Family Law

Number 15 January 2003 **Cheryl Howell, Editor**

RECENT FAMILY LAW CASES (JUNE 1, 2002 – FEBRUARY 1, 2003)

Cheryl Howell

The following cases were decided between June 1, 2002 and February 1, 2003. The full text of all opinions can be found on the website of the N.C. Administrative Office of the Courts: www.nccourts.org/.

Child Custody

Fathers of illegitimate children

Jurisdiction under the UCCJEA

David v. Ferguson, 571 S.E.2d 230 (N.C. App., October 15, 2002).

Holding #1. Trial court had jurisdiction to hear custody claim where children had resided in N.C. for 6 months prior to the institution of the action.

Discussion. Parties resided together in N.C. when both children were born. In Feb. 2000, defendant moved to Maryland with the children. In June 2000, the children were returned to plaintiff in N.C. with the agreement that the children would be returned to Maryland sometime in the future. Plaintiff filed for custody in N.C. in January 2001. The court of appeals rejected defendant's argument that, because the children were domiciled in Maryland, N.C. did not have jurisdiction to decide custody under the UCCJEA, G.S. 50A. The court of appeals held that because the children had resided in N.C. with plaintiff for at least 6 months before the custody proceeding was filed, N.C. was the home state and the only state with jurisdiction to make a custody determination. The court also rejected defendant's argument that Maryland had jurisdiction because the parties had entered into a custody agreement in Maryland. The court of appeals held that agreements between the parties that do not result in a court order do not amount to a "custody determination" within the meaning of the UCCJEA.

Holding #2. Trial court erred in applying best interest analysis to decide custody

between mother and father of child born out of wedlock where father had not judicially legitimated the child or judicially established paternity. Award of custody to plaintiff father is reversed.

Discussion. Although plaintiff and defendant lived together at the time each child was born, the parties were not married. The plaintiff had filed a voluntary acknowledgment of paternity, but had not legitimated the child nor established paternity pursuant to provisions in G.S. 49. The court of appeals therefore held that the ruling in *Rosero v. Blake*, 150 N.C. App. 251 (2002) prohibited the trial court from using the best interest of the child test to determine custody between the parties. According to *Rosero*, the mother of illegitimate children has absolute right to custody in case against a father who has not legitimated the children or established paternity pursuant to G.S. 49 unless the mother is proven unfit to exercise custody.

Smith v. Barbour, 571 S.E.2d 872 (N.C. App., December 3, 2002).

Holding #1. Where plaintiff initiated a legitimation action in superior court immediately after filing a custody and paternity action in district court, district court was divested of jurisdiction to proceed on the paternity claim. Therefore, the trial court erred in ordering a paternity test as part of a temporary custody order.

Discussion. Plaintiff filed custody and paternity claim in district court. The trial court ordered a paternity test and entered a temporary order granting plaintiff visitation rights. On the same day he filed the custody/paternity case, plaintiff also filed an action in superior court pursuant to G.S. 49-10 seeking to legitimate the child. The court of appeals held that the legitimation proceeding divested the district court of jurisdiction to hear the paternity claim and therefore it was error for the trial court to order paternity testing. The court reasoned that because legitimation "vests greater rights in the parent and the child than an order adjudicating the child's paternity, … the legitimation proceeding should be given preference when separate actions for both legitimation and paternity are filed."

Holding #2. Plaintiff had standing to bring a custody action even though he had not legitimated the child and paternity had not been judicially established where he and the child shared the same last name and plaintiff had visited with the child on a regular basis.

Discussion. Defendant mother was married to another man at the time of the birth of the child. Plaintiff had visited with the child since birth but alleged that mother had recently prohibited all visitation. The child and plaintiff shared the same last name. The trial court entered a temporary custody order granting visitation rights to plaintiff. Mother argued on appeal that plaintiff had no standing to bring a custody action because he had not legitimated the child or obtained a judicial determination of paternity at the time the custody action was initiated. The court of appeals held that under *Rosero v. Blake*, 150 NC App 250 (2002) a putative father who had not legitimated a child or established paternity is treated as a third party in a custody proceeding against a parent. However, in this case, plaintiff had alleged a relationship with the child sufficient to give him standing to file the custody action. (The court did not address the standard he would have to meet to be entitled to custodial rights in the final custody order). Because he alleged that the child shared his last name and he had visited with the child since birth, the court of appeals held plaintiff had standing to initiate the custody action.

Holding #3. Trial court erred in entering a temporary custody order in case brought against mother by putative father where husband of mother was not given notice of the custody action.

