



2025 Practical Family Law
Rowan County Bar Association
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2025

CASE LAW UPDATE

The Latest in North Carolina Family Law



James A. Davis

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About James

James is honored to present his 48th CLE at the 2025 Practical Family Law CLE sponsored by the Rowan County Bar Association. He is a N.C. Board Certified Specialist in Federal Criminal Law, State Criminal Law, and Family Law with a trial practice in criminal, domestic, and general litigation. He is deeply committed to excellence and professionalism in the practice of law, having served on the N.C. State Bar Specialization Criminal Law Committee, the N.C. State Bar Board of Continuing Legal Education, the N.C. State Bar Disciplinary Hearing Commission, and was Issue Planning Editor of the Law Review at Regent University. James also lectures at criminal, family law, and trial practice CLE programs, and has been regularly designated by the Capital Defender as lead counsel in capital murders.

This presentation covers the leading family law cases published by North Carolina appellate courts. It removes routine issues found in many family law cases and provides practical experience based on many CLEs, consulting with and observing great lawyers, and, most importantly, gaining trial experience in over 100 jury trials including capital murder, personal injury, torts, and an array of civil trials.

I have had various experts excluded; receiving not guilty verdicts in capital murder, habitual felon, rape, drug trafficking, and a myriad of other criminal trials; winning substantial monetary awards in equitable distribution trials and on appeal; and receiving multi-million and other large awards in criminal conversation, alienation of affection, malicious prosecution, assault, and other civil jury trials. I attribute any success to those willing to help me, the courage to try cases, and God's grace. My approach to seminars is simple: if it does not work, I am not interested.

I wish to thank Cheryl Howell of the School of Government who authors, *inter alia*, the Family Law Update and On the Civil Side blog. I also wish to thank Timothy J. Readling for his able assistance in researching, drafting, and editing this presentation.

Now, it is time to update your knowledge of North Carolina family law.

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I. Child Custody: [TOC](#)

A. In re B.E., 296 N.C. App. 364 (Nov. 5, 2024). [TOC](#)

Summary

Out-of-state custody order not recognized when it did not have “home state” jurisdiction.

Facts: In early 2023, Mother’s Separation Agreement was incorporated into a Virginia divorce judgment. The Agreement gave her custody of the children. At the time of incorporation, the children had lived in North Carolina for the last five years. In June 2023, DSS filed Chapter 7B petitions alleging Mother neglected the children.

Trial Court: Determined it had subject matter jurisdiction in the juvenile proceeding under the UCCJEA, placed the children with Father, and gave no visitation to Mother.

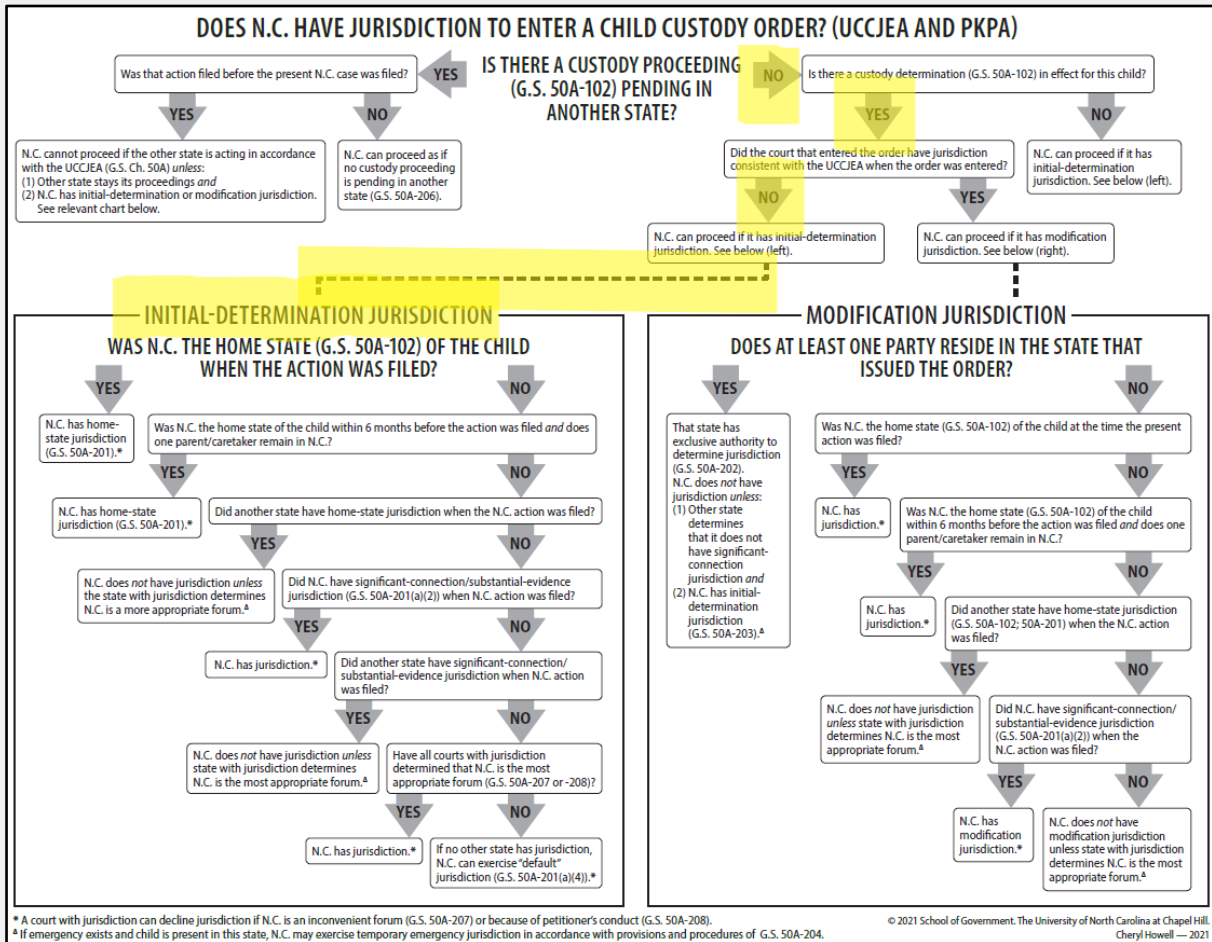
Holding/Legal Principles: Decision affirmed. To adjudicate a Chapter 7B petition, the trial court must have subject matter jurisdiction under the UCCJEA. While Virginia made an initial child custody determination only months earlier, it was not the “home state” of the children at the time. Therefore, Virginia did not have jurisdiction under the UCCJEA to make that custody determination unless North Carolina declined jurisdiction. Mother’s argument that Virginia had a “significant connection” basis for jurisdiction was misplaced. This basis is available only when there is no “home state” jurisdiction.

