

Family Law Update
Cases Decided and Legislation Enacted Between
June 18, 2025, and October 1, 2025

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Custody
June 18, 2025, and October 1, 2025

Findings required to support best interest determination; delegation of authority to determine visitation

- The trial court custody order was remanded because it appeared to grant nonparent custodians the discretion to change the supervised visitation granted to mother by the custody order to unsupervised visitation, and to cease visitation altogether when the custodians determine it is appropriate to do so. Such a delegation of judicial authority is impermissible in a custody order.
- The trial court was not required to make detailed findings regarding the fitness of the nonparent custodians in the custody order. GS 50-13.2(a) requires that the trial court make sufficient findings of fact to show why the custody order is in the best interest of the child. Findings regarding the fitness of the parties are allowed but are not required when the order contains sufficient other findings to explain the trial court's best interest determination.

In re A.J.J., _ S.E.2d _ (N.C. App., July 2, 2025). The trial court terminated juvenile court jurisdiction and entered a Chapter 50 custody order pursuant to GS 7B-911. The custody order granted custody to nonparent third parties and supervised visitation to mother. Mother appealed.

Mother first argued that the trial court improperly delegated judicial authority to the nonparent custodians by including a provision in the order specifying that the custodians had the discretion to allow the mother unsupervised visitation when they decided it was appropriate to do so and also appeared to allow the custodians to cease visitation altogether when they determined visitation started to “trigger regressive behavior” in the minor, or “to cause discord between the custodians that may lead to possible placement disruption.” The court of appeals held that an award or denial of visitation to a parent is a judicial function and if the trial court allows a parent to exercise visitation, it is an unlawful delegation of judicial authority to allow another party to change the terms of visitation.

Mother also argued that the trial court made insufficient findings to support the custody order because the trial court did not make findings regarding the physical, mental, and financial fitness of the nonparent custodians. The court of appeals held that while GS 50-13.2(a) requires findings of fact to support the best interest determination of the trial court, that statute does not require any specific findings other than the ones specifically set out in the statute regarding domestic violence when domestic violence is present. Because the findings in the trial court's order were sufficient to show why the trial court believed the order to be in the best interests of the child, the findings were sufficient.

Grandparent custody; allegations sufficient to plead a parent has acted inconsistently with constitutional right to parent

- To survive a motion to dismiss for lack of standing, grandparents must allege that they are grandparents of the minor child and facts sufficient to demonstrate that the minor child's parent is unfit or has engaged in conduct inconsistent with their parental status.
- Normally, testimony is not considered at a hearing on a motion to dismiss under Rule 12(b)(6) because a motion to dismiss tests the sufficiency of the complaint and the material allegations in the complaint are taken as true.

White v. Boatwright, _ S.E.2d _ (N.C. App., July 2, 2025). In their complaint seeking custody of the minor child, grandparents alleged that father (1) had acted inconsistently with his constitutional right as a parent by failing to provide for the child's basic physical, emotional, and developmental needs, (2) failed to maintain an adequate living environment for the child, (3) was not a fit and proper person to be awarded physical and/or legal custody of the child. Their complaint also alleged that they had been part of the child's life since birth and that it is in the best interests of the child for them to be awarded custody.

Father moved to dismiss their complaint "under Rule 12." At the hearing on father's motion, father testified as to his care of the child and disagreed with the allegations in grandparents' complaint. The trial court granted his motion and dismissed grandparents' complaint with prejudice.

The court of appeals reversed the trial court's order granting father's motion to dismiss and remanded the matter to the trial court. The allegations in grandparents' complaint that they were the grandparents of the child and that father was unfit and had acted inconsistent with his parental status, taken as true, were sufficient to survive father's motion to dismiss. Father's testimony disputing the allegations was a factual challenge not properly considered at the motion to dismiss stage. Although the court of appeals reversed the trial court's dismissal of the complaint, it expressed no opinion on the merits of the case, which was for the trial court to consider on remand.

Findings required to support best interest determination; visitation schedule; provisions regarding international travel

- The trial court did not err when it failed to make a specific finding of fact that the custodial schedule set out in the custody order was in the best interest of the child. Other findings illustrated that the trial court found the schedule to be in the best interest of the child, and the custody order contained a conclusion of law that the order was in the best interest of the child.
- The trial court did not abuse its discretion when it provided that the exchange of the child between the parties during the summer would occur at 5:00 pm on Saturdays, awarded mother custody on Mother's Day but did not award custody to father on Father's Day, prohibited both parties from recording the other during custody exchanges, and allowed international travel with the child without limiting travel to Hague Convention countries.

Morrow v. Morrow, _S.E.2d_ (N.C. App., July 16, 2025). The trial court entered an order providing for a 50/50 sharing of physical custody between the parties and for joint legal custody. In setting a detailed visitation schedule, the trial court set a regular schedule and a summertime schedule. The summertime schedule provided for the exchange of the children at 5 pm on Saturday. The regular schedule provided for mother to have custody on Mother's Day, but the summer schedule did not specify Father's Day as a day for the children to be with father. The order also specified that both parents were allowed to travel internationally with the children if notice is given to the other parent before the travel. Father appealed.

He first argued that the trial court erred in failing to make a specific finding of fact that the custodial schedule was in the best interest of the child, but the court of appeals disagreed, concluding that the findings in the order showed why the trial court found the order to be in the best interest of the child. In addition, the order contained the explicit conclusion of law that the "custody provisions set out [in the order] are in the best interest of the minor children."

Father also argued that the trial court abused its discretion when it ordered the custodial exchange to occur at 5:00 pm on Saturday during the summer because that time falls “smack-dab in the middle of the weekend”. The court of appeals disagreed, pointing to findings made by the trial court based on evidence in the record explaining why the summertime schedule needed to provide both parents full weeks with the children. The court of appeals also found that the findings explained why the trial court provided for visitation with mother on Mother’s Day but not for visitation with father on Father’s Day. The trial court explained that the summertime schedule would not accommodate Father’s Day as easily as the regular schedule would accommodate Mother’s Day and made a finding that father could celebrate Father’s Day with the children during his regularly scheduled custodial time. A dissent argued that the trial court erred in not providing for custody with father on Father’s Day because both parents had testified that they believed the children should be with their father on Father’s Day.

Regarding the order that the parents not record each other during custody exchanges, father argued that he has a legal right to record the exchanges pursuant to the Federal Wiretap Act. 18 USC sec. 2510, et. seq. The court of appeals found that the federal act does not give him a right to record exchanges but also held that even if it did, GS 50-13.2(b) allows the court to restrict the right if it finds that the restriction is in the best interest of the children. The court of appeals held that the restriction was proper given the findings that this “is a high conflict custody case because the parties demonstrate an on-going pattern of: a. distrust between them; b. difficulty cooperating in the care of the minor children; and c. disruptive custodial exchanges.”

Father also argued that the trial court should have restricted international travel with the children to countries that are parties to the “Hague Convention” because those countries have a framework to quickly retrieve a child that has been abducted. The court of appeals rejected father’s argument, finding that the trial court made findings that the mother had relatives in India, a non-Hague Convention country, and that mother had visited that country in the past and needed to be able to visit there with the children in the future.

Modification

- The trial court made sufficient findings of fact to support the conclusion that there had been a substantial change in circumstances affecting the welfare of the minor children and that modification of custody was in the best interest of the children.
- A trial judge is not required to use specific words or phrases in a modification order; the language of the order must show that the court used the appropriate legal standard. The findings of the trial court in this case were sufficient to show the trial court believed modification of custody was in the best interest of the children even though the order did not contain that exact sentence.
- New marriages of parents and changes in the work schedules of a parent are not sufficient in themselves to support a modification of custody, but when those changes are shown to have an impact – positive or negative – on the children, they can be the basis for a modification.
- The trial court did not demonstrate a preference for one religion over another, and the trial court did not modify custody due to mother’s religious practices. However, the trial court appropriately considered and made findings regarding how mother’s actions and changes in behavior based on the religion of her new husband affected the children.

Sinnott v. Sinnott, _ S.E.2d _ (N.C. App., August 6, 2025). The parties agreed to a consent order granting joint physical and joint legal custody of the children to both parents. Mother had primary physical custody. Father filed a motion to modify and after trial, the trial court found there had been a substantial change in circumstances that affected the welfare of the children and that modification of custody was in the best interest of the children. The modified order granted joint physical custody, with

parents alternating custody on a weekly basis. The legal custody provisions of the modified order required the parties to consult and cooperate in decision-making but gave mother final authority when the parties could not agree. Mother appealed, arguing that there had not been a substantial change in circumstances sufficient to justify the modification of custody. The court of appeals affirmed the trial court.