Discussion. The court of appeals held that the man married to the mother at the time of the birth of the child was a necessary party to the custody action. As he was not given notice of the proceeding, the court of appeals held that the trial court had no authority to enter the temporary custody order.

Grandparent custody and visitation

Death of custodial parent

McDuffie v. Mitchell, N.C. App. (December 31, 2002).

Holding #1. Trial court did not err in dismissing plaintiff grandmother's complaint seeking custody or visitation in case where custodial parent died.

Discussion. Mother had custody of children and defendant had visitation rights. Mother died and grandmother sought custody. Father counterclaimed for custody and moved to dismiss the grandmother's claims. The trial court granted defendant father's 12(b)(6) motion and the court of appeals affirmed. The court of appeals held that grandparent claims for custody or visitation are limited to 1) those brought pursuant to the grandparent visitation statutes, and 2) those wherein grandparents claim parents have lost their constitutional right to custody. In an effort to make a claim pursuant to the grandparent visitation statutes, plaintiff grandmother had initially filed a motion to intervene in the custody case between the parents pursuant to G.S. 50-13.5(j)(the grandparent

statute allowing visitation to be granted in a case where custody has been previously determined if the grandparent can show a substantial change of circumstance). However, the trial court dismissed that motion after concluding that the case between the parents no longer existed after the death of the mother. Although plaintiff did not appeal that dismissal, the court of appeals agreed in this opinion that the trial court's jurisdiction in the case between the parents terminated upon the death of one party, leaving no case within which a grandparent could intervene. In this separate action for custody, plaintiff argued that grandparents should have expanded rights to custody or visitation where the custodial parent died. The court of appeals rejected this argument, holding that a noncustodial parent has the same constitutional right to the care, custody and control of their children as against third parties as does a custodial parent.

Holding #2. Trial court properly granted defendant father's Rule 12(b)(6) motion to dismiss where grandparent's complaint failed to allege facts sufficient to support a conclusion that defendant father had waived his constitutional right to custody.

Discussion. Court of appeals agreed with trial court's conclusion that grandmother's complaint failed to allege facts sufficient to prove father had waived his right to custody and control of his children. Grandmother alleged that father "had been estranged from the children for some time and currently enjoys limited visitation with the minor children." According to the court of appeals, "such allegations fall short of establishing that defendant acted in a manner inconsistent with his protected status."

Procedure

Rule 68 offers of judgment not applicable to custody cases

Mohr v. Mohr, N.C. App. (December 31, 2002).

Holding. Offers of Judgment made pursuant to Rule 68 of the N.C. Rules of Civil Procedure are not applicable to custody proceedings.

Discussion. Plaintiff filed a motion to change the terms of a custody order. Defendant responded by filing an offer of judgment offering to keep the terms of the existing order in place with no modifications. Plaintiff rejected the offer. The trial court thereafter denied plaintiff's motion to modify, and defendant claimed costs pursuant to Rule 68. The trial court denied defendant's motion for costs and the court of appeals affirmed. The court of appeals held that "Rule 68 offers of judgment are inconsistent with our framework for determining custody under Chapter 50" as application of the Rule would rejecting plaintiff's argument that fees only can be awarded a prevailing party.

Attorney fees

Burr v. Burr, 570 S.E.2d 222 (N.C. App., October 15, 2002).

Holding#1. Trial court did not err in awarding attorney fees to defendant even though she did not prevail at trial.

Discussion. Plaintiff brought action for custody, support and termination of parental rights against defendant. The trial court granted custody to plaintiff, visitation to defendant, ordered defendant to pay past due and on-going support, and denied plaintiff's request for termination of defendant's rights. The trial court concluded that defendant was an interested party, acting in good faith, who was without means to defray the cost of the action and ordered plaintiff to pay defendant's reasonable attorney fees. The court of appeals upheld the part of the award relating to the custody and support proceeding, rejecting plaintiff's argument that fees only can be awarded a prevailing party.

Holding #2. The trial court erred in awarding fees to defendant for defense of the termination action.

Discussion. The court of appeals held that attorney fees may not be awarded unless a statute specifically authorizes the award in a particular case. As there is no statute allowing the award of fees in termination of parental rights cases, that portion of the trial court's award was improper.

Modification

Shipman v. Shipman, N.C. App. (December 31, 2002).

Holding #1. Trial court's findings were sufficient to support the conclusion that there had been a material change of circumstances affecting the welfare of the child.