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FURTHER INSIGHT

1. An entire CLE could cover UCCJEA issues.
2. When you need a fast answer, reference the School of Government's flowchart authored by Cheryl Howell. Her flowchart correctly decided this case as annotated below.



B. Ledford v. Ledford, 296 N.C. App. 648 (Dec. 3, 2024). [TUC](#)

Summary

Personal jurisdiction is obtained by invoking Court's judgment on any other matter in case.
Non-parents can intervene by alleging, *inter alia*, a parent's ongoing substance abuse.

Facts: Maternal Grandmother filed a custody action against Mother. Maternal Cousins intervened as they had cared for the child beginning in February 2022, alleging Mother had an ongoing

substance abuse problem and Father left the child. Mother was never served process. However, she signed a consent temporary custody order and later participated in the permanent custody trial.

Trial Court: Maternal Cousins received sole legal and physical custody. Maternal Grandmother received visitation. Mother received supervised visitation at the discretion of Maternal Cousins.

Holding/Legal Principles: Decision affirmed. Mother made two arguments. First, she contended the trial court did not have personal jurisdiction over her. COA disagreed. Personal jurisdiction is obtained through service of process or a “general appearance.” Mother’s actions constituted a general appearance as she did not contest jurisdiction. A general appearance occurs by invoking the judgment of the court on any matter other than jurisdiction. Second, Mother contended Maternal Cousins lacked standing. COA disagreed. To have standing, Maternal Cousins were required to allege: (1) a parent-child relationship; and (2) Mother was unfit, neglected the child’s welfare, or other acts inconsistent with her protected status as a parent. Maternal Cousins alleged the same, including Mother’s ongoing substance abuse problem.



FURTHER INSIGHT

1. A general appearance is broad and can occur post-judgment. A Defendant, who was never served process, made a general appearance in a case when she filed a motion to claim exempt property from collections after a \$2,000,000.00 judgment was entered against her. *Slattery v. Appy City, LLC*, 385 N.C. 726 (2024). Thereafter, she filed a Rule 60(b) motion to set aside the judgment as void for lack of personal jurisdiction. The North Carolina Supreme Court held the trial court obtained personal jurisdiction over her through the post-judgment general appearance as she invoked the court’s judgment on a matter other than personal jurisdiction before filing the Rule 60(b) motion.
2. Counsel should file the Rule 60(b) motion first.

C. **Braswell v. Braswell**, 296 N.C. App. 574 (Dec. 3, 2024). [TOC](#)

Summary

Filing a non-compulsory counterclaim waives a venue objection.

Facts: Mother filed an action for child support, equitable distribution, and spousal support in Wake County. However, Mother and the child resided in Wayne County. Father filed a motion to change venue to Johnston County (his county of residence) and filed a notice of hearing. Prior to the hearing, Father filed counterclaims, including a non-compulsory counterclaim for custody.

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Trial Court: Father waived his venue objection.

Holding/Legal Principles: Decision affirmed. Although Father timely raised his venue objection, his conduct thereafter impliedly waived the same. Factors considered under waiver include: (1) failing to unambiguously raise and pursue a venue objection; (2) participating in litigation; and (3) having unnecessary delay. COA held Father filing a non-compulsory counterclaim for custody amounted to waiver as he participated in the litigation. COA referenced other alternatives available to Father, including waiting to file counterclaims after hearing or filing a separate custody action in Johnston County.



FURTHER INSIGHT

1. Normally, a responsive pleading must be served within 30 days after service of process. However, if a party files a Rule 12(b) motion, his pleading is not required to be served until 20 days after notice of the court's ruling on the motion. N.C. R. Civ. Pro. 12(a)(1).
2. A plaintiff who files in the wrong county waives the right to have the matter heard in her own home county. *Nello L. Teer Co. v. Hitchcock Corp.*, 235 N.C. 741, 744 (1952).
3. A motion to change venue for improper venue must be made either in a pre-answer motion or answer, otherwise the same is waived. If a pre-answer motion contains any Rule 12(b) defense, venue must be included to avoid waiver. An order granting or denying a change of venue in this regard is immediately appealable.
4. A motion to change venue for convenience of the witnesses under N.C. Gen. Stat. § 1-83(2) may be made at any time before trial. An order granting or denying a change of venue in this regard is not immediately appealable as it does not affect a substantial right.

D. Ludack v. Ludack, 297 N.C. App. 72 (Dec. 17, 2024). [TOC](#)

Summary

An order must contain sufficient findings to support custody allocation between parties.

If Court delays entering an order, a party must seek relief there.

If there is a delay in noticing a permanent hearing, a temporary order may become permanent.

Facts: Father and Mother entered into a temporary custody consent order granting equal physical custody. Twenty-five months later, Mother filed a notice of hearing for permanent custody. Three years after the permanent custody trial, a permanent custody order was entered.

Trial Court: Awarded Mother primary physical custody and Father limited visitation.

Holding/Legal Principles: Decision vacated. Father made three arguments. First, he contended the court made insufficient findings to support the physical custody determination. COA disagreed. The trial court must consider all relevant factors when making a custody award. An order must include findings that reflect the consideration of the factors supporting a best interest determination. Sufficient findings were made in that the trial court considered, *inter alia*, each parent's housing circumstances, work schedule, and school district for the child. Second, Father contended the trial court erred by entering the order three years after the hearing. COA disagreed. The law does not require entry of a custody order within a set time following the hearing. Father's remedy was either to file a notice of hearing on a motion for entry of an order or file a writ of mandamus. Third, Father contended the temporary order became permanent by operation of time. COA vacated the order and remanded for further findings on that issue. When neither party notices a permanent custody hearing within a "reasonable time," a temporary order may become permanent. A reasonable time is determined on a case-by-case basis and is fact-specific. Prior precedent held a 23-month delay was unreasonable. If the temporary order became permanent, the trial court must find whether Mother presented a substantial change in circumstances affecting the welfare of the child to enter a new custody order.

