

Relief from Judgment in North Carolina Civil Cases

Ann M. Anderson

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Contents

About This Book ix

Part I Post-Trial Relief: JNOV, New Trial, and Amendment of Judgment 1

Chapter 1

JNOV—Rule 50(b) 3

Introduction 4

“Close Call”: Why Is JNOV Necessary? 6

Evidence to Be Considered 7

JNOV in Negligence Cases 9

JNOV in Favor of Party with Burden of Proof 11

The Punitive Damages Variation 15

Procedure and Jurisdiction 20

The Motion 20

Motions for Directed Verdict Mandatory 20

Timing of Motion 20

Effect on Appeal Deadlines 22

Stating the “Specific Grounds” 22

No new grounds in JNOV motion. 24

No new grounds on appeal. 25

Flexible application. 27

Objection required. 28

Motions by the Court 28

Combined Motions for JNOV and New Trial 29

The Court's Order	29
<i>Hearing</i>	29
<i>Timing of Order and Stay of Execution</i>	30
<i>No Findings of Fact</i>	32
<i>Conditional Rulings on Combined New Trial Motions</i>	33
<i>Jurisdiction over JNOV Motions after Appeal</i>	35
Appeal of JNOV Order	36

Chapter 2

New Trial—Rule 59	39
Introduction	40
Applicability of Rule 59	44
Grounds for New Trial	46
Irregularities Preventing Fair Trial—Rule 59(a)(1)	46
<i>Improper Statements by the Court</i>	47
<i>Failure of Court to Reveal Conflict</i>	53
<i>Improper Closing Argument</i>	54
<i>Improper Conduct of Witness or Third Party</i>	60
<i>Lack of Proper Notice</i>	61
<i>Misrecording of Jury Verdict</i>	63
<i>Change in the Law</i>	63
Misconduct of the Jury or Prevailing Party—Rule 59(a)(2)	64
<i>Misconduct of the Jury</i>	64
<i>Misconduct of the Prevailing Party</i>	69
Accident or Surprise—Rule 59(a)(3)	70
Newly Discovered Evidence—Rule 59(a)(4)	73
Jury Disregard of Instructions—Rule 59(a)(5)	77
Excessive or Inadequate Damages—Rule 59(a)(6)	80
<i>Inadequate Damages</i>	82
<i>Excessive Damages</i>	85
<i>Remittitur and Additur</i>	89
Insufficiency of the Evidence to Justify Verdict; Verdict	
Contrary to Law—Rule 59(a)(7)	90
<i>Insufficiency of the Evidence to Justify Verdict</i>	90
<i>Verdict Contrary to Law</i>	97

Error in Law—Rule 59(a)(8)	97
<i>Erroneous Admission or Exclusion of Evidence</i>	99
<i>Erroneous, Incomplete, or Otherwise Improper Instructions or Jury Issues</i>	101
“Any Other Reason”—Rule 59(a)(9)	108
Procedure and Jurisdiction	111
The Motion	111
<i>Time Requirements</i>	111
<i>Motions by the Court</i>	114
<i>Effect on Appeal Deadlines</i>	115
<i>Stating a Specific Basis</i>	118
<i>Affidavits and Other Support</i>	120
<i>Combined Motions for JNOV and New Trial</i>	122
<i>Motion after Verdict Set Aside by JNOV</i>	122
The Court’s Order	122
<i>Who May Rule</i>	122
<i>Hearing</i>	123
<i>Timing of Order and Stay of Execution</i>	125
<i>Written Findings of Fact and Conclusions of Law</i>	126
<i>Ordering Partial New Trial</i>	129
<i>Conditional Rulings on New Trial Motions</i>	133
<i>Jurisdiction over New Trial Motions after Appeal</i>	133
<i>Appealability of New Trial Order</i>	134

Chapter 3

Amendment of Judgments after Non-Jury Trials 135

Judge’s Role	135
Amendment of Judgment after Non-Jury Trial	138
Rule 52(b)	138
Rule 59	139
Effect of Appeal; Appeal Tolling	141
Appeal of Judgment after Non-Jury Trial	142

Part II Relief from Final Judgments and Orders under Rule 60(b)	143
Introduction	145
“Final Judgment, Order, or Proceeding”	147
Grounds for Relief	151
Mistake, Inadvertence, Surprise, Excusable Neglect—Rule 60(b)(1)	151
<i>Mistake and Inadvertence</i>	151
<i>Surprise</i>	154
<i>Excusable Neglect</i>	156
What is excusable neglect?	157
Meritorious defense.	165
Newly Discovered Evidence—Rule 60(b)(2)	167
Fraud, Misrepresentation, or Other Misconduct of an Adverse Party—Rule 60(b)(3)	171
Void Judgments—Rule 60(b)(4)	175
<i>Lack of Subject Matter Jurisdiction or Authority</i>	176
<i>Lack of Personal Jurisdiction</i>	177
<i>Lack of Authority to Enter Consent Judgment</i>	180
Judgment Satisfied; Prior Judgment Reversed; No Longer Equitable—Rule 60(b)(5)	181
<i>Judgment Satisfied, Released, or Discharged</i>	181
<i>Prior Judgment Reversed or Vacated</i>	182
<i>Prospective Application No Longer Equitable</i>	183
“Any Other Reason Justifying Relief”—Rule 60(b)(6)	184
<i>Not a Substitute for Appellate Review of Legal Errors</i>	184
<i>Not a Second Chance to Raise a Missed Trial Argument</i>	187
<i>Not a Substitute for Other Rule 60 Grounds Not Timely Raised</i>	188
<i>Not to Relax the Standards for Bases 1 through 5</i>	190
Requirements: Extraordinary Circumstances and Meritorious Defense	191
Potential “extraordinary circumstances.”	191
IRREGULAR JUDGMENTS RELATED TO COURT PRACTICE	191
IRREGULAR JUDGMENTS DUE TO IMPROPER RELIEF	194
GROSS NEGLIGENCE BY MOVANT’S COUNSEL OR REPRESENTATIVE	194
LOSS OF REMEDY THROUGH NO FAULT OF MOVANT	195
IMPOSSIBILITY OF ENFORCEMENT	195
TO CLARIFY THE JUDGMENT	196

