

Equitable Distribution: Classification of Marital Debt

For a reason never articulated by our appellate courts, debts incurred during a marriage are treated very differently in equitable distribution than is property. While public policy – codified as the marital property presumption found in [GS 50-20\(b\)](#) – is to include **all** property acquired during the marriage in the marital estate unless it is shown to fit within one of the limited categories of separate property, debt incurred during the marriage is excluded from the marital estate unless a party can prove the debt was incurred for the joint benefit of the parties.

The court of appeals recently reaffirmed and strengthened this presumption against the inclusion of debt in the marital estate by further limiting the definition of ‘joint benefit’ – at least in the context of student loans incurred by one spouse during the marriage – to mean only that debt which can be shown to **actually have benefited** both parties. Despite acknowledging that the court of appeals “has never required evidence that the marital unit actually benefited from the debt incurred,” the court in [Warren v. Warren, \(NC App, June 16, 2015\)](#), nevertheless held:

“In order for the court to classify student loan debt as marital debt, the parties must present evidence regarding whether the marriage lasted long enough after incurring the debt and receiving the degree for the married couple to substantially enjoy the benefits of the degree or higher earnings.”

Statute Does Not Define Marital Debt

While [GS 50-20](#) gives the court authority to distribute marital property, it does not specifically address marital debt. Nevertheless, in *Dorton v. Dorton*, 77 NC App 667 (1985), the court held that because [GS 50-20\(c\)\(1\)](#) requires that the court consider all liabilities of the parties when making a distribution, the court is required to account for marital debt. Shortly thereafter, in *Geer v. Geer*, 84 NC App 471 (1987), the court reaffirmed that marital debt should be accounted for in the marital estate and defined marital debt to be that debt incurred for the joint benefit of the parties. Neither *Geer* nor any opinion issued since *Geer* has defined ‘joint benefit’.

No Marital Debt Presumption

In *Becker v. Becker*, 127 NC App 409 (1997), the court made it clear there is no presumption that debt incurred during the marriage is marital. In that case, the court held that even a debt incurred for dental work for one spouse during the marriage cannot be classified as marital unless the trial court concludes the debt was incurred for the joint benefit of the parties. And in *Riggs v. Riggs*, 124 NC App 647 (1996), the court reversed a trial court for classifying credit card debt as marital where the appellate court found “no evidence in the record” to support the conclusion that the charges were incurred for the joint benefit of the parties.

Joint Benefit

As support for its definition of marital debt, *Geer* cites the South Carolina case of *Allen v. Allen*, 287 SC 501 (1986), wherein the court reversed the trial court for classifying as marital certain debts owed by husband. Explaining that the trial court had included debts incurred after the date of separation, the South Carolina court instructed the trial court on remand to classify as marital only those debts ‘incurred for the joint benefit of the parties’.

We know that a debt does not need to be in the name of both spouses to be marital, *Wornom v. Wornom*, 126 NC App 461 (1997), and conversely, the fact that a debt is in the joint names of the parties does not establish joint benefit. *Miller v. Miller*, 97 NC App 77 (1990).

We also knew before [Warren](#) that evidence of actual benefit to the marriage is sufficient to establish joint benefit. *Glaspy v. Glaspy*, 143 NC App 435 (2001)(business profits were used by the family during the marriage so tax lien on the business was a marital debt); *Godley v. Godley*, 110 NC App 99 (1993)(debt to husband’s capital account from his withdrawal of funds was marital where the funds benefited the marriage “both directly and indirectly”). [But cf. Comstock v. Comstock](#), 771 S.E.2d 602 (N.C. App., April 7, 2015)(debt owed by husband on a home equity line was his separate debt even though both parties acknowledged funds were used for household expenses where wife testified she was unaware during the marriage that husband had borrowed the money).

[Warren v. Warren](#)

After getting married, the parties in [Warren](#) agreed plaintiff would stop working to stay home with the children. When the children grew older, the parties agreed plaintiff would return to school to earn a degree so she could “increase her income for the benefit of the family.” She incurred student loans in her name alone. The funds were used for school expenses but also for living expenses of the family while wife was a full-time student.

After wife graduated, she was employed in the field of her degree and earned much more than she had earned before deciding to stay at home with the children. The parties remained together for twenty months after plaintiff began earning this income.

The trial court classified the loan debt as marital based upon findings that the loans were incurred with the intent that the degree would benefit the marriage, some of the loan proceeds were used to pay household expenses, and the increased earning capacity of the plaintiff actually benefited the family during the marriage.

The court of appeals affirmed, pointing to all of those facts as supporting the conclusion of joint benefit. Despite citing cases from other states indicating that ***an expectation*** of joint benefit at the time of the loans is sufficient to support a marital classification, the court of appeals nevertheless held that evidence must show the marriage “lasted long enough” for the couple to “substantially enjoy” benefits gained from the degree.

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So it appears from this holding that even if loans are incurred because the parties jointly believe at the time the debt is incurred that they both will benefit, the debt will not be marital if, for example, the parties separate before the degree is earned. Or, if the degree is earned but for some reason – such as the unavailability of jobs or the onset of a medical disability– the spouse is unable to actually earn more money because of the degree, the debt will not be marital.