Family Law Update
Cases Decided Between
October 1, 2024, and June 4, 2025

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Child Custody
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Subject matter jurisdiction, the UCCJEA

- The trial court properly declined to recognize a previous custody order entered in Virginia where the order was entered in Va. when North Carolina was the home state of the children.
- A custody order not entered in accordance with the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (the UCCJEA, Chapter 50A in NC) and the federal Parental Kidnapping Prevention Act (the "PKPA") is not enforceable or entitled to Full Faith and Credit.

In the Matters of B.E., L.E., L.E., C.W., F.W., B.W., 909 S.E.2d 505 (N.C. App., November 5, 2024). This is a juvenile case summarized in the child welfare case and legislative update. However, the court of appeals addressed an important issue relating to the subject matter jurisdiction of the court to make a child custody determination.

The mother argued that the NC court did not have subject matter jurisdiction in the juvenile case because a court in Virginia previously had incorporated a separation agreement into a divorce degree and the agreement contained provisions relating to custody of several of the children at issue in this case. The trial court and the court of appeals disagreed, holding that because NC was the home state of the children at the time the agreement was incorporated into the divorce judgment, the Virginia court did not have subject matter jurisdiction to make a child custody determination. Because the order was entered without jurisdiction, the NC trial court was not required to consider the Va order in the juvenile case.

The NC UCCJEA and the Va UCCJEA both give the home state priority in making initial custody determinations, in compliance with the federal PKPA. The court of appeals rejected the mother's argument that while Va. did not have home state jurisdiction at the time the agreement was incorporated, that state did have significant connection/substantial evidence jurisdiction. Both the UCCJEA and the federal PKA allow the use of significant connection/substantial evidence jurisdiction only when there is no home state.

Sufficiency of evidence to support findings, sufficiency of findings to support best interest determination

- Evidence was sufficient to support the trial court's findings of fact.
- Findings of fact regarding defendant father's acts of domestic violence were sufficient to establish his fitness as a parent and were sufficient to support the trial court's order of primary legal and physical custody to mother,

Efstathiadis v. Efstathiadis, 909 S.E.2d 737 (N.C. App., December 3, 2024). Father appealed the trial court order of primary legal and physical custody to mother, arguing that evidence was not sufficient to support the trial court's findings of fact and that the findings were not sufficient to establish his fitness as a parent and to support the determination of the child's best interest.

The court of appeals disagreed and affirmed the trial court. Mother's testimony regarding father's acts of domestic violence against her and the child, as well as the DVPO between the parties admitted into evidence during the custody trial, and a safety plan created by DSS also admitted into evidence during the trial was sufficient evidence to support the trial court's findings related to defendant's fitness as a father and to the trial court's determination that the order of primary legal and physical custody the mother was in the best interest of the child.

Waiver of objection to insufficient service; standing of nonparent third parties

- Defendant mother waived her right to object to a lack of proper service when she made a general appearance in the custody action without raising an objection to the lack of service.
- Maternal cousins established standing to seek custody when they alleged a parent-like relationship with the child and alleged facts to support a conclusion that the parents had waived their constitutional right to custody.

Ledford and Ledford (maternal cousins) v. Ledford (maternal grandmother) v. Burrell (father) and Burrell (mother), 910 S.E.2d 284 (N.C. App., December 3, 2024). Mother appealed the trial court order granting maternal cousins primary physical and legal custody of the child, granting grandparent visitation to maternal grandmother, and denying visitation to both parents except as allowed by the maternal cousins. Mother argued that the order was void because she had not been served with a summons in the custody action and because the maternal cousins lacked standing to seek custody.

The court of appeals rejected mother's arguments and affirmed the trial court. Mother waived all objection regarding service of process when she appeared in court and participated in the custody proceedings without raising an objection to service. The third-party maternal cousins established standing to seek custody when they alleged that they had acted a parents to the child and alleged that the parents of the child had waived their constitutional right to custody by acting inconsistent with their protected status as parents. The maternal cousins alleged that mother had placed the child at risk of substantial harm by her repeated and continuous use of illicit drugs.

Waiver of objection to improper venue by filing noncompulsory counterclaims

- Defendant husband/father waived his objection to improper venue by filing noncompulsory counterclaims after he filed an objection to venue but before the trial court ruled on his motion to change venue.

Braswell v. Braswell, 910 S.E.2d 359 (N.C. App., December 3, 2024). The plaintiff mother filed a complaint in Wake County seeking child support, PSS and alimony, equitable distribution, and asking to set aside a premarital agreement. Defendant father filed a timely objection to venue, arguing that mother and child lived in Wayne County and father lived in Johnston County. The defendant scheduled a hearing on his motion to change venue. One month after filing his objection to venue but before the hearing on his motion, defendant father filed an answer and other motions, as well as counterclaims for equitable distribution and custody. The trial court determined that father waived his objection to venue by filing the noncompulsory

counterclaims, and the court of appeals agreed, with a dissent by Dillon. According to the majority opinion, objection to improper venue can be waived either by failing to raise a timely objection to venue or by participating in the litigation even after raising an objection. By asserting claims as counterclaims that were not compulsory counterclaims but could have been asserted in another way (by separate action or by motion in the cause in another proceeding), defendant father waived his objection to improper venuw.

Sufficiency of findings to support best interest determination; delay in entry of order; temporary v permanent order

- GS 50-13.2(a) requires that the court make written findings of fact to show the trial court considered evidence of acts of domestic violence between the parties as well as the safety of the child and the parties, and to support the trial court's determination of what is in the best interest of the child.
- Findings of fact reflecting each parent's personal relationship with the child, each parent's ability to financially provide for the child, each parent's housing circumstances, the amount of time and kinds of activities each parent usually has with the child, and each parent's ability to spend time with the child with respect to their work schedule were sufficient to support the trial court's decision regarding the best interest of the child.
- The above findings, along with findings regarding the fitness of the school in mom's district supported the trial court's determination that it would be in the best interest of the child to reside with mother during the school week.
- There is no statutorily mandated time within which an order must be entered following a custody trial. However, a trial court is obligated to enter an order and custody orders must reflect the best interest of the child at the time of the custody trial.
- When a party would like to hold a trial court accountable for the failure to enter a custody order in a timely manner, the party must seek a writ of mandamus or request a hearing in the trial court on the issue of entry of the order. A party cannot complain on appeal about prejudice resulting from delay in the entry of an order unless the party has first taken steps in the trial court to have the order entered in a timely manner.
- A temporary order may become permanent by operation of time, when neither party sets the matter for hearing on the issue of permanent custody withing a reasonable time.
- What constitutes a reasonable time is a fact-specific question to be addressed on a case-by-case basis.
- The custody order in this case was remanded to the trial court to determine whether the twenty-five-month period between entry of a temporary order and mother's request for a permanent custody trial was reasonable under the circumstances.

Ludack v. Ludack, 910 S.E.2d 720 (N.C. App., December 17, 2024). Father filed a complaint for custody and the parties agreed to the entry of a temporary custody order. Twenty-five months later, mother requested that a trial date for the issue of permanent custody be set. The trial was held but the order for permanent custody was not entered until thirty-eight months following the trial. The trial court granted joint legal and physical custody to both parents with mother having primary physical custody and father having physical custody every other week from Thursday through Sunday. Father appealed.

Father first argued that the custody order did not contain sufficient findings of fact to support the allocation of physical custody between the parents. The court of appeals disagreed, holding that while findings must show more than the fitness of each parent, the order in this case was sufficient to show both the fitness of the parents and the reasons why the order of the trial court was in the best interest of the child.

Father also argued that the delay of over three years in the entry of the custody order following trial was a prejudicial delay. The court of appeals, adopting the reasoning of the North Carolina Supreme Court in cases addressing delay in the entry of orders in termination of parental rights cases, held that a party must address the issue of delay in the trial court by either requesting a writ of mandamus or requesting a hearing before the trial court to address entry of an order. The court of appeals noted that, in this case, the parties had been before the trial court on several occasions during the three-year period without addressing the issue of entry of the custody order. The appellate court held that a party cannot raise the issue of prejudice on appeal if the party has not tried to first address the issue in the trial court.