The modified custody order contained findings showing that the new marriages of both parents since the original consent order had beneficial impacts on the children given the positive relationships between the new spouses and the children and given that the employment of father's new spouse at a private school allowed the children to attend the private school when they otherwise could not have afforded to send the children to private school and evidence showed the children were doing very well in the new school. Findings also showed that father's new work schedule allowed him more time to spend with the children. There also were findings that the relationship between father's new spouse and mother had deteriorated over the new wife's involvement in the lives of the children, and there were findings about how mother's new husband's practice of Buddhism affected the children when they were in their mother's physical custody.

The court of appeals held that these findings showed there had been substantial changes affecting the children and that modification of the custody schedule to allow the children to spend more time with father was in the best interest of the children.

Modification; escalating conflict

- Escalating conflict on the part of one or both parents constitutes a substantial change in circumstances affecting the welfare of the child when – in the view of the trial court – it risks injury to the child.
- “Although conflict is common in custody cases, when the conflict escalates and poses a risk to the safety of the children, such a situation represents a change in circumstances opening the door to custody order modification by the trial court.”

Durbin v. Durbin, 918 S.E.2d 822 (N.C., August 22, 2025), reversing 292 N.C. App. 381 (2024). The parties agreed to a consent order in 2017 granting joint physical and joint legal custody of the children to both parents. The custody order was modified by consent in 2020, and the modified consent order included the appointment of a parenting coordinator “to deescalate the conflict between the parents.” The father had conflict with the parenting coordinator, especially concerning one child's medical care. In 2021, mother filed another motion to modify, alleging father was interfering with the children's therapy appointments and not attending to the medical needs of the children. The trial court entered a temporary custody order granting mother primary physical custody and final decision-making authority after making findings that the father's failure to comply with the directives of the parenting coordinator regarding administration of one child's medication had an adverse effect on the child's health and that the ongoing conflict between the father and the parenting coordinator affected the health, education and welfare of the children.

After trial of mother's motion to modify, the trial court entered a final modified custody order granting mother primary physical and legal custody. The final order contained findings that the conflict regarding the medical care for the children continued, that the father continued to refuse to ensure that the child was taking medication consistently, and that the amount of conflict between the parties “is not in the best interest of the children.” Based on these findings, the trial court concluded there had been a substantial change in circumstances and that modification was in the best interest of the children.

Father appealed and the court of appeals vacated the trial court order, concluding that while evidence established ongoing conflict between the parents and between father and the parenting coordinator, the evidence also showed the children were generally sheltered from the conflict.

Based on a dissent in the court of appeals, the supreme court reviewed the trial court order and affirmed the trial court, reversing the decision of the court of appeals. The supreme court rejected father's argument that because his behavior identified by the trial court in the modified order was the same as his behavior before the entry of the last custody order, there had been no change in circumstances. According to the supreme court, "when the failure to monitor the son's medication results in the son missing doses and thus requires him to seek additional medical care, it is plain that the [increasing pattern of] conflict is presently having an adverse effect on the child's health and is not in the child's best interest." The findings therefore were sufficient to support the conclusion that there had been a substantial change in circumstances. And the supreme court agreed with the trial court's conclusion that the modified custody order which gave mother sole responsibility for ensuring that the child consistently receives his prescribed medication is in the best interest of the child.

Dissent in the supreme court argued that the final modified custody order did not contain sufficient findings to show the circumstances existing at the time of the last custody order, or to show how circumstances had changed, or to show how the children had been impacted by the conflict between the parties and between the father and the parenting coordinator. According to the dissent, the majority inappropriately relied on several findings of fact contained only in the temporary custody order to support the final modification of custody.

Order for nonparent custody

- The findings of fact made by the trial court to support its custody decision were supported by evidence introduced during the custody trial, and the trial court order contained a sufficient explanation of why the order was in the best interest of the child.
- The trial court did not impermissibly delegate its judicial authority to intervenor grandmother when it stated in the order that grandmother could increase the time the child visits with its parents when she believed the parents were able to care for the child. The trial court resolved the issue of visitation with the parents when it ordered a specific amount of time for the parents and specified that the time could be increased when the grandmother felt it would be appropriate based on the condition of the parents.

Adams v. Dillon, _ S.E.2d _ (N.C. App., September 3, 2025). Plaintiff grandmother filed this action for custody against both parents of the child. According to the complaint, the parents "were known drug users" and unable to care for the child, and she had cared for the child from birth. The maternal grandmother of the child intervened. Following a custody trial, the trial court found that the parents were unfit to care for the child and entered an order granting intervenor maternal grandmother custody and defendant parents limited visitation. The order specified that the maternal grandmother could allow the parents additional visitation when they were able to care for the child. Plaintiff was not allowed visitation. The trial court made findings that while the plaintiff had cared for the child when the child needed care, the significant differences in the parenting styles of plaintiff and intervenor maternal grandmother, as well as the continuing animosity between the parties, meant that a joint custodial arrangement between plaintiff and maternal grandmother would not be in the best interest of the child.

Plaintiff appealed, arguing that the trial court's findings of fact were not supported by the evidence and that the trial court failed to resolve all factual disputes raised by the parties. The court of appeals

affirmed the trial court, finding that all findings of fact were supported by the evidence in the record and that the order resolved all issues relating to custody.

The court of appeals also rejected plaintiff's argument that the trial court inappropriately delegated a judicial function to the maternal grandparent when the court allowed the grandparent to increase visitation time with the parents when the grandparent deemed it appropriate to do so. According to the court of appeals, because the trial court specified that the parents would receive a specific amount of visitation time, the court did not delegate its decision-making responsibility to the grandmother by stating that she had the authority to increase the child's time with the parents when she believed it was safe to do so.

Legislation

Uniform Child Abduction Prevention Act, GS 50A, Article 4 (GS 50A-411 through 422)

S.L. 2025-25, HB 40, sec. 45(a).

The NC General Assembly adopted the Uniform Child Abduction Prevention Act as part of the technical corrections bill. The Uniform Act was adopted by the Uniform Law Commission in 2006. **The NC Act is effective October 1, 2025, and applies to petitions filed or motions made on or after that date.**

The Uniform Law Commission summarizes the Uniform Law as follows:

The act provides States with a valuable tool for deterring both domestic and international child abductions by parents and any persons acting on behalf of the parents. ...

An action for abduction prevention measures **may be brought either by a court on its own motion, by a party to a child-custody determination or an individual with a right to seek such a determination, or by a prosecutor or public attorney.** The party seeking the abduction prevention measures must file a petition with the court specifying the risk factors for abduction as well as other biographical information including the name, age and gender of the child, the current address of the child and the person against whom the measures are sought, a statement regarding any prior actions related to abduction or domestic violence, a statement addressing any prior arrests for domestic violence or child abuse by either party, and finally any additional information required by existing State child custody law including the UCCJEA.

The UCAPA sets out a wide variety of factors that should be considered in determining whether there is a credible risk that a child will be abducted. These factors include overt signs such as previous abductions, attempts to abduct the child, or threats of abduction, as well as signs of general abuse including domestic violence, negligence, or refusal to obey a child-custody determination. The act also includes a wide range of activities that may indicate a planned abduction including abandoning employment, liquidating assets, obtaining travel documents or travel tickets, or requesting the child's school or medical records.

The act also addresses the special problems involved with international child abduction by including several risk factors specifically related to international abduction. In particular, the act requires courts to consider whether the party in question is likely to take a child to a country that isn't a party to the Hague Convention on the Civil Aspects of International Child Abduction, or to a country that places the child at risk, has laws that would restrict access to the child, that is on the current list of state sponsors of terrorism, or is engaged in an active military action or war. In addition, a court will consider issues related to citizenship such as a recent change in citizenship status or a denial of United States Citizenship.

If a court determines that a credible risk exists that the child will be abducted, it may then enter an order containing provisions and measures meant to prevent abduction. The act lists a number of specific measures that a court may order. These include imposing travel restrictions, prohibiting the individual from removing the child from the State or other set geographic area, placing the child's name in the United States Department of State's Child Passport Issuance Alert Program, or requiring the individual to obtain an order from a foreign country containing identical terms to the child-custody determination. An abduction prevention order is effective until the earliest of the order's expiration, the child's emancipation, the child's 18th birthday, or until the order is modified, revoked, or vacated.