E. Bossian v. Chica, 297 N.C. App. 1 (Dec. 17, 2024). [TOC](#)

Summary

No cause of action exists for intentional interference with parental rights.

A contract attempting to modify a prior custody order confers no contractual rights.

Rule 11 sanctions require sufficient findings to support that a filing was made to harass.

Facts: An order granted Mother primary physical custody and Father visitation. Thereafter, they entered into a contract providing that the child would live with Father in Rhode Island. Two years later, the child returned to North Carolina to live with Mother and her boyfriend. Father filed an

action against Mother and her boyfriend for intentional interference with parental rights and a contract.

Trial Court: Dismissed the action under Rule 12(b)(6). Granted Rule 11 sanctions against Father, an attorney in Rhode Island.

Holding/Legal Principles: Decision affirmed and vacated in part. North Carolina does not recognize a cause of action for intentional interference with parental rights. Further, the contract did not confer any rights to custody as a custody order may be modified only by the court. Accordingly, dismissal was proper. COA vacated the Rule 11 sanctions against Father and remanded for findings supporting whether he had a purpose to harass when filing court documents.

F. Green v. Branch, ___ N.C. App. ___, 916 S.E.2d 824 (May 7, 2025). [TOC](#)

Summary

A judge cannot enter any order after being recused or disqualified. Such orders are void.

Facts: In 2019, after hearing a motion to modify custody, the trial court gave an oral pronouncement that the order would remain unchanged. In 2021, Father filed a motion to recuse the judge. After the recusal hearing, the judge entered a recusal order. However, in 2023, the judge entered an order ruling on the motion to modify custody.

Holding/Legal Principles: When a judge is recused or disqualified, he or she may not enter any further orders in the case. Such orders are “void.”

G. In re A.J.J., ___ N.C. App. ___, 919 S.E.2d 711 (July 2, 2025). [TOC](#)

Summary

Order cannot give custodian the discretion to change supervised visitation to unsupervised.
Order cannot give custodian the discretion to terminate visitation to a parent in certain events.

Facts: DSS filed a Chapter 7B petition alleging Mother neglected the child. The trial court adjudicated the child to be neglected and thereafter entered a Chapter 50 custody order.

Trial Court: Awarded custody to Paternal Uncle and supervised visitation to Mother. Paternal Uncle had discretion to: (1) allow unsupervised visitation; and (2) terminate visitations if, in his discretion, the same “triggered regressive behavior” in the child.

Holding/Legal Principles: Decision affirmed and vacated in part. Mother made two arguments. First, she contended the visitation provision impermissibly delegated a judicial function. COA agreed. “When visitation rights are awarded, it is the exercise of a judicial function.” This judicial function may not be delegated. “The feasible exercise of a parent’s right of visitation should be

safeguarded by a definite provision in the order” Second, Mother contended there were not “detailed findings” about Paternal Uncle’s physical, mental, or financial fitness. COA disagreed the same was required. Under N.C. Gen. Stat. § 50-13.2(a), a trial court is required to make findings of relevant factors when making a best interest determination. Prior precedent provides that such factors “may concern physical, mental, or financial fitness or any other factors brought out by the evidence and relevant to the issue of the welfare of the child.” *Steele v. Steele*, 36 N.C. App. 601, 604 (1978). The findings were detailed as to several relevant factors in the best interest determination, including Paternal Uncle’s ability and desire to provide for the child, Mother’s lack of suitable housing, and Mother’s mental illness history.

H. Adams v. Dillon, ___ N.C. App. ___, 2025 N.C. App. Lexis 581 (Sept. 3, 2025).
[TOC](#)

Summary

In non-parent custody case, conflict between parties and differing parenting styles may result in full custody to one and no visitation to the other.

An order can give custodian discretion to increase visitation to a parent in certain events.

Facts: Parents had substance abuse problems. After the child’s first birthday, they gave parental duties to Paternal Grandmother and had visits every other week. Paternal Grandmother filed a custody action against Parents. Maternal Grandmother intervened. Evidence was adduced at trial that the parties had ongoing animosity between them and differences in parenting styles.

Trial Court: Awarded full custody to Maternal Grandmother, visitation to Parents, and no visitation to Paternal Grandmother. Maternal Grandmother had discretion to increase visitation to Parents if they were in a safe and sober state.

Holding/Legal Principles: Decision affirmed. Paternal Grandmother made two arguments. First, she contended there were insufficient findings to conclude the custodial award was in the best interest of the child. COA disagreed. The trial court gave detailed findings about how a joint custodial arrangement was not in the best of interest as the child would be exposed to ongoing conflict and differing parenting styles. Second, Paternal Grandmother contended the trial court impermissibly delegated a judicial function by allowing Maternal Grandmother, in her discretion, to increase visitation with Parents if they were in a safe and sober state. The Court disagreed. The trial court set a “minimum amount of time” for visitation with Parents. Maternal Grandmother did not have authority to remove visitation.

I. White v. Boatwright, ___ N.C. App. ___, 919 S.E.2d 733 (July 2, 2025). [TOC](#)

Summary

Standing to bring a custody action is determined on the pleadings.
The allegations of a pleading are deemed true for purposes of a motion to dismiss.

Facts: Mother was the primary custodian of the child. Father had some weekend visits. After Mother passed away, Maternal Grandparents cared for the child. Father refused to return the child after a visit. Maternal Grandparents filed a custody action against Father, alleging facts that he was unfit and engaged in conduct inconsistent with his parental status. Father filed a Rule 12 motion to dismiss, albeit unclear whether under (b)(1) (lack of subject matter jurisdiction) or (b)(6) (failure to state a claim). At the hearing, Father was allowed to testify that the allegations were untrue.

Trial Court: Dismissed complaint with prejudice.

