Civil Procedure Case Update

Superior Court Judges' Summer Conference

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Courts covered: North Carolina Court of Appeals, and North Carolina Supreme Court
Subjects covered: Civil procedure[1]

Rule numbers refer to the North Carolina Rules of Civil Procedure, G.S. 1A-1, unless otherwise stated.

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[1] This summary does not cover general civil law issues even within cases containing procedural issues except when those issues are bound up in the procedural issues.

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Rule 6

Blackmon v. Blackmon (COA25-429)

Date: 2026-04-15

Rules: 6(e), 41(d)

Summary: Domestic action for alimony. The defendant moved pursuant to Rule 41(d) to direct the plaintiff to pay costs associated with a counterclaim for alimony that the plaintiff voluntarily dismissed in a prior action between the parties. The trial court entered an order directing the plaintiff to pay the counterclaim costs within 30 days of entry of the order. Thirty-three days later, the plaintiff attempted payment and the defendant refused to accept and moved to dismiss. The trial court granted the motion to dismiss and the plaintiff appealed to the NCCOA, arguing that Rule 6(e) extended the payment window by three days because the order was served by mail.

Holding: Rule 6(e) applies only where service is "the triggering event starting the clock[.]" Slip op. at 5. The terms of the order explicitly stated that the payment period ran from the date of entry, not

the date of service. Service of the trial court's order did not trigger the payment period, and the order was not required to be served under Rule 5(a). Rule 41(d) is a "mandatory directive" that "should not be read in conjunction with Rule 6(b)" and the action was properly dismissed. Slip op. at 7.

In re: Atkinson (COA25-1039)

Date: 2026-05-20

Rule or doctrine: Rule 6(e)

Procedural Summary: Petition for sale of real property (special proceeding) within an estate proceeding. After hearing, the Clerk entered order authorizing administrator of estate to sell property. Respondent filed notice of appeal of the clerk's order eleven days after entry of the order. The superior court dismissed the appeal as untimely. Respondent appealed.

Holding: The time for appeal from a clerk's order entered in a special proceeding under G.S. 1-301.2(e) is ten days after entry of the order. A notice of appeal filed eleven days after entry of the order is untimely and deprives the superior court of jurisdiction to review the order. Neither Rule 58 nor Rule 6(e) modify this time period.

Takeaway: when calculating time periods for appeal of clerk's (or administrative) orders, pay attention to the event that triggers the running of the time period. If service is not the triggering event, Rule 6(e) will not apply. Even if service is the triggering event, make sure that there is authority for Ruel 6(e) to apply before finding that the party who was served has an additional three days to file notice of appeal or petition for judicial review.

Bradley Home v. N.C. Dep't of Health & Hum. Servs. (220PA24)

Date: 2026-05-22

Rule or doctrine: Rule 6(e), Administrative Procedure Act

Procedural Summary: State agency mailed petitioner a notice that it had decided to revoke the petitioner's licenses. Sixty-three days after the agency placed the notice in the mail, the petitioner filed a petition for a contested case. When the agency moved to dismiss the case, the petitioner argued that the "mailbox rule" allowed it three extra days because the agency had delivered its notice by mail. The ALJ disagreed and found the petition untimely. *Id.* at 2–3. After review by the superior court and NCCOA, the petitioner appealed to the NCSC.

Holding: Rule of Civil Procedure 6(e) does not apply to the time limit for commencing a contested case.

Takeaway: Subject matter jurisdiction for administrative proceedings and appeals is governed by statute and the time limit for commencing a contested case cannot be modified by an agency or court. While the Rules of Civil Procedure govern calculation of time once a contested case before the OAH has commenced, they do not govern the time period before the commencement of a contested case, even if there is a dispute between a person and the agency. *See also* Joseph Laizure, *Jurisdictional Traps in Appeals from Administrative Agencies*, ON THE CIV. SIDE, UNC SCH. OF GOV'T BLOG (June 16, 2026), www.civil.sog.unc.edu.

Rule 7

Byrd v. Avco Corp. (270PA24)

Date: 2026-03-20

Rules: 7, 54(b)

Summary: Action for numerous claims including negligent failure to warn and breach of warranties. The defendants moved for partial summary judgment, and the trial court granted the motion only on the breach of warranties claim. The defendants then moved for summary judgment, asserting that

the General Aviation Revitalization Act (GARA) provided a statute of repose that barred all the plaintiff's claims. The trial court granted the order in part, effectively leaving only the plaintiff's claim for negligent failure to warn. The defendants moved pursuant to Rules 7 and 54(b) to reconsider and amend the order granting summary judgment in part, which the trial court denied. The defendants filed a notice of appeal and petition for a writ of supersedeas and temporary stay. The NCCOA granted a temporary stay. The plaintiffs filed a response to the petition for a writ of supersedeas and the NCCOA denied the defendants' petition and dissolved the temporary stay. The NCSC allowed a temporary stay while the NCCOA considered the appeal. The NCCOA "allowed plaintiffs' motion to dismiss the appeal, presumably because it determined it lacked appellate jurisdiction to consider the interlocutory order." Slip op. at 2. The defendant petitioned for NCSC review.

Holding: The NCCOA had jurisdiction to review the interlocutory order. Reconsideration orders that "contain such a substantive basis—particularly where, as here, that substantive basis alters the court's original reasoning" can provide the basis for appellate jurisdiction. Slip op. at 11. An order denying a statute of repose defense can support interlocutory jurisdiction because a statute of repose "relieves the defendant from the burden of even having to come to court to defend itself, and that burden cannot be lifted retroactively by an appellate court following a trial and final judgment." Slip op. at 19. The NCSC overrules the contrary holding of *Lee v. Baxter*, 147 N.C. App. 517 (2001) and reverses the NCCOA's order dismissing the appeal, remanding the matter for review of whether the trial court's order correctly determined that defendants were not entitled to immunity under the GARA statute of repose.

Dissent: Justice Earls, joined by Justice Riggs, would have held that the NCCOA did not err in dismissing the appeal, and the majority "broadly proclaims that statutes of repose as a category create substantial rights in immunity from suit that are not remedied on review after a final judgment[,]" slip op. at 35, and "converts carefully designed legislative policies on conditional

immunities from suit into judicially imposed standards detached from the facts of an appeal or a particular statute." Slip op. at 40.

Rule 9

Jones v. Mill (COA24-983)

Date: 2025-12-17

Rule: 9(j)

Summary: Action for breach of fiduciary duty and constructive fraud after the plaintiffs' daughter died from heart surgery complications. The defendants moved for summary judgment on the basis that the plaintiffs' claims sound in medical malpractice despite their characterizations, and the plaintiffs thus failed to comply with the requirements of Rule 9(j) and statute of limitations. The trial court granted summary judgment for the defendants and dismissed with prejudice; the plaintiffs appealed to the NCCOA.

Holding: The summary judgment order is affirmed. "Whether an action is treated as a medical malpractice action…is determined by our statutes, rather than the descriptor assigned by the author of a complaint." Slip op. at 6 (citation omitted). Medical malpractice claims allege injury resulting from professional services, interpreted to mean activity requiring clinical judgment and intellectual skill. "[T]he decision to provide mortality rates regarding a particular surgery to a particular patient implicates a doctor's clinical judgment" and is therefore a professional service. Slip op. at 8. The plaintiffs' claims "sound[] in medical malpractice as broadly defined by § 90-21.11(2)(a) and our case law that has interpreted it." Slip op. at 11. Summary judgment was proper because the plaintiffs' claims did not comply with Rule 9(j), which requires "prior review of the medical care and relevant

medical records by a person reasonably expected to qualify as an expert and to testify that the defendant provided substandard care" before commencing an action. *Id.* (citation omitted).

Luzzi v. Vill. Care of King, LLC (COA25-633)

Date: 2026-05-06

Rule or doctrine: 9(j), 12(b)(6)

Procedural Summary: Action for wrongful death based on improper positioning of medical equipment. The statute of limitations expired the day after Plaintiff filed the complaint. Defendant moved to dismiss on the ground that Plaintiff had alleged a medical malpractice claim without the required showing of medical expert review under Rule 9(j). Plaintiff argued the claim was for ordinary negligence. The trial court concluded the claim was for medical malpractice and not ordinary negligence and dismissed the action. Plaintiff appealed.

Holding: While an earlier case involving failure to warn about and failure to supervise the improper positioning of medical equipment was held to be an ordinary negligence action, this case is a medical malpractice action because it turned on the proper positioning of the medical equipment, which required clinical judgment.

Takeaway: "Medical malpractice claims arise from negligence of those performing professional services with specialized skill and training in the medical sphere. In contrast, ordinary medical negligence claims arise from manual or physical acts or omissions and do not require medical assessment, specialized skill, or clinical judgment." Slip op. at 4 (cleaned up). If the injury alleged "resulted from the use of clinical judgment and failure to furnish professional services to the applicable standard of care," slip op. at 7, then the claim is for medical malpractice rather than ordinary negligence.

Woollens v. Hamad (COA25-571)

Date: 2026-05-06

Rule or doctrine: 9(g), 15(b)

Procedural Summary: Complaint for breach of contract related to a residential real estate transaction. Plaintiffs-buyers sought specific performance and damages. Defendant seller answered asserting that Plaintiffs refused to close the transaction and failed to mitigate damages. Plaintiffs filed a motion for summary judgment. The trial court entered partial summary judgment in favor of Plaintiffs, ordering specific performance, adjudging Defendant liable, and reserving damages for trial. Two days later the parties completed the sale. At trial, Plaintiffs presented evidence they obtained a mortgage with an interest rate of 5.50%, while the rate would have been 2.99% had they closed as originally agreed. The Plaintiffs also move the court to amend the pleadings under Rules 15(a) and (b) to plead special damages. While the trial court did not enter an order specifically granting Plaintiffs' motion, it entered judgment for Plaintiffs including $53,373.89 in damages, including direct damages for rate lock fees, moving expenses, and inspection, incidental damages for storage fees, and consequential damages for additional interest paid through trial and reduced equity. The trial court did not allow Plaintiffs to recover mortgage payments for the house Plaintiffs lived in until the sale closed, and the trial court found that "damages for future interest were too speculative." Slip op. at 7–8. Plaintiffs and Defendant appealed.

Holding: The trial court did not err in awarding special damages because the issue of special damages for additional interest paid and reduced equity, while not pleaded before trial under Rule 9(g), "was known by each party and addressed by each party at trial." Slip op. at 14. The trial court erred in finding future interest rate damages too speculative as Plaintiffs had provided with enough evidence and a method "to calculate future damages to a reasonable certainty," slip op. at 22 (cleaned up). "[A] lump sum payment to allow the recasting of Buyers' loan would be the

appropriate award as it reduces the potential for a windfall." Slip op. at 29. "Buyers are entitled to a lump sum payment that allows them to reduce their monthly payment no more than the difference in monthly [principal and interest] payments for a [] loan at 2.99% and 5.50% interest." Slip op. at 30.

