

Family Law Update

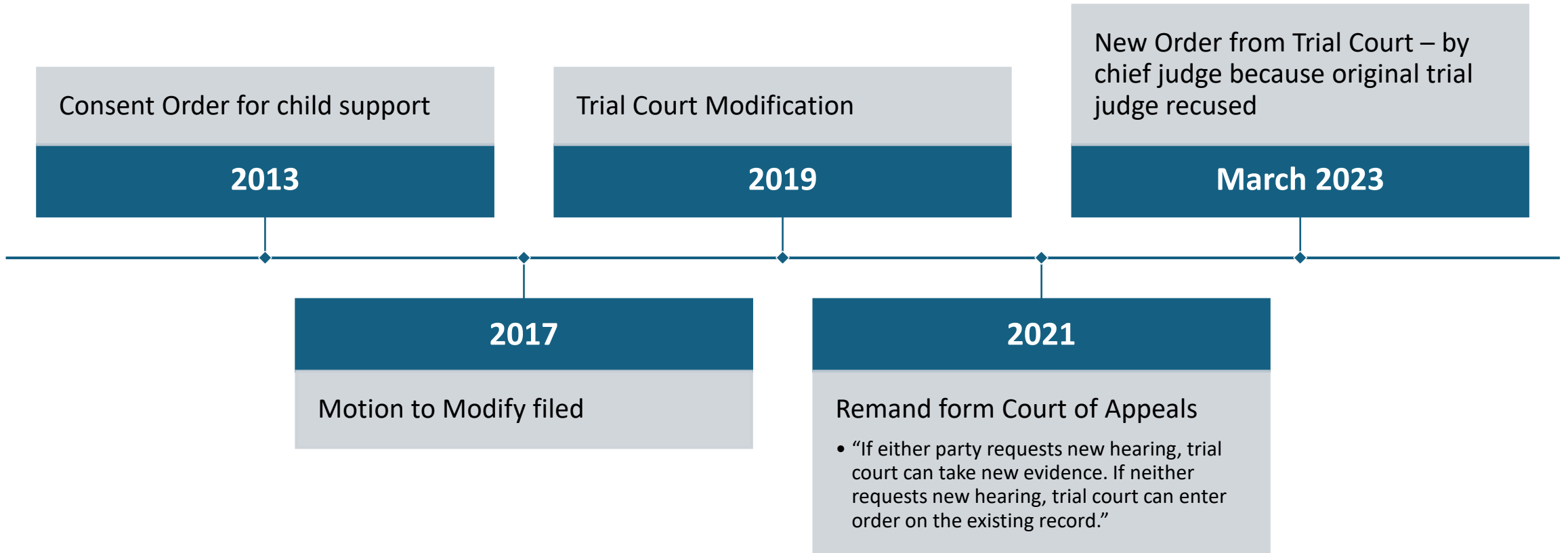
Cheryl Howell, School of Government

Chief Judge Samantha Cabe

June 2026

Child Support

Kincheloe, p. 8



Kincheloe, p. 8

The decision regarding evidence on remand generally within the discretion of the trial judge; need for new evidence can vary with the circumstances.

Child support must be based on parties' ability to pay support **at time the child support order is entered.**

Chief Judge cannot make findings based on evidence they did not hear. Rule 63

Chief Judge properly allowed all new evidence and set support based on circumstances at time of hearing on remand.

Prospective Support

New order of prospective support (entered 2023) presumed to start at time of motion to modify (filed 2017)

Can 'deviate' only with specific findings to explain how order meets needs of children.

Needs of the Children



- “Child support obligations set by the trial court well above the amount that might be extrapolated from the Guidelines does not mean the child support is an abuse of discretion if the findings of fact support the amount the trial court awarded.”
- Trial court must consider the financial circumstances and historical expenses in each individual case.
- “Children of wealthy parents are entitled to the educational advantages of travel, private lessons in music, drama, swimming, horseback riding, and other activities in which they show interest and ability.”

Kincheloe, p. 8

- Trial court properly determined needs of children in 2018 and in 2022 by adding:
 - Each party's monthly shared family expenses (household expenses, such as rent, electricity, heat, water, etc.) attributable to the children, and
 - The children's monthly individual expenses (uninsured medical/dental expenses, clothing, activities, etc.)

Nzewunwah, p. 12



Retroactive Support v. Prospective Support

- **Retroactive**

- Support for up to 3 years **before** filing of pleading/motion
- Amount determined using income of parties at the time the retroactive obligation begins
- In this case, retroaction support should start at date of separation, based on income at that time
- In effect through time of filing of complaint seeking support

Retroactive v. Prospective Support

- **Prospective**

- On-going support from date of support hearing
- Determined based on income of parties at the time of the support hearing
- Effective date is date complaint was filed
 - Any other order requires findings to support deviation
 - Findings must show financial circumstances of the parties and needs of the children for all times not covered by the final amount of prospective support

Nzewunwah

Retroactive Support

- Based on income of parties at time of separation
- In effect from date of separation until time complaint filed for support

Prospective Support

- Based on income of parties at time of hearing on permanent, prospective support
- Effective from date complaint was filed, unless court deviates

Roybal v. Raulli, p. 15

“Springing” contempt orders; Servicemembers Civil Relief Act



Custody

Faircloth

p. 17

GS 50-13.2(a)

- In making the determination [that the order is in the best interest of the child], the court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party. An order for custody must include written findings of fact that reflect the consideration of each of these factors and that support the determination of what is in the best interest of the child.

GS 50-13.2(b)

- If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2), and (3).
- If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation.