If abduction appears imminent, a court may issue a warrant to take physical custody of the child, direct law enforcement officers to take steps to locate and return the child, or exercise other appropriate powers under existing state laws. A warrant to take physical custody is enforceable in the enacting state even if issued by different state. The court may authorize law enforcement officers to enter private property, or even to make a forcible entry at any hour, if the circumstances so warrant. Nevertheless, the person on whom the warrant is being executed must be served with the warrant when or immediately after the child is taken into custody and the person must be afforded a hearing no later than the next judicial day or the next possible judicial day if the next day is impossible.

Post-adoption contact agreements; creation of civil custody order

S.L. 2025-16, sections 1.18 (a) (b), and (c); creating GS 7B-909.2 and 7B-909.3, and GS 50-13.2B.

Effective October 1, 2025.

These new statutes allow the parent or parents of a child in the custody of DSS pursuant to an abuse, neglect, and dependency proceeding, to, prior to executing a relinquishment of the child for adoption, voluntarily participate in a court-approved mediation program with the prospective adoptive parent or parents to reach a post-adoption contact agreement. The mediation can take place only if DSS has notified the court that it will accept a relinquishment that specifies the prospective adoptive parent or parents.

The agreement can allow a parent post-adoption contact with a child, including visitation, sharing of information, and communication such as the exchange of letters, electronic communication, and telephone contact.

Any agreement reached in mediation must be submitted to the district court for approval and incorporation into a court order. Once an order is entered, the court must direct the clerk to treat the order as an initiation of a civil action for child custody.

A party to the agreement may seek to enforce, modify, or terminate the agreement by filing a motion in the civil custody file. The court can modify or terminate the agreement upon finding there has been a substantial change in circumstances and that modification or termination is in the best interest of the child. The court can modify the agreement to decrease, limit, restrict, or terminate contact, but the court cannot increase, enlarge, or expand contact between the child and the parent.

Child Support June 18, 2025, and October 1, 2025

Income

- The trial court erred in awarding alimony and child support because it failed to make findings of fact regarding plaintiff's actual income and the parties' expenses at the time of the hearing in 2024. The trial court based its decision on evidence of plaintiff's 2023 income without explaining why that evidence was sufficient to support a finding that this amount continued to be his income at the time of the hearing.
- The trial court erred in ordering alimony without making specific findings of fact regarding the expenses of the parties and the accustomed standard of living of the parties.

Theuerkorn v. Heller, 918 S.E.2d 681 (N.C. App., June 18, 2025). The trial court entered orders on equitable distribution, alimony, and child support. The plaintiff appealed. A summary of the court's holding regarding equitable distribution is found in the equitable distribution section of this update and a summary of the holding regarding alimony is found in the alimony section of this update.

For both alimony and child support, the trial court must determine a party's actual present income at the time of the hearing. In this case, for a previous hearing conducted in February 2023, plaintiff submitted a financial affidavit stating he earned gross monthly income in the amount of \$15,298. During this subsequent hearing held in 2024, he testified that he earned \$3,134 per month and produced a W-2 paystub for the month of January 2024 to support his testimony. On cross-examination, he admitted that his gross annual income for 2023 was \$248,739.7, or \$12,458.76 per month. The trial court made a finding of fact stating that the plaintiff "is employed ... [and] has a net income of \$12,458.76 per month."

The court of appeals vacated the alimony and child support orders after concluding that the trial court's findings of fact were not sufficient to support the trial court's use of plaintiff's 2023 income rather than the income shown by evidence of his current income at the time of the hearing in 2024. The court of appeals held that a trial court can use evidence of a party's past earnings to support a finding of current income, but findings must show why the trial court determined that evidence of past income was sufficient to show his current income or show that the trial court determined that evidence of his current income was "not credible or was otherwise suspect." Findings of fact must show why the court decides to use evidence of past income to establish current income and must show what the court determines to be the actual present income of a party.

Civil contempt

- Civil contempt order was reversed where evidence introduced during the hearing on civil contempt did not support the trial court's finding that plaintiff had the ability to pay the amount ordered by the child support order and attorney fee order.
- The trial court erred in ordering plaintiff to pay additional amounts of child support arrears and additional amounts for attorney fees in the civil contempt order because the trial court does not have authority to modify orders that are the subject of the civil contempt proceeding.
- A civil contempt order cannot order that a person found in contempt be immediately arrested in the future if the person fails to make a payment imposed as a purge in the order for civil

contempt; a hearing is required before a person can be incarcerated for civil contempt and evidence must show that the person has the present ability to comply with the purge condition.

Collins v. Holley, 919 S.E.2d 24 (N.C. App., June 18, 2025). The defendant father filed a motion for civil contempt, alleging plaintiff mother failed to pay the amounts required by a child support order and an order for attorney fees. The only evidence offered during the hearing was testimony by plaintiff about her financial circumstances. The trial court concluded that the plaintiff was in civil contempt, and the court ordered that she pay an amount of child support arrears that was more than the amount required by the support order being enforced and ordered that she pay an amount of attorney fees that also was more than the amount already required by the order being enforced. The contempt order included findings that plaintiff had the ability to comply with these additional amounts as well as the amounts required by the original child support order and ordered that she make monthly payments until she paid all amounts ordered. The contempt order then provided that if the plaintiff failed to make any of the required monthly payments, she was to be immediately arrested and held in the county jail until all payments were made in full.

The plaintiff appealed and the court of appeals reversed the contempt order. The appellate court held that the trial court's findings that plaintiff acted willfully and had the ability to pay in compliance with the underlying orders were not supported by the only evidence produced during the hearing. The plaintiff's testimony about her income and expenses clearly showed she did not have the ability to pay. The defendant's motion contained allegations regarding plaintiff's ability to pay, but the defendant did not testify or offer evidence to support the allegations contained in the motion.

The court of appeals also held that the trial court did not have the authority to increase the amounts plaintiff owed for child support arrears or for attorney fees in the contempt order. Existing child support orders and existing orders for attorney fees cannot be modified in a civil contempt proceeding.

Finally, the court of appeals held that a trial court cannot order an automatic future arrest of a person who fails to comply with a purge condition that requires future payment. The court stated that a person cannot be held in civil contempt "indefinitely" and held that a person cannot be incarcerated without a hearing to determine that the person has the actual ability to comply with the purge condition at the time of incarceration. The appellate court stated, "there is simply no way the trial court can project out and assume [a party's] income, expenses, or assets in the future."

Retroactive support; allocation of cost of medical insurance, income, consideration of other children

- The trial court did not err in ordering retroactive child support when plaintiff did not specifically request retroactive support in her complaint. Plaintiff requested support pursuant to GS 50-13.4 and that statute requires that support be set pursuant to the Guidelines. That statute also provides that Guideline support includes retroactive support.
- In calculating Guideline support, the trial court must consider amounts paid by a parent for medical insurance covering the children for whom support is being sought. Trial court erred in including the total cost of medical insurance paid by plaintiff because the insurance covered children other than those whose support was at issue.
- In a child support case, determinations of gross income are conclusions of law that must be supported by sufficient findings of fact.

- The trial court properly relied on evidence of defendant's income in past years to determine his actual present gross income where the trial court found that the evidence he presented regarding his present income was unreliable.
- Plaintiff's varying monthly income was sufficient justification for the court to use her past income to determine her present actual income.
- The Guidelines allow the trial court to give a parent credit for payments made to support another biological child of the parent pursuant to a voluntary support arrangement if the parent shows the parent has paid support "consistently" and "for a reasonable and extended period of time."
- The trial court did not err in failing to give father a credit for support paid for another biological child when he failed to show he had paid support consistently or for an extended period of time.
- The trial court erred in failing to make a finding of fact as to the number of nights the children spent with each parent in the years since the separation of the parties. The number of nights is required to determine whether support is set using Worksheet A or Worksheet B.

Denis v. Chandler, _S.E.2d _ (N.C. App., July 16, 2025). The trial court entered orders on child support and equitable distribution. The defendant appealed. A summary of the court's holding regarding equitable distribution is found in the equitable distribution section of this document.

Retroactive support is support owed for a period before the complaint for child support was filed. In this case, the trial court ordered child support for the time between the separation of the parties and the date plaintiff filed the complaint for support. Defendant argued on appeal that this was error because plaintiff did not specifically request retroactive support in her complaint. The court of appeals rejected this argument, pointing out that GS 50-13.4(c1) requires that the Conference of Chief District Court Judges establish guidelines for the calculation of child support, "including retroactive support obligations." Therefore, according to the court of appeals, Guideline support includes retroactive support, and a party is not required to make a separate, specific request for retroactive support in a complaint requesting child support.