Finally, father argued that the temporary order became a permanent order by operation of time when it was left in effect for twenty-five months before mother requested a trial on permanent custody. Because it became a permanent order, father argued the trial court was required to find there had been a substantial change in circumstances before ordering the new custodial arrangement. The court of appeals held that the determination of whether a party requested a permanent custody trial within a reasonable time following the entry of a temporary order is a factual determination to be made on a case-by-case basis. Because the trial court did not address this issue, the case was remanded to the trial court for the trial court to determine whether the temporary order became a permanent order by operation of time.

Modification; tort of intentional interference with parental rights and interference with contract, Rule 11 sanctions

- Mother had the right to primary physical custody of child pursuant to a court order even if the parties agreed in writing after the entry of the order that child would live with father. A custody order remains in effect until modified by the court, and parties cannot affect custody rights granted by that order by private contract.
- The North Carolina Supreme Court has not recognized the tort of intentional interference with parental rights.
- The trial court failed to make sufficient findings of fact to support an order of sanctions pursuant to Rule 11 of the Rules of Civil Procedure.

Bossian v. Chica and Bossian, 910 S.E.2d 682 (N.C. App., December 17, 2024). A custody order granted joint legal custody to mother and father, and primary physical custody to mother with visitation to the father. After the order was entered, father alleged the parents entered a written contract, executed before a notary, agreeing that the child of the parties would reside with father in Rhode Island. After the execution of that contract, the child lived with father in Rhode Island for two years, then returned to live with mother and defendant Chica in North Carolina. The child never returned to Rhode Island.

Father filed this action alleging tortious interference with parental rights against mother and defendant Chica and tortious interference with contract against defendant Chica, arguing that the two defendants intentionally induced the minor child to leave Rhode Island and take up residence in North Carolina.

The trial court granted the defendants' motion to dismiss the complaint for failure to state a claim and granted Rule 11 sanctions against the plaintiff.

The court of appeals affirmed the trial court's dismissal of plaintiff's complaint for failure to state a claim, holding that North Carolina has not recognized the claim of tortious interference with parental rights. The majority also held that even if North Carolina recognized such a tort, mother had the right to custody of the child pursuant to the court order. Parties cannot modify or alter custodial rights granted by a court order; only a court can modify a court order. Similarly, the court of appeals held that father failed to state a claim for tortious interference with a contract against defendant Chica because the contract between mother and father was not a valid contract. As parties cannot modify custody rights granted by a court order, the contract was not an enforceable agreement.

The court of appeals remanded the case to the trial court for further findings of fact to support Rule 11 sanctions. Sanctions may be granted against a person who signs a complaint that is not well grounded in law or fact, or that was filed for an improper purpose or harassment. The court of appeals held that a dismissal for failure to state a claim is not sufficient alone to support the imposition of Rule 11 sanctions. The court of appeals held that while there was evidence in the record that might establish grounds for Rule 11 sanctions, the judgment of the trial court did not contain sufficient findings to support the trial court's order.

Order denying appointment of parenting coordinator; Rule 11 sanctions

- The trial court order denying mother's request for the appointment of a parenting coordinator and granting father's request for Rule 11 sanctions contained insufficient findings of fact and conclusions of law.
- While there is no requirement that a trial court make findings on factors set out in GS 50-91 when denying a request for the appointment of a parenting coordinator, Rule 52 of the Rules of Civil Procedure requires that the trial court make findings and conclusions necessary to address the issues before the court.

Riggan v. Andrews, _ N.C. App. _, _ S.E.2d _ (May 7, 2025). In a case that the parties agreed was a high-conflict case, mother requested that the court appoint a parenting coordinator. Father argued that mother made the request in bad faith, seeking only to retaliate against his motions for contempt filed against her. The trial court denied the request for a PC and imposed Rule 11 sanctions against mother, finding that mother's motion was filed in retaliation for father requesting that the trial court hold mother in contempt for interfering with his visitation as allowed by the custody order. The trial court did not make findings or conclusions regarding mother's request for a PC.

Mother appealed and the court of appeals held that the trial court order appeared to address only father's request for Rule 11 sanctions. While a trial court is not required to make findings to support a denial of a request for a PC, the court of appeals held that in this case, 'based upon the findings that were made even more than those that were missing, it appears the trial court was viewing the need to punish Mother for her actions regarding the previous order rather than [making] a reasoned decision of whether a parenting coordinator would serve as a means of reducing the conflict between the parents thereby benefiting the child at issue, whose wellbeing should be the primary focus." The court of appeals remanded the matter to the trial court with instructions that the trial court make findings of fact and conclusions of law to support both the ruling on sanctions and the ruling on the request for the PC.

Jurisdiction of the court after a recusal order is entered

- The trial court judge did not have jurisdiction to enter an order resolving matters tried by the judge because he had previously signed an order recusing himself and assigning the case to another judge.
- Where the trial judge recused himself before entering the written order resolving matters he tried before signing the recusal order, the case had to be retried before a new judge.

Green v. Branch, _N.C. App. _, _ S.E.2d _ (May 7, 2025). The trial judge heard evidence in a case concerning custody and child support. After the conclusion of the evidence, he ordered that defendant's attorney draft an order reflecting his oral ruling. Thereafter, the trial judge granted the plaintiff's motion that he recuse himself and entered an order recusing himself and assigning the case to another judge. Sometime after entry of the recusal order, the trial judge signed the written order resolving the custody and support matters. The plaintiff appealed that order.

The court of appeals held that the trial judge did not have jurisdiction to enter the custody and child support order because he had recused himself from the case after the conclusion of the evidence but before entry of the final written order. The custody and child support orders were vacated and remanded to the trial court, with instruction that a new trial be held before a different judge. As the judge who heard the evidence had not made findings of fact based on that evidence before recusing himself, no other judge could enter an order resolving the matters on the evidence originally presented to the court.

Child Support
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Effective date of modification; attorney fees

- In a case where the trial court deviated from the Child Support Guidelines, the trial court had the discretion to set the effective date of the new modified order on a date other than the date a motion to modify was filed.
- Where the trial court ordered father to pay attorney fees based on its finding that he filed several frivolous discovery motions, the trial court was not required to make findings that mother was a party acting in good faith with insufficient means to defray the cost of the litigation.

Crenshaw v. Crenshaw, 907 S.E.2d 743 (N.C. App., October 1, 2024). Father filed a motion to modify support when two of the three children of the parties reached the age of 18. Mother also filed a motion to modify, requesting that support be increased due to an increase in the needs of the one child under the age of 18 and an increase in father's income. The trial court determined that it was appropriate to deviate from the Guidelines, made numerous findings about the needs of the child and the financial circumstances of the parents, and increased the father's child support obligation. The trial court ordered that the modified support order be effective January 1, 2022, instead of the date that either parent filed their motion to modify. The trial court also ordered father to pay $15,000 in attorney fees to mother.

Both parents appealed. The court of appeals affirmed the trial court, holding that the amount of support set by the trial court was supported by sufficient findings of fact that were adequately supported by the evidence. The appellate court rejected mother's argument that the trial court erred by not making the new support order effective as of the date she filed her motion to modify. The court of appeals held that, while a trial court cannot modify a support obligation as of a date before the date of the filing of a motion to modify, the court has discretion to set an effective date after a motion is filed that the trial court determines is reasonable under the circumstances. The court of appeals held that the findings in the order showed that the trial court properly considered all the factors in the case when determining the effective date and did not enter an order that was "unsupported by reason."