Holding/Legal Principles: Decision reversed. “Standing to bring a custody claim should be based upon the allegations of the pleadings.” *Deanes v. Deanes*, 294 N.C. App. 29, 33 (2024). The complaint’s allegations are deemed true for purposes of a motion to dismiss under either Rule 12(b)(1) or (b)(6). Testimony should not be received. The allegations, taken as true, established Maternal Grandparents had standing as they alleged facts showing that they had been part of the child’s life since birth, Father was unfit, and Father engaged in conduct inconsistent with his parental status.

II. Child Support: [TOC](#)

A. Crenshaw v. Crenshaw, 296 N.C. App. 1 (Oct. 1, 2024). [TOC](#)

Summary

Court is not required to select the effective date of child support payments as the filing date of the motion to modify.

An “insufficient means” finding not required for attorney fee award when a party engages in a frivolous proceeding.

Facts: In October 2020, Father filed a motion to decrease child support as two of the three children were 18 years old and graduated high school. In January 2021, Mother filed a motion to increase child support due to an increase in Father’s income and the remaining child’s needs.

Trial Court: Increased child support with an effective date of January 2022. Ordered Father to pay \$15,000.00 in attorney fees to Mother.

Holding/Legal Principles: Decision affirmed. Both parties appealed on two issues. First, Mother contended the effective date should have been her filing date of January 2021. COA disagreed.

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The selection of an effective date can be overturned only for an abuse of discretion. The trial court elected to “compromise” on the effective date after considering the unique circumstances of the Covid pandemic on the parties’ incomes. Second, Father contended an attorney fee award was improper under N.C. Gen. Stat. § 50-13.6 as no finding was made that Mother had insufficient means to defray the costs. COA disagreed. Such finding is not required when the trial court finds a party engaged in a frivolous proceeding. The trial court found Father engaged in “exhaustive discovery” even though it should have been obvious that his child support obligation would increase.

B. Price v. New Hanover County ex rel. Murray-Price, 297 N.C. App. 579 (Dec. 31, 2024) (unpublished). [TOC](#)

Summary

Wage withholding is mandatory in Title IV-D cases unless the parties agree otherwise.

Facts: A county child support agency intervened in a child support case. The trial court ordered Father to make payments directly to Mother rather than through wage withholding, reasoning he had a history of timely payments and no arrears.

Holding/Legal Principles: Decision reversed. When a child support agency intervenes, Title IV-D of the Social Security Act applies. Such cases require immediate wage withholding. *See, e.g.*, N.C. Gen. Stat. § 110-130. An exception applies if the parties agree to an “alternative arrangement.” N.C. Gen. Stat. § 110-136.4(b).

C. Mecklenburg County ex rel. Herron v. Pressley, 297 N.C. App. 82 (Dec. 17, 2024). [TOC](#)

Summary

Gross income from self-employment includes ordinary and necessary business expenses such as depreciation.

Facts: Mother filed a motion to increase child support. Father is a self-employed dump truck owner and operator. At hearing, Mother introduced Father’s last two tax returns which included depreciation deductions.

Trial Court: Added deductions to Father’s gross income to calculate his child support obligation.

Holding/Legal Principles: Decision reversed. The Child Support Guidelines require obligations to be based upon “actual gross income from any source, including but not limited to income from employment or self-employment (salaries, wages, commissions, bonuses, dividends, severance pay, etc.), ownership, or operation of a business.” Gross income from self-employment is defined as “gross receipts minus ordinary and necessary expenses required for self-employment or business operation.” The trial court did not make findings about why it did not accept the

depreciation deductions. There was no finding that the same were not ordinary and necessary. Nor did the trial court determine the same was “accelerated depreciation” which the Guidelines preclude in offsetting income. Accelerated depreciation is an accounting method used to create large deductions to an asset in the beginning of its life cycle.

D. Keith v. Keith, 297 N.C. App. 356 (Dec. 31, 2024). [TOC](#)

Summary

Imputing income was proper when Father left employment to take position in his own company he created, earning less income than his supervisee.

Extraordinary expenses require a finding that they are reasonable, necessary, and in best interest.

Facts: In August 2017, Mother filed an action for child support. The hearing occurred in May 2022 and June 2023. Father worked as a carpenter during a nearly 13-year marriage, earning about \$20.00 hourly. After separation, he merged businesses with his brother to create a residential construction business, assigning himself only \$11.54 hourly. He then started a plumbing business with his brother to perform work for the construction business, hiring a plumber for \$1,100.00 weekly. Father’s living expenses exceeded his income by at least \$500.00 monthly.

Trial Court: Imputed the plumber’s income to Father with support to be paid effective July 2019. Ordered Father to pay one-half of the children’s summer camp fees.

Holding/Legal Principles: Decision affirmed concerning imputation but remanded concerning the effective date of payments. Father made three arguments. First, he contended insufficient findings were made that he acted in bad faith for the purpose of imputing income. COA disagreed. Non-exclusive factors determining bad faith include: (1) failing to exercise his reasonable capacity to earn; (2) deliberately avoiding his family's financial responsibilities; (3) acting in deliberate disregard for his support obligations; (4) refusing to seek or to accept gainful employment; (5) willfully refusing to secure or take a job; (6) deliberately not applying himself to his business; (7) intentionally depressing his income to an artificial low; and (8) intentionally leaving his employment to go into another business. The dispositive issue is whether a party is “motivated by a desire to avoid his reasonable support obligations.” Father did not challenge any particular finding which became binding. The findings reflect he intentionally left his job, invested significant assets into a new company, and paid himself amounts commensurate with lower skill and experience. Second, Father contended insufficient findings were made to determine the imputed income amount. COA disagreed. The findings were not challenged in that Father should make at least the same amount as the plumber he supervised. Third, Father contended the children’s summer camp fees were not found to be reasonable, necessary, and in the children’s best interest. COA agreed and remanded for such findings. The Guidelines allow the addition of extraordinary expenses to a basic child support obligation when such findings are made. COA also remanded for findings supporting deviation from the Guidelines. The Guidelines require prospective payments to be made effective as of the date the complaint was filed. The trial court used July 2019 rather than the date the complaint was filed in August 2017. A deviation requires

a finding that the Guidelines: (1) would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support; or (2) would otherwise be unjust or inappropriate.

III. Contempt: [TOC](#)

A. **Bridges v. Bridges**, __ N.C. App. __, 916 S.E.2d 840 (May 21, 2025). [TOC](#)

Summary

A party cannot be in civil contempt if he complied prior to entry of contempt order.