Dissent: Judge Tyson would have held that special damages were not recoverable because Plaintiffs did not plead them nor did they put Defendant on notice of complicated interest rate expenses. The dissent would also have concluded that future interest rate damages were too speculative to recover.

Rule 12

Mauck v. Cherry Oil Co. (318A24)

Date: 2025-10-17

Rules: 12(b)(1), 12(b)(6)

Summary: Mandatory complex business case between family shareholders of a closely held corporation. The Business Court dismissed the plaintiffs' judicial dissolution claim for lack of standing under Rule 12(b)(1), reasoning that the terms of the parties' existing shareholder agreement provided an appropriate remedy and foreclosed equitable relief. The Business Court granted summary judgment for the defendants on the remaining causes of action. The plaintiffs appealed to the NCSC.

Holding: Dismissal of the judicial dissolution claim was proper under Rule 12(b)(6), not for lack of standing pursuant to Rule 12(b)(1). The judicial dissolution statute, N.C.G.S. § 55-14-30(2), creates a cause of action for shareholders like the plaintiffs, who are "precisely the kind of party the statute empowers to sue" and who experienced "precisely the kind of injury the statute contemplates[.]" Slip op. at 10. Though the Business Court erred in determining that the plaintiffs lacked standing,

the dismissal is modified and affirmed under Rule 12(b)(6) because the plaintiffs' *Meiselman* claim failed to show that judicial resolution is "reasonably necessary" where the shareholder agreement "offers the very liquidity that judicial dissolution is meant to provide." Slip op. at 16.

Concurrence: Chief Justice Newby, joined by Justice Barringer, writes that the remedy provided by the shareholder agreement "necessarily defeats the claim" for judicial dissolution. Slip op. at 20. "Reasonable necessity is contingent upon the rights or interests of the complaining shareholder being unprotected[,]" and the shareholder agreement reflects bargained-for protections of the plaintiffs' rights and does not violate public policy. Slip op. at 21.

Solis-Santos v. Lester (COA25-7)

Date: 2025-11-05

Rule: 12(b)(1)

Summary: After the Industrial Commission approved settlement of the plaintiff's workers' compensation claim, the plaintiff brought a negligence action, which the trial court dismissed with prejudice for lack of subject-matter jurisdiction due to the exclusivity provision of the North Carolina Workers' Compensation Act (WCA). The plaintiff appealed to the NCCOA.

Holding: The trial court properly dismissed the matter for lack of subject-matter jurisdiction pursuant to Rule 12(b)(1) but erred by dismissing the matter with prejudice. "Generally, the [WCA] provides the exclusive remedy for an injured worker's workplace injuries." Slip op. at 15. " '[S]pecial employees' may be treated the same as workers who meet the [WCA]'s definition of 'employee.' " Slip op. at 6. The NCCOA applies a three-pronged *Collins* test to determine if a worker is a special employee: "(a) the employee has made a contract of hire, express or implied, with the special employer; (b) the work being done is essentially that of the special employer; and (c) the special employer has the right to control the details of the work." Slip op. at 7 (citation omitted). The

complaint should have been dismissed without prejudice because dismissal for lack of jurisdiction is not a judgment on the merits; the matter is affirmed in part, vacated in part, and remanded for entry of an order of dismissal without prejudice.

Land v. Whitley (71PA24)

Date: 2025-10-17

Rules: 12(b)(2), 12(b)(6)

Summary: Negligence action after complications from surgery during the COVID-19 pandemic. The defendants moved to dismiss under Rules 12(b)(1), 12(b)(2) and 12(b)(6), asserting immunity from suit under the Emergency Act. The trial court denied the defendants' motions and the defendants appealed. The NCCOA determined it had jurisdiction to review denial of the Rules 12(b)(2) and 12(b)(6) motions on the basis that immunity claims affect a substantial right and affirmed the trial court's decision. The defendants appealed to the NCSC.

Holding: The NCCOA lacked jurisdiction to review the interlocutory appeal; the judgment is vacated and remanded. The defendants did not have a right to immediate appellate review because immunity under the Emergency Act is distinguishable from sovereign, governmental, and some other statutory immunities (like the exclusivity provisions of the Workers' Compensation Act) because it "offers conditional statutory protection" from civil liability that is "contingent on specific pandemic-related circumstances." Slip op. at 13. The statute "expressly creates a defense to liability, not an immunity from suit." Slip op. at 14. Review of the Rule 12(b)(2) motion was improper because the right of immediate appeal from an adverse ruling as to the court's jurisdiction over the party or their property provided by N.C.G.S. § 1-277(b) applies narrowly to rulings on minimum contacts questions not invoked here.

PDII, LLC v. Sky Aircraft Maint., LLC (COA25-202)

Date: 2025-12-03

Rule: 12(b)(2)

Summary: In a products-liability action, the plaintiff asserted that the defendant was subject to personal jurisdiction in North Carolina because the defendant conducts business in the state by directing goods to individuals and businesses in the state. The defendant moved to dismiss for lack of personal jurisdiction. The trial court denied the motion without making findings of fact. The defendant appealed to the NCCOA.

Holding: The ruling is affirmed because "Defendant consented to general personal jurisdiction by registering to do business in North Carolina." Slip op. at 1. Because the trial court order contained no findings of fact, the NCCOA reviews the record "to determine whether it contains any evidence that would support the trial judge's conclusion that the North Carolina courts may exercise jurisdiction over Defendant without violating its due process rights." Slip op. at 6 (citation omitted). Based on recent federal case law and the state's long arm statute, "a foreign corporation that obtains a certificate of authority consents to general personal jurisdiction in North Carolina[.]" Slip op. at 17.

Horizon Forest Products, LP v. Flowers Flooring, LLC (COA25-171)

Date: 2025-11-05

Rule: 12(b)(6)

Summary: The trial court granted the defendants' Rule 12(b)(6) motion to dismiss the plaintiff's claims for fraud, conversion, and punitive damages. The plaintiff appealed to the NCCOA.

Holding: The plaintiff's complaint "on its face shows it is supported by law and facts and none of the facts defeat the claim[.]" Slip op. at 5. An actual fraud claim must be pleaded with "appropriate particularity including the time, place, and content of the misrepresentation as well as the identities

of the culprits and the acquisition from the misrepresentation." Slip op. at 6. The economic loss rule does not bar the plaintiff's conversion claim because "conversion claims are excepted from the general rule that a breach of contract does not amount to a tort claim by the promisee against the promisor." Slip op. at 7. The plaintiff's punitive damages claim is also sufficiently stated. The trial court's dismissal of each claim is reversed and the matter remanded.

Edwards v. Strata Solar (COA25-605)

Date: 2025-12-17

Rule: 12(b)(6)

Summary: Wrongful discharge action based on discrimination for sex (and pregnancy) and disability in violation of public policy. The plaintiff initially filed in a different county where the trial court dismissed the complaint pursuant to Rule 12(b)(6) for failure to state a claim for sex discrimination. Plaintiff commenced this action, and the trial court granted the defendant's Rule 12(b)(6) motion and dismissed with prejudice. The plaintiff appealed.

Holding: To state a claim for wrongful discharge in violation of public policy, a plaintiff must "show that defendant violated the statutorily expressed public policy in terminating plaintiff from at-will employment." Slip op. at 6. The court "may not create an expanded cause of action" when the legislature "chooses not to act" on a subject because "expansion of public policy protections is a matter reserved to the General Assembly." *Id.* The NCCOA looks to federal Title VII jurisprudence and concludes that discrimination based on pregnancy would "judicially recognize a cause of action the legislature has not enacted." Slip op. at 8. In a wrongful discharge action for disability discrimination, "a plaintiff must identify a public policy expressed in the North Carolina statutes or Constitution prohibiting discharge because of disability, while adequately pleading facts demonstrating that she had, had a record of, or was perceived as having a qualifying disability at the

time of termination." Slip op. at 9. The trial court properly dismissed the plaintiff's claims based on disability and pregnancy, but erred by dismissing the plaintiff's sex discrimination claim because the plaintiff's allegations, when taken as true, "permit the reasonable interference that plaintiff's sex was plausibly a motivating factor in the termination decision." Slip op. at 12. The order is affirmed in part, reversed in part, and remanded.

Greenhaus v. Goldstein (COA25-783)

Date: 2026-05-06

Rule or doctrine: 12(b)(2), personal jurisdiction

Procedural Summary: Plaintiffs filed complaints for a civil no-contact order and domestic violence protective order alleging that Defendant made harassing and pornographic electronic communications directed at the Plaintiffs' employers, family, friends, and the teachers of their children. Defendant was served in Texas. Trial court entered an ex parte no-contact and a domestic violence protective order. Defendant moved to dismiss for lack of personal jurisdiction under Rule 12(b)(2). The court held a hearing at which Defendant did not appear but submitted a one-page affidavit stating only that "(1) he was a resident of Texas; (2) has never been to North Carolina; (3) does not plan to go to North Carolina; and, (4) has never, nor does he plan to, conduct business, participate in the market or enter into a contractual relationship in North Carolina." Slip op. at 3. Plaintiffs testified to the electronic communications by Defendant. The trial court denied Defendant's motion to dismiss after concluding that personal jurisdiction existed. Defendant appealed.

Holding: Where the defendant objects to personal jurisdiction and submits an affidavit that does not challenge the plaintiff's allegations that the defendant made multiple contacts and communications

requesting that people in North Carolina take some action, the trial court's conclusion that it has specific personal jurisdiction over the defendant is not error.

Takeaway: Typically the trial court hears a motion to dismiss for lack of personal jurisdiction in one of three postures: "(1) the defendant makes a motion to dismiss without submitting any opposing evidence; (2) the defendant supports its motion to dismiss with affidavits, but the plaintiff does not file any opposing evidence; or (3) both the defendant and the plaintiff submit affidavits addressing the personal jurisdiction issues." Slip op. at 6 (quoting *Torres v. City of Raleigh*, 288 N.C. App. 617, 621 (2023)). When the parties submit affidavits that disagree about the facts, the court may hold an evidentiary hearing, which moves the case into a fourth procedural posture. *Id.* at 6–7. If a trial court holds an evidentiary hearing to resolve disputed facts and determine the weight and sufficiency of the evidence, and if the parties argue differing versions of the facts, then the court must apply the preponderance of the evidence standard. *Parker v. Town of* Erwin, 243 N.C. App. 84, 98 (2015). Not every evidentiary hearing exists in this fourth posture. If the defendant's evidence does not challenge the plaintiff's facts, the trial court may determine the question of personal jurisdiction based on whether the plaintiff has made a prima facie showing of the basis for personal jurisdiction. "[T]he need for the trial court to make findings of fact based on a preponderance of the evidence is only triggered by a material conflict in the facts alleged by the opposing parties." Slip op. at 8. In other words, where the defendant's affidavit does not contradict the plaintiff's allegations, "[t]he trial judge must decide whether the complaint contains allegations that, if taken as true, set forth a sufficient basis for the court's exercise of personal jurisdiction." *Banc of America Securities LLC v. Evergreen Intern. Aviation, Inc.*, 169 N.C. App. 690, 693 (2005). Electronic communications that seek to induce some action in the recipients are solicitations within the meaning of North Carolina's long-arm statute, and when those extensive communications are the basis for the suit, the exercise of specific personal

jurisdiction by North Carolina "does not offend traditional notions of fair play and substantial justice." Slip op. at 19 (cleaned up).

