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Case Law Update

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CHILD CUSTODY

Henderson v. Wittig, 278 N.C. App. 178, 862 S.E.2d 369 (2021) (Iredell County)

The Court of Appeals vacated and remanded an order modifying child custody when there were insufficient findings of fact directly linking the change in circumstances to the welfare of the minor child.

The parties were never married but had a minor child together in December 2013. In 2016, the trial court entered a consent order approving the parties' parenting agreement, which provided for joint legal custody and equal physical custody on a two-week rotating schedule.

In 2017, dad filed a motion for contempt, alleging mom failed to consult with him on major decisions relating to the child and failed to share information on healthcare matters. As a result, the court appointed parenting coordinator, Dr. Geyer. Dr. Geyer helped set guidelines for exchanges, but the two parties continued to have communication issues pertaining to the minor child's healthcare, vacation time, and school matters.

In December 2019, mom filed a motion to modify child custody. In April 2020, the trial court entered an order modifying the original parenting agreement and granting final decision-making authority on healthcare and school issues to dad. Mom appealed.

The appellate court held that a trial court must find both that there has been a substantial change of circumstances and that the change has affected the welfare of the child. The trial court made findings of fact that there had been several disagreements between the parties about vacations and schooling and that dad had married and moved to a new home since the initial custody order was entered in 2016. However, the parties' initial parenting agreement from 2016 had no findings of fact, so in ruling on the motion to modify, the court was required to "make appropriate findings in order to provide a base line before it could determine if there had been a substantial and material change in circumstances that would warrant a modification…"

Evidence of substantial change centered around the extensive disagreements between the parents, but a direct link to the welfare of the minor child was missing. Evidence

linking the substantial change to the child's welfare might consist of assessments of the child's mental well-being by a mental health professional, school records, or testimony from the child or parent.

The Court of Appeals held that the trial court made sufficient findings of fact relating to circumstances around the time of the initial custody order, but the trial court did not establish that the change had an effect on the welfare of the minor child. The April 2020 order was vacated and remanded to the trial court for further findings of fact.

Munoz v. Munoz, 278 N.C. App. 647, 864 S.E.2d 364 (2021) (Cumberland County)

The Court of Appeals affirmed a permanent child custody order awarding dad primary physical custody of the parties' daughter and allowing dad to move to California with the child.

The parties were married in 2012 and separated in 2018. They had a minor child together, born in 2015. The mother is a member of the United States Army.

In May 2018, the parties entered an MOJ regarding temporary custody, providing for joint legal custody, primary physical custody to dad, secondary physical custody to mom, and permitted dad to relocate to California with the minor child. At the time, mom anticipated deployment to Iraq for nine months. Upon learning that she would no longer be deployed until after July 2018, mom filed a motion to review the temporary custody order, and the trial court ordered the parties to keep the child in North Carolina until mom deployed, but no later than July 1, 2018. Mom then filed a motion to set aside the temporary order. Dad had already moved to California with the child at this point. The trial court entered a permanent custody order awarding primary physical custody to dad.

Mom appealed the permanent custody order, arguing that the trial court abused its discretion in considering her military-service obligations in awarding primary physical custody to dad and in allowing dad to relocate without considering the factors laid out in *Ramirez-Barker v. Barker*, 107 N.C. App. 71, 418 S.E.2d 675 (1992). The Court of Appeals affirmed the custody order, holding that the trial court did not abuse its discretion.

First, the Court of Appeals relied on *Tuel* to reiterate that the factors set out in *Ramirez-Barker* were merely "guideposts," and that the trial court's primary concern when considering relocation is the furtherance of the welfare of the child and conditions most conducive to the child's well-being. The Court of Appeals held that the trial court made sufficient findings regarding the child's welfare in this case.

Second, the Court of Appeals held that future deployment may be considered in a custody decision as long as it is not the *only* basis for the order. Here, the mother's deployment was not the only basis for awarding primary physical custody to the father because the

support system of each parent was a significant factor considered by the trial court in this case.

Waly v. Alkamary, 279 N.C. App. 73, 864 S.E.2d 763 (2021) (Cumberland County)

The Court of Appeals affirmed a permanent child custody order granting primary physical custody to father and secondary physical custody to mother, as the trial court in Cumberland County retained "initial determination" jurisdiction under the UCCJEA.