Father argued on appeal that the trial court order for attorney fees was improper in that the order contained no findings that the mother had insufficient means to defray the cost of litigation as required by GS 50-13.6. The court of appeals rejected this argument, concluding that the trial court ordered the payment of fees because it found that father had filed a significant number of frivolous discovery motions, causing unnecessary expense to mother. The court of appeals held that GS 50-13.6 does not require findings regarding the ability of the party to pay the cost of litigation when fees are awarded based on a finding that "the supporting party has initiated a frivolous action or proceeding" and the amount awarded will be as the trial court deems "appropriate under the circumstances."

Wage withholding

- Wage withholding is mandatory in all child support orders entered in IV-D cases.
- The trial court did not have discretion to allow plaintiff to make direct payments to defendant mother even though he did not have a history of nonpayment, or of erratic payments, and no arrears were owed, where mother was represented in the action by the IV-D child support agency.

Price v. New Hanover County Child Support, intervenor, o/b/o Murray-Price, unpublished opinion, 909 S.E.2d 805 (N.C. App., December 31, 2024). The intervenor child support agency appealed the trial court's order that plaintiff father's child support obligation could be paid directly to mother rather than being subject to wage withholding. The trial court made findings that father had paid timely support to mother in the past, did not make erratic payments in the past, and did not owe arrears. The court of appeals vacated the order and remanded the case to the trial court, holding that three statutes, GS 110-136.3(a), 110-136.3(b)(1), and 110-136.4(b), and case law provides that when a IV-D agency is involved in the child support case, wage withholding is mandatory.

Income from self-employment; depreciation

- Child support is set based on a party's actual income at the time the child support order is entered or modified.
- Income from self-employment is defined by the Child Support Guidelines to mean gross income minus ordinary and necessary business expenses.
- Straight-line depreciation may be a necessary business expense unless the trial court determines otherwise.
- The Guidelines provide that amounts allowable by the IRS for the accelerated component of depreciation expenses, investment tax credits, and any other business expense determined by the trial court to be inappropriate for determining gross income, are not business expenses deducted from gross income.
- The trial court order did not contain sufficient findings of fact to allow the appellate court to determine how the trial court considered the depreciation claimed on defendant's tax returns. Dissent on this issue.

Mecklenburg County, o/b/o. Herron v. Pressley, 910 S.E.2d 698 (N.C. App., December 17, 2024). The defendant father is a self-employed dump truck owner and operator. The trial court used defendant's income tax returns to determine his gross income but declined to consider the depreciation shown on the returns as a necessary business expense. The trial court added the deduction for depreciation back into defendant's gross income. On appeal, the defendant argued that the trial court failed to make sufficient findings of fact to support its decision to not allow the depreciation expense and the court of appeals agreed.

The court of appeals explained that accelerated depreciation cannot be considered in the determination of gross income of a self-employed person because it is prohibited by the Child Support Guidelines. The trial court has the discretion to determine whether straight-line depreciation is an ordinary and necessary business expense, but the trial court must make sufficient findings of fact to allow appropriate appellate review. The court of appeals held that

the trial court order in this case did not contain sufficient findings to allow the appellate court to determine whether the depreciation was not allowed because the trial court determined it was accelerated depreciation, or whether the trial court found it to be straight-line depreciation that the trial court determined was not an appropriate business expense. The court of appeals remanded the case to the trial court for additional findings of fact. A dissent argues the trial court findings were sufficient and appropriate given the evidence presented by the defendant.

Imputing income, effective date of modification, extraordinary expenses

- Findings of fact by the trial court were sufficient to support the conclusion that defendant intentionally depressed his income in deliberate disregard of his support obligation and to support the amount of income imputed to defendant.
- Prospective support is payable from the date the complaint or motion for support is filed. The trial court can order a different starting date for prospective support, but to do so is a deviation from the child support guidelines and must be supported with sufficient findings of fact. Findings must show that the deviation is based on the financial circumstances of the parties and sufficient to meet the reasonable needs of the children.
- A child's summer camp fees may fall within the category of extraordinary expenses that can be allocated between the parents when the trial court makes findings that the expense is reasonable, necessary, and in the child's best interest.

Keith v. Keith, 911 S.E.2d 371 (N.C. App., December 31, 2024). The defendant father appealed a trial court support order that imputed income to him after concluding that he acted in bad faith and that also ordered him to reimburse plaintiff mother for a portion of summer camp expenses she paid for one of the children.

The court of appeals affirmed the trial court's decision to impute income and affirmed the amount of income imputed, concluding that the trial court's findings of fact were sufficient to support both. The court of appeals held that, when considering whether a parent has acted in bad faith, "the dispositive issue is whether a party is motivated by a desire to avoid his reasonable support obligations." The court noted that a party's motivation is generally proved by circumstantial evidence. In this case, the trial court findings showed the father intentionally left his employment after the parties separated to start his own business, and despite the success of the business, he refused to pay himself a salary "commensurate with his experience and earning potential". In addition, the defendant father stated that he did not believe he should be required to pay support because the mother earned more than he earned and he shared custody of the children. These findings supported the trial court's finding that he intentionally reduced his income in disregard of his child support obligation. The amount of income imputed to the defendant was supported by findings regarding the defendant's earnings during the marriage and findings regarding how much he paid an employee of his new business.

The trial court ordered prospective support and ordered that it be paid by defendant monthly beginning July 2019. Because plaintiff filed the complaint for support in August of 2017, the court of appeals held that the trial court "deviated from the Guidelines" which provides that prospective support begins at the time the request for support is made. Noting that the trial court

"presumably" entered this order because there was evidence that father paid support to mother until July 2019, the court of appeals held that a deviation requires findings of fact. Required findings include a determination "that deviating from the Guidelines would be appropriate to meet the reasonable needs of the children and the parents' relative ability to pay, and that the presumptive amount of child support under the Guidelines would be inadequate, excessive, or otherwise inappropriate." The trial court then needs to make findings to show the support ordered – or not ordered as in this case – was sufficient to meet the reasonable needs of the children considering the ability of the parents to pay during the time of the deviation. Because the child support order did not contain these required findings, this issue was remanded to the trial court.

The court of appeals also remanded an issue related to the trial court's order that father reimburse mother for a part of the amount she paid for one of the children to attend summer camp. The court of appeals held that amounts paid for summer camp can be allocated as an extraordinary expense if the trial court determines the amounts were reasonable, necessary, and in the child's best interest. As the support order did not contain these findings, the issue was remanded to the trial court.

Civil contempt

- The trial court erred when it signed and filed an order finding defendant in civil contempt after the defendant paid the entire amount of purge announced by the trial court at the conclusion of the contempt hearing.
- A respondent must continue to be in civil contempt at the time the trial court enters an order finding respondent in contempt.

Bridges v. Bridges, _ N.C. App. _, _ S.E.2d _ (May 21, 2025). The trial court conducted a hearing on plaintiff's motion for civil contempt and at the end of the hearing, announced that father was in civil contempt for his failure to pay child support and medical expenses. The court also announced that father could purge contempt by paying $3,348.06. The father was immediately incarcerated. He executed a cash bond for the full amount of the purge and was released from incarceration. Approximately 19 days later, the trial court entered a written order, concluding father was in civil contempt and finding that he had complied with the purge ordered.

The court of appeals vacated the order, concluding that the trial court erred in holding father in civil contempt after he had complied with the child support order. For civil contempt, a respondent must be in contempt at the time the order is entered, which means when it is reduced to writing, signed by the court, and filed by the clerk of court.

Domestic Violence
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Act of domestic violence

- Evidence was sufficient to support the trial court's finding of fact that plaintiff suffered substantial emotional distress due to defendant's continued harassment, which supported the conclusion that defendant committed an act of domestic violence.
- Defendant failed to preserve his objection to plaintiff's testimony regarding her panic attacks and eating disorder and failed to make an offer of proof regarding evidence excluded by the trial court, thereby waiving his right to argue about either issue on appeal.