Facts: Mother filed a motion for civil contempt against Father. Father had failed to pay child support and uninsured medical expenses under an order. The trial court gave an oral pronouncement from the bench that Father was in civil contempt and could purge the same through paying the amounts owed. Father was put in jail and paid a cash bond for the purge amount five days later. Weeks thereafter, the trial court entered a civil contempt order, noting Father was in civil contempt and had purged himself of that contempt.

Holding/Legal Principles: Decision reversed. An order is not entered until reduced to writing, signed by the judge, and filed with the clerk. N.C. R. Civ. Pro. 58. When the civil contempt order was entered, Father was no longer in civil contempt as he paid the amounts owed weeks earlier.

B. **Collins v. Holley**, __ N.C. App. __, 919 S.E.2d 24 (June 18, 2025). [TOC](#)

Summary

For civil contempt, Court must find a party has the ability to comply at the time of hearing.
Court must find a party has the ability to comply with a purge condition at the time of hearing.
Contempt order cannot modify the underlying order.
Court cannot order future arrest of a party for failing to comply with a purge condition.

Facts: Mother was required to pay Father's attorney fees through monthly payments under a custody order. She did not make the first payment. Father filed a motion for civil contempt. At hearing, the only evidence adduced was Mother's testimony. She earned \$3,600.00 monthly, had \$1,705.00 monthly expenses, and \$1,045.00 monthly child support. Accordingly, she only had \$850.00 remaining to pay towards the \$2,500.00 monthly attorney fee award. Additionally, she lived with her grandmother, did not know her credit score, and needed a co-signer to obtain a loan.

Trial Court: Held Mother in civil contempt with purge conditions that she pay higher amounts in attorney fees and, monthly child support than previously ordered. Ordered that she be arrested upon a missed payment and jailed until full payments were made.

Holding/Legal Principles: Decision reversed. The trial court committed four errors. First, Mother was not in civil contempt. Civil contempt requires a finding that the party had the ability to comply with the order at the time of hearing. The evidence adduced at trial did not support this finding as Mother's testimony was the only evidence before the trial court. She only had \$850.00 to pay towards the \$2,500.00 obligation. Second, Mother could not comply with the purge conditions imposed at the time of hearing as those amounts far exceeded even the \$2,500.00 obligation. Third, a contempt order may not modify the underlying order. Fourth, Mother could be arrested only when the trial court determines she was capable of complying with the order at the time of incarceration.

C. Pocoroba v. Gregor, 296 N.C. App. 508 (Nov. 19, 2024). [TOC](#)

Summary

For civil contempt, Court must find a party is in violation at the time of hearing.

Facts: Defendant attempted to break into Neighbor's home while wearing a bathrobe. Neighbor received a 50C order against Defendant. Under the order, Defendant could not be within 100 feet of Neighbor unless Defendant was inside his own home. Neighbor filed contempt motions alleging Defendant was within 100 feet of her on two occasions.

Trial Court: Entered a civil contempt order against Defendant with a purge condition of a \$500.00 payment to Neighbor.

Holding/Legal Principles: Decision reversed. The purpose of civil contempt is to coerce compliance with an order through imprisonment. Therefore, civil contempt requires a party to be in violation of the order at the time of the hearing. The trial court did not find that Defendant was in violation at the time of the hearing. Criminal contempt, rather than civil contempt, punishes past violations of an order.

D. State v. Aspiote, ___ N.C. App. ___, 916 S.E.2d 837 (May 21, 2025). [TOC](#)

Summary

Direct criminal contempt improper when alleged act occurred outside presence of courtroom.

Facts: During a plea colloquy, Defendant answered yes to the question of whether he was then using alcohol, drugs, narcotics, medicine, pills or other substances. He admitted he used something earlier that morning, although he was never asked what the substance was. He admitted his mind was clear and that he knew the nature of the hearing. The Court required him to take a urine sample before accepting the plea. Defendant tested positive for methamphetamine.

Trial Court: Held Defendant in direct criminal contempt.

Holding/Legal Principles: Decision reversed. Direct criminal contempt requires a delay or interference with a court proceeding within the sight or hearing of the judge and within or in the immediate proximity of the courtroom. Since the drug testing occurred outside of the presence of the trial court, any alleged delay could not have been direct criminal contempt. Additionally, the trial court was under the misapprehension that Defendant said he would not test positive for a controlled substance. This was not said. Moreover, the nothing in the record supported that Defendant was impaired at the time of the plea. A positive test for a substance is not conclusive proof that someone is impaired. The substance Defendant consumed that morning was not identified.

E. **State v. Brinkley, ___ N.C. App. ___, 2025 N.C. App. Lexis 630 (Sept. 17, 2025).** [TOC](#)

Summary

Direct criminal contempt improper when alleged act occurred outside presence of courtroom.

Facts: Defendant was sentenced after a guilty plea. He was ordered to report to the local jail two months later on a certain date to begin his active sentence. He failed to show. The judge issued an order for arrest. Once Defendant was taken into custody, he appeared before the judge for a summary contempt proceeding. When asked why he did not show up to jail, he stated he had “other things going on.”

Trial Court: Held Defendant in direct criminal contempt.

Holding/Legal Principles: Decision reversed. Direct criminal contempt requires a delay or interference with a court proceeding within the sight or hearing of the judge and within or in the immediate proximity of the courtroom. Since Defendant’s failure to report to jail occurred outside of the presence of the trial court, this act could only be indirect criminal contempt. However, the trial court could not use a summary proceeding for indirect criminal contempt. An order to show cause must be issued. The matter was remanded for the trial court to proceed with indirect criminal contempt.

IV. **Domestic Violence:** [TOC](#)

A. **A.J.Z. v. Ziegler, 298 N.C. App. 122 (Mar. 5, 2025).** [TOC](#)

Summary

Court has personal jurisdiction over a non-resident when alleged domestic violence acts would be a consideration in a pending custody modification action.