Discussion. Original order granted plaintiff mother primary physical custody and defendant father visitation. The trial court granted defendant father's motion to modify and the court of appeals affirmed. The court of appeals rejected mother's contention that the trial court made insufficient findings to support the conclusion that there had been a substantial change of circumstances affecting the welfare of the child. The

court of appeals held that findings of fact including 1) mother's transience (she had moved several times and did not have a home at the time of the hearing), 2) defendant's remarriage, 3) plaintiff's cohabitation in violation of the original custody order, and 4) plaintiff's denial of defendant's visitation rights supported the conclusion that there had been a change and that the change affected the children. Dissent by Walker on this issue. Dissent argued that trial court made no findings about how these changes affected the child.

Holding #2. Trial court did not err in modifying child support based upon the modification of the custody order without giving notice to the Child Support Enforcement Agency.

Discussion. Court of appeals held that the lack of notice to the Child Support Enforcement Agency that helped plaintiff with the initial child support order "was not fatal" because an agent of the agency appeared and testified at the modification hearing.

Holding #3. After modifying child support, trial court did not err in giving plaintiff a credit toward her future support for the amount defendant was in arrears under the original order.

Discussion. The court of appeals rejected plaintiff's argument that the trial court erred in giving her a credit on her future support for defendant's arrears under the original order rather than ordering defendant to pay all arrears. The court of appeals held that "plaintiff will receive the support but in different form."

Child Support

Paternity

Rule 60(b) to set aside Voluntary Support Agreement

State ex. Rel. Davis v. Adams, 571 S.E.2d 238 (N.C. App., October 15, 2002).

Holding. Trial judge did not abuse discretion in denying defendant's motion to set aside Voluntary Support Agreement and Order that established defendant's paternity where defendant's motion was filed more than three years after the order was entered.

Discussion. In 1996, the court entered a Voluntary Support Agreement and Order that established defendant's paternity of two children and set his support obligation. In 1999, a DNA test excluded defendant as the father of one of the children. In 2000, defendant filed a motion asking the court to void the order establishing his paternity of that child. The trial court treated the motion as one made pursuant to Rule 60(b) and denied the motion. The court of appeals affirmed the trial court and rejected defendant's argument that the trial court erred in treating the motion as a Rule 60(b) motion when defendant did not designate it as such. The court of appeals held that motions seeking to void or set aside a paternity judgment are Rule 60(b) motions whether designated as such by the party or not. Further, a trial judge's decision on a Rule 60(b) motion is reviewable only for an abuse of discretion. The court of appeals held that because defendant's claim was based upon his assertion that the earlier order was obtained by mistake or fraud – a claim pursuant to Rule 60(b)(1) or (b)(3) – the claim was subject to a one-year time limitation. As there were three years between the entry of the order and defendant's motion to set it aside, the court of appeals held that the motion was properly denied. The court of appeals further held that because the motion was one properly made pursuant to Rule 60(b)(1) or (b)(3), the defendant could not ask the court to set aside the paternity judgment pursuant to the broader authority of Rule 60(b)(6), which has no time limitation.

Modification of N.C. orders by other states

Egbert v. Egbert, 569 S.E.2d 727 (N.C. App., October 1, 2002).

Holding. Florida orders entered in 1992 and 1997 did not result in a modification of child support order entered in North Carolina in 1989 where the mother and the child continued to reside in North Carolina. Therefore, obligor was required to pay arrearages accrued under N.C. order even though Florida court had attempted to lower defendant's support obligation.

Discussion. A support order was entered in N.C. in 1989. N.C. was the home state of the child at the time the order was entered and has been the home state at all times since the entry of the N.C. order. When defendant moved to Florida, the North Carolina order was registered in Florida pursuant to URESA. The Florida court modified the North Carolina order in 1992 and 1997, both times reducing the amount of defendant's support obligation. In 1997, the Florida court dismissed the URESA proceeding after concluding that defendant had satisfied all support obligations. Plaintiff filed action in N.C. seeking to recover arrears under the 1989 support order and the trial court ordered defendant to pay. The court of appeals affirmed, holding that North Carolina had

"exclusive continuing jurisdiction" pursuant to the federal Full Faith and Credit for Child Support Orders Act ("FFCCSOA"), 28 U.S.C. 1738B (1994). That act provides that a state retains exclusive jurisdiction to modify an order as long as the state remains the child's home state or as long as one party remains a resident of the state. As N.C. retained exclusive jurisdiction, the Florida court did not have jurisdiction to modify the N.C. order. The court rejected obligor's argument that plaintiff should be estopped from recovering the arrears because she had consented to the jurisdiction of the Florida court. The court of appeals acknowledged that FFCCSOA provides that a court can obtain exclusive, continuing jurisdiction by the written consent of all parties, but held that no written consent was filed in this case. Further, the court held that even if Florida obtained jurisdiction by consent, N.C. would retain jurisdiction as well. According to the court of appeals, FFCCSOA provides that if more than one state has continuing jurisdiction, then orders issued in the home state of the child must be recognized.