Simpson v. Silver, 909 S.E.2d 360 (N.C. App., November 5, 2024). Following trial on plaintiff's request for a domestic violence protective order, the trial court concluded that defendant committed an act of domestic violence by placing plaintiff in fear of continued harassment that rises to such a level as to inflict substantial emotional distress. This conclusion was supported by findings of fact that defendant threatened to kill plaintiff if she left him, continuously messaged her after she told him not to contact her and threatened to stalk her. The court of appeals rejected the defendant's argument that evidence was not sufficient to support the findings that plaintiff suffered substantial emotional distress. Plaintiff's testimony that she was afraid of defendant, that she suffered an eating disorder and panic attacks due to his conduct, and that she had developed hypertension and was "stressed out, overwhelmed, .. unable to eat or sleep … [and] struggling to keep [her] job … because [she] can't function," was sufficient evidence to support the trial court's findings of fact.

Personal jurisdiction, minimum contacts

- The trial court did not err when it denied defendant father's motion to dismiss the Chapter 50B complaints filed against him. His motion was based on his contention that the court lacked personal jurisdiction over him. The trial court correctly concluded father had sufficient contacts with the state of North Carolina to support the exercise of personal jurisdiction over him.
- To support the exercise of jurisdiction over a defendant who does not reside in North Carolina, the court must find that the defendant has purposefully availed himself of the privilege of conducting activities in the state. The defendant must be aware that he is "establishing a connection with the State of North Carolina. This awareness -whether actual or imputed – is what permits a court in North Carolina to exercise judicial authority over a nonresident defendant."
- Defendant's alleged domestic violence towards his children who reside in North Carolina, the alleged violence as it pertains to the custody modification action pending in North Carolina and defendant's participation in that modification proceeding, and defendant's legal representations in both the custody action and the Chapter 50B

proceeding, establish sufficient minimum contacts necessary for the trial court's exercise of personal jurisdiction over defendant father.

A.J.Z, a minor by her GAL Demi-Lee Ziegler v. Jay Ziegler, 914 S.E.2d 29 (N.C. App., March 5, 2025) (there is a separate action and identical opinion addressing an action filed by the same GAL on behalf of L.Z., the sibling of A.J.Z, against the same defendant.)

Demi-Lee Ziegler is the mother of both plaintiffs A.J.Z. and L.Z., both minor children. Demi-Lee was appointed the GAL for the minor plaintiffs. Mother GAL filed complaints requesting a DVPO pursuant to Chapter 50B on behalf of each minor child against defendant, the father of the minor children. Mother and the minor children reside in North Carolina because the mother brought the children to this state following her separation from defendant. The defendant has been to North Carolina to visit the children and to participate in litigation regarding domestic violence and regarding the modification of custody, but he continued to reside in Tennessee, where the parties lived together before the separation of the parents.

Defendant father filed motions to dismiss the complaints for a lack of personal jurisdiction, arguing he does not have sufficient contact with the state of North Carolina to support personal jurisdiction over him. The trial court denied his motion and he appealed.

The court of appeals affirmed the trial court. The appellate court noted that the presence of defendant's children in North Carolina, his visitation with them in North Carolina, and his participation in the custody modification proceedings in this state would not be sufficient alone to support the exercise of jurisdiction over him. However, there also were pending DSS actions in this state and in Tennessee regarding the allegations of violence. The court of appeals held that "by committing actions that may be deemed domestic violence towards his minor children whose custody modification was under consideration by the trial court in this State, and by hiring a North Carolina attorney to represent him in the domestic violence action, Defendant purposefully availed himself of the benefits and protections of the laws of this State." He could "reasonably foresee that his alleged domestic violence towards his children, in the context of the custody modification action and under North Carolina's domestic violence statute, would be a necessary consideration for the trial court's best interest of the child analysis." The appellate court agreed with the trial court's conclusion that defendant "could have reasonably anticipated that his actions would connect him to the state."

Personal jurisdiction, residence, harassment

- Defendant waived his right to object to personal jurisdiction when he filed an answer and a motion to dismiss without raising the issue of personal jurisdiction. Rule 12(b).
- Plaintiff's testimony that she owned a home in North Carolina and regularly spent time in North Carolina established that she had more than "a mere physical presence" in the state and was sufficient to prove she was a resident of North Carolina.
- Within the context of Chapter 50B, harassment means knowing conduct, directed at a specific person that torments, terrorizes, or terrifies, and serves no legitimate purpose.
- A defendant's conduct is directed at a plaintiff if the conduct induces a third party to act against plaintiff.

- Trial court findings that defendant harassed plaintiff seeking to recover a portion of the value of a home purchased while the parties lived together when he had no legal claim to the value, causing her financial damage, anxiety and sleeplessness were sufficient to support the conclusion that he committed acts of domestic violence.

Honacher v. Uhlhorn, 911 S.E.2d 253 (N.C. App., December 31, 2024). The trial court entered a DVPO against the defendant after concluding he committed acts of domestic violence against plaintiff by placing plaintiff in fear of continued harassment that rises to such a level as to inflict substantial emotional distress. Specifically, the trial court found that the defendant contacted numerous third parties such as realtors and government agencies, making complaints about plaintiff and plaintiff's property for the purpose of harassing plaintiff, and by placing fraudulent liens on plaintiff's properties, causing plaintiff anxiety, sleeplessness, and financial harm. Defendant appealed and the court of appeals affirmed the trial court.

On appeal, the defendant first argued that because he was not a North Carolina resident and had not been in North Carolina since 2018, the trial court had no basis for exercising personal jurisdiction over him. The court of appeals held that the defendant waived objection to personal jurisdiction when he failed to raise this issue in his answer or in the motion he filed along with his answer requesting that plaintiff's complaint be dismissed for failure to state a claim. Rule 12(b) requires that certain defenses, including a lack of personal jurisdiction, be raised in an answer. The Rule also allows certain defenses designated in the Rule to be raised by a separate motion before an answer is filed. An objection to personal jurisdiction can be raised by a separate pre-answer motion, and a motion to dismiss for failure to state a claim also can be raised by separate motion. If a separate pre-answer motion is filed to raise any one of the designated motions, all designated motions must be filed in that motion, or they are waived. Because the defendant did not raise his objection to personal jurisdiction in the motion containing his request that the complaint be dismissed for the failure to state a claim, he waived his right to object to personal jurisdiction.

Defendant also argued that the trial court had no subject matter jurisdiction because plaintiff was a resident of Virginia rather than North Carolina. GS 50B-2(a) allows any person residing in North Carolina to request a DVPO pursuant to Chapter 50B. The court of appeals first held that the defendant has judicially admitted the issue of plaintiff's residence in the state when he affirmatively alleged in his answer that she was a resident of North Carolina. However, the appellate court also held that plaintiff's evidence established her residency. She testified that she owned homes both in North Carolina and in Virginia, and that she regularly spent time in North Carolina, The court of appeals acknowledged that the words "resident, residing, and residence' have no "precise, technical and fixed meaning applicable to all cases." The court held that the terms "denote something more than mere physical presence, in which event intent is material." In this case, her evidence that she owned property and regularly spends time in North Carolina established that she had more than a "mere physical presence" here and was sufficient to establish she is a resident.

Regarding the conclusion he committed acts of domestic violence, the defendant first argued that his actions were not harassment within the definition found in GS 14-277.3A because his actions were not directed at the plaintiff. He contacted third parties and did not contact plaintiff directly.

The court of appeals held harassment is defined in GS 14-277.3A as conduct directed at a specific person that torments, terrorizes or terrifies, and serves no legitimate purpose. Conduct 'directed at' a specific person includes communication with third parties intended to induce actions against the plaintiff. In this case, the defendant admitted in his answer and in his counterclaims that he contacted third parties and government agencies to report alleged misconduct on the part of plaintiff and alleged problems with plaintiff's property. The court of appeals held that these admissions clearly showed that his communications were intended to induce action against plaintiff.