TO ACCOUNT FOR CERTAIN CHANGES IN THE LAW	197
MISCONDUCT OF OTHERS	198
GENERAL FAIRNESS	199
No extraordinary circumstances.	199
LACK OF UNDERSTANDING OF LAW; FAILURE TO PROCURE COUNSEL	199
FAILURE TO PROSECUTE OR DEFEND	200
NOTICE ISSUES WHERE FAULT SHARED BY MOVANT OR MOVANT'S AGENT OR ATTORNEY	202
UNILATERAL MISTAKE (WITHOUT MISREPRESENTATION)	205
PROCEDURAL BLUNDER NOT AMOUNTING TO GROSS NEGLIGENCE	206
FORESEEABLE CHANGE IN CIRCUMSTANCES	206
MODIFICATION OF JUDGMENT MERELY TO RESOLVE DISSATISFACTION	206
Meritorious defense.	207
Procedure and Jurisdiction	208
The Motion	208
<i>Who May Seek Relief</i>	208
<i>Time Limits</i>	210
<i>Court's Own Motion</i>	213
<i>Form and Notice</i>	214
<i>Effect on Appeal Deadline</i>	217
Court's Authority and Order	217
<i>Who May Rule</i>	217
<i>Hearing</i>	218
<i>Timing of Order; Stay of Execution; Restitution</i>	220
<i>Written Findings of Fact and Conclusions of Law</i>	222
<i>Type of Relief Allowed</i>	223
<i>Effect of Appeal of Underlying Judgment; Conditional Ruling</i>	225
Judgments of Clerks and Magistrates	227
<i>Clerks of Superior Court</i>	227
<i>Magistrate Judgments</i>	229
Appealability of Rule 60(b) Order	229
Independent Action	230

Appendix A—Full Text of Relevant Rules of Civil Procedure

(Chapter 1A of the N.C. General Statutes)	233
North Carolina Rule of Civil Procedure 50	
(G.S. 1A-1, Rule 50)	233

North Carolina Rule of Civil Procedure 52
(G.S. 1A-1, Rule 52) 235

North Carolina Rule of Civil Procedure 59
(G.S. 1A-1, Rule 59) 236

North Carolina Rule of Civil Procedure 60(b)
(G.S. 1A-1, Rule 60(b)) 237

Appendix B—Table of Authorities 239

About This Book

There are many reasons a party to a civil action may seek relief from a final judgment or order of North Carolina's trial courts. Litigants often, of course, take their arguments to the state's appellate division. But for many issues, the North Carolina Rules of Civil Procedure provide methods for first seeking relief directly from the trial courts themselves. These rules, presented in Chapter 1A of the North Carolina General Statutes, and North Carolina case law interpreting them, are the focus of this book. The discussion proceeds in two parts.

Part I covers motions for immediate post-trial relief. These motions include

1. *Judgment notwithstanding the verdict (JNOV)*. A motion for JNOV is a continuation of a party's directed verdict motion made at the close of evidence pursuant to Rule 50, and it challenges the sufficiency of the evidence to support the jury's verdict. With this motion, a party asks the trial judge to upend the decision of the jury and the judgment on which it is based and instead grant judgment for the movant. The law permits this remedy only where the evidence on which the judgment was based was insufficient as a matter of law—an exacting standard reviewable *de novo* on appeal. Rule 50 governs motions for JNOV.
2. *New trial*. This less sweeping but nonetheless quite significant remedy is available in a much wider range of situations—nine enumerated grounds—all but one of which are matters of the court's discretion. Governed by Rule 59, new trial motions often are coupled with JNOV motions.

3. *Amendment of judgment.* For judgments after non-jury trials, Rule 52(b) allows motions to amend the findings in the court's written judgment. Rule 59 also permits motions to alter or amend a judgment after a non-jury trial for any of the pertinent grounds listed for new trial.

The time frame for each of these motions is a mere ten days after entry of the judgment.

Part II covers motions brought under Rule 60(b), which allows relief from a "final judgment, order, or proceeding" based on any of six specific grounds that are based largely in equity and, in general, are discretionary. The range of final orders from which relief may be sought is much broader than the range discussed in Part I, and the motion may be made within a reasonable time after judgment, limited to one year for the first three grounds. This motion is not a substitute for a proper appeal of the order or a timely motion under Rule 50, Rule 52(b), or Rule 59.

As to each of these types of motions for post-judgment relief, there are important procedural requirements to which the parties and the trial courts must give careful attention. Failure to comply with certain aspects of the rules may affect the trial court's jurisdiction over a motion and appeal of the court's decision.

The focus of this book is North Carolina case law, primarily cases that interpret the Rules of Civil Procedure governing these motions rather than cases discussing the common law upon which the rules are based or statutes that preceded them. On many occasions, however, pre-rules case law is helpful to provide context or to explain the basis for a particular Rule of Civil Procedure, and this book attempts to note these older cases whenever useful. Appendix B provides a table of authorities for reference to the sources noted throughout the text.

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