In determining Guideline support, a parent is given a credit for the amount paid for medical insurance for the children covered by the support order. In this case, the court credited plaintiff in the amount of the total premium she paid monthly, even though the premium covered insurance for other children not covered by this support order. On remand, the trial court was instructed to divide the monthly premium by the number of persons covered by the order to determine the amount of the premium applicable to each person. The support order should give credit only for the amount attributable to the two children involved in this case.

The court of appeals also rejected defendant's argument that the trial court erred by imputing income to him without first concluding he was voluntarily suppressing his income in bad faith. The court of appeals held that the trial court did not impute income. Rather, the trial court found that his evidence of his income was not credible or complete and used evidence of his income in recent years to determine his actual present income. A trial court is allowed to use evidence of income in past years to determine present income in this situation. In addition, the trial court properly used evidence of plaintiff's income in past years to determine her present income where her monthly income fluctuated.

The trial court did err, however, in using Worksheet A to determine Guideline support without making a finding of fact as to the number of nights the children spent with each parent during the years since the parties separated. Worksheet A is used when one parent has the children less than 123 nights per year, and Worksheet B is used if both parents have at least 123 nights and there is a true sharing of expenses relating to the children.

Legislation

S.L. 2025-16, sec. 1.21.(a). Child support accrual and DSS custody.

Effective October 1, 2025, and applies to all actions pending on or filed after that date.

Amends G.S. 50-13.10 (which governs establishment and modification of past due child support) to include subdivision (5), to provide that a child support payment is not past due and no arrears accrue for foster care assistance that is owed to the state by the supporting party during any period when the child is placed in DSS custody.

Equitable Distribution June 18, 2025, and October 1, 2025

Distributive Award

- An in-kind distribution is presumed equitable.
- That presumption can be rebutted when it is shown that an in-kind division is not equitable by the greater weight of the evidence, or evidence that the property is a closely held business or is otherwise not susceptible to an in-kind division.
- An order for a distributive award must specifically find that the presumption in favor of an in-kind division has been rebutted and must identify assets from which the award can be paid, unless it is clear from the evidence that there are sufficient liquid assets from which the award can be paid.
- The trial court did not err in ordering a distributive award, as plaintiff's ability to pay the award could be ascertained from the record, which showed he had sufficient liquid assets, including a house and retirement accounts.

Theuerkorn v. Heller, 918 S.E.2d 681 (N.C. App., June 18, 2025). The trial court entered orders on equitable distribution, alimony, and child support. The plaintiff appealed. Summaries of the court's holdings regarding child support and alimony are found in those sections of this update.

Regarding the equitable distribution order, plaintiff argued the trial court erred when it failed to make a specific finding regarding assets he could use to pay the award. The court of appeals held that such a finding is not required when a party's ability to pay the award can be ascertained from the record. In this case, the record showed plaintiff possessed liquid assets in the form of a house and retirement accounts. The accounts were valued at over \$1 million. Ownership of a house is considered a liquid asset when a party has the option of refinancing the home to obtain money to pay the distributive award.

Military pension division order, laches

- The trial court retained jurisdiction to consider plaintiff's request for a pension division order filed 15 years after entry of a consent order which resolved issues in equitable distribution but stated "the nonvested military retirement account is reserved for further consideration."
- Plaintiff's request for a military pension division order was not barred by laches even though she waited 15 years after entry of the consent order to request the division order because her delay was not unreasonable under the facts of this case. She filed the request two months after the pension vested and defendant began to receive payments, and defendant had notice from the time of the entry of the consent order that the pension was subject to division.
- Where the consent order did not specify wife's share of the pension, the trial court appropriately used the statutory coverture fraction to determine the marital portion of the pension and awarded wife 50% of the marital portion of his monthly payments, beginning when he began to receive the payments.

Holland v. Holland, 919 S.E.2d 258 (N.C. App., June 18, 2025). The plaintiff filed a complaint for custody, equitable distribution, post-separation support, and alimony in 2005. The parties agreed to a consent judgment later in that same year which stated in part that "the nonvested military retirement account is reserved for further consideration." A divorce judgment was entered which stated that all pending claims were reserved. Wife subsequently dismissed her PSS and alimony claims but did not dismiss the equitable distribution claim.

In August 2021, plaintiff filed a motion for entry of a military pension division order. This was two months after defendant's pension vested and he began to receive retirement payments. The wife dismissed that motion in February of 2022 but refiled it in December 2022. Over objection by defendant, the trial court entered an order dividing the pension payments, using the coverture fraction found in GS 50-21.1(a)(3)(ii) to classify the marital portion of the pension and awarding plaintiff 50% of the marital portion. The trial court ordered that plaintiff receive that percentage of each payment and that husband reimburse wife for her portion of the payments he already received. Husband appealed.

The court of appeals affirmed the trial court. The appellate court rejected defendant's argument that plaintiff's dismissal of her motion in February of 2022 terminated the action and left the trial court without jurisdiction to consider her request for the division order. The court of appeals held that a dismissal of a motion does not terminate the underlying cause of action, which was equitable distribution in this case.

The court also rejected the husband's argument that wife's request was barred by the doctrine of laches because she waited 15 years to request the pension division. The court stated that "laches does not arise from the mere passage of time; it must be demonstrated that the delay was unreasonable under the circumstances." In this case, the pension did not vest and neither party had a right to receive payments until two months before she filed her request for the division. In addition, the husband did not establish that he was prejudiced by the delay in the entry of the order. The appellate court noted that the consent judgment gave him "clear notice" that the issue of the pension division remained unresolved, and there had been a subsequent status report filed in the proceeding in 2007 confirming that the claim remained pending.

Finally, the court of appeals held that, as the consent judgment did not specify how the pension would be divided, the trial court appropriately used the coverture fraction set out in GS 50-20.1(a)(3)(ii) (total number of years earning the pension while married over the total number of years earning the pension) to determine the marital portion of the pension and awarded wife 50% of that marital portion.

Division of military pension pursuant to separation agreement

- The trial court properly interpreted a separation agreement to award wife a portion of husband's military retirement pay in accordance with the coverture fraction in the equitable distribution statute at the time of the execution of the agreement.
- A trial court is required to interpret a separation agreement to determine the intent of the parties at the time the agreement was executed. When an agreement is unambiguous, the court determines the intent of the parties based on the plain language of the agreement.
- The trial court correctly determined that the clear language of the agreement in this case supported the trial court's order that wife receive 21% of husband's actual current disposable retirement pay.
- The federal "frozen benefit rule" applicable to the division of military pensions took effect on December 23, 2016, and applies for service members who were not yet receiving retired pay on a divorce date after that date. As the parties in this case were divorced before that date, the frozen benefit rule did not apply.
- The trial court properly divided "50% of husband's benefits accumulated during the course of the marriage" [the language in the agreement] by determining the coverture fraction (by dividing the total number of points earned by husband during the marriage by the total number of points earned by husband by the time he retired) and multiplying that fraction by 50% in accordance with the agreement. That percentage (in this case 21%) was applied to husband's actual disposable retired pay to determine wife's proper share.

Green v. Green, _ S.E.2d _ (N.C. App., July 2, 2025). In 2023, plaintiff filed this action for entry of a military pension division order in accordance with the terms of a separation agreement executed by the parties in 2009. The parties divorced in 2010. Defendant retired from the military sometime later and was receiving retirement pay when plaintiff filed her action. The defendant filed counterclaims, including a request for a declaratory judgment. The trial court entered a pension distribution order in 2024, awarding plaintiff 21% of defendant's total disposable retirement pay.

The separation agreement stated that wife is entitled to "50% of Husband's benefits accumulated during the course of the marriage." The agreement also stated that the agreement was to "be construed in accordance with and governed by the laws of the State of North Carolina."

Plaintiff argued that this provision meant the trial court should apply the coverture fraction contained in the equitable distribution statute at the time the agreement was executed to determine her share of husband's current total disposable retirement pay. Husband argued that the language of the agreement clearly indicated that the coverture fraction should be applied to "what his hypothetical retirement pay would have been had he retired on the date the parties entered into the Agreement," similar to the "frozen benefit rule" applicable now to all military pension division orders involving service members who were not yet receiving retired pay on a divorce date after December 23, 2016.

The trial court agreed with plaintiff wife and the court of appeals affirmed. The appellate court stated that the plain and unambiguous language indicates that the parties intended wife to receive a share of husband's final disposable retirement pay in the amount of 50% of the portion of the pension acquired during the marriage, noting that "[t]his reading is supported by construing the agreement in accordance with the standard method of dividing military pensions in North Carolina in effect at the time the parties entered into the agreement."

