



Family Law Update

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Child Custody

Third party custody: *Ledford* (p. 3)

Standing is established by the
pleading

Pleading needs to allege:

- Relationship between person asking for custody and the child
 - Relatives generally have a sufficient relationship
- Facts sufficient to, if proven at trial, support the conclusion that parents have waived their constitutional right to custody

Ludack v. Ludack, p. 5

Findings in custody order must show:

- Fitness of parents
- Domestic Violence
- Why order is in the best interest of the child

Delay in entry of order

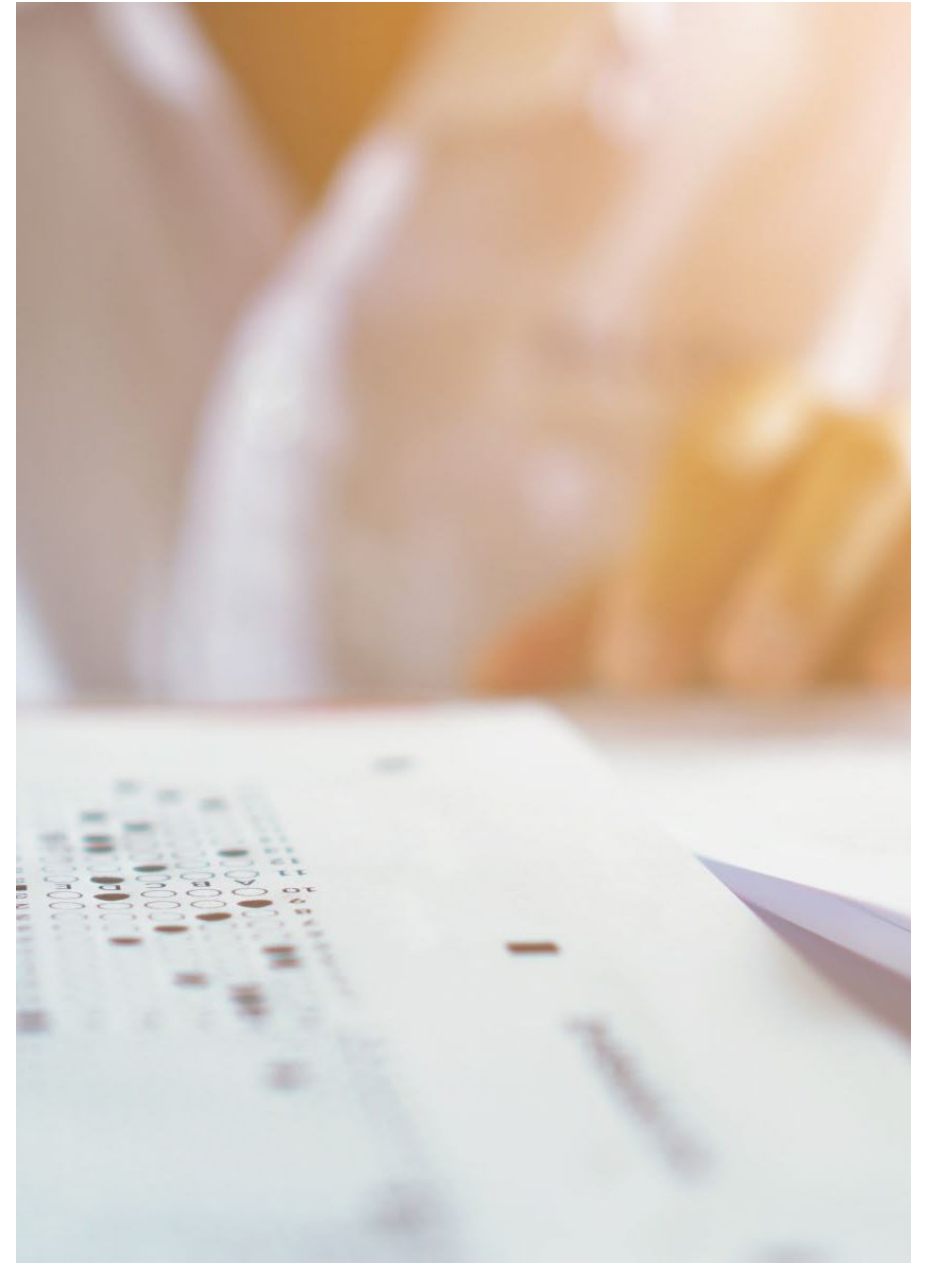
- Party must request trial court to enter order or seek writ of mandamus

Has temporary order converted to a permanent order?