Facts: Father lived in Tennessee but never in North Carolina. After separating in 2021, Mother moved with the children to North Carolina from Tennessee. In 2023, Mother registered a Tennessee custody order in North Carolina. A month later, she filed a motion to modify the order

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which resulted in Tennessee releasing jurisdiction under the UCCJEA. Thereafter, the children had marks and bruises after an exchange from Father. Mother filed a 50B on behalf of the children. Father filed a motion to dismiss for lack of personal jurisdiction.

Trial Court: Determined it had personal jurisdiction and entered a DVPO.

Holding/Legal Principles: Decision affirmed. To have personal jurisdiction, Father must have sufficient “minimum contacts” with North Carolina to satisfy due process. He must be aware that he is “establishing a connection” with the state. Father knew the children had lived in North Carolina and could “reasonably foresee” that his alleged domestic violence acts would be a consideration in the pending North Carolina modification action and result in DSS and law enforcement investigations in this state. Father also hired North Carolina lawyers for the domestic violence action and modification action. The foregoing findings were sufficient “minimum contacts” to obtain personal jurisdiction.

B. Honacher v. Uhlhorn, 297 N.C. App. 304 (Dec. 31, 2024). [TOC](#)

Summary

Failure to join Rule 12(b) defenses (e.g., personal jurisdiction) with Rule 12(b)(6) motion results in waiver.

Communications to third parties to “induce action” against a Plaintiff is sufficient to constitute “harassment” for purposes of a 50B.

Facts: Girlfriend and Boyfriend each contributed purchase money for a home titled only in her name. After they broke up, Boyfriend moved to Ohio. Thereafter, he filed liens on the home and other real property she owned in North Carolina. He filed reports with the N.C. Insurance Commission and local law enforcement to allege she started a fire in the home for insurance proceeds. He emailed her real estate agent to allege the home had \$200,000.00 in structural damage. He contacted local real estate agents and health department officials to allege she was committing real estate fraud. He reported her pets to animal control. Ultimately, Girlfriend filed a 50B against Boyfriend.

Trial Court: Entered a DVPO as Boyfriend committed domestic violence by placing Girlfriend in fear of continued harassment that rises to such a level as to inflict substantial emotional distress.

Holding/Legal Principles: Decision affirmed. Boyfriend made three arguments. First, he contended the trial court did not have personal jurisdiction. COA disagreed. Boyfriend filed a Rule 12(b)(6) motion for failure to state a claim, but he did not join other Rule 12(b) defenses. When a party files any motion under Rule 12(b), he must join with that motion the defenses of lack of personal jurisdiction, improper venue, insufficiency of process, and insufficiency of service of process—or else the same is waived. N.C. R. Civ. Pro. 12(h)(1). Therefore, personal jurisdiction was waived. Second, Boyfriend contended the trial court did not have subject matter jurisdiction as Girlfriend resided in Virginia. COA disagreed. Boyfriend judicially admitted in his pleading that she lived

in North Carolina, although he later recanted. Currently, 50B actions require the Plaintiff to be a resident of this state. Although undefined, “resident” denotes more than physical presence. Girlfriend testified that she spent time at her homes in North Carolina and Virginia. This was sufficient to support the finding that she was a resident of this state. Third, Boyfriend contended there were insufficient findings that he committed domestic violence as he did not direct the messages to Girlfriend. COA disagreed. For a 50B, “harassment” incorporates its criminal statute definition which amounts to five elements: (1) knowing conduct; (2) directed at; (3) a specific person; (4) that torments, terrorizes, or terrifies; and (5) serves no legitimate purpose. The second element was met when Boyfriend sent communications directed at third parties to “induce action” against Girlfriend.



FURTHER INSIGHT

1. Beginning December 1, 2025, non-residents may file a 50B for acts occurring in North Carolina. N.C. Sess. Law 2025-70 (S.B. 429), s. 6.(a) (modifying N.C. Gen. Stat. § 50B-2(a)).
2. Beginning December 1, 2025, the 50B statutes allow law enforcement to return surrendered firearms to the Defendant without a court order when (1) an ex parte or emergency order expires or (2) a protective order is denied after hearing. N.C. Sess. Law 2025-70 (S.B. 429), s. 20.(a) (modifying N.C. Gen. Stat. § 50B-3.1(d) and (e)).

C. **Cauley v. Cauley**, ___ N.C. App. ___, 919 S.E.2d 9 (June 18, 2025). [TOC](#)

Summary

50B relief unavailable after expiration of an *ex parte* order in effect for more than one year.

Facts: Wife filed a 50B against Husband. An *ex parte* DVPO was entered and continued in effect for 18 months after several continuances. The hearing for the one-year DVPO relief occurred after expiration of the *ex parte* DVPO. The trial court denied relief to Wife after hearing. Husband filed a motion for attorney fees under the 50B statute.

Trial Court: Awarded attorney fees to Husband under the 50B statute.

Holding/Legal Principles: Decision reversed. The trial court lacked subject matter jurisdiction to enter any relief under the 50B statute after the *ex parte* order expired after being in effect for more than one year.

D. Roy v. Martin, 297 N.C. App. 704 (Feb. 5, 2025). [TOC](#)

Summary

50B renewal requires “legitimate fear” of Defendant at the time of the renewal hearing.

Facts: Mother filed a 50B on behalf of the child against Father. Mother alleged Father placed the child in fear of continued harassment that rises to such a level as to inflict substantial emotional distress. A consent DVPO was entered without findings. Thereafter, Mother filed a motion to renew and used the complaint’s allegations. No allegation of a DVPO violation was made.

Trial Court: Renewed DVPO.

Holding/Legal Principles: Decision reversed. Renewal requires “good cause.” Although undefined, good cause required the child to have a “legitimate fear” of Father at the time of the renewal hearing. The child’s testimony about fear was vague and inadequate to support a finding as she feared Father would “convince [her] to come back.”

V. Equitable Distribution: [TOC](#)

A. Arrington v. Arrington, ___ N.C. App. ___, 914 S.E.2d 569 (Apr. 2, 2025). [TOC](#)

Summary

Entry of default against a party does not preclude an unequal distribution in his favor.

Facts: Wife filed for E.D and sought an unequal distribution. Husband did not respond to the complaint, respond to discovery, or attend any pre-trial conference. Default was entered against him.

Trial Court: Awarded an unequal distribution in Husband’s favor.