Gift to one spouse; agreements, undue influence and duress

- Evidence supported the trial court's finding that \$8,996 was received by plaintiff during the marriage as a gift from her cousin and was, therefore, plaintiff's separate property.
- The trial court erred in setting aside an agreement between the parties regarding the distribution of a portion of the proceeds from the sale of a house. Evidence was not sufficient to show plaintiff signed the agreement as the result of undue influence or duress.
- The trial court's value of wedding rings was supported by the evidence where plaintiff testified as to her opinion of the value and the trial court found her opinion to be credible.
- The trial court did not err when it failed to give husband credit in distribution for wife's use of the marital home where possession of the home was granted to wife in a DVPO.
- The trial court did err when it ordered that defendant's child support arrears be deducted from his share of the proceeds from the sale of marital property. GS 50-20(f) requires that equitable distribution be accomplished without regard to child support or alimony.

Denis v. Chandler, _ S.E.2d _ (N.C. App., July 16, 2025). The trial court entered orders on child support and equitable distribution. The defendant appealed. A summary of the court's holding regarding child support is found in the child support section of this document.

Defendant argued that the trial court erred when it classified a check for \$8996 received during the marriage by plaintiff from her cousin as plaintiff's separate property. The court of appeals disagreed, concluding that evidence in the record which included a letter written by the cousin was sufficient to show that the check was acquired by plaintiff by gift.

The trial court determined that an agreement signed by the parties during the marriage regarding the distribution of a portion of the proceeds from the sale of a house had been signed by plaintiff as the result of duress and set the agreement aside. The court of appeals vacated that portion of the ED judgment after concluding that evidence was not sufficient to support the finding of duress. Plaintiff testified that she signed the agreement because it was presented to her on the morning of the closing on the purchase of a new house and she knew the children of the parties would be disappointed if the parties did not purchase the new home. The court of appeals held that while her testimony demonstrated that she felt some external pressure to sign the agreement, “the pressure applied in this case does not rise to the level of overriding plaintiff’s ability to freely consent”, as required to prove that an agreement was the result of duress.

The court of appeals rejected husband’s argument that wife’s “unsubstantiated” opinion as to the value of her wedding rings was insufficient evidence to support the trial court’s valuation of the rings. An owner of property is competent to offer an opinion as to the value of that property.

Finally, the trial court violated GS 50-20(f) when it ordered that defendant’s child support arrears be deducted from defendant’s share of proceeds from the sale of marital property. That statute provides that equitable distribution be accomplished “without regard” to alimony or child support. Quoting *Brinkley v. Brinkley*, 135 NC App 608 (1999), that court stated that “as a matter of sound public policy, child support obligations may not be offset by other obligations owed by one spouse to the other spouse.”

Legislation

Restrictions on agreements in conveyances between spouses.

S.L. 2025-25, HB 40, Amends G.S. 50-20(b)(2) and 50-20(d), and G.S. 39-13.3(a), effective October 1, 2025.

GS 50-20(b)(2) provides that property acquired by gift from a spouse is marital property unless the intent that the property be separate property is expressly stated. This amendment specifies that the intent that the property be separate property must be stated in writing (was in the conveyance). For real property, the writing must be in a document separate from the conveyance.

That statute also provides that property acquired in exchange for separate property during the marriage is separate property unless a statement is made in writing (was in the conveyance) that the property is intended to be marital property. The amendment also states that the act of acquiring the property does not in itself state this intent.

GS 50-20(d) allows parties to make agreements regarding the distribution of marital and divisible property in written agreements that are properly executed. This amendment specifies that parties may not provide for the distribution of property in a conveyance of real property.

GS 39-13.3(a)(2) is amended to specify that the right to an equitable distribution cannot be released or waived in an instrument of conveyance and specifies that a conveyance of real property between spouses does not waive or release any claim by a spouse for equitable distribution.

**PSS and Alimony
June 18, 2025, and October 1, 2025**

Correction of clerical error in judgment; income, findings required to support award of alimony

- Relief pursuant to G.S. 1A-1, Rule 60(a) is permitted to correct a clerical error in an order but not to correct a “serious or substantial error” or one resulting from “judicial reasoning or determination.”
- Amending an alimony order to include the required payment amount left blank in the original order was the correction of a clerical error.
- The trial court erred in awarding alimony and child support because it failed to make findings of fact regarding plaintiff’s actual income and the parties’ expenses at the time of the hearing in 2024. The trial court based its decision on evidence of plaintiff’s 2023 income without explaining why that evidence was sufficient to support a finding that this amount continued to be his income at the time of the hearing.
- The trial court erred in ordering alimony without making specific findings of fact regarding the expenses of the parties and the accustomed standard of living of the parties.

Theuerkorn v. Heller, 918 S.E.2d 681 (N.C. App., June 18, 2025). The trial court entered orders on equitable distribution, alimony, and child support. The plaintiff appealed. A summary of the court’s holding regarding equitable distribution is found in the equitable distribution section of this update.

The alimony order stated “Plaintiff shall pay Defendant forty-eight (48) monthly alimony payments of \$_____ beginning ...”, leaving the amount and beginning date blank. Defendant filed a Rule 60(a) motion requesting that the trial court correct the order and fill in the alimony amount in the original order. The trial court granted the motion and entered an amended order which was identical to the original order, except that \$1,250.00 per month replaced the blank space.

Plaintiff first challenged the trial court’s grant of defendant’s Rule 60(a) motion. The court of appeals found no error. The change the trial court made in the amended order did not alter the substantive provisions of the original order because “the amount of money involved is not what creates a substantive right ... [i]t is the source from which this money is derived that determines whether a change in the amount owed in substantive for the purposes of Rule 60(a).”

Plaintiff also challenged the trial court findings as to the income of the parties. For both alimony and child support, the trial court must determine a party’s present income at the time of the hearing. In this case, for a prior hearing conducted in February 2023, plaintiff submitted a financial affidavit stating he earned gross monthly income in the amount of \$15,298. During this hearing held in 2024, he testified that he earned \$3,134 per month and produced a W-2 paystub for the month of January 2024. On cross-examination, he admitted that his gross annual income for 2023 was \$248,739.7, or \$12,458.76 per month. The trial court made a finding of fact stating that the plaintiff “is employed ... [and] has a net income of \$12,458.76 per month.”

The court of appeals vacated the alimony and child support orders after concluding that the trial court’s findings of fact were not sufficient to support the trial court’s use of plaintiff’s 2023 income rather than the income shown by evidence of his current income at the time of the hearing in 2024. The court of appeals held that a trial court can use evidence of a party’s past earnings to support a finding of current

income, but findings must show why the trial court determined that evidence of past income was sufficient to show his current income or show that the trial court determined that evidence of his current income was “not credible or was otherwise suspect.” Findings of fact must show why the court decides to use evidence of past income to establish current income and must show what the court determines to be the actual present income of a party.

The court of appeals also vacated the alimony order because the alimony order did not contain specific findings regarding the actual present expenses of the parties and the accustomed standard of living of the parties established during the marriage. GS 50-16.3A(b) requires that the court make specific findings and, in this case, where the alimony order stated only that the trial court “considered the financial affidavits filed by the parties”, the findings of fact were not sufficient to support the alimony award.

Dismissal of alimony claim for failure to prosecute

- When the trial court dismissed wife’s alimony claim for failure to prosecute without specifying that the dismissal was without prejudice, the dismissal was with prejudice, meaning wife was barred from filing a new claim alimony or PSS claim. GS Rules of Civil Procedure, Rule 41(b).
- The trial court PSS order terminated automatically pursuant to GS 50-16.1A(4)(c) when the trial court dismissed wife’s alimony claim for failure to prosecute.

Sessoms v. Ray, 919 S.E.2d 249 (N.C. App., June 18, 2025). Wife filed claims for PSS and alimony, along with other claims. The trial court ordered husband to pay monthly PSS to wife. When the alimony claim came on for hearing, wife did not appear, and the trial court entered an order dismissing her alimony claim for the failure to prosecute. The dismissal did not specify whether it was with or without prejudice.

Three days after the dismissal, wife filed a new claim requesting PSS and alimony, arguing that she had a full year to refile her claims that had been dismissed. The husband filed a motion to dismiss, arguing the trial court had no jurisdiction to proceed with wife’s new claims because the parties were divorced at the time she filed her new claim and because GS 50-16.1A(4)(c) specifies that PSS terminates when an alimony claim is dismissed. He argued that GS 50-16.1(4)(c) means that a PSS claim is dismissed with prejudice when an alimony claim is dismissed. The trial court denied his motion to dismiss and entered a new PSS order requiring the husband to pay PSS to wife.

Following a trial on wife’s alimony claim and a court order denying her alimony, the husband appealed the PSS order. The court of appeals held that this was the proper way to appeal the interlocutory PSS order.