The parties were married in January 2013 and had one minor child together, born in February 2014. Legal action between the parties began in July 2016, when the father filed a complaint for child custody, child support, and attorney withdrawal in Cumberland County, North Carolina. The mother filed an answer and counterclaims for emergency custody, a restraining order, custody, child support, alimony, and attorney's fees.

Initially, the trial court entered an order directing the father to pay mother child support, awarding mother temporary primary physical custody, and providing guidelines for equitable distribution and postseparation support. Both parties relocated outside of North Carolina during the dispute. The mother moved to New Jersey with the parties' child, and the father moved to Florida.

Legal action between the parties continued in New Jersey. In February 2017, a New Jersey trial court entered a DVPO, barring the father from having any oral, written, personal, electronic, or other form of contact with the mother. Exchanges of the minor child were set to take place at the police station in the mother's home city in New Jersey.

The parties then filed separate motions in North Carolina and New Jersey. In North Carolina, the father filed a motion for contempt, alleging that mother had refused to allow him visitation with the minor child. In New Jersey, the mother filed a complaint for divorce, alimony, child support, child custody, equitable distribution, and attorney's fees in January 2018. The mother also sent a letter to the Cumberland County Clerk's Office to request a stay in the North Carolina proceedings. A North Carolina hearing took place in March 2018, and mother was ordered to provide her sister's contact information to facilitate visitations.

The following winter, in January 2019, the father filed a motion for contempt and a motion for modification of custody, alleging that the mother had neglected the minor child. Shortly thereafter, the New Jersey DVPO was amended to allow for visitation of the minor child as set out in the North Carolina order.

The final hearing occurred on May 14, 2019, in Cumberland County, when the trial court entered a permanent custody order awarding the father primary physical custody of the

minor child and awarding the mother visitation. The mother appealed this decision, contending that (1) the North Carolina court lost jurisdiction over the custody issue after issuance of the temporary custody order when both parents relocated outside North Carolina and (2) the North Carolina court erroneously used the New Jersey DVPO against the mother and failed to give full faith and credit to the DVPO.

The Court of Appeals disagreed with both arguments. First, North Carolina retained jurisdiction over the child custody issue, as the North Carolina court had made the initial child custody determination and had jurisdiction to enter the permanent custody order under the UCCJEA. (The Court noted that had mother taken the appropriate actions and filed the appropriate motions for custody in New Jersey, it is possible North Carolina may have declined to exercise jurisdiction on the basis of an "inconvenient forum" determination).

Second, the trial court did not use the New Jersey DVPO against the mother at the June 2019 hearing and actually took affirmative steps to avoid using the DVPO against her. The Court of Appeals also held that it lacked jurisdiction over a trial court's oral ruling that was not rendered into a written order; that there were sufficient findings of fact supported by competent evidence that mother had not complied with the temporary order and had frustrated visitation with dad; that the trial court did not abuse its discretion in finding that mother's sister was not the appropriate person to facilitate visitation; that the permanent custody order was not inconsistent with the DVPO; that the trial court gave full faith and credit to the DVPO; and that mother failed to properly authenticate screenshots of electronic communications.

Isom v. Duncan, 279 N.C. App. 171, 864 S.E.2d 831 (2021) (Wilkes County)

The Court of Appeals affirmed an order granting father sole legal custody and limiting mother's visitation to phone calls and Facetime videos once per week and on holidays.

The parties were never married but had a child together in January 2011. A custody battle began in January 2012 when an Indiana court awarded joint custody to the parties and awarded the mother primary physical custody. The mother refused to comply with the order and refused the father visitation, so the Indiana court held the mother in contempt in May 2012. (Mother did not appear at the show cause hearing).

For the next four years, the mother hid the child from the father. The father filed an emergency motion for physical custody in September 2016, and the Indiana court granted temporary physical custody to the father. In response, the mother fled to Ohio. Later in September 2016, an Ohio court found the mother to be a flight risk and ordered temporary custody of the child to Ohio CPS. The father, having moved to North Carolina,

filed a lawsuit for custody of the minor child and was awarded temporary sole legal and physical custody by the North Carolina district court. The mother was granted visitation.

