

Trial Court Jurisdiction After Appeal of Civil Case

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Following appeal,
trial court is
functus officio

Consider

- Child support order entered
- Defendant appeals
- 8 months later, appeal still pending
- Defendant files motion to modify child support because he lost his job
- Can you rule on the motion?

Compare

- Child support order entered in case requesting child support and child custody
- Child support order appealed
- While appeal pending, plaintiff wants to proceed with custody trial
- Can you determine custody?

- Appeal divests trial court of jurisdiction only WITH REGARD TO MATTERS APPEALED
- Can continue with MATTERS UNAFFECTED BY THE APPEAL

AFFECTED BY MATTER APPEALED?

- Child custody order on appeal
- Dad requests injunction relating to the child

• See *Rosero v. Blake*, 150 NC App 251 (2003)

AFFECTED BY MATTER APPEALED?

- Alimony order appealed
- Judgment states “attorney fee issue preserved for later hearing”
- Wife requests hearing on attorney fees while appeal is pending

AFFECTED BY MATTER APPEALED?

- Judgment entered on claim seeking rescission of separation agreement
- Judgment appealed
- 3 months later, party files a Rule 60(b)(2) alleging newly discovered evidence

Talbert v. Mauney

Trial court can enter an ‘advisory decision’ on a Rule 60(b) motion

Enforcement by contempt?

- Equitable distribution judgment entered, ordering party to pay a distributive award
- ED order appealed
- Contempt motion filed seeking to force payment of distributive award

Enforcement by contempt

- General rule: no contempt while case on appeal
 - But party not excused from performance
 - Unless stay issued???
- Statutory exceptions in domestic cases
 - Child custody
 - Child Support
 - Alimony

Custody, Support, Alimony

“Notwithstanding the provisions of GS 1-294, an order pertaining to the payment of [child custody, child support or the periodic payment of alimony] which has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay an order for civil contempt ... until the appeal is decided, if justice requires.”

Enforcement??

- Equitable distribution judgment ordering distributive award
- Party seeks execution on distributive award
- No execution bond filed
- Can clerk issue execution?

Enforcement by execution

- Distributive award in equitable distribution is a judgment "directing the payment of money" pursuant to GS 1-289
 - *Romulus v. Romulus*, Court of Appeals, Sept. 20, 2011
- Execution goes forward unless execution bond is posted

Enforcement

- Distributive award is payable in monthly installments
- Can judge determine arrears subject to execution?
 - *Romulus*

Consider.....

- Custody claim filed along with claim for child support
- Trial court enters order for temporary custody and temporary support
- One side appeals both temporary orders
- Other side wants to proceed to trial on both

- ONLY APPROPRIATE APPEALS DIVEST TRIAL COURT OF JURISDICTION
- Trial court can determine whether appeal is appropriate (maybe....)

APPROPRIATE APPEALS

- Final judgments
- Interlocutory orders that AFFECT A SUBSTANTIAL RIGHT
- Interlocutory orders CERTIFIED FOR IMMEDIATE APPEAL by trial judge pursuant to Rule of Civil Procedure 54(b)
- Or whenever appellate court decides to hear it..... [CERT granted]