Dissent: the dissent would have applied a higher standard of proof. "Upon receiving evidence from both parties and a request for written findings, the trial court needed to decide the question of personal jurisdiction by a preponderance of the evidence as the finder of fact in the evidentiary hearing." Carpenter, J., dissenting at 1. The dissent would have held that "clearest indicator of the transition to the fourth procedural posture is an evidentiary hearing … If the trial court receives evidence beyond affidavits addressing the issue of personal jurisdiction, it must act as a fact finder and decide the question of personal jurisdiction by a preponderance of the evidence." *Id.* at 6 (cleaned up).

Luzzi v. Vill. Care of King, LLC (COA25-633)

Date: 2026-05-06

Rule or doctrine: 9(j), 12(b)(6)

See summary under Rule 9

Smith v. The BDK Grp. Shallotte, LLC (COA25-738)

Date: 2026-05-06

Rule or doctrine: 12(b)(1), subject matter jurisdiction

Procedural Summary: Plaintiff filed a notice of injury with the Industrial Commission. Defendant filed a denial of compensability. Following almost a year of motion practice and discovery, plaintiff voluntarily dismissed the claim and filed a new action in superior court. Defendant moved to dismiss for lack of subject matter jurisdiction, arguing that the Industrial Commission had exclusive jurisdiction. The trial court denied the motion to dismiss. Defendant appealed.

Holding: When the plaintiff and defendant have an employee-employer relationship, the Industrial Commission has exclusive jurisdiction over claims for injuries resulting from accidents that happen in the course of and arising from the employment. Once the superior court has found the jurisdictional fact of an employee-employer relationship between plaintiff and defendant, dismissal is proper unless the plaintiff alleges an exception under *Woodson v. Rowland*, 329 N.C. 330 (1991) or *Pleasant v. Johnson,* 312 N.C. 710 (1985). A direct conflict exists between *Marlow v. TCS Designs, Inc.*, 288 N.C. App. 567 (2023) and the *Woodson* line of cases because *Marlow* holds that the superior court can find as a jurisdictional fact whether the injury happened in the course of and arose out of the employment. *Marlow* can be disregarded in favor of *Woodson* because *Marlow* only discusses *Pleasant* exceptions and does not show awareness of the *Woodson* precedent. Whether the injury arose from employment is not a jurisdictional fact and only goes to compensability under the Act. Determination of this fact is within the exclusive jurisdiction of the Industrial Commission.

Dissent: Judge Flood would have held that *Marlow* is not in conflict with *Woodson* and controls this case, allowing the superior court to find that the injury did not arise from the employment, thus taking the case out of the Industrial Commission's exclusive jurisdiction without the plaintiff needing to allege an exception under *Woodson* or *Pleasant*. The dissent analyzes *Woodson* to ratify the original jurisdiction of the superior court in determining whether the injury happened in the course of and arose out of the employment.

Takeaway: The majority and the *Marlow* panel agree on the elements of the Workers Compensation Act: that it vests exclusive jurisdiction in the Industrial Commission over injuries resulting from accidents that occur in the course of and arising from the employment when the plaintiff and defendant have an employee-employer relationship. But the majority and the *Marlow* panel disagree about which of these facts are jurisdictional and which forum may find these facts. Under *Smith v. The BDK Group Shallotte*, when a common law tort claim is pleaded, as soon as the superior court has

found the existence of an employee-employer relationship between plaintiff and defendant, the superior court must dismiss the case without prejudice because the Industrial Commission has exclusive jurisdiction unless the plaintiff has alleged an exception under the strict standards of *Woodson* or *Pleasant*.

Rule 15

Woollens v. Hamad (COA25-571)

Date: 2026-05-06

Rule or doctrine: 9(g), 15(b)

See summary under Rule 9

Rule 17

In re: A.H-G. (COA25-152)

Date: 2025-12-17

Rule: 17

Summary: Respondents appeal adjudication and disposition orders in abuse and neglect proceeding. Respondent-mother, a minor parent with a Rule 17 guardian ad litem (GAL) argued that allowing her to decide whether to waive her Fifth Amendment right against self-incrimination during compelled testimony was reversible error. Respondent-father argued the adjudication order is not supported by sufficient findings of fact.

Holding: The trial court did not err by allowing respondent-mother to decide whether to assert her Fifth Amendment right and made sufficient findings of fact to support the adjudication order. "A Rule 17 GAL's role is to act as a guardian of procedural due process for the parent, to assist in explaining and executing her rights…to the fullest extent feasible…which is dependent on the individual facts of the case." Slip op. at 9 (citation omitted). Notably, "Rule 17 contemplates active

participation of a GAL[.]" Slip op. at 10 (citation omitted). The NCCOA compares cases with violations of Rule 17 and concludes that the individual facts of the case do "not reach the level of error, without additional evidence," slip op. at 15, and the court "will not presume error from a silent record." Slip op. at 16 (citation omitted). The adjudication order was supported by sufficient evidence; both orders are affirmed.

Dissent in part: Judge Collins would conclude that the trial court erred by allowing a minor parent with a Rule 17 GAL to decide whether to assert her Fifth Amendment right. A Rule 17 GAL "must decide whether the minor parent will waive important rights—not the minor parent." Dissent at 2. While there is no set definition of active participation, "the record must indicate that the Rule 17 GAL participated in some manner." Dissent at 6.

Rule 22

Law Off. Of Robert Forquer v. Arcuri (COA25-522)

Date: 2025-12-17

Rules: 56, 22

Summary: Dispute over distribution of land sale proceeds. Escrow agent filed an interpleader complaint and the interpleader-defendant parties filed crossclaims against each other seeking a declaration of the proper distribution of the sale proceedings. Both parties moved for summary judgment. The trial court entered summary judgment for crossclaim-plaintiffs. The crossclaim-defendant appealed the order to the NCCOA.

Holding: The trial court did not err by awarding summary judgment to the crossclaim-plaintiffs. The NCCOA looks to state and federal caselaw from other jurisdictions to conclude that "co-signers are not entitled to the same rights under the [promissory] note as signed borrowers on the note" and

that the co-signers in this matter have no obligation on the note. Slip op. at 9. A trial court "should not resolve any contested facts" in a summary judgment order. Slip op. at 13. While the NCCOA agrees that some of the trial court's findings were made in error, reversal is not warranted as the disputed facts were "surplusage to the question to be determined" and the errors of law did not change the ultimate outcome. Slip op. at 14.

Concurrence: Chief Judge Dillon would affirm because the parties' actions in the loan proceedings created a rebuttable presumption that a crossclaim-plaintiff was acting as a surety and the crossclaim-defendant did not produce competent evidence at summary judgment to rebut that presumption.

Rule 23

Empire Contractors v. Town of Apex (322A24)

Date: 2025-12-12

Rule: 23

Summary: Putative class action challenging town recreation fees charged to subdivision developers. The trial court certified a class of all persons who paid recreation fees to town over almost seven-year period. The defendant appealed, arguing that (1) common issues did not predominate over individualized issues and (2) class action was not superior method of adjudicating these claims.

Holding: The class does not meet the legal criteria for class certification because "highly individualized fact issues [] defeat the predominance prong of class certification." Slip op. at 12. The claims at issue necessitate individualized factual findings (for example, calculating the fair market value for every land area at issue and whether a fee levied was "roughly proportional" to each development) which "would create a series of mini-trials that would dwarf the adjudication of common issues…and predominate the entire lawsuit." Slip op. at 11 (citation omitted). The matter is

vacated and remanded based on the predominance prong of class certification, and the NCSC leaves the superiority analysis to the trial court, noting that potential claim-splitting issues may arise on remand.

Concurrence: Justice Berger describes the town's collection and management of recreation fees as "constitutionally suspect" based on the plaintiff's allegations that funds were comingled with general town revenue. Slip op. at 15.

Armistead v. County of Carteret (66A25)

Date: 2026-03-20

Rule: 23

Summary: Appeal of class certification order in action challenging county fees for trash disposal sites. The trial court certified three classes of property owners who paid the county fees but used private waste collection services. The defendant appealed, challenging the ascertainability of two classes, and the predominance of common issues and superiority of the class action mechanism for the third class.

Holding: The class certification order is affirmed. "To ensure that class members receive the required notice, the trial court must confirm that there is a feasible, objective way to identify who those class members are." Slip op. at 7. Customer lists from the private waste collection services provide an objective means of ascertaining class membership in a way that does not defeat other class certification criteria. The predominance prong of class certification is satisfied because the fact issue of whether the handful of private waste collectors provided the same services as the county is not individualized to each class member, and the defendant has "simply highlighted a shared factual issue among class members that is amenable to resolution through a class action." Slip op. at 15. The trial court considered "important efficiency issues that are at the core of the class action process"

and did not abuse its discretion by concluding that a class action was the superior method of adjudication. Slip op. at 17.

Wardson Constr., Inc. v. City of Raleigh (115A25)

Date: 2026-03-20

Rule: 23

Summary: Action by plaintiff builders seeking repayment of certain fees imposed by the city. State law requires that any fee unlawfully collected by a local government be returned to the person who made the payment. *See* N.C.G.S. § 160D-106. The trial court certified a class of builders who paid the fees. The defendant challenges the certification because some members of the certified class passed on the fees to home buyers and therefore lack a common injury, individualized issues predominate, intraclass conflict exists, and a class action is not a super method of adjudication.

Holding: The class certification order is affirmed. "When statutory language is clear and unambiguous, courts apply the statute as written and do not add conditions the legislature did not include." Slip op. at 9. The statute is clear that the refund belongs to the person who made the payment; the relevant injury is the payment of the unlawful fee. "Differences in downstream reimbursement therefore do not displace the predominant common issue presented by the legality of the fees." Slip op. at 12. There is no intraclass conflict; "[t]he legal theory and requested relief are [] uniform across the class." Slip op. at 14. A class action is the superior method of adjudication because "the legality of a uniform municipal fee presents a common question capable of resolution on a class-wide basis." Slip op. at 15.