Defendant also argued that his actions were not harassment because he contacted the third parties and government officials for the legitimate purpose of reporting plaintiff's misconduct and problems with her property. The court of appeals held that the record supported the trial court's conclusion that defendant had no basis for his claims against plaintiff; defendant neither appeared in court nor presented witnesses to support his allegations against plaintiff or about plaintiff's property. Statements in his pleadings supported the trial court's findings that he acted to harass the plaintiff.

Finally, the court of appeals rejected defendant's argument that plaintiff failed to prove he placed her in fear of continued harassment inflicting substantial emotional distress. The court of appeals stated that the record showed defendant committed "extortion: he sought to obtain a portion of the value of plaintiff's home by intimidation and harassment," causing her to suffer "anxiety and sleeplessness due to [his] continuing, harassing conduct."

Renewal of DVPO

- A DVPO can be renewed only if the trial court concludes that good cause exists to renew the order and the conclusion must be supported with findings of fact.
- Where the original DVPO contained no findings of fact and there was no evidence that plaintiff had a legitimate fear of defendant at the time of the renewal hearing, the trial court erred in concluding good cause existed to renew the DVPO.

Roy obo G.E.M. v. Martin, 911 S.E.2d 501 (N.C. App., February 5, 2025). The court of appeals reversed a trial court's conclusion that good cause existed to renew a DVPO, holding there was insufficient evidence presented at the renewal hearing to support the conclusion.

The original DVPO in that case was entered by consent and contained no findings of fact. The allegations in the complaint requesting the DVPO did not allege the defendant attempted to cause bodily injury or caused bodily injury, but rather alleged defendant's conduct placed G.E.M., defendant's teenaged child, in fear of imminent serious bodily injury or continued harassment. The court stated that "[p]er prior North Carolina appellate case law, a showing of good cause [to renew the DVPO] requires plaintiff to demonstrate the minor child's continued, legitimate fear of defendant."

To support the conclusion that there was good cause to renew the DVPO, the trial court made findings that mirrored the findings of fact made in the original ex parte DVPO entered in the case. Those findings of fact were based on allegations contained in the complaint. In addition,

the renewal order contained the findings that the "minor child testified that she remains in fear of defendant", the "minor child testified that she remains in fear of seeing the Defendant out in public for fear of what he might do or say to her," and the "minor child testified that she remains afraid of receiving physical harm at the hands of defendant."

On appeal, defendant argued there was not competent evidence introduced at the renewal hearing to support the findings of fact and argued that plaintiff failed to show good cause to renew the DVPO. The court of appeals agreed, concluding that there was no evidence introduced at the hearing to support the findings based on the contents of the ex parte order, and concluding that the trial court findings established that the minor child testified about her fear but failed to find that the trial court believed the child was in fear. Noting that a showing of subjective fear, rather than a showing of an objectively reasonable fear, is required for the issuance of a DVPO, the court of appeals held that a trial court's findings must show that the court believed the plaintiff had an actual fear of the defendant. The mere fact that the child testified that she feared the defendant was insufficient to establish the child's legitimate, subjective fear.

The court of appeals also held that the child's testimony was "vague" and not "adequate to support a finding that she had a legitimate fear of defendant." The child did not testify that she was in fear of the defendant for any of the reasons alleged in the original complaint, included in the ex parte DVPO, or alleged in the motion to renew the DVPO. Instead, she testified that she was "afraid he is going to convince me to come back or he's going to be sorry or something – he's best at manipulating," and that she was afraid he would "listen in on my conversations on my technology and he would, get in my business on technology and stuff." When asked if she feared physical harm, she admitted that defendant had never physically hurt her before but that she was "scared that he's going to get mad at me for doing this and I'm scared he's going to hurt me or something."

The court of appeals does not directly address the question of what a plaintiff needs to fear to establish a legitimate fear, but the court does cite as support for its statement that "a DVPO is appropriate in situations where a person attempts to cause bodily injury or intentionally causes bodily injury, or places one in fear of imminent serious bodily injury or continued harassment." This indicates that a renewal is appropriate if supported with findings of fact indicating that the plaintiff has an actual fear that the defendant will commit or continue to commit an act of domestic violence.

Sufficiency of evidence to support findings of fact; incorporation of unverified statement of allegations

- Evidence was sufficient to support the trial court's findings of fact that the defendant committed acts of domestic violence.
- The trial court did not err by attaching plaintiff's unverified statement of events to the DVPO where there was sufficient evidence during the trial in addition to the written statement of plaintiff to support the trial court's findings of fact.
- Dissent argued that the trial court's findings of fact were insufficient to support the conclusion that the defendant committed acts of domestic violence. According to the dissent, the incorporation of plaintiff's unverified statement into the DVPO "was an improper delegation of the trial court's fact-finding duty.".

Jay v. Jay, 912 S.E.2d 873 (N.C. App., March 5, 2025). The trial court entered a one-year DVPO after concluding the defendant committed acts of domestic violence against plaintiff. The DVPO contained findings on the printed DVPO form order that defendant committed acts in all three categories of domestic violence: intentionally causing bodily injury, placing plaintiff in fear of imminent serious bodily injury, and second-degree rape. The trial court also attached to the DVPO plaintiff's unverified statement of events that were the acts of domestic violence.

The defendant argued on appeal that the evidence introduced at trial was insufficient to support the findings of fact in the DVPO. The court of appeals disagreed, holding that the evidence introduced during the trial that included testimony by both parties about the events at issue was sufficient to support the trial court's findings of fact. Even if the unverified statement was stricken from the record, the majority held there was sufficient evidence to support the findings of fact in the DVPO. The dissent argued that the findings of fact were insufficient and that the trial court should not have relied on the attached statement as the detailed findings necessary to support the DVPO.

Sufficiency of evidence to support findings of fact; sufficiency of findings to deny DVPO

- While recitations of evidence alone are not appropriate findings of fact, a trial court can describe testimony as part of making findings of fact regarding credibility and resolving disputed issues.
- The trial court did not err in concluding plaintiff failed to prove defendant committed an act of domestic violence.

Shomette v. Needham, _ N.C. App. _, _ S.E.2d _ (April 2, 2025). The plaintiff and defendant were married. Upon separation of the parties, wife filed a complaint for a DVPO alleging husband had sexually assaulted and raped her approximately 50-100 times throughout their marriage. After a trial during which both parties testified, the trial court concluded that wife failed to prove grounds for a DVPO. Wife appealed.

Wife first argued that the following finding of fact was not supported by competent evidence and "merely recited the evidence" and did not serve as an ultimate finding of fact:

> "[Wife] contends that [Husband] "raped" her 50 to 100 times during their 2-and-a-half-year marriage. She described several occasions when she says she said no and he didn't stop. [Husband] denies ever continuing to have sex with [Wife] when she told him to stop or pushed him off except when she was saying so while laughing or in a playful manner. The statutes regarding sexual offenses that are applicable require evidence of by [sic] force and against the will of the victim. The evidence of "against her will" is her saying she said no and him contradicting that evidence saying he never proceeded past a non-playful laughing no similar to when they were play wrestling. There is almost no evidence from which the court could find any alleged action was by force. The court considering all of the evidence and weighing the credibility of each witness cannot find

> by the greater weight of the evidence that [Husband] committed an act of domestic violence."

The court of appeals disagreed with wife and held that evidence in the record supported everything included in this finding, and that the finding was an appropriate finding. The court of appeals agreed that recitations of testimony and other evidence are not findings of fact, but recitations that include "an indication concerning whether the judge deemed the relevant portion of the testimony credible" are appropriate. The appellate court stated, "there is nothing impermissible about describing evidence, as long as the court ultimately makes its own findings, resolving any material disputes." While this finding by the trial court set out the conflicting testimony presented by the parties, the finding also addressed the weight and credibility of the evidence and resolved that the evidence was insufficient to meet plaintiff's burden of proof.

