

# Civil Law Update & Review

## Civil Procedure

Carroll at Bellemeade v. Kabuto, 2022-NCCOA-222 (unpublished). To set aside a judgment on the grounds of excusable neglect under Rule 60(b)(1), the party seeking to have the judgment set aside must show that the judgment rendered against him was due to excusable neglect and that he has a meritorious defense. The defendant's failure to inform its attorney of the summary ejectment proceeding and its own failure to appear do not constitute excusable neglect.

Snider v. Elite Mountain Bus., LLC, 2021-NCCOA-716 (unpublished). A party can make an oral announcement of appeal in open court or file a notice of appeal with the clerk within ten (10) days of the entry of the magistrate's judgment. The chief district court judge can authorize magistrates to hear motions to set aside an order or judgment pursuant to Rule 60(b)(1), however the right to appeal from the magistrate's order granting or denying a Rule 60(b)(1) motion is to district court not the court of appeals.

Goode v. Leisure Entertainment Corp., 2022-NCCOA-602 (unpublished). Service of process is not insufficient if the caption contains a misnomer of defendant if the misnomer does not leave in doubt the identity of the party intended to be sued or if there is service on the party intended to be sued and the misnomer may be corrected by amendment. However, an amendment that amounts to a substitution or entire change of parties is not allowed. Actual notice of the lawsuit does not remedy invalid service of process.

## Summary Ejectment

Matthews v. Fields, 2022-NCCOA-491. An option contract is a contract by which an owner agrees to give another the exclusive right to buy property at a fixed price within a specified period of time. NCGS 47-G governs "Option to Purchase Contracts Executed with Lease Agreements" and NCGS 47-H governs "Contracts for Deed." In an installment land contract, the vendor retains title to the property as security and the vendee pays for the purchase price for the property in 5 or more payments, exclusive of the down payment. NCGS 47-H requires the seller to record the contract, but the seller's failure to do so does not render the purchase contract unenforceable or transform it into a rental agreement.

Coghill v. Brown, 2022-NCCOA-100 (unpublished). The lease required either party to give 30 days written notice to terminate the month-to-month tenancy. The landlord sent notice on July 6, 2020, and November 5, 2020, and filed for Summary Ejectment on December 16, 2020. The court of appeals affirmed the trial court's order entering summary judgment for plaintiff relying on the seven-day notice requirement set out in NCGS 42-14 for a month-to-month tenancy.

Grace Ridge Gateway Terrace Durham, LLC v. Mattress Firm, Inc., 2022-NCCOA-102 (unpublished). Where a forfeiture of a lease is incurred by nonpayment of rent, if the landlord receives from the tenant rent subsequently accruing, the forfeiture is thereby waived.

## Torts

Asher v. Huneycutt, 2022-NCCOA-517. Proof that a building's owner violated the State Building Code is insufficient to establish negligence *per se* unless: 1) the owner knew or should have known of the Code violation; 2) the owner failed to take reasonable steps to remedy the violation; and 3) the violation proximately caused injury or damage. Landowners have a duty to exercise reasonable care in the maintenance of their premises for the protection of lawful visitors. To prove a landowner's negligence in a premises liability case, the plaintiff must show that the landowner either 1) negligently created the condition causing the injury, or 2) negligently failed to correct the condition after actual or constructive notice of its existence. The landowners in this case did not breach their duty to lawful visitors by not correcting minor code violations where they relied upon a professional inspector, inquired of their tenants about any issues with the property, and performed visual inspections and walkthroughs.

Johnson v. Guilford Cty. Bd. Of Educ., 2022-NCCOA-630. The doctrine of sudden emergency applies when a defendant is confronted with an emergency situation not of his own making and requires a defendant only to act as a reasonable person would react to similar emergency circumstances. A bus driver who turned left rather than right to try to avoid an impaired driver who crossed into the bus driver's lane was not negligent because she reacted in less than 5 seconds to try to avoid a head-on collision.

McDonald v. Ramirez, 2022-NCCOA-643 (unpublished). Plaintiff had to react instantaneously to avoid colliding head on into the back of the dump truck when defendant pulled out in front of plaintiff. Plaintiff's actions were protected by the sudden emergency doctrine and defeated defendant's affirmative defense of contributory negligence.