Rule 24

Roesel v. Roesel (COA25-612)

Date: 2026-02-18

Topics: Rule 24, entity intervenor in equitable distribution action

Summary: Equitable distribution action. The appellant is a company owned by the plaintiff and the defendant as marital property. The defendant and the appellant commenced a related complex business case against the plaintiff stayed pending the outcome of this action. The appellant moved to intervene in this equitable distribution action, asserting permission to do so under Rule 24(a)(2). The trial court denied the motion, reasoning that the court can classify, value, and distribute the company between the two existing parties without ordering the company itself to do anything.

Holding: The motion to intervene was properly denied. In the equitable distribution action, "[t]he trial court's role is limited to calculating the value of [appellant] and distributing it, along with the remainder of the marital estate, among the parties." Slip op. at 6. The appellant failed to show how the valuation and distribution process could "impede its ability to protect its interests." *Id.* The appellant has no interest in its shares, which are the defendant's personal property. "When the party seeking intervention has the same ultimate objective as a party to the suit, a presumption arises its interests are adequately represented, against which the petitioner must demonstrate an adversity of interest, collusion, or nonfeasance." Slip op. at 8. The appellant has not met its burden to overcome this presumption.

Rule 37

Kincheloe v. Kincheloe (COA23-1147)

Date: 2025-11-05

Rules: 37, 63

Summary: Second appeal in complex child support dispute. On prior remand from the NCCOA, the trial court judge recused from further hearings. The Chief District Court Judge held an evidentiary rehearing and denied the defendant's proffer of evidence from prior hearings before the recused judge; the substitute judge made new findings of fact and conclusions of law. The trial court denied the defendant's motion for a protective order and granted the plaintiff's motion for sanctions based on the defendant's subsequent failure to produce the documents for which the protective order was denied. The defendant appealed to the NCCOA.

Holding: The trial court acted within its discretion under Rule 63 by excluding evidence from prior hearings and holding a new hearing on remand. "Recusal, retirement, or death of a trial judge are circumstances this Court cannot anticipate when a case is remanded for entry of a new order." Slip op. at 22. The trial court was authorized to issue Rule 37(b) sanctions because the defendant "failed and refused to comply" with the trial court's order to respond to the plaintiff's discovery request within sixty days after the motion for protective order was denied. Slip op. at 57.

Reynolds v. Devotion Fam., LLC (COA24-711)

Date: 2025-12-03

Topics: Rule 37(a); arbitration

Summary: Dispute over asset distribution after entity dissolution. The plaintiff sued and filed a demand for arbitration pursuant to the dispute resolution clause of the entity's operating agreement. The parties entered a consent order compelling arbitration and staying litigation, and the arbitrator entered interim awards for the plaintiff. The trial court granted the plaintiff's motion to confirm the

interim awards and denied the defendant's motion to vacate or modify the awards. The defendant appealed, and the plaintiff moved to dismiss the appeal.

Holding: The NCCOA determines it has jurisdiction and that the trial court erred in denying the defendant's motion to modify because the arbitration award exceeded the scope of the arbitrator's authority by requiring the parties to arbitrate future disputes. To determine whether it has jurisdiction over an arbitration award, the NCCOA "begins with assessing whether the appellant possesses a statutory right of appeal under the relevant arbitration statute; if unavailable, [the court] then conduct[s] a substantial rights analysis under N.C. Gen. Stat. § 7A-27[.]" Slip op. at 9. A plain reading of N.C.G.S. § 1-569.28(a)(1)-(6) allows for appeals from both interlocutory orders and final judgments because the use of the word "or." "[T]he statute expressly provides that an appeal from a 'final judgment entered pursuant to this Article' is a clear alternative to an appeal from an order confirming an arbitration award." Slip op. at 13 (citation omitted). An arbitrator has "the latitude to grant any remedy he deems appropriate unless the arbitration clause specifically limits the types of relief he may grant[.]" Slip op. at 18. This arbitrator "exceeded his scope of authority by according relief on a matter not submitted to him" by requiring arbitration of future disputes. Slip op. at 28. The trial court's order is affirmed in part, vacated in part, and remanded.

Southland Nat'l Ins. Corp. v. Lindberg (COA25-167)

Date: 2025-12-17

Rules: 37, 65

Summary: The plaintiffs brought an action for breach of memorandum of understanding (MOU) and fraud seeking specific performance and damages. The plaintiffs filed a motion for a preliminary injunction and a temporary restraining order (TRO). The trial court approved the TRO and the parties entered a consent extension of the TRO to continue until the trial court rules on the motion

for a preliminary injunction. After a bench trial, the trial court entered judgment for the plaintiffs and ordered specific performance of the MOU but not damages. An amended judgment was entered to correct clerical errors, and both parties appealed the amended judgment to the NCCOA. The NCCOA affirmed the order of specific performance and directed the trial court to award damages. The defendants petitioned for NCSC review and, after oral argument, the NCSC concluded that review was improvidently allowed. The plaintiffs filed a motion to modify the TRO; the trial court granted the motion and appointed a receiver. The receiver submitted potential violations of the modified TRO and the defendants concurrently filed a motion to allow that would expand the receiver's authority. Minutes later, the trial court entered a re-modified TRO. After a hearing, the trial court denied the motion to allow. The defendants appealed the re-modified TRO and the order denying the motion to allow. The defendants also moved to request the NCCOA take judicial notice of a prior motion to dissolve and a prior order granting in part and denying in part a motion from the receiver seeking additional authority to recover transfers.

Holding: The trial court's judgment is affirmed in part, dismissed in part, and remanded. Interlocutory review is appropriate because both orders affect the defendants' "substantial right to use and control their assets[.]" Slip op. at 11. The motion for judicial notice is denied because the motion to dissolve is "the subject of dispute" and "does not contain facts that are well established and authoritatively settled," slip op. at 14 (citation omitted), and the order on the receiver's motion "does not bear upon a fact crucial to the disposition of this appeal." *Id.* Rule 65 allows a TRO to be "extended before the original duration expires for a longer period of time, if the restrained party consents to the extension of the [TRO] or if good cause is shown." Slip op. at 17. Rule 62(c) permits a trial court to modify a TRO while an appeal is pending. The defendants failed to meet their burden by "cit[ing] no applicable legal authority to support their claim[,]" so the question of whether the trial court erred by issuing the re-modified TRO is considered abandoned and dismissed. Slip op. at

20. The motion to allow was properly denied because "the trial court had the vested authority to limit or expand the powers of the Receiver at any time[.]" Slip op. at 24.

Steele v. Kenna (COA25-530)

Date: 2026-02-18

Rule: 37

Summary: Trustee filed a petition for declaratory judgment to clarify class composition of grantor's "nieces and nephews" entitled to trust distribution. Marital nieces and nephews filed an answer and moved for summary judgment; counter-petitioners asserted that grantor had expressed intent to his attorney to include only nieces and nephews on his side of the family. In discovery, the counter-petitioners subpoenaed law firm for estate planning documents; the law firm asserted attorney-client privilege and refused to produce requested documents without written consent of the trustee or a court order to compel production. The trial court granted the counter-petitioners' motion to compel and the trustee appealed.

Holding: The motion to compel was properly granted. An interlocutory order to compel discovery is immediately appealable as affecting a substantial right if the information is allegedly subject to common law attorney-client privilege and the order is reviewed for abuse of discretion. Applying the testamentary exception to the attorney-client privilege in the context of a trust (not a will), the NCCOA "conclude[s] that the logic of the exception's application to wills applies with equal force to trusts." Slip op. at 8-9. This matter "presents the quintessential situation that the testamentary exception exists to resolve[,]" and the communications are discoverable to discern the grantor's intent. Slip op. at 10. The trustee's assertion that her personal attorney-client privilege bars production is unsupported by the record and the scope of the order is sufficiently limited to information related to the grantor.

Delene v. Kean (COA25-910)

Date: 2026-05-20

Rule or doctrine: 37(b), 40(b)

Procedural Summary: Tort action. Defendant served discovery requests, Plaintiff responded, and Defendant moved to compel, arguing that Plaintiff's responses were insufficient. The trial court granted the motion to compel in part in January 2024. Over the following year, Plaintiff supplemented her responses while the trial court allowed her more time. In December 2024, for instance, the trial court entered an order requiring compliance with the January 2024 order. In January 2025, Plaintiff moved for a continuance for more time to comply with the December 2024 order. The trial court denied the motion. After more than a year had passed since the trial court had entered the order to compel, Defendant moved for sanctions. The trial court struck Plaintiff's pleadings, "dismissing her claims with prejudice, and entering default against her on Defendant's counterclaims on the issue of liability." Slip op. at 2. Plaintiff appealed.

Holding: When a trial court considers all available sanctions before striking pleadings, dismissing claims, and entering default, the NCCOA can "properly affirm the order." Slip op. at 14. When the trial court enters an order allowing more time to comply with a previous order, it is not a new order to compel but a gracious extension of time that does not deprive the trial court of the ability to enter sanctions for failure to comply once the extended time has expired. Slip op. at 12. The opinion considered other matters. The NCCOA held that it had jurisdiction to consider the appeal even though there is a "divergent line of cases as to whether an order imposing sanctions under Rule 37 is interlocutory or final." Slip op. at 10. The trial court did not err in denying Plaintiff's motion to continue, though the NCCOA noted that Plaintiff also abandoned this argument on appeal.

Takeaway: The trial court can enter an order granting more time to comply with a previous order without jeopardizing the court's ability to enter sanctions, if appropriate, at a later date.

Rule 40

Delene v. Kean (COA25-910)

Date: 2026-05-20

Rule or doctrine: 37(b), 40(b)

See summary under Rule 37

Rule 41

Crumel v. Morton (COA25-372)

Date: 2026-01-07

Rules: 41, 60(b)(6)

Summary: Negligence action after motor vehicle crash. The defendants answered and asserted a contributory negligence defense. Unnamed defendant (the plaintiff's insurer) filed a notice of appearance and conditional answer. The plaintiff voluntarily dismissed the action pursuant to Rule 41 and settlement discussions continued. The unnamed defendant filed a motion to enforce settlement. At the hearing on the motion to enforce, the plaintiff orally moved to set aside the voluntary dismissal and resurrect the action under Rule 60(b)(6). The trial court denied both motions, and the unnamed defendant appealed to the NCCOA.

Holding: The trial court did not abuse its discretion in denying the Rule 60(b)(6) motion. The plaintiff's voluntary dismissal was a final adjudication for Rule 60(b)(6) purposes because the refiling period had passed. The motion was properly denied where the unnamed defendant failed to show "extraordinary circumstances exist or that justice demands" relief. Slip op. at 7. The order denying the motion to enforce is vacated for lack of jurisdiction because there was no action pending after the Rule 60(b)(6) motion was denied.