Following several visitation rule violations by the mother, the father filed a motion to suspend the mother's visitation. In May 2019, the North Carolina court suspended visitation but allowed the mother to communicate with the minor child by phone once weekly and on holidays. The mother appealed this order.

The Court of Appeals pointed to the long-standing tradition that trial courts have broad discretion in determining child custody matters, and the decision would only be overturned if there was not substantial evidence in the record that a reasonable mind could find adequate to support the trial court's conclusions. The Court of Appeals held that each challenged finding of fact was reasonable and that the trial court did not abuse its discretion. Therefore, the order was affirmed. (This case is an important reminder that unchallenged findings of fact are deemed to be supported by competent evidence and are binding on appeal).

Thomas v. Oxendine, 280 N.C. App. 526, 867 S.E.2d 728 (2021) (Cabarrus County)

The Court of Appeals affirmed the child custody order granting sole legal and physical custody of the minor child to the child's grandparents, requiring the mother to undergo a psychiatric evaluation, and requiring the mother's husband to complete parenting classes, anger management, and obtain a substance abuse assessment.

The mother and father, both defendants in this case, had one child together in 2005. For the first five years of the child's life, the child lived with her father's parents. The father left his parents' house in 2007, while the minor child stayed in the home with mother and the paternal grandparents. In 2010, the minor child moved into the home with mother and Chip Oxendine (stepfather), who quickly became abusive to the child. Chip spat on her, kept her in a hot room, and threatened to kick her out of the house. In May 2016, the child was admitted to the hospital for suicidal thoughts and depression as a result of Chip's actions.

In February 2019, Chip flung the child to the ground and injured her. The grandparents with whom the minor child used to live filed a Complaint for Child Custody and a Motion for Emergency Custody in March 2019. Emergency custody was entered at that point. Following a denial of the mother-defendant's motion to dismiss the action on June 12, 2019, the trial court entered a Permanent Custody Order granting the grandparents sole legal and physical custody of the minor child. The trial court found that grandparents had standing and that mother engaged in conduct inconsistent with her protected status as a parent by clear and convincing evidence. The mother was granted visitation and proceeded to appeal the decision.

On appeal, the mother first argued that the grandparents did not have standing to bring a custody action under N.C. Gen. Stat. § 50-13.1(a). The Court of Appeals disagreed, holding that grandparents have standing to bring a custody action where it can be shown that the parents have acted inconsistently with their parental status and were unfit because they had neglected the child. Here, the pleadings, detailing the abuse described above, were sufficient to show that the parent was unfit or had engaged in conduct inconsistent with her parental status. (The child's father was not a party to the appeal).

Similarly, the mother also argued that the grandparents had not shown "clear and convincing" evidence of misconduct that could overcome the parent's constitutional right. The Court of Appeals also disagreed with this argument. The grandparents showed that the minor child had an emotional connection to them and that the mother had allowed Chip to abuse the minor child, which was sufficient to overcome the mother's constitutionally protected right to parent her child. (The Court of Appeals also found that the unchallenged findings of fact, by themselves and together with the challenged findings, supported the conclusion that mother acted inconsistently with her protected status as a parent).

Finally, the mother argued that the trial court erred in determining that it would be in the child's best interest for the grandparents to have sole legal and physical custody, that she must undergo a psychiatric evaluation, and that Chip must complete parenting classes. The Court of Appeals held that these determinations were within the trial court's discretion, were something a "reasonable mind might accept," given the facts, and were supported by substantial evidence.

Malone-Pass v. Schultz, 280 N.C. App. 449, 868 S.E.2d 327 (2021) (Cumberland County)

The Court of Appeals affirmed the child custody order granting sole legal and physical custody of the minor children to the father and denying the mother visitation.

This child custody case started in North Carolina when the mother filed a petition to register a foreign child custody order from New York in 2017. This order held that the mother and father would have joint legal custody but that the father would have primary physical custody with visitation for the mother. The North Carolina court assumed jurisdiction over the case. The trial court entered a number of orders throughout 2018 and 2019 that set out visitation schedules for the mother and kept the father as the primary custodian of the minor children.