Lovett v. Univ. Place Owner's Ass'n, 2022-NCCOA-594. The decedent's gross contributory negligence of voluntary intoxication with a BAC nearly 5 times the legal intoxication threshold was a bar to recovery for defendant's ordinary negligence.

Biggs v. Brooks, 2022-NCCOA-548. While ownership of a motor vehicle at the time of a collision is *prima facie* evidence that the motor vehicle was being operated by a person with the authority, consent and knowledge of the owner for whose conduct the owner is legally responsible, the plaintiff cannot rely solely on this statute to establish either any agency relationship or negligent entrustment of the motor vehicle from the dealer to the relative of the owner who picked up the vehicle purchased by the owner from the dealer.

Cauley v. Bean, 2022-NCCOA-202. A complaint for negligent infliction of emotional distress must contain some factual allegations to support an allegation of severe emotional distress, and

although plaintiff witnessed the accident that killed her father, she failed to allege the type, manner, or degree of severe emotional distress she claims to have experienced.

## Contracts

Strohm v. Morgan, 2022-NCCOA-619 (unpublished). A “time is of the essence” clause in a real estate contract is an enforceable, unambiguous term and plaintiffs’ failure to make required earnest money deposits on time excused the defendant from her obligation to perform under the contract.

Kandaras v. Jones, 2021-NCCOA-675 (unpublished). The NC Residential Property Owner’s Association Disclosure Statement (Disclosure Statement) is not integrated as terms into the Offer to Purchase and Contract (Contract), so misrepresentations in the Disclosure Statement are not breach of the Contract, although they may be the basis for a fraud claim.

## Domestic Violence Protective Orders

Keenan v. Keenan, 2022-NCCOA-554. The defendant came over to cut plaintiff’s grass despite repeatedly being told he did not have permission and he refused to leave after plaintiff asked several times. Plaintiff was nervous and suffered a panic attack as a result. This single act of harassment, committed without a legitimate purpose, was enough for the court to find an act of domestic violence had occurred as the basis for the DVPO.

Hitchcock v. Rupert, 2022-NCCOA-268 (unpublished). Evidence that defendant threatened to burn down plaintiff’s house and struck him multiple times during heated arguments, and that plaintiff believed a gun he found was going to be used to harm him was sufficient to establish harassment inflicting substantial emotional distress and threatening to harm someone or burn their home would not fall under a “legitimate purpose.”

Walker-Snyder v. Snyder, 2022-NCCOA-97. Evidence was insufficient to establish that defendant had committed an act of domestic violence by placing the minor child in fear of continued harassment inflicting substantial emotional distress. There was evidence of text messages between father and daughter about finances, but she never tried to block his number and continuously replied to the messages in a flippant manner. Being generally upset or anxious about her father’s conduct cannot constitute substantial emotional distress.

## Marriage

Hill v. Durrett, 2022-NCCOA-532 (unpublished). Marriage officiated by a friend of the bride who was not an ordained minister or a magistrate, but who had obtained a Certificate of Ministry from the Universal Life Church via a mail-order service was voidable and the trial court’s order annulling the marriage was affirmed. For further reading about marriages and Universal Life Church ministers, see Cheryl Howell’s blog post at <https://civil.sog.unc.edu/marriages-solemnized-in-north-carolina-by-universal-life-church-ministers-are-not-valid/>.

## Related to the Job

### S.L. 2022-47

Section 5 (effective 10/1/2022) expands the residency eligibility for nomination or renomination of a magistrate to include the county where the magistrate is seeking nomination or renomination or a county that is contiguous with that county. Other sections of G.S. 7A were amended to reflect this change to the language regarding magistrate residency.

Section 6 (effective 10/1/2022) codifies the authority of a chief district court judge to discipline a magistrate for misconduct in violation of NC Rules of Conduct for Magistrates.

Section 20 (effective 1/1/2023) amends G.S. 7A-177(b1) regarding magistrate in-service training to add “summary ejectment laws” to the list of required subjects for training.