Enforcement

Pending appeal

Guerrier v. Guerrier, N.C. App. (December 31, 2002).

Holding. Trial court had jurisdiction to enforce contempt judgement even though defendant had appealed the order of contempt.

Discussion. Trial court held defendant in contempt for failing to comply with child support order but postponed placing defendant in jail for 30 days. Defendant appealed the order. At the end of 30 days, the trial court entered another order sanctioning defendant $100 for failure to comply with the purge conditions of the contempt order. The court of appeals rejected defendant's contention that the trial court lost jurisdiction to enter further orders to enforce the child support while the appeal of the contempt order was pending. The court of appeals held that although the general rule is that the trial court loses jurisdiction when an appeal is filed, G.S. 50-13.4(f)(9) provides that child support can be enforced during appeal. The only recourse to defendant is to apply to the appellate court for a writ of supersedeas staying enforcement of the contempt order.

Criminal Contempt and Suspended Sentences

Reynolds v. Reynolds, 569 S.E.2d 645 (N.C., October 4, 2002), reversing majority and adopting dissent in 147 N.C. App. 566 (2001).

Holding. Trial court entered an order of criminal rather than civil contempt. Therefore, appeal of contempt is dismissed because appeals of criminal contempt orders are taken to the superior court rather than to the appellate court.

Discussion. Trial court held defendant in contempt for failure to pay child support in compliance with court order. Evidence showed that defendant had the ability to pay the ordered amount of support but for years he repeatedly failed to pay, resulting in numerous contested contempt proceedings. On the occasion leading to the hearing that resulted in the order on appeal, defendant paid all amounts due immediately prior to the contempt hearing. The order entered by the trial court stated that the court found defendant in criminal contempt. The trial court imposed a sentence of thirty days imprisonment but then "suspended" the sentence on the condition that defendant comply with certain conditions. The conditions required that defendant post of a bond in the amount of $75,000 to assure future payment, pay plaintiff's attorney fees, and pay all future child support in a timely manner. The court of appeals held that, even though the trial court designated this to be an order of criminal contempt, it was in fact an order of civil contempt because defendant could in effect "purge" his contempt by complying with the conditions of the suspended sentence. The court held that the order would have been criminal had the trial court placed defendant on probation after suspending the active sentence, because probation places a defendant under "disabilities" that do not abate when the defendant complies with the conditions of probation. The court of appeals then reversed the order of contempt, holding that defendant could not be held in civil contempt because he had paid all required support prior to the contempt hearing.

Judge John wrote a dissent to the majority opinion in the court of appeals and the supreme court adopted his dissent. The dissent argued that the order was an order of criminal contempt and that the court of appeals therefor had no jurisdiction to hear the appeal. G.S. 5A-17 requires that appeals of criminal contempt be to the superior court for a trial de novo. The dissent concluded that a "determinate suspended sentence, notwithstanding that it is accompanied by conditions, compromises criminal punishment…"

Deviation

Scotland County DSS, on behalf of Shannon Powell v. John Powell, N.C. App. (December 31, 2002).

Holding #1. Although neither party gave the required advance notice of a request to deviate from the guidelines, objection to the lack of notice was waived by the presentation of evidence without objection concerning the needs of the children and the relative ability of each party to pay support.

Discussion. The parties shared joint physical custody of the children. In this support action, neither party requested deviation in the pleadings. However, at trial, defendant requested deviation and presented evidence about the needs and expenses of the children as well as the income and expenses of both parents. The court of appeals held that a party requesting variance from the guidelines is required to give advance notice of the request. If the request is not contained in the pleadings, it must be given at least 10 days prior to the child support hearing. In this case, no advance notice was given. However, objection to the failure to provide notice was waived by the fact that both parties introduced evidence about the needs of the children and the ability of both parties to pay support.

Holding #2. Trial court did not err in ruling that evidence of third party contribution to the support of the children was irrelevant where the support existed some months prior to the hearing but not at the time of the hearing.