Brutus v. Broido (COA25-244)

Date: 2025-11-05

Rules: 41(b), 50(a)

Summary: In custody dispute, the trial court granted the plaintiff's motion for a directed verdict. The defendant appealed to the NCCOA, asserting that the plaintiff's motion for a directed verdict was procedurally improper in a non-jury trial and, even if treated as a 41(b) motion to dismiss, that the ruling was based on insufficient findings of fact.

Holding: The trial court erred by deciding the plaintiff's motion for a directed verdict in a bench trial proceeding. A Rule 41(b) motion for involuntary dismissal, not a Rule 50(a) motion for a directed verdict, is appropriate in a bench trial, and this distinction matters because a different standard of review applies. However, a motion to dismiss under Rule 41(b) that is "incorrectly designated as one for a directed verdict [] may be treated as a motion for involuntary dismissal," for the NCCOA to assess the merits. Slip op. at 5. Judgment on the merits of a Rule 41(b) motion must be supported by "specific and detailed findings of fact relating to and supporting conclusions of law[.]" Slip op. at 6. Reviewing the motion as a Rule 41(b) motion, the NCCOA concludes that the trial court failed to make sufficient findings of fact, so the order is vacated and the matter remanded.

Blackmon v. Blackmon (COA25-429)

Date: 2026-04-15

Rules: 6(e), 41(d)

See summary under Rule 6.

Rule 50

Brutus v. Broido (COA25-244)

Date: 2025-11-05

Rules: 50(a), 41(b)

See summary under Rule 41.

Talley v. Earth Fare 2020, Inc. (17A25)

Date: 2026-03-20

Rules: 50(b), 59

Summary: Mandatory complex business case; dispute between corporate officers regarding the plaintiff's compensation. A jury found that (1) the defendant was unjustly enriched and (2) there was no agreement between the parties so the jury was therefore instructed not to address the plaintiff's Wage and Hour Act (WHA) claims. Both parties moved for judgment notwithstanding the verdict and the plaintiff moved for a new trial on the breach of contract and WHA claims. The Business Court denied the motions, reasoning that there was sufficient evidence at trial to support the jury's conclusions and that the jury instruction was appropriate. The plaintiff appealed to the NCSC.

Holding: Per Curiam. Affirmed.

Concurrence: Justice Dietz writes that "the central question is whether [the plaintiff] was employed to do the work to begin with[,]" and the plaintiff's recovery was properly limited to unjust enrichment based on a lack of evidence that the plaintiff was an employee. Slip op. at 5. The dissent "misunderstands the realities of business relationships[,]" and the motions were properly denied. Slip op. at 3.

Dissent in part: Justice Riggs, joined by Justice Earls, writes that the Business Court's denial of the plaintiff's motion for a new trial on the WHA claims "inserted a requirement" of an enforceable contract "into the WHA that does not plainly exist in the text and created a conflict with" NCSC precedent. Slip op. at 7. The jury should have been permitted to reach the WHA claims and could have found that the plaintiff was promised wages based on the evidence presented at trial, especially "[g]iven the stated purpose of the WHA and the fact that our limited precedent suggests a worker-protective interpretation of the statute[.]" Slip op. at 18. The decision on unjust enrichment should also be vacated to prevent double recovery and the matter should be remanded.

In re: West (COA25-409)

Date: 2026-04-15

Topic: Rule 50 directed verdict

Summary: The caveators alleged duress and undue influence by the propounder. The trial court granted summary judgment for the propounder on one issue and the remaining claims of testamentary capacity, duress, and undue influence went to a jury trial. At the close of the caveators' evidence, the propounder moved for a directed verdict, and the trial court denied the motion. The propounder renewed the motion for a directed verdict at the close of all evidence and the trial court granted the motion on the issues of undue influence and duress. The caveators appealed the order granting a directed verdict on both issues.

Holding: The trial court erred by granting the propounder's motion for directed verdict on both issues. "[A] motion for directed verdict should be denied if there is more than a scintilla of evidence supporting each element of the non-movant's claim." Slip op. at 12 (citation omitted). While SCOTUS adopted a "preponderance of the evidence" standard in 1986, the Federal Rules of Civil Procedure are not binding on the NCSC, which has interchangeably used "sufficient as a matter of

law" and "more than a scintilla of evidence" as the directed verdict standard in North Carolina. These two terms "are in reality the same and simply mean the evidence must be existing and real, not just seeming or imaginary." Slip op. at 17 (quoting *State v. Earnhardt*, 307 N.C. 62, 66 (1982)). "Therefore, a claim is 'sufficient as a matter of law' to survive a directed verdict when there is substantial evidence or 'more than a scintilla of evidence' to support each element of the nonmoving party's cause of action." Slip op. at 18. The trial court erred by granting the motion for directed verdict because the issues were "highly fact intensive and there was at least some evidence, when viewed in the light most favorable to the non-moving party, of all the relevant factors[.]" Slip op. at 28.

Dissent: Judge Tyson would affirm because the majority applies an "erroneous standard of proof and employs an improper appellate review[.]" Dissent at 1. The "sufficient as a matter of law" and "more than a scintilla of evidence" standards are not equivalent, and the NCSC "appears to 'flip-flop' between the two burdens and standards of review[.]" Dissent at 5. As a result, the 1986 SCOTUS decision provides pertinent guidance, and the appropriate standard of review is whether the nonmovant "produced sufficient evidence by which reasonable jurors could find, by a preponderance of the evidence," for the nonmovant. Dissent at 13. The caveators failed to meet that standard and the motion for directed verdict on the issues of undue influence and duress was properly granted.

Rule 52

Jay v. Jay (97A25)

Date: 2026-03-20

Topics: Rule 52; DVPO

Summary: The plaintiff filed a complaint and motion for domestic violence protective order (DVPO) with a written statement of her allegations. After a hearing where both parties testified, the trial court granted a one-year DVPO. The trial court judge included his "marked up" copy of the plaintiff's written statement in the additional findings section of the DVPO. The defendant filed a Rule 60 motion to set the DVPO aside. The trial court denied the motion and the defendant appealed to the NCCOA. The NCCOA (Carpenter, J., dissenting) affirmed the DVPO, concluding that competent evidence supported the trial court's findings of fact. The defendant appealed to the NCSC pursuant to since-repealed N.C.G.S. § 7A-30(2) because the NCCOA's opinion contained a dissent.

Holding: The trial court's findings in the DVPO were sufficient under Rule 52 and the NCCOA's judgment is affirmed. "The purpose of Rule 52 is to ensure that the findings of specific facts are sufficient to allow a reviewing court to determine whether the judgment, and the underlying legal conclusions, reflect the appropriate application of law." Slip op. at 8. The trial court order was not based on "mere recitations" where the judge "struck through specific lines and whole paragraphs in [the plaintiff's] statement while adopting others as findings" and "signed off on each amendment by initialing beside each portion struck." Slip op. at 12. Comparing hearing testimony to the marked-up statement provides "adequate assurances here that the trial court assessed the credibility of [the plaintiff's] written allegations." Slip op. at 13.

Rule 54

Welbourne v. Barbee (COA25-325)

Date: 2025-12-17

Topics: Rules 54(b), 56, 59, 60(b)

Summary: Negligence action after motor vehicle crash. The plaintiffs filed a complaint and a petition for approval of a wrongful death settlement on the same day. The trial court approved the settlement. The defendants filed an answer and motion to enforce the settlement agreement, which the trial court orally granted. Before the trial court entered a written order on the defendants' motion to enforce, the plaintiffs filed a Rule 54(b) motion to reconsider and a motion to amend the judgment pursuant to Rule 59(e) or Rule 60(b) in the alternative. The trial court entered a written order on the motion to enforce that did not address either of the plaintiffs' motions. Months later, the trial court entered an order denying the plaintiffs' motions. The plaintiffs appeal (1) the order denying the motions to reconsider and amend and (2) the order granting the defendants' motion to enforce. The defendants moved to dismiss the appeal of the order on the motion to enforce as untimely, asserting that the motion to enforce was a final judgment that had to be appealed within 30 days of the order. The plaintiffs petitioned for a writ of certiorari in the alternative.

Holding: The NCCOA lacks jurisdiction to review the plaintiffs' appeal of the order on the motion to enforce because the oral order was a rendered final judgment and the plaintiffs' Rule 54(b) motion was improper. "A judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court." Slip op. at 12-13 (citation omitted). The plain language of Rule 54(b) "does not provide revision as to a final judgment of an entire case." Slip op. at 15. The NCCOA concludes that "a party cannot use Rule 54(b) to move the trial court to reconsider a complete final judgment of a case, even where that final judgment has not yet been entered." *Id.* The plaintiffs' appeal time was not tolled because the motion to amend was not a proper Rule 59 motion; per *Bodie Island*, "Rule 59 is not a proper ground for relief from summary judgments" as there was no trial on the merits. Slip op. at 21. The plaintiffs' petition for a writ of certiorari is denied because the plaintiffs "failed to show extraordinary circumstances to justify it." Slip op. at 23. Denial of the motion to

amend pursuant to Rule 60(b) was also appropriate because "Rule 60 does not provide relief from errors of law." Slip op. at 26. The trial court's order is affirmed.

Byrd v. Avco Corp. (270PA24)

Date: 2026-03-20

Rules: 54(b), 7

See summary under Rule 7.

Rule 56

Roach v. Wells Fargo Bank, Nat'l Ass'n (COA24-177)

Date: 2025-12-03

Rule: 56

Summary: Unfair and deceptive trade practices action following foreclosure proceeding. The trial court granted summary judgment for the defendant; the plaintiffs appealed to the NCCOA.

Holding: The trial court did not err in granting the defendant's motion for summary judgment. A claim for unfair and deceptive trade practices requires a plaintiff to "make a showing of substantial aggravating circumstances" beyond a "mere breach of contract[.]" Slip op. at 9 (citations omitted). Prior matters involving substantial aggravating circumstances "generally involved forms of forgery or deception." *Id.* The plaintiffs "failed to forecast evidence of substantial aggravating circumstances attendant to a breach[,]" slip op. at 13, and the plaintiffs' assertion "that [d]efendant's actions were not 'right' in a moral sense" does not stand up to the defendant's "legal and contractual rights to foreclose." Slip op. at 14.

Law Off. Of Robert Forquer v. Arcuri (COA25-522)

Date: 2025-12-17

Rules: 56, 22

See summary under Rule 22.