The Plaintiff also argued that the trial court should have concluded that defendant committed an act of domestic violence. The Plaintiff testified extensively about all the times the parties engaged in sexual intercourse. Although plaintiff testified that she did not consent to the acts, the trial court did not find the evidence sufficient to establish that defendant forced plaintiff to have sex. Because the trial court did not make findings that would support the conclusion that defendant committed an act of domestic violence, the trial court did not err in denying plaintiff's request for a DVPO.

Equitable Distribution
Cases Decided Between
October 1, 2024, and June 4, 2025

Distribution factors; use of inventory affidavit as evidence

- The trial court did not improperly consider marital fault when it found as a distribution factor that defendant wasted and devalued marital assets following separation because of his use of illicit drugs.
- The trial court could rely on plaintiff's inventory affidavit as evidence where defendant failed to participate in pretrial conferences, failed to appear for trial, and failed to object when plaintiff requested during trial that the trial court admit the affidavit into evidence and to accept the facts alleged in the affidavit. The court of appeals held that the admitted affidavits were, in effect, the pretrial orders of the court, and the trial court could accept the facts to support the findings it made in the final judgment.
- The trial court did not err by failing to include a finding in the judgment as to the total value of the marital estate when the total value could be easily ascertained based on the findings and conclusions in the judgment regarding the value of the marital property and marital debt.

Kaylor v. Kaylor, 907 S.E.2d 758 (N.C. App., October 1, 2024). Plaintiff wife filed this action for equitable distribution and defendant husband filed an answer. However, he thereafter failed to appear for any scheduling or pretrial conference, failed to file an inventory affidavit, and failed to appear at trial. The trial court entered an equitable distribution judgment, ordering an unequal distribution in favor of wife. Defendant appealed.

Defendant argued that the trial court inappropriately considered marital fault in determining that an unequal distribution was equitable. The trial court found that, because of defendant's use of illicit drugs, he allowed the marital business to deteriorate during separation and failed to assist plaintiff in paying marital debt during separation. The trial court also found that plaintiff maintained the marital estate during separation by paying the marital debt, including paying the mortgage on the residence where defendant resided during separation. The court of appeals rejected defendant's argument, pointing to GS 50-20(c)(11a) which allows the trial court to consider "acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert the marital property or divisible property, during the period after separation of the parties and before the time of distribution" as a factor when determining whether the estate should be divided unequally. Because the findings regarding defendant's drug use related to his failure to preserve marital property during separation, they were not an inappropriate consideration of marital fault.

The defendant also argued that findings made by the trial court regarding the classification of certain property and the value of marital debt were not supported by evidence. The court of appeals rejected this argument as well, finding that the trial court relied on allegations contained in plaintiff's inventory affidavit to support the findings of fact in the judgment. The affidavit had been introduced at trial with a request by plaintiff that the facts alleged in the affidavit be

accepted. Because defendant did not object to the introduction and acceptance of the affidavit, the court of appeals held that the trial court properly treated the affidavit as a pretrial order, establishing the facts alleged therein.

"Indicative ruling" on Rule 60(b) motion; revocable trust; interim distribution

- The trial court had jurisdiction to issue an "indicative ruling" on a Rule 60(b) motion filed by defendant after he filed a notice of appeal of the equitable distribution judgment.
- A revocable trust of which the parties were the sole trustees and beneficiaries was revoked when the parties stipulated in the pretrial order that property held in the trust was property owned by the parties and was marital property subject to equitable distribution.
- Because the trust was revoked by the actions of the parties, the trust was not a necessary party to the equitable distribution proceeding.
- The trial court erred when it failed to classify the defendant's share of distributions from an LLC received by defendant after the date of separation as his separate property as provided by an interim distribution order entered earlier in the case.

Face v. Face, 909 S.E.2d 521 (N.C. App., November 5, 2024), temporary stay granted, 909 S.E.2d 867 (N.C., January 7, 2025). On the date of separation, the defendant owned a 4.5% interest in an LLC. The parties agreed that the interest in LLC was marital property. Also, on the date of separation, the parties were the sole trustees and beneficiaries of a revocable trust that held title to three properties that had been acquired during the marriage. The existence of the trust was not identified before or during the equitable distribution trial. The pretrial order identified the three properties as property owned by the parties and stipulated that the properties were marital property.

An interim order was entered in 2016 that, among other things, distributed the 4.5% interest in the LLC equally between the parties, providing that each party would own 2.25% as their separate property.

When the trial court entered the final equitable distribution judgment, the court distributed the three properties between the parties and distributed to wife as her separate property, one-half of distributions paid by the LLC during separation. The trial court classified the other half of the distributions as divisible property and divided them equally between the parties.

The defendant appealed the judgment. Thereafter, the defendant filed a Rule 60(b) motion in which he stated that it had been discovered that the trust held title to the three properties distributed by the trial court. He argued that because the trust was a necessary party to the equitable distribution proceeding, the trial court had no jurisdiction to enter the equitable distribution judgment, citing *Wenninger v. Wenninger*, 901 S.E.2d 677 (COA, May 2024).

The trial court entered an "indicative ruling" denying the Rule 60(b) motion.

[Indicative rulings are authorized by case law such as *Bell v. Martin*, 43 NC App 134 (1979). Although the trial court has lost jurisdiction due to an appeal, the trial court can enter an order informing the appellate court how it would rule on the motion if it had jurisdiction to act, thereby

allowing the appellate court to determine whether to proceed with the pending appeal or return the case to the trial court.]

The trial court determined that, as settlors of the trust, the parties retained the authority to revoke the revocable trust at any point in time, pursuant to the provisions in GS 36C-6-602(c). By stipulating in the pretrial order that the properties held in the trust were properties owned by them and were marital property, the parties had revoked the trust pursuant to GS 36C-6-602((c)(2)(c)(revocable trust can be revoked by "any written method … manifesting clear and convincing evidence of the settlor's intent.").

The defendant then filed a writ of certiorari seeking review of the Rule 60(b) order.

The court of appeals granted *cert.* to review the indicative ruling on the Rule 60(b) motion, and upon review, agreed with the trial court, ruling that the trust was not a necessary party to the equitable distribution proceeding because the parties had revoked the trust by the stipulations in the pretrial order.

Regarding the equitable distribution judgment, the court of appeals held that the trial court erred in classifying one-half of the distributions from the LLC received by husband during separation as divisible property. Because the interim distribution order classified the ownership interest in the LLC as the separate property of the parties in equal shares, the distributions from the LLC also were the separate property of the parties in equal shares. The portion classified by the trial court as divisible property should have been classified as husband's separate property.

Stipulations; invited error

- A stipulation by the parties is binding on the trial court until the stipulation is properly set aside.
- A trial judge has discretion to set aside a stipulation when a party makes a timely motion to set aside the stipulation, and the trial court concludes that enforcement of the stipulation would result in injury to one party and the other party would not be materially prejudices by its being set aside.
- Grounds to set aside a stipulation include a mistake of material fact, misrepresentation as to a material fact, undue influence, collusion, duress, fraud, and inadvertence.
- A party cannot complain on appeal about an error by the trial court if the party invited or induced the trial court to make the error.
- Where plaintiff's attorney urged the trial court to proceed with the trial without first ruling on defendant's motion to set aside the stipulation of the parties, the plaintiff was barred from complaining on appeal that the trial court did not rule on defendant's motion before proceeding to hear evidence contradicting the stipulation.

Smith v. Smith, 387 N.C. 255, 912 S.E.2d 762 (2025), affirming, 292 NC App 443 (2023). Before trial of the equitable distribution claims filed by both parties, the parties entered stipulations concerning two pieces of real property. The parties stipulated that the properties were marital property. Defendant subsequently filed a motion seeking to set aside the stipulations, arguing that the properties were his separate property. The trial court did not rule on

the motion but later entered a pretrial order stating that the parties disagreed as to the classification of the properties.

When the equitable distribution trial began, plaintiff's counsel acknowledged defendant's motion to set aside the stipulation but stated "I'm fine with the court just hearing evidence and considering those motions or that motion in relation to those stipulations during the trial."