In 2018, the father moved to South Carolina, and the mother moved to Massachusetts. The children moved to South Carolina with the father. In March 2019, the mother obtained a DVPO from a Massachusetts court, fraudulently alleging that the father had

been abusive. As a result, the mother obtained emergency temporary custody of the children and took them from South Carolina to Massachusetts.

The father responded in the North Carolina court by filing an emergency motion to suspend the mother's visitation, alleging that she had lied to the Massachusetts court in the DVPO. The Massachusetts court dissolved its DVPO, and the North Carolina court ordered the children to be returned to the father's custody.

In April 2019, following the Massachusetts incident, the North Carolina court held an in-chambers discussion with the children and determined that they did not want to visit the mother and were angry that she took them from South Carolina. Although the judge barred the parents from having conversations with the children about the in-chambers conversation, the mother later asked the children about the conversation.

The series of actions culminated in a November 2019 order that granted the father sole legal and physical custody of the minor children and denied the mother visitation. In this order, the court made findings of fact that pointed to the quality of life at the father's residence, the psychological trauma the children experienced due to their emergency removal from South Carolina, and the false allegations the mother had made in Massachusetts court. The mother appealed.

First, the mother argued that North Carolina did not have subject matter jurisdiction over the issue. The Court of Appeals disagreed and affirmed the trial court's finding that it had subject matter jurisdiction. Under N.C. Gen. Stat. § 50A-203, North Carolina courts may modify an out-of-state child custody determination when North Carolina is the home state of the children on the date of commencement of the proceeding and the court of the other state determines it no longer has exclusive, continuing jurisdiction or that a court of this state would be a more convenient forum. Here, the children lived in North Carolina on the date of commencement, and the New York court had relinquished jurisdiction to North Carolina, as found in the New York custody order, which stated it was relinquishing jurisdiction. Mother made additional arguments that North Carolina should have declined to exercise jurisdiction because father engaged in unjustifiable conduct by fraudulently alleging that he planned to live in North Carolina until the children graduated from high school but later moved to South Carolina. However, the trial court made undisputed findings that mother is the one who actually engaged in fraud with the filing of her DVPO.

Second, the mother argued that the trial court had not made sufficient findings of fact to support the conclusion of law that she had acted in a way that superseded her constitutionally protected status as a parent. The Court of Appeals, in response to this argument, noted that the constitutionally protected status right of parents "is irrelevant in a child custody proceeding between two natural parents," and, instead, the trial court must determine custody using the "best interest of the child" test. Here, there was sufficient evidence supporting a finding that awarding father sole custody was in the

children's best interest and that it was not in their best interest for mother to have visitation.

Webb v. Jarvis, 2022-NCCOA-499 (Forsyth County)

The Court of Appeals affirmed the trial court's order denying a motion to dismiss, concluding that Defendant-Appellant acted inconsistently with his constitutionally protected parental rights, such that maternal grandmother had standing to pursue a child custody claim.

The parties to this action include a maternal grandfather and step-grandmother, a maternal grandmother, and the natural father of a child born on July 28, 2010. The natural mother died of cervical cancer on December 20, 2015. At the time of her death, the natural mother told the maternal grandmother that she wished for the minor child to live with her. On January 4, 2016, with the natural father's consent, the court appointed the maternal grandmother as the child's guardian. The natural father maintained regular contact with the child until November 2017, when he was convicted and sentenced for trafficking cocaine.

This action began when the child's maternal grandfather and step-grandmother sought visitation with the child and named the maternal grandmother and the natural father as defendants. The maternal grandmother filed an amended answer and counterclaim against the maternal grandfather and a crossclaim against the natural father for custody of the child. The natural father filed a motion to dismiss the maternal grandmother's claim for lack of standing. The trial court denied the natural father's motion to dismiss.