Holding/Legal Principles: Decision affirmed. Wife contended Husband could not receive an unequal distribution after he was defaulted and had no pending E.D. claim. COA disagreed. While entry of default deems the complaint’s allegations as true, it does not change the trial court’s duty to classify property as marital, value it, and distribute it in an equitable manner. Wife had the burden to show that an equal distribution was not equitable. After she made that showing, the trial court had broad discretion in how to distribute the property equitably.

B. Kaylor v. Kaylor, 296 N.C. App. 80 (Oct. 1, 2024). [TOC](#)

Summary

Marital fault may be considered to the extent it wastes or devalues marital property.
Absent objection, inventory affidavit may be received into evidence and as pre-trial order.
Finding the total net value of the marital estate satisfied if easily ascertained by findings.

Facts: Husband did not attend any status conference or the E.D. trial. Wife's inventory affidavit was received into evidence and as a pre-trial order. The Court awarded an unequal distribution to Wife. Unequal factors included: (1) Husband's acts wasted or devalued marital property in that his drug addiction caused him to stop working at the parties' once valuable business; (2) Wife's acts to preserve marital property by servicing debt on real properties, including the residence Husband occupied; and (3) Wife performed unpaid bookkeeping work for the business.

Holding/Legal Principles: Decision affirmed. Husband made three arguments. First, he contended that marital fault was improperly considered, resulting in insufficient findings to support an unequal distribution. COA disagreed. The findings showed that Husband's conduct wasted or devalued a marital business. Second, he contended certain real property was improperly classified as marital as no evidence was received as to the date of acquisition. COA disagreed. Wife listed this real property as marital on the inventory affidavit. While no testimony was received concerning the date, the inventory affidavit was received without objection into evidence and as a pre-trial order. Third, Husband contended that the trial court failed to find the total net value of the marital estate. COA disagreed. While an express total was not listed, the same was "easily ascertained" by the findings.

C. Smith v. Smith, 387 N.C. 255 (Mar. 21, 2025). [TOC](#)

Summary

Invited error precludes a stipulation from being binding.

Facts: Husband and Wife filed a stipulation that certain real property was marital. Husband later filed a motion to set aside the stipulation due to a mistake, noting it was his separate property. Thereafter, the trial court entered a pre-trial order stating the parties disagreed to its classification. At trial, Wife's counsel stated, "I'm fine with the court just hearing the evidence and considering . . . that motion in relation to those stipulations during trial." The trial court never ruled on the motion to set aside the stipulation.

Trial Court: Determined the real property was Husband's separate property.

Holding/Legal Principles: Decision affirmed. Wife contended a stipulation establishes a fact without the need of a judicial finding. While case law provides that a stipulation should be aside through a "direct proceeding," Wife invited the error by inducing the trial court to not rule on the

motion. Invited error is error which a party complains of that she induced. It cannot be a ground for a new trial.



FURTHER INSIGHT

1. As of October 1, 2025, when spouses gift real property to each other, the real property is deemed marital unless they sign a separate written agreement, apart from the deed, reflecting this intent. N.C. Sess. Law 2025-25 (H.B. 40), s. 48.(d) (modifying N.C. Gen. Stat. § 50-20(b)(2)).
2. As of October 1, 2025, spouses cannot waive equitable distribution rights to real property by deed. N.C. Sess. Law 2025-25 (H.B. 40), s. 48.(a) (modifying N.C. Gen. Stat. § 39-13.3(a)).

D. Gallagher-Masonis v. Masonis, 297 N.C. App. 272 (Dec. 31, 2024). [TOC](#)

Summary

Court may vacate portions of an arbitration award for legal error upon prior agreement.

For E.D., Court cannot distribute a separate debt or order a party how to pay it.

For alimony and child support, Court can order a party to pay separate debt.

Facts: Husband and Wife entered into a post-nuptial agreement providing that he would deed his separate residence to the parties and the mortgage would remain as his separate debt. After separation, the parties agreed to an arbitration under the Family Law Arbitration Act (FLAA) for their equitable distribution, alimony, and child support claims. Among other things in the arbitration award, the arbitrator distributed the residence to Wife, distributed the mortgage to Husband (i.e., his separate debt), and ordered him to pay it off early under a schedule. Wife filed a motion for the trial court to confirm the arbitration award.

Trial Court: Confirmed a partially vacated award.

Holding/Legal Principles: Decision affirmed. Both parties appealed. The FLAA allows the trial court to determine whether an arbitration award should be confirmed, modified, or vacated. An award can be vacated when there is legal error. However, the parties must have agreed to a judicial review of legal error. The parties had agreed. The trial court vacated the portion of the award which distributed Husband his separate debt and required him to pay it off early under a schedule. COA agreed. In E.D., a trial court cannot distribute separate property or order how it is to be paid. However, in alimony and child support, the trial court can order Husband to continue to pay separate debt. The trial court also vacated a statement that a court cannot order a sale of

marital property. COA did not rule on this issue since neither party showed how it affected the appeal.



FURTHER INSIGHT

1. Does the Court have the authority to order the sale of real property in E.D.?
 2. I believe so. I have used the argument below over the years.
- I. The trial court has authority to order that real property be sold and the proceeds distributed, even when both parties requested that they be distributed the marital home as long as the trial court first classifies and values the property on the Date of Separation. *Wall v. Wall*, 140 N.C. App. 303 (2000).
 - A. *Wall* recognized prior decisions implicitly recognized the trial court's power to order a sale.
 - i. The trial court did not err in forbidding either party to receive a commission or broker's fee on the sale of the marital home after ordering the home sold. *Dorton v. Dorton*, 77 N.C. App. 667 (1985).
 - ii. The trial court erred in ordering the sale of the marital home for not less than the appraised value without first determining its value. *Soares v. Soares*, 86 N.C. App. 369 (1987).
 - iii. The trial court did not satisfy the valuation requirement when it appointed commissioners to sell the property at issue and divide the proceeds without finding a date of separation value. *Thomas v. Thomas*, 102 N.C. App. 127 (1991).
 - II. *But See Miller v. Miller*, 253 N.C. App. 85, 105 (2017) (noting the trial court's "role is to classify, value, and distribute property, not simply to order that it be sold.") (emphasis added).
 - III. However, "[A] panel of the Court of Appeals is bound by a prior decision of another panel of the same court addressing the same question, but in a different case, unless overturned by an intervening decision from a higher court." *In re Civil Penalty*, 324 N.C. 373, 384 (1989) (emphasis added).