Discussion. Defendant sought to introduce evidence that plaintiff's parents contributed to the support of both her and the children. The trial court excluded the evidence as irrelevant and the court of appeals affirmed. The court of appeals held that contributions of third parties are relevant in a deviation case. However, in this case, evidence showed that while plaintiff lived with her parents at times prior to the hearing, she was not living with them and there was no evidence of their support at the time of the child support hearing.

Holding #3. Trial court's findings of fact were sufficient to support its decision not to deviate from the guidelines.

Discussion. The court of appeals held orders allowing or denying deviation must contain "factual findings specific enough to indicate to the appellate court that the judge below took due regard of the estates, earnings, conditions, and accustomed standard of living of both the children and the parents." The factual findings in this case were sufficient because they indicated that the trial court based its decision not to deviate on the "interplay between the reasonable needs of the children and the relative ability of each party to provide support."

Equitable Distribution

Valuation

Franks v. Franks, 571 S.E.2d 276 (N.C. App., November 5, 2002)

Holding #1. Trial court did not err in considering testimony of expert offered by wife as to value of husband's business where wife's inventory affidavits gave no estimated value of the business.

Discussion. Court of appeals rejected argument that trial court could not consider evidence of value of a small business from an expert during the trial that was different from the wife's estimation of value in her inventory affidavit filed at the beginning to the ED case. The court of appeals held that G.S 50-21 provides that affidavits required by the statute are subject to amendment and not binding on the trial court as to value of specific assets. In response to defendant's argument that wife was required to amend the affidavit before trial, the court held that because husband received a copy of the expert's valuation report prior to trial, the trial court was free to accept the value offered at trial.

Holding #2. Trial court did not err in accepting valuation opinion of expert and rejecting the value offered by the owner of the business.

Discussion. Expert used "the asset approach, the market approach and the income approach…" to arrive at a value for husband's painting business, and used "the excess earnings method [to determine] the value of the business's goodwill." According to the court of appeals, these are all acceptable valuation methods. The court of appeals rejected husband's argument that his opinion of value, because he is the owner of the business, was "the best evidence that the trial court had as to value."

Surles v. Surles, 571 S.E.2d 676 (N.C. App., November 19, 2002).

Holding. Trial court did not abuse its discretion when it denied defendant's request to set aside ED judgment pursuant to Rule 60(b). In denying the request, the trial court correctly determined that the ED judgment intended to award plaintiff ownership of a life insurance policy with a fair market value of $192,617.92 even though the judgment valued the

policy at $32,617.92 to reflect the cash value of the policy.

Discussion. ED judgment classified a life insurance policy owned by defendant as marital property. The judgment found that the value of the policy on the date of separation was $32,617.92 based upon evidence of the cash value of the policy. The ED judgment awarded "absolute ownership and exclusive possession" of the policy to plaintiff. Defendant did not appeal the ED judgment. Defendant attempted to satisfy the ED judgment by paying plaintiff the cash value of the policy rather than turning over possession of the policy. When plaintiff refused the money, defendant filed a Rule 60(b) motion, arguing that the trial court did not intend to award plaintiff an asset with a fair market value of $192,617.92. The Rule 60(b) motion was heard by the same judge who entered the ED judgment, and in denying the Rule 60(b) motion, the trial court made findings to indicate that the ED judgment clearly intended to grant ownership of the policy to plaintiff and there was no surprise, excusable neglect, or unfairness, nor any clerical mistake that would support setting aside the judgment. The court of appeals agreed, holding that defendant failed to show an abuse of discretion on the part of the court in denying the motion to set aside the judgment. In a concurring opinion, Judge Greene noted that the ED statute requires that a trial court use fair market value rather than the cash value when valuing an insurance policy. However, neither party introduced evidence of the market value to the court during the ED trial.

Death of Party

Effective date of statutory amendment

Bowen v. Mabry, 572 S.E.2d 809 (N.C. App., December 17, 2002).

Holding. ED action pending at time statutory amendment took effect did not abate even though death of party occurred prior to effective date of amendment.

Discussion. Claim for ED was filed Sept. 14, 2000. Plaintiff husband died Feb. 15, 2001, while the ED claim was pending. On October 2, 2001, defendant filed a motion to dismiss the ED claim, arguing that pursuant to the supreme court opinion in *Brown v. Brown*, 353 N.C. 220 (2000), the ED claim abated upon the death of plaintiff because no judgement of absolute divorce had been entered before plaintiff died. The trial court dismissed the ED claim but the court of appeals reversed. The court of appeals held that the amendment to G.S. 50-20(1) providing that ED claims do not abate upon the death of a party applied to this case. The statute provides that it applies to "actions pending or filed on or after" August 10, 2001. As this was a claim pending on the effective date of the statute, the amendment rather than the *Brown* decision controlled the outcome of the case. The court of appeals rejected defendant's argument that the claim abated on the date of plaintiff's death, prior to the effective date of the statute.