The Court of Appeals affirmed the trial court's ruling and found that the natural father acted inconsistently with his constitutionally protected status as a parent. Firstly, the natural father consented to the maternal grandmother's appointment as the minor child's guardian. In addition, the natural father was aware that a third conviction would qualify him as a habitual felon and inhibit his ability to exercise physical custody of the minor child. Yet, the natural father proceeded to engage in conduct, leading him to be arrested and convicted. The Court of Appeals held that the voluntary relinquishment of parental authority to grandmother, in addition to his repeated criminal convictions, were clear and convincing evidence to support the determination that the natural father acted inconsistently with his constitutional right to parent his child. Therefore, the maternal grandmother had standing to bring her custody claim.

Drum v. Drum, 2022-NCCOA-448 (Catawba County)

The Court of Appeals affirmed the trial court's order awarding the maternal grandmother primary physical custody of the minor child and holding that Defendant acted inconsistently with his constitutionally protected status.

Defendant is the biological father, and Plaintiff is the maternal grandmother of the minor child born on September 20, 2014. The minor's biological mother abandoned the child due to drug abuse issues. The minor child had been in the maternal grandmother's care since she was 6-8 months old. The maternal grandmother had been the primary caregiver and had provided a stable and structured life to the minor child, which gave her standing in a custody case. The trial court prohibited visitation with mother, granted joint legal custody between father and grandmother, and granted primary physical custody to grandmother with visitation to father. Father appealed.

Under N.C. Gen. Stat §50-13.1(a), a grandparent can claim the right to custody of a minor child. To do so, the grandparent must prove parental unfitness or that the natural parent's conduct is inconsistent with their constitutionally protected status to a clear and convincing standard.

Here, biological father's contact with the minor child was sporadic and minimal between the time the child went to live with grandmother until the proceedings began. He never sought custody or exercised overnights with the minor child. Only after the proceeding commenced did biological father visit the minor child regularly and take more of an interest in the child's life. However, these changes do not make up for the five years before the pleading in which father was absent. In addition, father had paid only half of the ordered child support amount, which was also a ground for finding he acted contrary to his constitutionally protected status as a parent. For these reasons, the Court of Appeals affirmed the trial court's order in granting primary physical custody to the maternal grandmother.

Cash v. Cash, 2022-NCCOA-403 (Cabarrus County)

The Court of Appeals vacated and remanded the trial court's order denying father's motion to modify custody, holding that the trial court abused its discretion by bifurcating the hearing and preventing father from presenting evidence as to the minor child's best interests as part of his case-in-chief.

Plaintiff-mother and Defendant-father had one child in 2008 and entered into a consent child custody order in February 2010. The consent order granted primary legal and physical custody to mom with regular weekly and weekend visitation for dad, as well as holiday visitation, summer visitation, and further visitation as the parties agreed. In

August 2018, dad filed a motion to modify custody, alleging a substantial and material change in circumstances. Dad alleged that mom denied him visitation, blocked the child's cell phone, berated dad in front of the child, did not keep dad informed regarding the child's medical care, and interrogated the child after his visitation with dad.

Dad presented testimony addressing the change of circumstances, but the trial court did not allow testimony regarding how the change in circumstances affected the welfare and best interest of the child. Specifically, there were two instances where the trial court disallowed evidence as to the child's best interest.

The appellate court found that the trial court abused its discretion by not allowing dad to present best interest evidence because the trial court misunderstood the two-prong test for a motion to modify custody. (The Court of Appeals ruled on this issue alone).

Mom argued that the trial court did not abuse its discretion because custody modification involves two steps, and that the court cannot reach the best interest analysis until it finds a substantial change in circumstances. However, the appellate court disagreed with this argument, determining that best interest evidence can overlap with evidence of a change in circumstances.

Turner v. Oakley, 2022-NCCOA-266, 872 S.E.2d 547 (Randolph County)

The Court of Appeals affirmed the trial court's modified custody order and held that the trial court did not abuse its discretion.

Plaintiff and Defendant had a minor child born in March 2010. In November 2013, the district court entered an order granting primary custody to Defendant-Mother and secondary custody to Plaintiff-Father. This order gave Plaintiff-Father custody on all weekends that mom did not work and shared holidays and vacation time with sufficient notice.