The trial court conducted the trial and entered a judgment concluding that the properties were defendant's separate property. The plaintiff argued on appeal that the trial court was bound by the stipulation because the trial court did not set aside the original stipulation that the properties were marital.

The court of appeals affirmed the trial court, deciding that the trial court had in fact set aside the stipulation when it entered the pretrial order stating that the parties disagreed as to the classification of the properties. There was a dissent at the court of appeals and the matter was appealed to the supreme court. The supreme court also affirmed the trial court but on different grounds. According to the supreme court, the plaintiff "invited error" when plaintiff allowed the trial court to proceed with the trial on the classification of the properties without first considering defendant's motion to set aside the stipulation. According to the supreme court, by stating "I am fine with the court just hearing evidence and considering that motion in relation to those stipulations during this trial," the plaintiff "invited" the trial court to commit the error of proceeding with evidence contradicting the stipulation without formally setting aside the stipulation. A party cannot complain on appeal about an "invited error".

Arbitration under Family Law Arbitration Act; confirmation and modification of arbitrator decision by the trial court; orders regarding separate property, consideration of tax consequences, imputing income

- After an arbitration is conducted pursuant to the Family Law Arbitration Act, GS Chapter 50, Article 3, GS 50-41 et. seq., and an arbitration award is entered by the arbitrator, the role of the trial court is limited.
- A trial court's job is to determine whether the arbitrator award should be confirmed, modified, or vacated, pursuant to GS 50-53, 50-54, and 50-55. The trial court has no authority to retry the case.
- A trial court has the authority to vacate an arbitration award for errors of law only if the parties agreed in their arbitration contract that the court can review errors of law.GS 50-54(a)(8).
- Where the parties agreed that errors of law in the arbitration award could be a basis for vacating the arbitration award, the trial court did not err in vacating portion of the equitable distribution award containing a legal error.
- It was legal error by the arbitrator to distribute the husband's separate loan debt to him and to order that he pay off the debt earlier than required by the terms of the loan.
- The arbitrator did not err in failing to consider the capital gains tax consequences from the sale of a house anticipated by the arbitration award when there was no evidence of the tax consequences introduced during the arbitration hearing.

- An arbitrator's award cannot be vacated by the trial court for abuse of discretion by the arbitrator.
- The arbitrator did not err in refusing to impute income to wife in determining alimony and child support where there was no evidence that wife was deliberately depressing her income in bad faith.

Gallagher-Masonis v. Masonis, 911 S.E.2d 125 (N.C. App., December 31, 2024). After claims were filed by both wife and husband, the parties agreed to submit equitable distribution, alimony and child support to binding arbitration pursuant to the NC Family Law Arbitration Act, GS Chapter 50, Article 3. As part of the arbitration contract, the parties agreed that a trial court could review any alleged errors of law in the final arbitration award. When the arbitrator issued the arbitration award, wife filed a motion requesting that the trial court confirm the award and enter judgment in accordance with the award, and the husband requested that the trial court vacate or modify the award based on his alleged errors of law. The trial court entered judgment vacating portions of the award and confirming the award as modified by the removal of the vacated portions. Both parties appealed.

The court of appeals noted that the Family Law Arbitration Act allows a trial court to vacate an award by an arbitrator only for reasons set out in GS 54(a), which includes errors of law by the arbitrator that prejudices a party's rights only if the parties agree in the arbitration contract that a review of errors of law is allowed. In this case, the parties agreed to such a review.

The trial court vacated two provisions in the arbitrator's award. The first was a statement by the arbitrator that the arbitrator lacked the authority to order the sale of marital property. The court of appeals did not decide whether this statement by the arbitrator was legally incorrect after concluding that neither party showed how this statement by the arbitrator affected them in the final award.

The trial court also vacated a portion of the award dealing with a mortgage debt that the parties stipulated was the separate debt of husband. The arbitrator had ordered that the debt be distributed to the husband and ordered that he make a lump sum payment on the debt after the sale of marital property and ordered that husband pay off the debt entirely by a specific date. The trial court determined that the arbitrator did not have authority in equitable distribution to distribute separate debt or to order that husband pay the debt in a way not required by the mortgage contract. The court of appeals affirmed the trial court, holding that a judge in equitable distribution can distribute marital debt but has no authority to distribute separate debt or to order that a party pay off separate debt.

However, the arbitrator did not commit legal error by ordering that husband continue to make the mortgage payments on his separate debt as part of the alimony and child support portion of the arbitrator award. The wife and child resided in the residence encumbered by the mortgage and the arbitrator had the authority to order husband to make the mortgage payments as part of the support order.

Husband also argued that the arbitrator erred by failing to consider the capital gains consequences from the sale of a house that was marital property when the sale was anticipated by the arbitration award. The court of appeals held that the arbitrator was not required to consider

any tax consequences of the sale when there was no evidence of those consequences introduced during the arbitration.

Regarding the arbitrator's award for alimony and child support, the court of appeals held that the husband's alleged errors amounted to an argument that the arbitrator abused her discretion in determining the appropriate amount of monthly support. While the award of the arbitrator can be reviewed for errors of law, the arbitrator award cannot be vacated for an abuse of discretion.

Finally, the court of appeals held that the arbitrator did not err in failing to impute income to wife where there was no evidence that she was deliberately depressing her income in bad faith. She stopped working when the child of the parties was born, and she was a stay-at-home mother and homemaker by agreement of the parties.

Effect of default, unequal distribution

- The trial court did not err in awarding the defendant a larger share of the marital estate even though a default had been entered against him and he had not requested an unequal distribution in his pleadings.
- A party requesting an unequal distribution has the burden to prove – based on the distribution factors listed in GS 50-20(c) – that an equal distribution is not equitable. However, once that burden is met, the trial court can award a larger share of the marital estate to either party.
- While the entry of a default prohibits a defendant from asserting a response to plaintiff's complaint, it does not alter the trial court's obligation to determine which property is marital, the value that property, and to distribute it equitably.

Arrington v. Arrington, 914 S.E.2d 569 (N.C. App., April 2, 2025). The plaintiff filed for equitable distribution and requested an unequal distribution. Defendant did not file an answer, did not file an inventory affidavit until shortly before trial, did not respond to discovery and did not respond to discovery requests or participate in discovery or pretrial conferences. A default was entered against him. Both plaintiff and defendant appeared for the ED trial and presented evidence. The trial court classified the marital assets, identified the separate property of the parties, and entered an unequal distribution in favor of defendant. The marital home had been acquired by defendant before marriage but gifted to the marriage shortly before separation. The trial court distributed the home to the defendant along with his 401K. The value of those two assets was more than 50% of the total value of the marital estate.

The court of appeals rejected wife's argument that the trial court erred in awarding the defendant more of the marital estate when he did not specifically request an unequal distribution and a default had been entered against him. The court held that the entry of the default against defendant did not affect the trial court's obligation to properly "dispose of plaintiff's claim". Defendant lost the right to assert a response to plaintiff's complaint, but it did not relieve the trial court of the obligation to classify and value the property based on the evidence presented by both parties and to decide what constitutes an equitable distribution. Once plaintiff proved by evidence relating to the distribution factors listed in the statute that an unequal distribution was equitable, the trial court had the discretion to fashion a distribution that was equitable under the

circumstances. A trial court's determination of what constitutes an equitable division of marital assets will be upheld unless shown to be "so arbitrary that it cannot be the result of a reasoned decision."

PSS and Alimony

Cases Decided Between
October 1, 2024, and June 4, 2025

Reimbursement of alimony paid pursuant to an order vacated after appeal

- The trial court has discretion to order receiving party to reimburse payor for amount paid pursuant to a modified alimony award that was vacated on appeal for a lack of sufficient evidence of a substantial change in circumstances.
- A trial court has the discretion to order repayment as a remedy for unjust enrichment.
- Unjust enrichment results when (1) one party conferred to another (2) a measurable benefit (3) that was accepted (4) but which was conferred neither officiously (5) nor gratuitously.