- Did one party request a trial within a reasonable time?
- To be determined on case-by-case basis by trial court

Green v. Branch, p. 7

- Following trial, judge directed attorney to draft order to reflect oral ruling
 - Judge granted plaintiff's recusal request and signed order of recusal
 - Later, judge signed order resolving matter tried by the judge
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- Order void; trial judge cannot act following order of recusal
 - Remand required new trial before new judge



Effective date of modification

Compare

*Crenshaw v.
Crenshaw*, p.
9

Keith v. Keith,
p., 11

Date other than the
date motion was
filed is a deviation;
findings required to
explain deviation

Crenshaw, p. 9

attorney fees



- GS 50-13.6

“In an action or proceeding for the custody or support, or both, of a minor child, including a motion in the cause for the modification or revocation of an existing order for custody or support, or both, the court may in its discretion order payment of reasonable attorney's fees **to an interested party acting in good faith who has insufficient means to defray the expense of the suit. ...;**

provided however, **should the court find as a fact that the supporting party has initiated a frivolous action or proceeding the court may order payment of reasonable attorney's fees to an interested party as deemed appropriate under the circumstances.**

Wage Withholding

Order of withholding is required in **every IV-D** child support order, even orders for arrears.

- GS 110-136.3 and 110-136.4,
- *Price v. New Hanover County*, p. 10

Order of withholding is required in **every non-IV-D** child support order unless findings show:

- Good cause not to order withholding, or
- The parties agree in writing to another arrangement
- GS 110-136.5(c1)

Civil Contempt

At conclusion of hearing, judge announced civil contempt; defendant immediately incarcerated

Defendant paid entire purge amount as a “cash bond” and was released

19-days later, judge signed civil contempt order, also stating defendant had complied with the purge

Bridges v. Bridges, p. 12

- Civil contempt order vacated because defendant paid the entire purge before order was entered
- For civil contempt, **defendant must be in civil contempt at time order is entered**

Domestic Violence

Personal jurisdiction: minimum contacts

A.J.Z. v. Zeigler, p.
13

- Defendant's acts of DV against his children (outside of NC) and his participation in custody and domestic violence proceedings in NC were sufficient to make defendant aware that he was establishing a connection to North Carolina.

*Honacher v.
Uhlhorn*, p. 15

- Defendant waived all objection to the exercise of personal jurisdiction over him when he filed a Rule 12(b)6) motion and did not include a motion to dismiss for lack of personal jurisdiction

Honacher v. Uhlhorn, p. 14



- The term **resident** denotes “something more than mere physical presence, in which event intent is material”.
 - Fact that plaintiff owned property in NC and spent time here regularly was sufficient to show she is a resident even though she also owns property and spends time in Virginia.
- Harassment requires conduct ‘directed at’ plaintiff
 - Conduct of defendant was ‘directed at’ plaintiff when defendant contacted third parties with the intent to harass plaintiff

Renewal of DVPO

The court can renew a DVPO:

Evidence in the record must support the findings establishing good cause.

Roy v. Martin, p. 16

Upon motion filed before DVPO expires,

“For good cause”

Conclusion of good cause must be supported with findings of fact



Findings of fact v. Summary of evidence

- **Compare**
 - *Roy v. Martin*,
p. 16
 - *Shomate v. Needham*,
p. 18

Equitable Distribution

Kaylor v. Kaylor, p. 20



- Marital fault is not an appropriate distribution factor
- But “acts of either party ... to waste, neglect, devalue or convert marital or divisible property, during the period after separation of the parties and before the time of distribution” is an appropriate consideration.
 - GS 50-20(c)(11a).
- An inventory affidavit introduced into evidence during the trial without objection can support findings of fact

Smith v. Smith,
p. 22

Stipulations are binding on the trial court unless they properly set aside

Ground to set aside include mistake of material fact, misrepresentation of a material fact, undue influence, fraud, collusion, duress, fraud or inadvertence

Trial court can set aside stipulations on motion of a party or own court's own motion, following notice and hearing

Decision to set aside is discretionary, when trial court concludes enforcement of the stipulation would result in injury to one party and would not materially prejudice the other party

Arrington v. Arrington, p. 25

Entry of default does not alter the trial court's responsibility to determine what property is marital, the value of that property, and to distribute it equitably.

A party does not have to request an unequal distribution to receive an unequal distribution.

Alimony

Du Plessis, p. 27 Order to repay....



A trial court has the authority “at equity” to order a receiving spouse to repay alimony



A trial court can order repayment when the payment resulted in unjust enrichment:

One party conferred to the other,

A measurable benefit,

That was accepted,

But which was conferred neither officiously,

Nor gratuitously.

Civil No-Contact Order

Enforcement

- *Pocoroba v. Gregor*, p. 29
 - 50C order prohibited defendant from being within 100 feet of plaintiff
 - Trial court determined defendant violated the order twice
 - Trial court found defendant in civil contempt; ordered \$500 payment to plaintiff

Reversed

- Defendant must be violating the order at time of the civil contempt hearing.
- Civil contempt is not used to punish past behavior