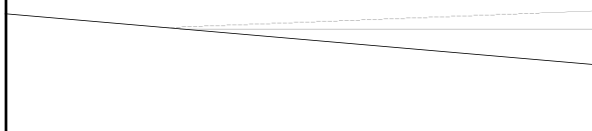


**Family Law Update**

Cheryl Howell  
October 2015



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**Domestic Violence**



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**“Catch-all” relief**

- ▶ GS 50B-3(a)(13):
  - [in addition to all specifically enumerated types of relief, the court may order] **“any additional prohibitions or requirements the court deems necessary to protect any party or minor child.”**



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### Limitation on “catch-all” relief?

- ▶ State v. Elder, Court of Appeals version
  - Trial court had no authority to address firearms because GS 50B-3.1 is comprehensive and exclusive
- ▶ State v. Elder, Supreme Court version
  - Trial court had no authority to order law enforcement to act
  - Catch-all is limited to ordering additional prohibitions or actions *on parties only*

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### Firearms???

- ▶ G.S. 50B-3(a)(11):
  - Designates as form of enumerated relief:
    - "prohibit a party from purchasing a firearm".
- ▶ GS 50B-3.1: Can order surrender only if findings show:
  - Use or threatened use of weapon
  - Threat to seriously injure or kill
  - Threat to commit suicide, or
  - Serious injury inflicted
- ▶ See Stancill v. Stancill (NC App June 2015)
  - Error to order surrender without one of the 50B-3.1 grounds

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### Dating Relationship

- ▶ “Personal relationship” includes:
  - persons of the opposite sex who are in a dating relationship or have been in a dating relationship.
  - A dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship.
  - A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.
    - GS 50B-1(b)(6).

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***Thomas v. Williams***

- ▶ Definition covers a wide range of “romantic” relationships
- ▶ Legislative intent was to exclude “only the least intimate of personal relationships”
- ▶ Mere fact that relationship is “short term” does not “categorically preclude” it from definition

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***Thomas v. Williams***

- ▶ Parties seemed to admit they “dated”
  - Issue was how long relationship must continue to “exist over time”
- ▶ Period of less than 3 weeks was sufficient
- ▶ Relationship “appears to exceed the minimal social interpersonal bonding”

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***Williams: 6 non-exclusive factors***

- ▶ Was there interpersonal bonding over and above mere casual acquaintances or ordinary fraternization?
- ▶ How long did the dating activities continue before the alleged DV?
- ▶ What were the nature and frequency of the parties’ interactions?
- ▶ What were the parties’ ongoing expectations with respect to the relationship, either individually or jointly?
- ▶ Did the parties demonstrate an affirmation of their relationship before others by statement or conduct?
- ▶ Any other reasons that support or detract from a finding that a “dating relationship” exists?

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### Recording *ex parte* hearings

- ▶ For *ex parte* DVPOs entered before July 31, 2015, *ex parte* hearings must be recorded
  - *Stancill v. Stancill*
  
- ▶ For orders entered on or after July 31, 2015, *ex parte* and emergency hearings in 50B and 50C cases are not required to be recorded
  - S.L. 2015-173
  - Amends GS 7A-198
    - (All civil trials must be recorded)

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### DV Legislation

- ▶ S.L. 2015-176
  - Electronic transmittal of 50B and 50C orders from clerk to sheriff
  
- ▶ S.L. 2015-25
  - Criminal contempt allowed for 50C violations
  
- ▶ S.L. 2015-284
  - No fines allowed for civil contempt
  - Imprisonment is only remedy
  
- ▶ S.L. 2015-62
  - Electronic filing for 50B and 50C cases
  - Video conferencing for *ex parte* and emergency hearings

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### Permanent No-Contact Order

- ▶ New GS Chapter 50D
  
- ▶ Plaintiff can obtain no-contact order against defendant if:
  - Defendant was convicted of a sex offense against plaintiff;
  - The court finds reasonable grounds for the victim to fear future contact with defendant; **and**
  - The victim did not request no-contact order in the criminal case.
  