The court of appeals then held that, even though neither party argued that the dismissal of wife’s first claim for alimony for the failure to prosecute had been a dismissal with prejudice, “the straightforward application of Rule 41(b)” provides that it was a dismissal with prejudice. That rule provides that when the trial court enters an involuntary dismissal, that dismissal is with prejudice unless the trial court specifically states otherwise in the order of dismissal. As the original alimony claim had been dismissed with prejudice, the trial court had no subject matter jurisdiction to grant wife’s subsequently filed request for PSS and no authority to consider her request for alimony.

Domestic Violence
June 18, 2025, and October 1, 2025

Attorney fees, jurisdiction after expiration of ex parte order

- The trial court lost subject matter jurisdiction to enter a DVPO when the ex parte DVPO expired more than one year after it was entered without the entry of the one-year DVPO.
- Attorney fees are authorized by GS 50B-3(a)(10) as a form of relief in a DVPO. Because the trial court had no jurisdiction to enter a DVPO, the trial court erred in granting attorney fees to defendant pursuant to that statute.
- Where defendant's request for attorney fees listed GS 6-21.5 as an alternative statutory authorization for his request, the court of appeals remanded the case to the trial court to consider his request pursuant to that statute even though the trial court did not address this statute. Dissent on this issue. Dissent argued that because the trial court did not consider GS 6-21.5, the case should not be remanded to give the court that opportunity.
- GS 6-21.5 allows the court to award attorney fees to a prevailing party "if the court finds there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading."

Cauley v. Cauley, 919 S.E.2d 9 (N.C. App., June 18, 2025). Plaintiff filed an action seeking relief pursuant to Chapter 50B. An ex parte DVPO was entered and was subsequently renewed several times, resulting in the ex parte remaining in effect for more than one year. The ex parte order was subsequently allowed to expire before a trial was held on plaintiff's request for a permanent DVPO. Following a trial on plaintiff's request for a one-year DVPO, the trial court concluded plaintiff failed to prove defendant committed an act of domestic violence and denied her request.

Following the trial court's denial of plaintiff's claim, defendant filed a motion seeking attorney fees and expenses pursuant to GS 50B-3(a)(1), GS 50-13.6, GS 50A-312 and GS 6-21.5. The trial court entered an order that required plaintiff to pay defendant \$21,105 in expenses and \$75,258 in attorney fees, citing GS 50B-3(a)(10), GS 50-13.6, and GS 50A-312. Plaintiff appealed.

The court of appeals vacated the trial court order and remanded the case to the trial court for additional consideration and findings of fact.

The appellate court first held that while GS 50-13.6 and GS 50A-312 authorize the award of fees in custody proceedings, the trial court was stayed from acting in a custody proceeding because juvenile proceedings were pending regarding the child of the parties pursuant to GS Chapter 7B. GS 7B-200 stays all proceedings for child custody while a juvenile proceeding is pending, meaning the trial court in the DVPO proceeding could not use the custody statutes to award attorney fees while the juvenile proceeding remained pending.

The court of appeals also held that the trial court lost jurisdiction to enter a DVPO when the ex parte order expired after being in effect for more than one year. In *Rudder v. Rudder*, 234 NC App 173 (2014), the court of appeals held that a trial court loses jurisdiction to enter a permanent DVPO when no permanent DVPO is entered before an ex parte expires after being in effect for more than one year. As attorney fees are authorized by Chapter 50B only as a form of relief granted in a DVPO, the trial court could not order fees pursuant to GS 50B-3(a)(10) when the court could not enter a DVPO.

However, the court of appeals held that the trial court could consider an award of fees pursuant to GS 6-21.5, which authorizes an award of attorney fees when the trial court concludes that plaintiff's pleadings

failed to allege a justiciable issue. Because defendant cited this statute in his motion requesting attorney fees and costs, the court of appeals held the trial court could consider his request on remand.

Legislation

SESSION LAW 2025-54 HOUSE BILL 620

AN ACT TO MODIFY PROVISIONS AFFECTING THE COURTS OF NORTH CAROLINA AND THE ADMINISTRATIVE OFFICE OF THE COURTS.

Responsibilities of Clerks of Court for Service of Process in Chapter 50B Proceedings

Effective June 30, 2025, and applies to service of process occurring on or after that date.

Sec. 9.(a) and 9.(b) amends G.S. 50B-2 and G.S. 50B-4 to remove the requirement that the clerk of court effect service of process for a self-represented litigant when the court has issued an ex parte DVPO or when the self-represented litigant has filed a motion requesting defendant be held in contempt for violation of a DVPO, if the service of process does not occur within the state of North Carolina.

Session Law 2025-70 Senate Bill 429

AN ACT TO MAKE VARIOUS CHANGES RELATED TO THE CRIMINAL LAWS OF NORTH CAROLINA.

Allows persons who reside outside of North Carolina to file for a DVPO

Effective December 1, 2025, and applies to civil actions or motions filed on or after that date.

Sec. 6.(a) amends G.S. 50B-2(a) to provide that any person residing in this State as well as any person seeking relief for acts that occurred in this State can seek relief pursuant to Chapter 50B.

Make changes to the process for the retrieval of firearms, ammunition, and permits surrendered pursuant to an ex parte, emergency, or permanent DVPO

Effective December 1, 2025, and applies (1) to firearms, ammunition, and permits surrendered on or after that date, and (2) beginning February 1, 2026, to firearms, ammunition, and permits surrendered before December 1, 2025.

Sec. 20.(a) amends G.S. 50B-3.1(d) and (e) to allow the sheriff to return weapons, ammunition, and permits surrendered pursuant to a DVPO without an order from the court when the court does not enter a DVPO when an ex parte or emergency order expires, or when a protective order is denied by the court following a hearing.

Before returning any firearm to the defendant, the sheriff must verify through a criminal history record check that the defendant is not prohibited from possessing or receiving a firearm pursuant to 18 U.S.C. sec. 922 or any state law and that the defendant does not have any pending criminal charges committed

against the person that is the subject of the current protective order or pending charges that, if convicted, would prohibit the defendant from possessing a firearm.

Also amends G.S. 50B-3.1(g) to allow a third-party owner of weapons seized as a result of the entry of a DVPO to file a motion requesting return of the weapons at any time prior to the disposal of the firearms by the sheriff (the motion was required to be filed within 30 days following the seizure of the weapons), and amends G.S. 50B-3.1(h) regarding the process for disposal of weapons, ammunition, and permits by the sheriff.

Specifies that the defendant and all parties known or believed to have an ownership or possessory interest in the firearms, ammunition, or permits must be given notice before the sheriff applies to the court for an order allowing disposition of the items surrendered as a result of a DVPO. Allows the order of disposal if the defendant or third-party owner has not filed a motion requesting return of the items within 90 days after the expiration of the DVPO or the final disposition of any pending criminal charges committed against the person that is the subject of the current protective order, and the defendant has not requested return of the items directly from the sheriff within 90 days from the expiration of the ex parte or emergency DVPO or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order. Also clarifies that both a defendant and a third-party owner are entitled to the proceeds from any sale, after a deduction for costs, if the defendant or third-party files or makes a motion requesting the proceeds before or during the hearing requesting the order for disposition.

An order of disposal also can be entered if the court determines that the defendant or third-party owner is precluded from regaining possession of any firearm, ammunition, or permit surrendered, or if the defendant or third-party fails to remit all fees owed for the storage of the firearms, ammunition, or permits within the time periods specified in the statute.

Spousal Agreements
June 18, 2025, and October 1, 2025

Effect of reconciliation; reconciliation clause in agreement; integration

- The effect of a separation agreement on the estate rights of one spouse was properly an issue for the district court. While the clerk of superior court has exclusive jurisdiction over estate proceedings and has exclusive authority to name the executor of an estate, pursuant to GS 7A-244, the district court has jurisdiction over actions to enforce a separation or property settlement agreement between spouses.
- While reconciliation of the parties will void the true separation provisions of an agreement (such as alimony and provisions relating to living separate and apart) even if the agreement contains a provision indicating otherwise, reconciliation does not affect property settlement agreements. The provisions at issue in this proceeding were property settlement; wife's waiver of her inheritance rights as a surviving spouse and her right to administer her husband's estate.
- When a separation and property settlement agreement is an integrated agreement, a reconciliation of the parties will void the entire agreement. Agreements containing both separation and property settlement provisions, are presumed NOT integrated.
- The statement of the parties in the agreement that reconciliation would have no effect on the agreement along with the severability clause in the agreement supported the conclusion that the agreement was not integrated.
- As the property settlement provisions were not 'reciprocal consideration' for the provisions of the separation agreement, the property settlement provisions survived the reconciliation of the parties and continued to be valid and enforceable.
- Plaintiff was not entitled to rescission of the agreement based on husband's breach of the agreement. A material breach will support the equitable remedy of rescission only when the legal remedy of money damages will not provide an adequate remedy. In this case, wife could be compensated for husband's failure to pay as required by the agreement with a money judgment against husband's estate.
- The trial court did not err when it concluded that a loan modification document executed by the parties after execution of the separation and property settlement agreement was not intended by the parties to modify the agreement.