Asset in UTMA accounts

Guerrier v. Guerrier, N.C. App. (December 31, 2002).

Holding. Trial court erred in removing defendant as custodian of children's account created pursuant to the Uniform Transfers to Minors Act found in G.S. 33A because the clerk of superior court has original jurisdiction over such accounts.

Discussion. Equitable distribution judgement classified UTMA account as marital property, awarded it to plaintiff who was the designated custodian for the children under the account, and ordered that plaintiff provide information to defendant about the account. The trial court held defendant in contempt for failure to provide the required information. When defendant continued to fail to comply with the contempt order, the trial court entered another order removing defendant as custodian of the account. The court of appeals reversed, holding that G.S. 33A-18(f) grants exclusive jurisdiction to the clerk of superior court to enter orders relating to the removal of custodians on UTMA accounts. The court noted in a footnote that the account should not have been classified as marital property under the original ED judgment because the account is property of the children rather than either party.

Divorce

Judgement void for lack of service

Freeman v. Freemen, N.C. App. (December 31, 2002)

Holding. Trial court did not err in granting defendant's Rule 60(b)(4) motion to set aside divorce judgment as void where defendant met burden of proving that she was not served with process in the divorce action.

Discussion. Judgment of divorce was entered in 1985. After entry of that judgment, however, the parties continued to live together, purchased property together as tenants by the entirety, and applied for social security benefits as husband and wife. After death of husband, wife moved to set aside the divorce judgment, claiming that she had no knowledge of the judgment and that she had not been served with process before its entry. The trial court granted her motion and the court of appeals affirmed. The record showed that service had been accomplished by acceptance. The notation of service on the summons contained a signature purporting to be that of defendant. The court of appeals held that while a presumption of valid service arises when a signature is shown on the summons, defendant presented evidence sufficient to rebut the presumption in this case. Her evidence included: 1) her own testimony that she did not sign the summons and that she had never been to the courthouse where the signing allegedly took place, 2) testimony from defendant and others that plaintiff and defendant continued to act as husband and wife after the entry of the divorce judgement, and 3) a handwriting expert who testified that he could not say with any certainty that the signature belonged to her.

Domestic Violence

Renewal of protective orders

Basden v. Basden, N.C. App. (December 3, 2002) UNPUBLISHED OPINION reported at 572 S.E.2d 442 (2002).

Holding. Trial court did not err in granting plaintiff's motion to renew a domestic violence protective order. In addition, the renewal order contained sufficient findings of fact and conclusions of law where it incorporated by reference the original protective order.

Discussion. Court of appeals held that there was sufficient evidence to support the renewal of a domestic violence protective order where the record on appeal showed that defendant violated the terms of the initial order and made additional threats that made plaintiff "scared that somebody's going to get hurt, particularly my kids." In addition, the court of appeals found that the trial court made sufficient findings and conclusions of law to support the renewal order but only because the form order incorporated by reference the original protective order. Holding that "[a] n order renewing a domestic violence protective order must be based on sufficient findings of fact and conclusions of law …", the court held that judges should use caution when filling out Form AOC-CV-306 because the form contains no findings or conclusions in support of renewal.

This Bulletin is published by the Institute of Government to address issues of interest to local and state government employees and officials. Public officials may photocopy the Bulletin under the following conditions: (1) it is copied in its entirety; (2) it is copied solely for distribution to other public officials, employees, or staff members; and (3) copies are not sold or used for commercial purposes.

Additional copies of this Bulletin may be purchased from the Institute of Government. To place an order or to request a catalog of Institute of Government publications, please contact the Publications Sales Office, Institute of Government, CB# 3330 Knapp Building, UNC-CH, Chapel Hill, NC 27599-3330; telephone (919) 966-4119; fax (919) 962-2707; e-mail sales@iogmail.iog.unc.edu; or visit the Institute's web site at http://ncinfo.iog.unc.edu.

The Institute of Government of The University of North Carolina at Chapel Hill has printed a total of 554 copies of this public document at a cost of $261.29 or $0.48 each. These figures include only the direct costs of reproduction. They do not include preparation, handling, or distribution costs.