Welbourne v. Barbee (COA25-325)

Date: 2025-12-17

Topics: Rules 54(b), 56, 59, 60(b); *Bodie Island*

See Summary under Rule 54

Advisor Law, LLC v. Holland (COA24-1035)

Date: 2026-02-04

Topics: Rule 56, arbitration, forum selection

Summary: Breach of contract action. The parties' agreement provided that "any contractual disputes that include specific performance…shall have the entire dispute settled finally and exclusively by arbitration in Denver, Colorado." Slip op. at 2. The defendant moved to compel arbitration and asserted that Colorado law governed the agreement. The plaintiff moved for summary judgment. The trial court found that the parties' contract only required arbitration for actions seeking specific performance and the arbitration clause was therefore not applicable to this action. The trial court (1) denied the defendant's motion to compel arbitration and (2) granted summary judgment for the plaintiff. The defendant appealed both orders to the NCCOA.

Holding: The trial court's orders are affirmed. "Generally, the law of the state where a contract is made governs the contract, but parties may agree otherwise." Slip op. at 5. This contract includes a contingent choice of law provision that Colorado law governs if the dispute includes specific

performance, but that is not at issue, so North Carolina law governs interpretation of the contract. The contract is unambiguous and the terms must be "harmoniously construed, and if possible, every word and every provision is to be given effect." Slip op. at 7-8. Because the dispute does not fall within the scope of the arbitration clause, "it was procedurally proper for the trial court to reach and issue a ruling on Plaintiff's motion for summary judgment." Slip op. at 11.

Dissent: Judge Tyson would reverse both orders because "public policy exists in favor of resolving disputes through arbitration where the parties have mutually agreed to use that alternative dispute remedy, and such provisions are to be constructed broadly in favor of arbitration." Dissent at 3.

Warren v. Cielo Ventures, Inc. (203PA24)

Date: 2026-03-20

Rule: 56

Summary: Unfair and deceptive trade practices claim brought approximately three years after the parties signed a contract that barred any action related to the subject matter of the contract after one year. The trial court awarded summary judgment to the defendant based on the one-year contractual limitation period. The NCCOA vacated the order, citing a four-year statute of limitations for claims under the Unfair and Deceptive Trade Practices Act (UDTPA) and declaring that public policy made the one-year limitation in the contract unenforceable for UDTPA claims. The defendant petitioned for NCSC review.

Holding: The defendant is entitled to judgment as a matter of law on the plaintiffs' UDTPA claim. Individuals can agree to shorten the time to bring claims arising out of the subject matter of a contract, and it is the legislature's job to determine the public policy of the state. "It is not for the courts to second-guess legislative policy decisions or to insert unwritten terms into a statutory scheme." Slip op. at 7. The NCCOA's judgment is reversed.

Dissent: Justice Earls, joined by Justice Riggs, asserts that the "practical effect" of the majority's ruling "is to allow sophisticated parties to opt out of state law." Slip op. at 10. The court must interpret statutes "in a manner consistent with reason and common sense[,]" and it is abnormal to "interpret statutory silence to produce results that are inconsistent with the statute's purpose and weaken the operation of the statute itself." Slip op. at 12, 13. The legislature was thoughtful in its decision to explicitly include a four-year statute of limitations for UDTPA claims, which are a unique tool to combat unfair and deceptive practices, and "the statute's protections cannot be reduced to the terms of the parties' agreement." Slip op. at 18. The contract in this case was a standard service agreement, and the majority's holding "effectively allow[s] general language in a form contract to evade consumer protections against general language in form contracts." Slip op. at 24.

Rule 59

Giles-Jones v. Robinson (COA25-322)

Date: 2025-11-05

Rule: 59

Summary: The plaintiff moved for a new trial pursuant to Rule 59, asserting prejudicial juror misconduct occurred where a juror asked a witness on a date, and the witness rejected the juror. After a hearing, the trial court granted the plaintiff's motion. The defendant appealed to the NCCOA.

Holding: The trial court abused its discretion by granting the plaintiff's Rule 59 motion for a new trial. Granting motions based on juror misconduct is "equivalent to a finding that prejudicial misconduct has been shown[.]" Slip op. at 6 (citation omitted). The record in this case "does not

contain a showing of prejudice," and the trial court's order is thus "unsupported by reason[.]" Slip op. at 8. The order is vacated and the matter remanded.

Dissent: Judge Collins writes that the majority purports to review for abuse of discretion but "essentially applies a de novo standard to determine – on the cold record – that there was no prejudice from juror misconduct." Slip op. at 15. The NCCOA should affirm the trial court's decision because the record does not "affirmatively demonstrate a manifest abuse of discretion by the judge." Slip op. at 17 (citation omitted).

Welbourne v. Barbee (COA25-325)

Date: 2025-12-17

Topics: Rules 54(b), 56, 59, 60(b)

See summary under Rule 54.

Talley v. Earth Fare 2020, Inc. (17A25)

Date: 2026-03-20

Rules: 50(b), 59

See summary under Rule 50.

Rule 60

Welbourne v. Barbee (COA25-325)

Date: 2025-12-17

Topics: Rules 54(b), 56, 59, 60(b)

See summary under Rule 54

Crumel v. Morton (COA25-372)

Date: 2026-01-07

Rules: 60(b)(6), 41

See summary under Rule 41

Rule 63

Kincheloe v. Kincheloe (COA23-1147)

Date: 2025-11-05

Rules: 63, 37

See summary under Rule 37

Rule 65

Southland Nat'l Ins. Corp. v. Lindberg (COA25-167)

Date: 2025-12-17

Rules: 65, 37

See summary under Rule 37

Smith v. Forge Creek at Flowers Plantation Homeowners Ass'n, Inc. (COA25-1072)

Date: 2026-05-20

Rule or doctrine: 65(c)

Procedural Summary: Action for declaratory judgment and preliminary and permanent injunction.

Trial court entered a preliminary injunction after hearing with detailed findings but without mention

of the bond requirement in Rule 65(c). Defendant eventually appealed the preliminary injunction, among other issues.

Holding: Rule of Civil Procedure 65(c) requires that consider the question of requiring a bond as security before issuing a preliminary injunction. The failure to do so is reversible error even if the party to be bound by the injunction does not request it.

Takeaway: Make sure your orders on TROs and preliminary injunctions contain findings of fact and conclusions of law about the "giving of security by the applicant, in such sum as the judge deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." G.S. 1A-1, Rule 65(c).

Arbitration

Premier Athlete Advisors LLC v. EnterSports MGT LLC (COA25-81)

Date: 2025-11-05

Topic: arbitration

Summary: The plaintiff filed a demand for arbitration and a complaint for breach of contract and unjust enrichment. The parties brought joint motions to stay proceedings and for a declaration of the proper venue and applicable rules for agreed-upon arbitration. The trial court entered an order declaring that the arbitration clause of the parties' agreement requiring private arbitration was valid and enforceable. The defendant appealed to the NCCOA.

Holding: The trial court's order is affirmed. The NCCOA has jurisdiction over the interlocutory appeal because the defendant's "right to arbitrate the underlying dispute in its alleged proper venue" is a substantial right that warrants an immediate appeal. Slip op. at 9. The NCCOA applied the plain

meaning rule to interpret the arbitration clause because the "terms are clear and unambiguous," and concluded that there was "a valid agreement to arbitrate, and the underlying dispute falls within the substantive scope of that agreement." Slip op. at 12 (citation omitted).

Earnhardt Plumbing LLC v. Thomas Builders, Inc. (COA25-36)

Date: 2025-11-19

Topics: arbitration

Summary: The defendants appeal the trial court's order to arbitrate a breach of contract claim. In a prior proceeding, the trial court held that a provision of the arbitration clause placing the forum in the defendant's home state was unenforceable and was not preempted by the Federal Arbitration Act (FAA); the defendants appealed and the NCCOA remanded the matter for additional findings of fact. On remand, the trial court found that the contract (1) involves interstate commerce and the forum-selection clause thus was preempted by the FAA and (2) that the forum-selection clause was permissive, not mandatory, and therefore unenforceable under state law; the parties were ordered to arbitrate in North Carolina. The defendants appealed to the NCCOA.

Holding: The trial court erred in concluding the forum-selection clause was not enforceable. Appellate review is appropriate because the interlocutory order "denying Defendants their contractual right to select the forum for arbitration affects a substantial right." Slip op. at 4. The FAA applies because the trial court found that the transaction involved interstate commerce, and there is no requirement that the involvement be "substantial." While "mere diversity of parties does not on its own require the conclusion that an agreement involved interstate commerce[,]" other findings of interstate activity were sufficient to support the trial court's conclusion. Slip op. at 7. The state law that voids forum-selection clauses requiring parties to arbitrate out-of-state, N.C.G.S. § 22B-3, is preempted by the FAA. "[W]hen the FAA applies to a contract the forum-selection clause

contained in that contract is enforceable even if the forum designation is against the law and public policy of North Carolina." Slip op. at 11. This forum-selection clause is enforceable because the use of "either-or" and plain language giving the defendants the right to choose the forum is mandatory, not merely permissive. The trial court's order is reversed and the matter is remanded.

Reynolds v. Devotion Fam., LLC (COA24-711)

Date: 2025-12-03

Topics: Rule 37(a); arbitration

See summary under Rule 37

Advisor Law, LLC v. Holland (COA24-1035)

Date: 2026-02-04

Topics: Rule 56, arbitration, forum-selection

See Summary under Rule 56

Frazier v. TitleMax of Va., Inc. (COA25-703)

Date: 2026-05-06

Rule or doctrine: arbitration

Procedural Summary: Action to confirm arbitration awards and enter judgment against Defendants with interest and attorney's fees. Several Plaintiffs had previously sued for violation of the N.C. Consumer Finance Act, usury, and the Unfair and Deceptive Trade Practices Act based on loan agreements prepared by Defendants. The cases were removed to federal court, consolidated, and arbitrated pursuant to the Federal Arbitration Act (FAA). Defendants moved to vacate the arbitration awards on the grounds that the arbitrator applied North Carolina law where the loan

agreements contained a choice of law provision stating that either South Carolina or Virginia law governs (except that the FAA governs arbitration and waiver of jury trial).

Holding: Since the arbitrators considered the generic choice of law provision and determined that North Carolina law applies, the arbitrators did not exceed their powers.

Takeaway: Judicial review of an arbitration award is very limited. Errors of law or fact or erroneous decisions will not invalidate an arbitration award. Absent fraud, corruption, or misconduct, an arbitration award will be vacated only "where arbitrators exceeded their powers." Slip op. at 7 (citing 9 U.S.C. § 10(a)). A generic choice of law clause "provides that the contract shall be governed by the law of a particular state without specifically providing that the clause governs 'any and all claims arising from or relating to' the Agreements." Slip op. at 9. As long as the arbitrators analyzed the choice of law clause, the award does not exceed the arbitrators' powers.

