

## FINDING WHAT YOU NEED WITHOUT EXPERTS

April 2017

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## DETERMINING BEST INTEREST

•Neither party has the burden of proof on the issue of best interest

• *Lamond v. Mahoney*, 159 NC App 400 (2003)

•It's all up to you.....

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## YOU NEED EVIDENCE

•But expert testimony is not required

• *Peters v. Pennington*, 210 NC App 1 (2011)

• Expert not necessary to support finding that parent's actions caused emotional harm to the children

• *Shipman v. Shipman*, 357 NC 471 (2003)

• Expert not necessary to support conclusion that change in circumstances affected or will affect the child

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*PETERS V. PENNINGTON*

•“While expert testimony on causation might assist the trier of fact, it is not required to show causation. A domestic trial court judge hears numerous child custody cases every month. They have practical experience and training in human behavior that qualifies them to make causal decisions regarding child custody. They have the ability to select such facts from evidence to form a chronological chain of acts preceding an effect or event that they determine brought about the effect or event.”

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*SHIPMAN V. SHIPMAN*

•“Evidence linking [the substantial change] to the child's welfare might consist of assessments of the minor child's mental well-being by a qualified mental health professional, school records, or testimony from the child or the parent.”

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**EVIDENCE RULE 614**

**Rule 614. Calling and interrogation of witnesses by court.**

- Calling by court. –The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.
- Interrogation by court. –The court may interrogate witnesses, whether called by itself or by a party.

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2 SELF-REPRESENTED LITIGANTS

- 2 children: boys, ages 8 and 9
- History of allegations of domestic violence by both parents against each other
- Father says mother has anger management issues
- Mother says father abuses alcohol and is violent
- Father has recording of mother yelling at children
- Both brought copies of hundreds of text messages between mom and dad
- Father is living with his mother
- Older child has been in trouble at school recently; teacher has called both parents
- Mother wants children in therapy but can't pay the co-pay for a counselor

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