Bullins v. Riddle

p. 18-19

- **Modification**

- A stipulation by the parties that there has been a substantial change in circumstances is invalid
- Parties cannot stipulate to a conclusion of law
- Findings in modification order did not adequately explain 'nexus' between the parties' "breakdown in communication" and the child's "difficulty in transitioning between households"

Bullins v. Riddle p. 18-19

- Non-relative third-party had standing to intervene
- Relationship was sufficient
 - Intervenor had “parent-like” relationship with child
- Allegations of mother’s conduct were sufficient to support conclusion mother had waived her constitutional right to custody
 - Mother had voluntarily ceded decision-making authority to the non-parent without creating the expectation that the relationship could be terminated.

Jurisdiction?

Plaintiff father is a resident of North Carolina and has been for more than 6 months.

Defendant mother is a US citizen employed by the US State Department living and working in London

Child born 2 months ago in London, England; has not left England since birth

Father files for custody in North Carolina



§ 50A-105. International application of Article.

- (a) A court of this State shall treat a foreign country as if it were a state of the United States for the purpose of applying Parts 1 and 2.
- (b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this Article must be recognized and enforced under Part 3.
- (c) A court of this State need not apply this Article if the child-custody law of a foreign country violates fundamental principles of human rights.

GS 50A-102

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. **In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned.**

Bonomo v. Shabat, p. 24-25



50B and 50C

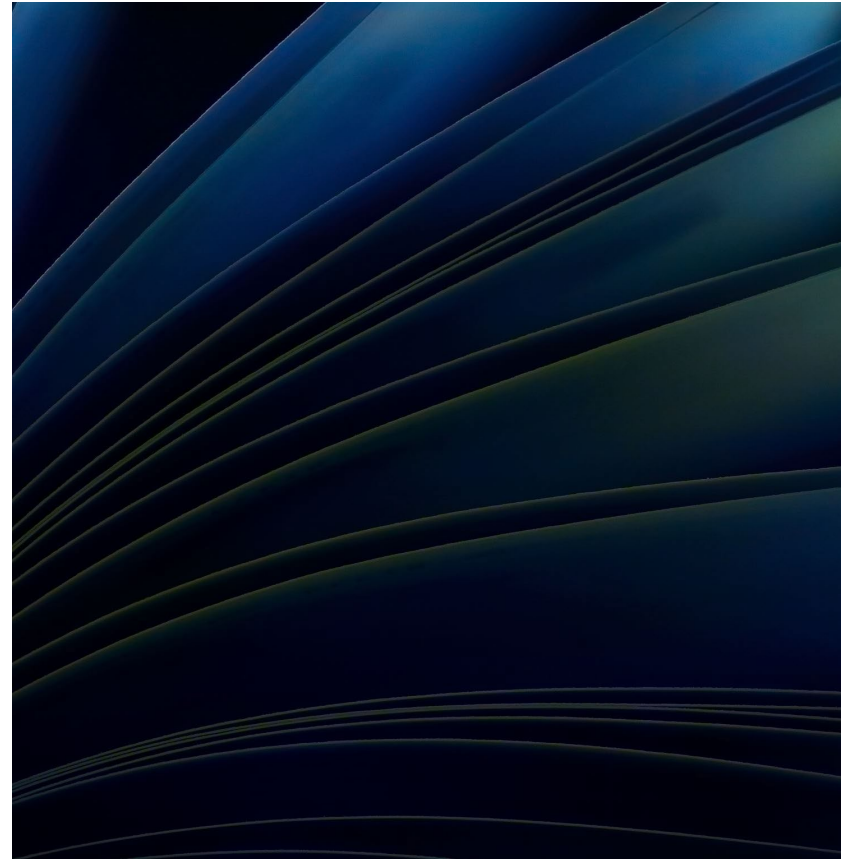
Shuler v. Donahue, p. 27

Plaintiff filed against defendant, seeking a DVPO, alleging he committed acts of domestic violence

Defendant filed counterclaim, seeking a DVPO, alleging plaintiff committed acts of domestic violence.

Trial judge entered a DVPO on both claims, granting similar protections for each party.

Plaintiff appealed



Mutual Orders

- GS 50B-3(b):
“Protective orders entered, including consent orders, shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.”

Hays v. Lewis, p. 28

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- Computation of the one-year time limit for a DVPO imposed by GS 50B-3(b) does not include the time an ex parte DVPO is in place.
 - GS 50B-2(c)(5) governs the time limit for an ex parte DVPO.
 - Statute allows only one continuance of no more than 10 days unless all parties consent or good cause is shown
 - Statutory time limit intended to protect a defendant from a “prolonged” ex parte order.

Jay v. Jay,
NC Supreme Court,
p. 29

- **Findings of Fact**

- Trial court generally allowed to incorporate documents and recitations into orders.
- Trial court cannot rely solely on prior orders, reports or recitations in pleadings, but must receive testimony during a hearing to allow the court to make an independent determination of the evidence presented.
- Recitations may be “transformed into a proper evidentiary finding when a trial court makes a credibility determination about the recited evidence.”
- Better practice is to make specific, express findings rather than referencing evidence or statements in the record.

*Coble v.
Ballentine*
p. 43

Unlawful conduct pursuant to 50C

Nonconsensual sexual
conduct or stalking on more
than one occasion

Stalking includes harassment

Harassment is conduct
“*directed at* a specific
person”

Distinction between online posts *about* a person
and online posts *sent to* a person

Political statements posted online *about* plaintiff
was not harassment

Alimony

Allport v. Allport, p. 2

Taylor v. Taylor, p. 5

Equitable Distribution

Roesel, p. 32



Marital LLC had no right to intervene in the ED proceeding.



The trial court could classify, value and distribute the marital interest in the LLC without ordering the company to take any action and without affecting property owned by the LLC