- ▶ No-contact order lasts through lifetime of defendant unless victim asks to rescind

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### 50D procedure

- ▶ AOC developing forms
- ▶ Defendant has 10 days to file Answer
- ▶ No ex parte or emergency relief authorized
- ▶ No explicit time for trial on merits
- ▶ List of relief similar to 50C cases
- ▶ Violation of 50D order is a Class A1 misdemeanor

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### Child Support

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### *Malinak*

- ▶ 10-year Statute of Limitations applies to enforcement of child support order
  - No recovery of amounts due more than 10 years before filing enforcement action
- ▶ Latches cannot be used to bar recovery of court-ordered support

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### Imputing Income

- ▶ Don't ever use words like "earning capacity" in a court order unless you also use the term "bad faith deliberate disregard of support obligation."
- ▶ Voluntary unemployment or underemployment is not sufficient
  - *Nicks v. Nicks*

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### Child Support Legislation

- ▶ SL 2015-284
  - No fines allowed in civil contempt
  - Imprisonment is only remedy
- ▶ SL 2015-117
  - Comprehensive changes to UIFSA, Chapter 52C
  - To comply with Uniform Act and federal funding requirements
  - Adds new section 7 to address provisions in the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

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### Health Insurance

- ▶ Court must order a parent to maintain health insurance for child "when health insurance is available at a reasonable cost."
  - GS 50-13.11(a1)
- ▶ Before August 18, 2015:
  - "Employment related or other group coverage" deemed reasonably priced
- ▶ On or after August 18, 2015:
  - Reasonably priced when cost for child does not exceed 5% of the parent's gross income
  - SL 2015-220

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Postseparation Support  
Alimony

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Role of Fault

- ▶ PSS
  - Court considers marital misconduct of supporting spouse only if supporting spouse first raises issue of marital misconduct on part of dependent spouse
  - Misconduct is just a factor
    - Weight is up to trial judge
    - No absolute bar to PSS
- ▶ Alimony
  - Marital Misconduct is one factor court considers in deciding whether award of alimony is equitable and in determining amount and duration of award
  - Except.....

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Illicit Sexual Behavior

- ▶ If **dependent spouse** commits act of illicit sexual behavior before the date of separation and supporting spouse does not – **no alimony** can be awarded
  - *Romulus*, 215 NC App 495 (2011)
- ▶ If **supporting spouse** commits act of illicit sexual behavior before the date of separation and supporting spouse does not – **alimony must be awarded**
  - *Fleming*, 765 SE2d 553 (2014)
- ▶ If **both** do it – acts become **one factor** for court to consider
  - Weight up to judge

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## Tax Consequences

- ▶ If party offers evidence of tax consequences of an alimony award, trial court must consider and order must reflect consideration
  - *Nicks v. Nicks*, NC App June 16, 2015

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## Imputing Income

- ▶ Findings of fact must support conclusion that party is suppressing income in bad faith
  - Motivated by a desire to avoid his/her support obligation
- ▶ Finding that party voluntarily reduced income is not sufficient
  - *Upchurch*, 767 SE2d 704 (2014)
  - *Nicks v. Nicks*

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## PSS ????

- ▶ Plaintiff files for PSS, ED, Alimony
- ▶ Divorce entered
- ▶ PSS, Alimony and ED set for trial
- ▶ Can court award PSS for time between DOS and commencement of Alimony award?

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*Nicks v. Nicks*

- ▶ Granting or denying alimony terminates a PSS
  - GS 50-16.1A(4)(b)
- ▶ “This does not necessarily mean that an order granting alimony cannot also provide for the payment of an already-pending claim for PSS where warranted”
- ▶ Court erred in dismissing PSS claim at start of alimony trial

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**Spousal Agreements**

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**Ratification**

- ▶ Ratification of contract precludes claims to rescind or void contract due to formation problems like duress and coercion
- ▶ Ratification occurs as a matter of law when party performs agreement or accepts benefits under agreement after duress/coercion ends
  - *Pilos-Narron*, 771 SE2d 633 (2015)(no ratification when defendant performed under agreement for over one year because duress continued through that time)
  - *Jones v. Jones*, NC App (March 17, 2015)(ratification as a matter of law where duress ended as soon as contract was signed; party paid alimony pursuant to agreement and accepted property transferred by the agreement)

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