On August 10, 2018, dad filed an Ex Parte Motion for Emergency Custody and Modification of Prior Order on Custody, seeking temporary and permanent custody of the minor child. Dad alleged that there had been a substantial change in circumstances affecting the minor child's health and welfare since the 2013 Custody Order. He alleged that mom called dad in a rage and said she could not do anything for the minor child and was screaming at the minor child. Dad also alleged that mom had not been keeping up with homework and had trouble communicating with teachers. In addition, he alleged that mom and the minor child had a strained relationship. Finally, the complaint alleged that the current custody schedule was not in the child's best interest due to mom's current mental state.

The trial court granted dad emergency custody of the minor child by ex parte order. A temporary order was entered on December 14, 2018, granting dad temporary primary physical and legal custody and awarding mom supervised visitation at a time, day, and location mutually agreed upon by the parties. On January 11, 2019, mom moved the court to establish a visitation schedule, alleging that dad denied her requests for visitation and refused to communicate. Two temporary MOJs were then entered to facilitate mom's visitation. On July 31, 2020, the trial court entered a temporary order directing dad to bring the minor child to mom's home that evening, pending entry of a final order.

On August 17, 2020, the trial court entered a permanent custody order granting joint legal custody but primary physical custody to mom. Dad was granted visitation three weekends each month, 30 days during school recess, Father's Day, a portion of the minor child's birthday, and every other Christmas, Thanksgiving, and Easter holiday. Dad appealed.

The trial court found that the mom had previously suffered a major depressive episode due to her brother's unexpected death, which impacted her ability to care for the minor child during that time. Mom sought treatment and was "cured," according to testimony from her treating physician. The trial court also found that dad had only allowed supervised visitation at a park, no matter the weather or the fact that mom had just given birth to another child. Dad's only concern about mom's custody was that the minor child would have to share a household with other children and was not given individual time and attention. Dad refused to allow any expanded visitation with mom, and no good cause was shown for such refusal.

Dad challenged the trial court's findings. Specifically, the finding that mom was "cured," per the doctor's testimony. The Court of Appeals disagreed because a trial judge assesses the credibility of a witness and is permitted to make reasonable inferences from witness testimony based on that credibility. The doctor's description of mom as cured was sufficiently supported by the doctor's testimony regarding mom's treatment.

Dad also argued there was no nexus between the substantial change in circumstances and the minor child's welfare because the court failed to examine whether the modification was in the child's best interest. The Court of Appeals disagreed, reasoning that the trial court made findings concerning the mom's mental health difficulties, her improvement with treatment, her successful visitation with the minor child, her continued employment, and her flexible work schedule. The trial court's findings show that mom suffered a temporary mental health crisis. The Court of Appeals hled that the trial court complied with its duty to determine a substantial change, whether it affected the child's welfare, and whether the modification was in the child's best interest. Therefore, the Court of Appeals affirmed the trial court's order.

ALIMONY, POSTSEPARATION SUPPORT, AND CHILD SUPPORT

Putnam v. Putnam, 278 N.C. App. 667, 863 S.E.2d 291 (2021) (Wake County)

The Court of Appeals affirmed an order for alimony and temporary child support.

The parties were married in 2001, separated in 2017, and divorced in 2018. They had three children together. In 2018, a consent order for equitable distribution was entered, but the parties went to trial to resolve alimony and temporary child support.

At the trial in February 2020, the court found that the wife was the dependent spouse and was entitled to alimony and temporary child support. In determining the exact amount of alimony and child support, the trial court made findings of fact relating to each factor in N.C. Gen. Stat. § 50-16.3A(b) for which evidence was presented. The trial court entered an order granting the wife alimony and temporary child support, and wife appealed, arguing that the trial court had erred in its computation and amount of alimony. The Court of Appeals held that, since the trial court made sufficient findings of fact based on the statutory factors to support its alimony and temporary child support determinations, it had not abused its discretion. Therefore, the trial court's order was affirmed.

Jackson v. Jackson, 280 N.C. App. 325, 868 S.E.2d 104 (2021) (Wake County)

The Court of Appeals affirmed in part, reversed in part, and remanded for further fact-finding the portion of a child support order arising from a separation agreement.