- E. **Face v. Face**, 296 N.C. App. 306 (Nov. 5, 2024), *stay granted by* 387 N.C. 443 (Jan. 7, 2025). [TOC](#)

Summary

**** Supreme Court entered stay on this COA opinion, resulting in loss of precedential value. ****

Trust is not a necessary party when parties stipulate its property is marital, revoking the trust. An interim distribution of LLC results in post-DOS distributions also being separate property.

Facts: On DOS, Husband held a 4.5% ownership interest in an LLC. The trial court equally divided this interest as their separate property in a consent interim distribution order. In a pre-trial order, the parties stipulated three real properties were marital. The trial court classified Husband's distributions from the LLC post-separation as divisible property and awarded half to Wife. After trial, Husband filed a Rule 60(b) motion alleging the parties' revocable trust was a necessary party to the E.D. action as it held title to the three real properties. The trial court denied the motion.

Holding/Legal Principles: Decision affirmed and reversed in part. Husband made two arguments. First, he contended the trust was a necessary party since it held title to the real property. While case law provides that the holder of legal title is a necessary party to an E.D. action, the trust did not own the property once the trust was revoked by stipulation. N.C. Gen. Stat. § 36C-6-602(c)(2)c. (a trust may be revoked by a written method delivered to the trustee manifesting clear and convincing evidence of the settlor's intent). Second, Husband contended his distributions from the LLC post-separation were not marital. COA agreed. The interim distribution order provided that each party's ownership interest in the LLC was their separate property and, therefore, distributions therefrom are also separate property.



FURTHER INSIGHT

1. A stay removes the precedential effect of a Court of Appeals opinion. *See, e.g., State v. Gonzalez*, 263 N.C. App. 527, 530 (2019).

VI. Spousal Support: [TOC](#)

A. **Sessoms v. Ray**, ___ N.C. App. ___, 919 S.E.2d 249 (June 18, 2025). [TOC](#)

Summary

Under Rule 41(b), a dismissal is with prejudice unless otherwise stated absent an exception.

Facts: Wife filed for spousal support. The trial court entered a PSS order. At the alimony hearing, Wife did not appear. The trial court dismissed her alimony claim for failure to prosecute. Days later, Wife filed a new action for spousal support. The trial court entered a new PSS order. Husband appealed.

Holding/Legal Principles: Decision reversed. Wife’s alimony claim was adjudicated on the merits via the trial court’s dismissal for failure to prosecute. Under Rule 41(b), a dismissal is with prejudice unless otherwise stated absent certain exceptions inapplicable here. Therefore, no subject matter jurisdiction existed for a new PSS claim because PSS can only be paid until dismissal of an alimony claim.

B. **Theuerkorn v. Heller**, ___ N.C. App. ___, 918 S.E.2d 681 (June 18, 2025). [TOC](#)

Summary

Amended alimony order changing payment amount was a correction of a clerical error.

A party’s income from prior years is permissible when current income is not credible or suspect.

Facts: The trial court entered an alimony order using Husband’s 2023 income rather than current income at the time of trial in 2024. The order also provided “[Husband] shall pay [Wife] forty-eight (48) monthly alimony payments of \$___ beginning April 15, 2024 . . .” Wife filed a Rule 60(a) motion to correct a clerical error (i.e., the blank dollar amount).

Trial Court: Entered an amended alimony order stating the monthly payments were \$1,250.00.

Holding/Legal Principles: Decision affirmed and vacated in part. Husband made two arguments. First, he contended the Rule 60(a) motion should not have been granted as the change from a blank dollar amount to \$1,250.00 affected the “substantive rights” of a party rather than correcting a clerical error. COA disagreed. The substantive right is the “source from which this money is derived” rather than the “amount.” Since the original order required alimony to be paid by Husband, the source of the money was not changed in the amended order. Second, Husband contended his 2023 income should not have been used as his current income in 2024 was adduced at trial. COA agreed. While Husband’s 2023 financial affidavit reflected a \$15,298.00 gross monthly income, he produced paystubs showing a \$3,124.00 gross monthly income in 2024. Income from prior years is permissible when a trial court finds the “actual income is not credible”

or is otherwise suspect.” There were no findings as to why Husband’s 2023 income was used rather than current income. COA remanded the case for further findings.

VII. Spousal Agreements: [TOC](#)

A. Jones v. Jones, ___ N.C. App. ___, 919 S.E.2d 308 (July 2, 2025). [TOC](#)

Summary

An SPSA is presumed to be non-integrated. Presumption must be rebutted to void an SPSA due to reconciliation of the parties.

Rescission of an agreement requires no adequate remedy at law.

Facts: Wife filed a declaratory judgment action against Husband’s estate to declare a Separation and Property Settlement Agreement (SPSA) as void due to reconciliation. As an alternative, she requested rescission due to Husband’s breach as he failed to make payments under the Agreement.

Trial Court: Determined the Agreement was valid. Even if a breach occurred, rescission was inappropriate.

Holding/Legal Principles: Decision affirmed. Wife made two arguments. First, she contended the Agreement was void due to reconciliation. COA disagreed. While true separation agreements (i.e., concerning marital support rights) are void after reconciliation, the Agreement contained both separation and property settlement provisions. An SPSA is void due to reconciliation only if it is an integrated agreement (i.e., property settlement provisions were reciprocal consideration for separation provisions). To determine whether the provisions were reciprocal consideration, the parties’ intent must be determined. The law presumes non-integration. Since the Agreement contained reconciliation and severability provisions, Wife failed to meet her burden to rebut the presumption of non-integration. Second, Wife contended the Agreement should be rescinded due to Husband’s failure to make payments of over \$47,000.00. COA disagreed. Rescission is an equitable remedy which requires a showing that no adequate remedy at law would fully compensate her. Wife may be compensated by money damages.

VIII. Epilogue: [TOC](#)



LOUIS BRANDEIS
ASSOCIATE JUSTICE

“Most of the things worth doing in the world had been declared impossible before they were done.”