Jones v. Jones (administrator), et. al., 919 S.E.2d 308 (N.C. App., July 2, 2025). Plaintiff filed an action in district court asking the court to declare a separation and property settlement agreement void due to the reconciliation of the parties to the agreement following the execution of the agreement and asking that the district court substitute plaintiff as the administrator of the estate of her late husband. In the alternative, plaintiff requested that the agreement be rescinded by the court either based on husband's material breach of the agreement when he failed to make the payments to wife required by the agreement, or based on the alleged modification of the agreement when the parties executed a modified loan agreement that plaintiff argued contradicted the separation and property settlement agreement.

Defendants (administrator of husband's estate and beneficiaries of the estate) filed a counterclaim requesting a declaratory judgment that the separation and property settlement agreement was valid and enforceable. In the agreement, wife waived her inheritance rights as a surviving spouse and her right to administer her husband's estate, among other things. The trial court ruled that the clerk of superior court had exclusive jurisdiction to address plaintiff's request to be named executor of the estate but entered a declaratory judgment finding that the agreement was valid and enforceable. Plaintiff appealed.

The court of appeals affirmed the trial court's exercise of jurisdiction, agreeing that only the clerk of superior court can address plaintiff's request to be appointed executor and agreeing that the district court

had jurisdiction to address the enforceability of the separation and property settlement agreement pursuant to GS 7A-244.

Regarding the continued validity and enforceability of the agreement, the court of appeals held that the trial court also was correct when it held that “whether Plaintiff and Defendant had actually reconciled was not relevant to the legal issue presented.” The property settlement provisions of the agreement, including wife’s waiver of her rights regarding her husband’s estate, would not be affected by reconciliation, even assuming reconciliation occurred.

The appellate court explained that “true” separation agreements are voided by reconciliation, even if the agreement itself states otherwise. Separation provisions include agreements to live separate and apart and alimony provisions. However, property settlements can be executed by spouses at any time before, during or after marriage and are unaffected by reconciliation.

If an agreement is integrated, meaning the property settlement provisions are ‘reciprocal consideration’ for the separation provisions, then the entire agreement is voided by reconciliation. There is presumption that agreements are not integrated and the person seeking to void the agreement based on reconciliation has “the burden to rebut the presumption by a preponderance of the evidence that an integrated agreement was in fact intended by the parties.”

The agreement in this case contained both a severability clause and a clause stating that reconciliation would not affect the terms of the agreement, and a provision indicating that the agreement could be modified only in writing. According to the court of appeals, these provisions indicate that the intent of the parties was that the agreement was not integrated and plaintiff did not present evidence to rebut the presumption that the agreement was not integrated.

The court of appeals noted that the trial court did not directly address plaintiff’s alternative request for rescission of the agreement based on husband’s material breach of the agreement. The court of appeals held that the record showed husband did fail to make all payments to wife required by the agreement but held that the remedy at law, a money judgment against the estate for the payments he failed to make, would be adequate to compensate plaintiff. Rescission is an equitable remedy, available only when a money judgment will not adequately compensate a party to a contract.

Finally, the court of appeals held that the trial court was correct when it rejected plaintiff’s argument that the parties to the contract modified the contract when they executed a loan modification agreement sometime after the execution of the separation and property settlement agreement. The court of appeals held that while the loan modification was an agreement signed by both parties and acknowledged before a notary, the loan modification did not mention the separation and property settlement agreement, did not necessarily contradict the agreement and did not otherwise indicate that the parties intended it as a modification of their separation and property settlement agreement.

Division of military pension pursuant to separation agreement

- The trial court properly interpreted a separation agreement to award wife a portion of husband’s military retirement pay in accordance with the coverture fraction in the equitable distribution statute at the time of the execution of the agreement.
- A trial court is required to interpret a separation agreement to determine the intent of the parties at the time the agreement was executed. When an agreement is unambiguous, the court determines the intent of the parties based on the plain language of the agreement.

- The trial court correctly determined that the clear language of the agreement in this case supported the trial court's order that wife receive 21% of husband's actual current disposable retirement pay.
- The federal "frozen benefit rule" applicable to the division of military pensions took effect on December 23, 2016, and applies for service members who were not yet receiving retired pay on a divorce date after that date. As the parties in this case were divorced before that date, the frozen benefit rule did not apply.
- The trial court properly divided "50% of husband's benefits accumulated during the course of the marriage" [the language in the agreement] by determining the coverture fraction (by dividing the total number of points earned by husband during the marriage by the total number of points earned by husband by the time he retired) and multiplying that fraction by 50% in accordance with the agreement. That percentage (in this case 21%) was applied to husband's actual disposable retired pay to determine wife's proper share.

Green v. Green, _ S.E.2d _ (N.C. App., July 2, 2025). In 2023, plaintiff filed this action for entry of a military pension division order in accordance with the terms of a separation agreement executed by the parties in 2009. The parties divorced in 2010. Defendant retired from the military sometime later and was receiving retirement pay when plaintiff filed this action. The defendant filed counterclaims, including a request for a declaratory judgment. The trial court entered a pension distribution order in 2024, awarding plaintiff 21% of defendant's total disposable retirement pay.

The separation agreement stated that wife is entitled to "50% of Husband's benefits accumulated during the course of the marriage." The agreement also stated that the agreement was to "be construed in accordance with and governed by the laws of the State of North Carolina."

Plaintiff argued that this provision meant the trial court should apply the coverture fraction contained in the equitable distribution statute at the time the agreement was executed to determine her share of husband's current total disposable retirement pay. Husband argued that the language of the agreement clearly indicated that the coverture fraction should be applied to "what his hypothetical retirement pay would have been had he retired on the date the parties entered into the Agreement," similar to the "frozen benefit rule" applicable now to all military pension division orders involving service members who were not yet receiving retired pay on a divorce date after December 23, 2016.

The trial court agreed with plaintiff wife and the court of appeals affirmed. The appellate court stated that the plain and unambiguous language indicates that the parties intended wife to receive a share of husband's final disposable retirement pay in the amount of 50% of the portion of the pension acquired during the marriage, noting that "[t]his reading is supported by construing the agreement in accordance with the standard method of dividing military pensions in North Carolina in effect at the time the parties entered into the agreement."

**Civil No-Contact Orders
June 18, 2025, and October 1, 2025**

Legislation

Expansion of definition of unlawful conduct to include mass picketing

MEMORANDUM

TO: District Court Judges
Clerks of Superior
Court

FROM: Antares Holloway, AOC

DATE: July 10, 2025

SUBJECT: 2025 Legislation- Workplace Violence Prevention No-Contact Actions¹

On July 9, 2025, the Governor signed into law Senate Bill 311, [Session Law 2025-71](#),² which makes various changes to Article 23 of Chapter 95 of the General Statutes in Part III of the Act regarding civil no-contact actions pursuant to the Workplace Violence Prevention Act.³ These changes are effective July 9, 2025, and apply to acts or omissions occurring on or after that date.

I. Who May Bring an Action and Where

Section 3.(a) of the Act amends G.S. 95-261 and other statutes throughout Article 23 of Chapter 95 to provide that an employer who has suffered unlawful conduct may bring an action for a civil no- contact order. This is in addition to the language in the statute that permits an employer to bring the action on behalf of the employee. The amendments also provide clarifying language in G.S. 95-262(a) that an action for a civil no-contact order is commenced by filing a verified complaint in the county where the unlawful conduct took place.

II. Unlawful Conduct Definition

The Act amends the definitions of Article 23 by adding additional subsections that expand the definition of unlawful conduct to include mass picketing, unlawful threats, or force that hinders or prevents the pursuit of any lawful work or employment. Unlawful conduct is also defined to include obstructing or interfering with, by mass picketing, the entrance to or egress to any place of employment. Further, obstructing or interfering with the use of public roads, streets, highways, railways, airports, or other ways of travel by mass picketing is also included in the definition of unlawful conduct. G.S. 95-260 is also amended to define mass picketing, obstruction, and place of employment.

