gaddy. The receiver requested that the trial court enter an order directing defendant Lindbergh, Alban, and Gaddy to appear and show cause. A show cause hearing was noticed and served on both Alban and Gaddy. Alban objected and asserted that the trial court lacked personal jurisdiction over him. Gaddy filed no objection. At the hearing, the trial court overruled Alban's objection. The trial court entered an order finding probable cause for defendant Lindbergh, Alban, and Gaddy to be held in civil contempt and ordered them to appear and show cause at a subsequent hearing, which was not held. Alban and Gaddy appealed.

On appeal, Alban argued the trial court's order to show cause was immediately appealable because his objection related to the court's personal jurisdiction over him. The court of appeals disagreed. While G.S. 1-227(b) permits a party to immediate appeal an interlocutory order that adversely rules on the issue of jurisdiction of the court over a defendant's person or property, Alban was not a party, and he was not appealing based on the trial court's personal jurisdiction over defendants. Gaddy asserted that because the show cause order "may result in imprisonment" it affected a substantial right and was therefore immediately appealable. The court of appeals held that the basis for the immediate appeal of an order for contempt is that the alleged contemnor will be faced with being punished for contempt or complying with an order the contemnor believes is erroneous. In contrast, a show cause order is a means of initiating civil contempt proceedings and allows an opportunity to prepare a defense. A show cause order does not require an alleged contemnor to face punishment or comply with a possibly erroneous order and was therefore not immediately appealable.

Civil contempt; present ability to pay; "springing" orders for contempt

- G.S. 5A-21(a) requires that to find a party in continuing civil contempt for violation of an order the underlying order must remain in force.
- A civil injunction consent order that had expired at the time of the contempt hearing could not be the basis for an order of civil contempt.
- When reviewing a contempt order, the court of appeals is limited to determining whether there is competent evidence to support a trial court's findings and the trial court's findings support its conclusions.
- When a trial court issues an order to show cause based on a showing of probable cause, the burden moves from the moving party to the opposing party to show cause why that party should not be found in willful contempt of court.
- The findings in a civil contempt order must also address the contemnor' s present ability to pay any purge payment ordered.
- Three-year-old financial data about father's used car business was insufficient to support a finding that father had the present ability to pay a $51,273.75 purge payment.
- A trial court cannot order incarceration on a future date (a "springing" order) based solely on evidence of a contemnor's financial circumstances as of an earlier date, without providing an opportunity for the contemnor to demonstrate an inability to pay at the later time.

Ahdi v. Ahdi, ___ N.C. App. ___ (May 20, 2026). Defendant appeals three orders: an equitable distribution and alimony order, an order denying a post-trial motion, and a civil contempt order. Because it vacated the equitable distribution and alimony order, the court of appeals did not reach defendant's arguments on his post-trial motion. Discussion of the appeal of the equitable distribution order is included in the equitable distribution section of this update, and discussion of the alimony order is found in the alimony section. The relevant procedural background and facts are included with each substantive discussion.

The parties were married in 2007 and separated on September 12, 2021. On October 17, 2023, the trial court entered a civil contempt order relating to three underlying orders entered in the course of the litigation between the parties: (1) the equitable distribution and alimony order, (2) a civil injunction consent order, and (3) a child support order. With respect to contempt of the child support order, the trial court found father in civil contempt for failure to abide by the terms of the order, ordered him to make a purge payment of $51,273.75 within fourteen days of the entry of the order, and ordered his incarceration if he did not do so.

First, the court of appeals vacated the civil contempt order to the extent it rested upon the equitable distribution and alimony order since that order was vacated on appeal. Second, the court of appeals agreed with father that a civil injunction order entered earlier in the litigation that had expired before the contempt hearing or entry of the contempt order could not be the basis for the trial court holding father in contempt. A requirement under G.S. 5A-21(a) for a finding of civil contempt is that the underlying order must remain in force, and an expired order does not meet that requirement.

Father's remaining arguments concerned the trial court's findings that he was in willful contempt of his obligation to make monthly child support payments. He argued that multiple findings of fact in the trial court's contempt order were not supported by the evidence and the trial court's findings did not establish that he had the ability to pay and that his non-compliance was therefore willful. The court of appeals stated that mother's civil contempt motion identified the child support order's provisions that father allegedly violated, the payments he failed to make, and alleged that he had the ability to pay. The trial court show cause order shifted the burden to father to prove why he should not be held in willful contempt for failure to pay child support and he did not appear. The trial court made findings (1) as to payments father had made and payments he had failed to make, (2) that he continued to operate a used car dealership and was its sole shareholder and that the used car market was "doing well during these times," (3) as to the business' previous average annual profit, and (4) that father was driving an "expensive car" during custody exchanges. The court of appeals held that these findings were sufficient to support a conclusion that father had the ability to pay his monthly child support obligation.

The findings in a civil contempt order must also address the contemnor's present ability to pay any purge payment ordered. In the order on appeal, the trial court ordered father to pay a purge amount of \$51,273.75 within fourteen days, which father argued was unsupported by the evidence. The evidence offered to support this finding was found in part in the equitable distribution and alimony order that the court of appeals vacated. Mother also offered testimonial evidence, but the information she offered about father's business profits was several years old and insufficient to support a finding that father had the present ability to pay a \$51,273.75 purge payment. The court of appeals vacated the contempt order.

Lastly, the court of appeals addressed issues that father raised on appeal that might recur on remand before the trial court. In its contempt order, the trial court ordered that if father had not purged himself of contempt within fourteen days he would be immediately incarcerated, a "springing" contempt provision. The court of appeals held that a court cannot order incarceration on a future date based solely on evidence of a contemnor's financial status as of an earlier date, without providing an opportunity for the contemnor to demonstrate an inability to pay at the later time. The trial court had erred by not doing so. Because the court of appeals vacated the contempt order, its award of attorney fees was also vacated. However, the court of appeals reminded the trial court for purposes of remand that any award of attorney fees must be supported by the statutory findings specific to the claims in which the fees arose.