The parties were married in 1992 and had three children during the marriage. The parties separated on May 17, 2013 and executed a separation agreement and property settlement in October 2013, which resolved child custody, child support, and attorney's fees issues. A provision in the separation agreement stated that the termination events for child support were: (1) the parties' youngest child reaching the age of 18 or graduation from high school, whichever occurs last; (2) emancipation of the children; (3) death of the children; (4) death of the father; or (5) a court order modifying or terminating child support.

In summer 2016, the mother-plaintiff moved from Raleigh to Wilmington. The parties' second child moved to Wilmington with the mother, while the youngest child stayed in Raleigh with the father. On June 15, 2017, the father filed a motion for child support, alleging that the mother owed a duty of child support to the father because at that time

the only remaining minor child was living solely with the father. On January 19, 2018, mother filed a complaint for breach of contract, alleging that the father had unilaterally lowered child support payments. Mother sought specific performance of the child support arrearages and reasonable attorney's fees.

On December 10, 2019, the trial court entered an order establishing child support in favor of the mother at $1,150 per month, the contractual amount. The trial court also awarded the mother $21,505 in damages for the father's breach and awarded the mother $5,000 in attorney's fees. The father appealed.

The father first argued on appeal that the trial court erred in applying the *Pataky* presumption because his child support obligation terminated when he became the custodial parent for the parties' youngest child. The Court of Appeals disagreed with this argument, holding that none of the events listed in the separation agreement had occurred. However, the Court of Appeals held that the findings of fact as to the minor child's reasonable needs at the time of the hearing were not supported by competent evidence and therefore were insufficient. Therefore, the Court of Appeals vacated and remanded this portion of the order for further findings as to the reasonable needs of the child and reconsideration of the *Pataky* presumption.

Finally, the father argued on appeal that the trial court erred in awarding attorney's fees only to the mother. However, the Court of Appeals pointed to the fact that the attorney's fees provision was in the still-valid separation agreement and affirmed the lower court's attorney's fees order along with the award of damages to Plaintiff for breach of contract.

Mendez v. Mendez, 281 N.C. App. 36, 868 S.E.2d 612 (2021) (Mecklenburg County)

The Court of Appeals affirmed a child support order decreasing father's monthly child support payments, where he was diagnosed with cancer and planned to attend law school.

The parties were married in December 2007, had three children during their marriage, and divorced in 2013. Following the divorce, a child support order was entered in December 2015 that required the plaintiff-father to pay the defendant-mother $2,271 each month in child support. Mom filed a Motion to Modify Child Support and for Attorney's Fees in December 2018, citing the children's enrollment in new activities and their changing needs as the reasons for the modification.

Dad was admitted to Columbia University School of Law in late 2018 but was subsequently diagnosed with prostate cancer in January 2019. The trial court found it was not bad faith for dad to discontinue working his Department of Defense job due to cancer treatments and the toll it was taking on his body. It was also not in bad faith that he was no longer receiving income from his business because he sold the machinery and testified that he

was contributing personal funds to cover the business's operating expenses. The trial court reduced dad's child support payment to $1,272 in a child support order entered on September 2, 2020. The court also denied mom's request for attorney's fees, and mom appealed.

First, mom argued that the trial court erred in refusing to impute income to dad for his Department of Defense job. Imputation of income by a trial court requires a showing of bad faith, and the trial court articulated its findings and conclusions that dad could not physically continue his DOD employment and was justified in seeking a new legal career. Here, dad worked long hours even during the early stages of his cancer treatments, despite the significant pain the work caused.

Second, mom argued that the trial court erred in refusing to consider the children's new activities as extraordinary expenses. The Court of Appeals ruled that it is entirely within the discretion of the trial court to determine which expenses are extraordinary, and the trial court did not abuse its discretion here. (It is important to note that mom did not move to deviate from the Guidelines).

Finally, mom argued that the trial court erred in not awarding her attorney's fees. Attorney's fees may be paid to an interested party acting in good faith who has insufficient means to pay the expense of the suit. In child support cases, an award of attorney's fees requires a showing that the supporting party failed to pay his or her child support obligation. Here, the Court of Appeals affirmed the trial court's ruling, holding that mom paid her attorney's fees in full, and dad had never failed to pay child support, so mom did not meet her burden in proving she was entitled to an attorney fee award.