Administrative Procedure Act

Beneficial Economic Interest

Paez v. Pettis (COA25-168)

Date: 2026-03-04

Topics: specific performance, necessary parties, beneficial economic interest

Summary: Action for breach of contract, fraud, misrepresentation, and civil conspiracy seeking specific performance of contract. The plaintiff filed a complaint and motion for a preliminary injunction and temporary restraining order (TRO) on the same day. All three defendants filed a combined answer and moved to dismiss all claims except breach of contract pursuant to Rule 12(b)(6). The trial court denied the plaintiff's motion for a preliminary injunction and TRO. The plaintiff filed a second motion for a preliminary injunction and TRO that was granted in part. Two defendants moved for summary judgment, which the trial court granted. The plaintiff's remaining

claims against the third defendant went to trial, and that defendant moved to dismiss at the close of evidence. The trial court dismissed all claims except breach of contract, on which the jury found for the plaintiff. The trial court entered final judgment on the jury verdict and ordered specific performance. The third defendant appealed to the NCCOA, challenging the order for specific performance and that the judgment overruled the prior summary judgment order, releasing necessary parties (*i.e.*, the other two defendants).

Holding: The trial court did not abuse its discretion by ordering specific performance. The trial court clearly "considered the unique complexities of this case" and the conclusion is adequately supported by the record. Slip op. at 12. The specific performance ordered, that the plaintiff immediately have a beneficial economic interest in the venture, is supported by the trial court's finding that the plaintiff is an economic interest holder under N.C.G.S. § 57D-1-03(11). The trial court's judgment did not overrule the order granting summary judgment to the other two defendants, and the other two defendants were not necessary parties at trial. The trial court's order only affects the third defendant's interests in the venture, and the other two defendants did not have "a material interest in the subject matter of the controversy that would be directly affected by an adjudication of the controversy." Slip op. at 18. The judgment of the trial court is affirmed.

Collateral Estoppel

In re A.D.H. (265PA24)

Date: 2025-12-12

Doctrine: collateral estoppel

Summary: A child custody order (CCO) and interference petition order (IPO) were issued finding no evidence of abuse and awarding primary custody to father. Petitioner Department of Social Services subsequently filed a juvenile petition, which the trial court dismissed with prejudice based on res judicata and collateral estoppel. The NCCOA held that the allegations in the petition predating the CCO and IPO were precluded by collateral estoppel, but later allegations made after the CCO and IPO were issued could not be estopped. The petitioner sought NCSC review of the applicability of collateral estoppel to the CCO and IPO.

Holding: None of the allegations are barred by collateral estoppel; the NCCOA opinion is reversed and the matter remanded. The doctrine of collateral estoppel requires "(1) a valid final judgment on the merits in a previous suit; (2) the later suit involves identical issues; (3) the issue was actually litigated in the prior suit and necessary to the judgment; (4) the issue was actually determined; and (5) the party to be collaterally estopped was a party or in privity with a party to the prior suit, who had a full and fair opportunity to litigate the issue in the earlier action." Slip op. at 12-13. The petitioner was not in privity with the parties to the child custody action, so the CCO did not collaterally estop the trial court from adjudicating the matter. The contents of the IPO were not actually determined by the trial court because "[a] trial court's recitation of arguments is not a finding of fact." Slip op. at 15.

Concurrence: Justice Riggs emphasizes the limited applicability of this case on future collateral estoppel analyses given the "factually dependent nature of the privity inquiry" and the "extreme and unusual facts in this case[.]" Slip op. at 17. "Given the unique facts of this case, I would not point to this as a case upon which future litigants should rely upon for clarification of either collateral estoppel law or privity[.]" Slip op. at 19.

Collar v. Fletcher Hosp., Inc. (COA25-482)

Date: 2026-05-06

Rule or doctrine: Collateral Estoppel

Procedural Summary: Action for negligent credentialing and related claims against medical facilities regarding the conduct of a surgeon who was a defendant in a number of lawsuits filed by patients. Thirty-four plaintiffs, including the Plaintiffs in this case and the plaintiffs in *Justus v. Rosner*, entered into a Memorandum of Understanding and created a plaintiffs' trust fund. Only *Justus* proceeded to trial, while the other 33 cases were stayed. When the stay in this case was lifted, Plaintiffs sought to consolidate 25/33 cases for trial. Defendants objected to consolidation and moved for summary judgment, arguing that Plaintiffs are in privity with the plaintiffs in Justus and bound by the judgment in that case. Defendants argued Plaintiffs' claims are barred by collateral estoppel. The trial court denied Defendants' motion for summary judgment and Defendants appealed. Plaintiffs also appealed, arguing that judicial estoppel should prevent the Defendants from invoking collateral estoppel. In other words, Plaintiffs argued that Defendants should not be able to object to consolidation of 25 of the remaining cases while also arguing that the issue of Defendants' negligence was already determined in *Justus* and binds the remaining plaintiffs.

Holding: Plaintiffs were in privity with the plaintiffs in *Justus* because they agreed that any award from the *Justus* plaintiffs or any other plaintiffs in these cases would be placed in the trust fund and divided, meaning that Plaintiffs and the *Justus* plaintiffs had the same legal rights to the trust fund property. Therefore the determination of any issues actually litigated in *Justus* and necessary to the judgment in *Justus* bind Plaintiffs. The issue of Defendants' "negligence as a whole," slip op. at 37, existed in both *Justus* and this case. When the trial court in *Justus* determined that Defendants were not negligent, that determination bound Plaintiffs, meaning that Defendants here are entitled to summary judgment. On the issue of judicial estoppel, the trial court did not err when exercising its

discretion to determine that the Defendants' opposition to consolidating many of the remaining cases for trial and also raising the defense of collateral estoppel are not clearly inconsistent. In other words, it is acceptable for Defendants to argue that collateral estoppel prevents Plaintiffs from retrying the issue of negligence and in the alternative to oppose consolidating cases for trial.

Takeaway: "Collateral estoppel [precludes] parties and parties in privity with them … from retrying fully litigated issues that were decided in any prior determination between the parties or their privies and were necessary to the prior determination." Slip op. at 20 (cleaned up). "Privity for purposes of res judicata and collateral estoppel denotes a mutual or successive relationship to the same rights of property … privity involves a person so identified in interest with another that he represents the same legal right." *Id.* If a party was fully protected in an earlier litigation or controlled the earlier litigation even though they were not a party, then privity can also exist. Privity is not the same thing as a party who happens to be interested in an earlier litigation or in the same set of facts.

Necessary Parties

Paez v. Pettis (COA25-168)

Date: 2026-03-04

Topics: Necessary parties, beneficial economic interest

See summary under Beneficial economic interest

Personal Jurisdiction

Greenhaus v. Goldstein (COA25-783)

Date: 2026-05-06

Rule or doctrine: 12(b)(2), personal jurisdiction

See summary under Rule 12

Universal Life Ins. Co. v. Lindberg (COA25-6)

Date: 2026-05-20

Rule or doctrine: Personal jurisdiction

Procedural Summary: Plaintiff obtained a judgment in federal court and sought a charging order in superior court. Among other things, Defendant contended that the superior court did not have *in rem* or *quasi in rem* jurisdiction over the Defendant's out-of-state assets.

Holding: "[W]here personal jurisdiction over an interest owner has been established, a judgment-creditor may charge a judgment-debtor's economic interest in both foreign LLCs and North Carolina LLCs." Slip op. at 6. "So long as personal jurisdiction exists over the interest owner, a trial court may issue a charging order." *Id.* at 8. The charging order does not affect the internal operations of a foreign LLC but only "operates as a lien on the judgment-debtor's economic interest" in the LLC. *Id.* (cleaned up). In this case, did not dispute personal jurisdiction. Thus Defendant made a general appearance and waived objections to personal jurisdiction.

Res Judicata

Sanders v. N.C. Dep't of Transp. (87PA24)

Date: 2025-12-12

Topic: res judicata

Summary: Inverse condemnation action for damages caused by Map Act restrictions on the plaintiff's land. The parties settled two direct actions while the Map Act restrictions were in effect. After the restrictions were repealed, the plaintiff commenced the present action asserting entitlement to just compensation under N.C.G.S. § 136-111. The defendant moved to dismiss pursuant to Rule 12(b)(6), and the trial court dismissed some claims based on res judicata. Both parties appealed to

the NCCOA. The NCCOA affirmed the trial court's order and both parties petitioned for NCSC review.

Holding: State law required the plaintiff to raise the issue of Map Act restrictions in the prior direct action; the plaintiff is now precluded from pursuing those damages. The NCSC analyzes Chapter 136 and concludes that the Map Act restrictions were "pertinent to" the prior direct action pursuant to N.C.G.S. § 136-106. The plaintiff's failure to raise the issue "prevents him from pursuing damages for those restrictions through an inverse condemnation action under N.C.G.S. § 136-111." Slip op. at 17. The judgment of the NCCOA is reversed; discretionary review was improvidently allowed in part for the remaining issues.

Britt v. Wake Cnty. Sheriff's Off. (COA25-1145)

Date: 2026-05-20

Rule or doctrine: res judicata

Procedural Summary: Action for *Corum* claims and intentional infliction of emotional distress related to adverse employment actions. Plaintiff had filed a first suit alleging violations of Title VII of the Civil Rights Act. Defendants removed the case to federal court where it was dismissed. When Plaintiff filed this action, Defendants moved to dismiss, arguing that res judicata barred the suit because the factual allegations in both suits were identical. Plaintiff argued that since *Corum* claims were appropriate when no other remedy existed, she could not have pleaded the *Corum* claim in the first action. The trial court dismissed and Plaintiff appealed.

Holding: Res judicata bars a *Corum* claim that could have been brought in a previous suit that reached final judgment on the merits between the parties or those in privity with them. "Our Supreme Court's intent is not that a *Corum* claim be brought as a collateral revival of a conventional claim that has already failed—not as an exception to the doctrine of res judicata—but as an alternative theory to the conventional claim in the same action." Slip op. at 9.

Servicemembers Civil Relief Act

Roybal v. Raulli (COA23-983)

Date: 2026-02-04

Topic: Servicemembers Civil Relief Act

Summary: In domestic dispute, the NCCOA considers an issue of first impression in North Carolina as to whether a servicemember is entitled to a stay or continuance under Section 50-3932 of the Servicemember Civil Relief Act (SCRA). 50 U.S.C. § 3932. The plaintiff moved to continue a trial court hearing on the defendant's motion to modify child custody because the plaintiff was unavailable due to military service. The trial court denied the motion to continue, granted the defendant's motion to modify custody, and issued an amended commitment order committing plaintiff to jail for civil contempt for failure to make a prior purge payment. Consolidated appeal of four trial court orders: (1) the continuance order denying the plaintiff's motion to continue; (2) a memorandum of order granting the defendant's motion to modify custody; (3) the formal modification order; and (4) the amended commitment order.