III. Amendments to G.S. 95-271

The legislation adds qualifying language to G.S. 95-271 addressing the application of the Article to union organization or activities, labor disputes, and activities protected by the National Labor Relations Act. The Article does not apply to those listed activities on condition that, “such activity does not involve violence, threats, or intentional obstruction of any place of employment’s access points.”

G.S. 95-271 is further amended to create additional subsections (b)-(d). Subsection (b) specifies that the Article is not intended to conflict or infringe upon rights protected by the North Carolina Constitution or the Constitution of the United States. A severability clause is created in new subsection (c). The legislation further clarifies in subsection (d) that nothing in the Article applies to peaceful demonstrations, informational picketing, or labor activity protected by the National Labor Relations Act or by the North Carolina Constitution, provided that the act does not involve violence, threats, or intentional obstruction of any place of employment’s access points. Subsection(d) further defines “peaceful demonstration” for purposes of the subsection to include either one or both of the following:

- (1) Conduct which does not involve lawlessness or create a risk to property or the safety of others;
- (2) Speech that is not directed to inciting or producing imminent lawless action and not likely to incite or produce such action.

Note: The following AOC forms related to the Workplace Violence Prevention Act have been revised in response to this legislation and are now available.

[AOC-CV-530 Complaint](#)

[AOC-CV-532 Notice of Hearing](#)

[AOC-CV-533 Temporary](#)

[Order/Ex parte Order AOC-CV](#)

[534 No-Contact Order](#)

Court officials with questions about the changes described above may contact me at Antares.S.Holloway@nccourts.org. Officials of other agencies external to the Judicial Branch and other interested parties with questions about the impact of this legislation should consult their respective attorneys. Counsel for the NCAOC cannot provide legal advice to individuals and entities outside of the Judicial Branch.

¹ This memo will be available on NCAOC’s Juno website for Judicial Branch users at <https://juno.nccourts.org/legal-memos>, under the civil memos and domestic violence memos categories.

² The full text of the enacted bill can be found at <https://www.ncleg.gov/Sessions/2025/Bills/Senate/PDF/S311v5.pdf>.

³ This memo summarizes the provisions of Part III of the Act that address civil no-contact actions under Article 23 of Chapter 95 regarding workplace violence prevention.

Contempt June 18, 2025, and October 1, 2025

Direct criminal contempt

- The defendant's failure to report to jail as required by the sentencing order entered following his conviction for criminal conduct was an act of criminal contempt pursuant to GS 5A-11(a)(3) but was not direct criminal contempt.
- When a person is charged with indirect criminal contempt, the court must use the plenary contempt process set out in GS 5A-15. The summary procedure authorized by GS 5A-14 is available only for direct criminal contempt.

State v. Brinkley, _ S.E.2d _ (N.C. App., Sept. 17, 2025). Curtis Brinkley was sentenced for voluntary manslaughter and later held in contempt for failing to report to jail.

- On 11 April 2023, Brinkley entered an Alford plea to voluntary manslaughter and was sentenced to 58 to 82 months in prison.
- The sentence was set to begin on 12 June 2023, with a \$50,000 bond if he failed to report.
- Brinkley did not report on the scheduled date and was arrested on 3 January 2024.
- A contempt hearing was held on 16 January 2024, where he was found in direct criminal contempt in a summary proceeding without legal representation.

The court of appeals held that Brinkley's failure to report constituted indirect rather than direct criminal contempt.

- Direct criminal contempt requires actions to occur in the presence of the court, which did not happen in this case.
- Brinkley's failure to report was classified as indirect criminal contempt, necessitating different procedural requirements.
- The trial court erred by summarily punishing Brinkley without following the necessary procedures for indirect contempt. Indirect criminal contempt must be initiated by a show cause order, and a trial must be held. A defendant has a right to counsel and the right against self-incrimination. The trial court must find facts beyond a reasonable doubt.

The appellate court vacated the contempt order and remanded the case for proper proceedings.

- The trial court's order was vacated due to the misclassification of contempt.
- The case was remanded for proceedings consistent with the requirements for indirect criminal contempt under N.C. Gen. Stat. § 5A-15.

Civil contempt for failure to pay child support

- Civil contempt order was reversed where evidence introduced during the hearing on civil contempt did not support the trial court's finding that plaintiff had the ability to pay the amount ordered by the child support order and attorney fee order.

- The trial court erred in ordering plaintiff to pay additional amounts of child support arrears and additional amounts for attorney fees in the civil contempt order because the trial court does not have authority to modify orders that are the subject of the civil contempt proceeding.
- A civil contempt order cannot order that a person found in contempt be immediately arrested in the future if the person fails to make a payment imposed as a purge in the order for civil contempt; a hearing is required before a person can be incarcerated for civil contempt and evidence must show that the person has the present ability to comply with the purge condition.

Collins v. Holley, 919 S.E.2d 23 (N.C. App., June 18, 2025). The defendant father filed a motion for civil contempt, alleging plaintiff mother failed to pay the amounts required by a child support order and an order for attorney fees. The only evidence offered during the hearing was testimony by plaintiff about her financial circumstances. The trial court concluded that the plaintiff was in civil contempt, and the court ordered that she pay an amount of child support arrears that was more than the amount required by the support order being enforced and ordered that she pay an amount of attorney fees that also was more than the amount already required by the order being enforced. The contempt order included findings that plaintiff had the ability to comply with these additional amounts as well as the amounts required by the original child support order and ordered that she make monthly payments until she paid all amounts ordered. The contempt order then provided that if the plaintiff failed to make any of the required monthly payments, she was to be immediately arrested and held in the county jail until all payments were made in full.

The plaintiff appealed and the court of appeals reversed the contempt order. The appellate court held that the trial court's findings that plaintiff acted willfully and had the ability to pay in compliance with the underlying orders were not supported by the only evidence produced during the hearing. The plaintiff's testimony about her income and expenses clearly showed she did not have the ability to pay. The defendant's motion contained allegations regarding plaintiff's ability to pay, but the defendant did not testify or offer evidence to support the allegations contained in the motion.

The court of appeals also held that the trial court did not have the authority to increase the amounts plaintiff owed for child support arrears or for attorney fees in the contempt order. Existing child support orders and existing orders for attorney fees cannot be modified in a civil contempt proceeding.

Finally, the court of appeals held that a trial court cannot order an automatic future arrest of a person who fails to comply with a purge condition that requires future payment. The court stated that a person cannot be held in civil contempt "indefinitely" and held that a person cannot be incarcerated without a hearing to determine that the person has the actual ability to comply with the purge condition at the time of incarceration. The appellate court stated, "there is simply no way the trial court can project out and assume [a party's] income, expenses, or assets in the future."

Miscellaneous Enacted Legislation

S.L. 2025-84, sec. 1. Definitions applicable to statutory construction.

Effective January 1, 2026, and titled “**Official recognition of two sexes in all administrative rules, regulations, or public policies adopted by the State of North Carolina or its political subdivisions**”, creates new section G.S. 12.3.3 to adopt definitions to apply to all administrative rules, regulations, or public policies adopted by the State of North Carolina or its political subdivisions, unless otherwise specified.

Those definitions include:

- Biological sex: “The biological indication of male and female in the context of reproductive potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal and external genitalia present at birth, without regard to an individual’s psychological, chosen, or subjective experience of gender.”
- Male: “A term that when used to refer to a natural person, means a person belonging, at conception, to the sex characterized by a reproductive system with the biological function of producing sperm.”
- Father: “A male parent.”
- Female: “A term that when used to refer to a natural person, means a person belonging, at conception, to the sex characterized by a reproductive system with the biological function of producing ova (eggs).”
- Mother: “A female parent.”

S.L. 2025-70, sec. 24.(a). Electronic signatures of court documents.

Effective July 9, 2025 and expires two years from its effective date, July 9, 2027, chief district court judges and senior resident superior court judges may establish rules for their districts allowing for the court’s manual signature of (1) orders of the court executed outside of court and (2) fee application orders from private assigned counsel submitted on Form AOC-CR-225. In circumstances when manual signatures are permitted, the party obtaining the court’s manual signature bears sole responsibility for filing the executed document with the clerk through eFile and Serve. Manual signature is defined as “the act of physically signing a paper document with a pen, pencil, or other writing utensil.” **This section does not apply to criminal judgments.**

S.L. 2025-54, sec. 12.(a). Judicial settlements and retirement of judge.

Effective July 2, 2025 and applicable to actions taken on or after that date, G.S. 1-283 was amended to add retirement of the judge empowered to settle the record on appeal as a basis to find that judge unavailable and the use of the rules of appellate procedure to determine a substitute.