Du Plessis v. Du Plessis, _ N.C. App. _, _ S.E.2d _ (May 7, 2025). The trial court modified an alimony order, increasing plaintiff's alimony obligation and awarding additional attorney fees. The plaintiff appealed and the court of appeals vacated the modified order. Thereafter, the plaintiff requested that the trial court order defendant to reimburse plaintiff for the amounts paid under the modified order. The trial court held that it lacked authority to order repayment.

Plaintiff appealed and the court of appeals vacated the trial court order after concluding that a trial court has the authority "at equity" to allow plaintiff to recover from plaintiff amounts paid under the modification order that was vacated following appeal, and that the trial court has discretion to order reimbursement for unjust enrichment. The court of appeals also held that all of the elements of unjust enrichment had been established in this case when plaintiff paid to defendant the amount due pursuant to the modified order that was vacated by the appellate court.

Spousal Agreements

Cases Decided Between
October 1, 2024, and June 4, 2025

Standard of proof to attack validity of premarital agreement

- The trial court erred in applying the clear and convincing standard of proof to plaintiff's claim that the premarital agreement between the parties was invalid.
- In civil matters, the appropriate standard of proof is preponderance of the evidence unless a different standard has been adopted by statute or case law.

Clark v. Clark, unpublished opinion, 910 S.E.2d 449 (N.C. App., January 15, 2025). The trial court denied plaintiff's request to declare the premarital agreement between the parties void and unenforceable, concluding that "[p]laintiff has not presented clear and convincing evidence to rebut the validity" of the agreement. Plaintiff appealed and the court of appeals vacated the trial court order and remanded the case, holding that the trial court used the incorrect standard of proof. In civil cases, the standard of proof is preponderance of the evidence "unless a different standard has been adopted by our General Assembly or approved by our Supreme Court."

Civil No-Contact Order
Cases Decided Between
October 1, 2024, and June 4, 2025

Civil contempt

- Trial court erred in holding the defendant in civil contempt for violating a Civil No-Contact Order entered pursuant to Chapter 50C where there was no evidence that defendant was violating the order at the time of the civil contempt hearing.
- Violations of a court order that occurred in the past and that are not continuing at the time of the contempt hearing are punished by criminal contempt rather than civil contempt.

Pocoroba v. Gregor, 909 S.E.2d 538 (N.C. App., November 19, 2024). A civil no-contact order was entered pursuant to Chapter 50C which prohibited the defendant from being within 100 feet of plaintiff. The trial court found the defendant to be in civil contempt after determining that he violated the order on two occasions by willfully coming too close to plaintiff. Defendant appealed and the court of appeals reversed the order of civil contempt, explaining that because the purpose of civil contempt is to coerce compliance with a court order, the trial court must find that a defendant is violating the order at the time of the hearing. Criminal contempt must be used to punish a defendant for past violations of a court order.

Contempt
Cases Decided Between
October 1, 2024, and June 4, 2025

Civil contempt

- Trial court erred in holding the defendant in civil contempt for violating a Civil No-Contact Order entered pursuant to Chapter 50C where there was no evidence that defendant was violating the order at the time of the civil contempt hearing.
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Civil contempt

- The trial court erred when it signed and filed an order finding defendant in civil contempt after the defendant paid the entire amount of purge announced by the trial court at the conclusion of the contempt hearing.
- A respondent must continue to be in civil contempt at the time the trial court enters an order finding respondent in contempt.

Bridges v. Bridges, _ N.C. App. _, _ S.E.2d _ (May 21, 2025). The trial court conducted a hearing on plaintiff's motion for civil contempt and at the end of the hearing, announced that father was in civil contempt for his failure to pay child support and medical expenses. The court also announced that father could purge contempt by paying $3,348.06. The father was immediately incarcerated. He executed a cash bond for the full amount of the purge and was released from incarceration. Approximately 19 days later, the trial court entered a written order, concluding father was in civil contempt and finding that he had complied with the purge ordered.

The court of appeals vacated the order, concluding that the trial court erred in holding father in civil contempt after he had complied with the child support order. For civil contempt, a respondent must be in contempt at the time the order is entered, which means when it is reduced to writing, signed by the court, and filed by the clerk of court.

Direct criminal contempt

- The trial court erred when it held defendant in direct criminal contempt after he tested positive for an impairing substance during a criminal court proceeding.
- Where there was nothing in the record to show defendant lied to the court about taking an impairing substance, or that he was impaired during the proceeding, or that he intentionally caused a delay in the process for testing him for an impaired substance, the trial court erred in concluding defendant committed direct criminal contempt.

State v. Aspiote, _ N.C. App. _, _ S.E.2d _ (May 21, 2025). The trial court held the defendant in direct criminal contempt after refusing to accept the defendant's plea in criminal court because the defendant tested positive for drug use during the plea proceeding. The trial court concluded that the defendant caused a delay in the court proceedings by telling the court that he would not test positive for an impairing substance and by intentionally delaying the drug testing process.

The court of appeals reversed the contempt order after concluding that the record showed the defendant admitted to taking an impairing substance on the day of the proceeding, did not say he would not test positive for a substance, and was not impaired during the proceeding. The court of appeals also held that the defendant could not be in direct criminal contempt for intentionally delaying the testing process because the testing occurred outside of the courtroom and outside the presence of the judge.

Criminal contempt; statute of limitations

- The trial court properly denied defendant's motion to dismiss at the close of the evidence because evidence was sufficient to allow a rational juror or trier of fact to conclude defendant violated the injunction issued by the State Board.
- The trial court retained jurisdiction to enter the final contempt order where defendant's initial appeal to the court of appeals was inappropriate.
- Criminal contempt is not a felony or a misdemeanor, and it is not subject to the 2-year statute of limitations applicable to misdemeanors. There is no statute of limitations that applies to criminal contempt.

State Board of Examiners of Plumbing Heating and Fire Sprinkler Contractors v. Hudson, _ N.C. App. _, _ S.E.2d _ (May 21, 2025). The plaintiff State Board entered an injunction prohibiting the defendant from engaging in the business of plumbing contracting. A show cause order for criminal contempt was issued based on plaintiff's allegations that defendant violated the injunction. A trial was held and the defendant made motions at the close of plaintiff's evidence and again at the conclusion of the trial requesting that the charge be dismissed for lack of adequate evidence. The trial court denied both motions and concluded defendant committed criminal contempt. At the conclusion of the hearing, the trial court filled out and signed a form document titled "Order for Indirect Criminal Contempt Proceeding." The court checked several boxes on the form and sentenced the defendant to 30 days imprisonment and a $250 fine.

Defendant filed a notice of appeal. Approximately one month later, the trial court entered an order which included findings of fact and conclusions of law and ordered the defendant to serve 30 days in jail and pay a $250 fine. The defendant filed an appeal of that order as well.

Defendant first argued that the trial court should have granted his motions to dismiss at the close of the plaintiff's evidence and the close of all the evidence. The court of appeals reviewed the evidence in detail and held it was sufficient to show the defendant violated the injunction.

Defendant then argued that the trial court had no jurisdiction to enter the final order of contempt because of his appeal filed after the trial court signed the form order. The court of appeals held that while an appeal generally divests the trial court of jurisdiction, an inappropriate interlocutory appeal does not. In this case, the form order was not actually an order because it was not filed with the clerk of court. Rule 58 provides that an order is not entered until it is reduced to writing, signed by the judge, and filed with the clerk of court. The appeal did not divest the court of jurisdiction because the order had not been entered when the appeal was filed.

Finally, the court of appeals rejected the defendant's argument that criminal contempt was barred by the two-year statute of limitations that applies to misdemeanor. The appellate court held that contempt is not a "traditional crime", and it not a felony or a misdemeanor. Instead, it is "of its own kind or class" and there is no statute of limitation that applies.