Holding: The plaintiff's motion to continue is properly considered a motion to stay under the SCRA, not a Rule 40(b) motion. The NCCOA looks to decisions from the Kentucky and Maryland Courts of Appeals and concludes "the standard of review for the denial of a proper motion to stay under the SCRA is *de novo*." Slip op. at 25. A motion to stay under the SCRA must include letters or other communications that lay out how "current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be able to appear[;]" a letter or other communication from the servicemember's commanding officer must also

"stat[e] that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter." Slip op. at 34 (quoting 50 U.S.C.A. § 3932(b)(2)). The plaintiff satisfied these requirements and was entitled to a mandatory stay of the trial court proceedings. The NCCOA agrees with the Supreme Court of Alabama's analysis of the SCRA's predecessor statute that there is no meaningful distinction between a motion for a "stay" versus a "continuance" under the SCRA. The trial court erred in denying the motion and denial was prejudicial because it deprived the plaintiff of the right to appear and oppose the motion to modify custody. The remedy for this error is to vacate the memorandum of order granting that motion and the formal modification order. The amended commitment order is reversed because the trial court did not make findings of fact as to the plaintiff's present ability to pay at the time the order was entered. The trial court's judgment is reversed in part, and the matter is vacated and remanded in part.

Standard of Review for Agency Interpretations

Mitchell v. Univ. of N.C. Bd. of Governors (121A23)

Date: 2025-10-17

Topic: standard of review for agency interpretations

Summary: Plaintiff professor challenged termination through the administrative appeals process and judicial review. The NCCOA held that an agency's interpretation of its own regulations is entitled to "substantial deference" unless it is "plainly erroneous." Slip op. at 4 (quoting COA opinion). The NCCOA opinion also contained a dissent that would remand the matter based on a First Amendment issue. The NCSC granted the plaintiff's petition to clarify the appropriate standard of

review for when courts should defer to an agency's interpretation of the agency's own rules and regulations.

Holding: North Carolina "courts interpreting state administrative regulations must freely substitute their judgment for that of the agency and employ de novo review." Slip op. at 9. Agency interpretations are "never binding[,]" but can be used to ascertain meaning "[i]n cases involving a complex or highly technical regulatory program[.]" *Id.* The NCSC explicitly disavows contrary state law precedent and modifies and affirms the NCCOA's judgment accordingly. The NCSC rejects the NCCOA dissent's argument that remand is necessary to apply the proper First Amendment balancing test because that analysis is a question of law that must be reviewed de novo; the NCCOA "cannot ignore a properly preserved question of law because it wants the trial court to provide further legal analysis[.]" Slip op. at 13.

Dissent in part: Justice Earls, joined by Justice Riggs, concurs in result only on the issue of agency deference and dissents on the First Amendment issue. The specific regulation here was clear on its face, and the majority's "sweeping language goes far beyond" the "legal issues actually presented by the facts" of the case. Slip op. at 16, 17. Justice Earls would also reach the merits of the First Amendment challenge and conclude that the plaintiff's speech was protected, warranting reversal of the NCCOA's judgment.

Standing

Eagles v. Integon Indem. Corp. (COA25-263 & COA25-264)

Date: 2026-01-21

Topics: Venue, standing

Summary: After a jury trial in Franklin County, estate initiated supplemental proceedings in Franklin County seeking appointment of a receiver for the judgment-debtors, who were insured by appellant insurance company ("Indemnity"). An Indemnity-related entity ("National") filed a complaint in Forsyth County seeking a declaration of no bad-faith refusal to settle and other related declarations. The Franklin County court appointed receivers, and the estate and receivers moved in Forsyth County to substitute the receivers as real parties in interest and to dismiss. The receivers brought an action in Nash County against Indemnity for bad-faith refusal to settle and related claims. The estate and receivers filed amended motions to substitute real parties in interest and to dismiss, and filed an answer in the Forsyth County action. The amended motion to dismiss argued that National lacked standing in the Forsyth County action because Indemnity was the judgment-debtors' insurer; National moved to amend the Forsyth County complaint to change the plaintiff to Indemnity and dismissed its claims against the estate. Indemnity moved to dismiss the Nash County action or, in the alternative, to transfer venue to Forsyth County or Franklin County or to stay the Nash County proceedings pending the outcome of the Forsyth County action. The Forsyth County court ordered receivers to be substituted as defendants, denied receivers' amended motion to dismiss, and granted National's motion to amend its complaint to name Indemnity as plaintiff. The receivers moved to dismiss the amended complaint and filed an answer, counterclaims, and a motion to abate the Forsyth County action. The parties jointly moved to designate both the Nash County and Forsyth County actions as exceptional; the motion was granted and both matters were assigned to the same judge. In the Forsyth County action, discovery disputes arose and the court entered orders granting receivers' motion for a protective order and denying Indemnity's motion to compel depositions; Indemnity filed a Rule 54(b) motion for reconsideration. The court denied Indemnity's motions for reconsideration and to dismiss the Nash County action; the court also abated the Forsyth County action. Indemnity appeals the (1) denial of the motion to reconsider the order on its motion to

compel, (2) denial of the motion to dismiss the Nash County action, and (3) abatement of the Forsyth County proceeding.

Holding: The Forsyth County court lacked subject-matter jurisdiction to rule on National's motion to amend because National lacked standing; the Forsyth County action is remanded to be dismissed without prejudice. The order on the motion for reconsideration was only filed in the Forsyth County action, so Indemnity's appeal of that order in the Nash County action is null. The NCCOA reviews the interlocutory order denying the motion to dismiss the Nash County action because it affects a substantial right and, on the merits, finds that Nash County is a proper venue. "[A]n action is properly brought by a receiver in the county in which the receiver resides where there is no statute providing otherwise." Slip op. at 17. However, insofar as the receivership order gave Franklin County exclusive jurisdiction over the claims, the NCCOA holds that "a superior court [that] limits the legally proper venues in which a receiver may file related claims [] exceeds its statutory authority." Slip op. at 18.

Subject Matter Jurisdiction

Hoke Cnty. Bd. Of Educ. v. State (425A21-3)

Date: 2026-04-20

Topic: subject matter jurisdiction

Procedural summary: In 1994, plaintiff students, parents, and guardians and school boards from low-wealth school systems filed a complaint seeking relief for inadequate educational opportunities created by the state's failure to fund schools. Later that year, students, parents, guardians, and school boards from urban school systems intervened as plaintiffs. In its first opinion in 1997, the NCSC

held that the state constitution guaranteed students "the opportunity for a sound basic education." Slip op. at 4 (cleaned up). After trial on issues related only to Hoke County, the NCSC's opinion in *Hoke County I*, 358 N.C. 605 (2004), directed the trial court to conduct "proceedings for each of the other low-wealth and urban school districts because their individual claims had not yet been adjudicated." Slip op. at 56. The following year students in Charlotte-Mecklenburg schools intervened. For more than twenty years, litigation continued, the legislature enacted changes to the state's educational system, and the trial court held additional hearings. On July 24, 2017, the attorney general moved for relief from the trial court's judgment, arguing that no other trials had been held regarding other school districts and that the claims currently before the court were so different than the original claims that the trial court no longer had jurisdiction. The trial court entered a series of consent orders, including an order to create a Comprehensive Remedial Plan by the end of 2020. When the trial court found that the state had failed to fund the CRP past its first year and ordered its funding, the General Assembly intervened and appealed the order, which the NCSC upheld in *Hoke County III*, 382 N.C. 386 (2022). The NCSC "ordered the trial court to retain jurisdiction over the matter to ensure implementation of its order and to monitor for continued constitutional compliance." Slip op. at 81 (cleaned up). On April 17, 2023, the trial court entered another order recalculating amounts needed to fund the CRP, and the General Assembly appealed.

Holding: the trial court lost subject matter jurisdiction no later than July 24, 2017, making all orders after that date void. "[B]ecause we agree that nobody in this case invoked the trial court's subject matter jurisdiction over a facial challenge to the current education system, we agree that the trial court lacked subject matter jurisdiction to enter its 17 April 2023 Order." Slip op. at 83. The majority emphasizes that subject matter jurisdiction is invoked by pleading, and that "[i]f a party has not properly invoked the trial court's subject matter jurisdiction over a claim, then the trial court is not empowered to rule on that claim." Slip op. at 88. Importantly,

> final judgments in cases trigger all sorts of equitable doctrines potentially foreclosing other relief—for example, res judicata and collateral estoppel. And when attorneys and judges stray outside the bounds of the complaint and the named parties, they risk inadvertently closing the courthouse doors to future litigants who may have stronger claims or unique facts. This is why precisely establishing the contours of a claim—what is being challenged, by whom, against whom, and on what grounds—in the complaint is paramount.

Slip op. at 89. Additionally, the majority states that pleadings determine the tribunal that may exercise subject matter jurisdiction. Since G.S. 1-267.1 (a) and (c) require that a three-judge panel in the superior court of Wake County hear any facial constitutional challenge, only such a three-judge panel has "subject matter jurisdiction to invalidate acts of the General Assembly as facially unconstitutional." Slip op. at 106. The NCSC dismissed the matter with prejudice "because the various complaints and amended complaints presented as-applied constitutional challenges to the education system of 1994, which no longer exists." Slip op. 10, fn. 5.[2]

Dissent: All three dissenting opinions would have held that the trial court retained subject matter jurisdiction, and that a trial court does not lose subject matter jurisdiction over a case once it has exercised it. Citing *Singleton v. N.C. Dep't of Health & Hum. Servs.*, 386 N.C. 597 (2024), Justice Earls would have held that failure to transfer a case raising a facial constitutional challenge to a three-judge panel in Wake County is "not a jurisdictional defect." Earls, J., dissenting, slip op. at 144.

Takeaway: While this litigation is unique in North Carolina, *Hoke Cnty. Bd. Of Educ. v. State* contains important reminders from the NCSC. Superior court judges should require that parties amend pleadings to conform to the claims before the court using G.S. 1A-1, Rule 15. Facial constitutional challenges, even if not pleaded using those exact words, must be transferred to a three-judge panel in Wake County.

[2] Typically, a dismissal for lack of subject matter jurisdiction is without prejudice. *Flowers v. Blackbeard Sailing Club, Ltd.*, 115 N.C. App. 349 (1994).

Smith v. The BDK Grp. Shallotte, LLC (COA25-738)

Date: 2026-05-06

Rule or doctrine: 12(b)(1), subject matter jurisdiction

See summary under Rule 12

Venue

Eagles v. Integon Indem. Corp. (COA25-263 & COA25-264)

Date: 2026-01-21

Topics: Venue, standing

See summary under Standing