Barus v. Coffey, 281 N.C. App. 250, 868 S.E.2d 655 (2022) (Burke County)

The Court of Appeals reversed and remanded the trial court's order dismissing father's motion to modify child support for failure to state a claim under Rule 12(b)(6).

The parties were married in 1998, had two children during their marriage, and divorced in 2012. In 2014, a permanent child custody order was entered with the father having primary physical custody during the school year and the parties having joint custody during the summer. Neither party was ordered to pay child support under this 2014 order.

In April 2017, the parties each filed motions for modification. Father requested modification of child custody, medical coverage, and child support, while the mother requested an exchange schedule modification. In May 2019, the trial court denied both motions and left the 2014 order in full force and effect. The father filed another motion to modify child support on August 30, 2019, and the mother responded to this motion by

requesting that the trial court dismiss father's motion for failure to state a claim upon which relief can be granted. The trial court dismissed the motion for failure to state a claim, and the father appealed.

The Court of Appeals reversed and remanded the dismissal, holding that the father stated a claim upon which relief may be granted in his motion. Trial courts in North Carolina presume that there has been a substantial change in circumstances where a child support order was entered at least three years before the pending motion to modify and there is a difference of 15% or more between the child support payable under the existing order and the amount resulting from the application of guidelines to the parents' current incomes.

In his motion, the father alleged that three years had elapsed since the entry of the prior order, and that there was a 15% difference between the child support payable under the 2014 order and the amount due according to the guidelines. Mother's primary argument under 12(b)(6) was that he failed to state a claim because the allegations in the motion failed to provide her with sufficient notice. However, the father filed his motion for modification on an AOC form, included details about the parties and a clear request for more child support. Therefore, the Court of Appeals ruled that the motion should not have been dismissed and remanded the case to the trial court to determine whether there had been a substantial change of circumstances.

Britt v. Britt, 2022-NCCOA-487 (Wake County)

The Court of Appeals affirmed the trial court's order requiring the Defendant to pay child support for their two minor children.

Plaintiff and Defendant were married in 1999 and separated in 2014. There were two children born of the parties' marriage. On August 18, 2017, a temporary child support order was entered, ordering Defendant to pay $375 in child support, plus $25 per month toward arrears of $7,500. In May 2018, a consent order was entered resolving equitable distribution, and Defendant was required to pay $4,000/month to Plaintiff toward a $110,000 distributive award.

On April 30, 2021, the permanent child support claim was heard. The trial court ordered the Defendant to pay $2,040.23/month in child support. Defendant appealed the trial court's decision arguing that the trial court erred by 1) failing to deduct the "ordinary and necessary" expenses from Defendant's self-employment business in its calculation of his gross monthly income; 2) failing to provide a rationale as to why the court did not deduct the expenses; and 3) failing to deduct Defendant's temporary child support and equitable distribution payments from his gross monthly income.

The appellate court found that the trial court did not fail to deduct ordinary and necessary expenses from Defendant's self-employment because mortgage principal payments are not an ordinary and necessary expense within the meaning of the Guidelines. In addition, no evidence of expenses associated with any of Defendant's business enterprises was presented. Defendant could only provide rough estimates of the amount he derived from his apartment rentals and other businesses. He did not provide tax returns and included an itemized list of expenses that included clearly illegitimate expenses, such as his home mortgage payment and "separation" expenses, which he conceded were not business expenses. Judge Baker found that there was no evidence as to what expenses were associated with any of his business enterprises and found the witness "completely not credible," as he went to "great lengths to portray [his] income at an artificial low." Defendant did not challenge the finding that he was not credible and was largely evasive with the purpose of misleading the court and, thus, it was binding on appeal.

The appellate court also did not find that the trial court failed to provide a rationale as to why the trial court did not deduct the expenses. Instead, the appellate court found that the trial court provided a rationale for not factoring Defendant's evidence of a pest control expense into the calculation of his gross income because the court found his evidence not to be credible. The court did not require rationale for declining to consider evidence of the mortgage-interest expenses because Defendant offered no evidence of the same.

Finally, the appellate court held that the trial court did not err in failing to deduct temporary child support and equitable distribution payments from Defendant's gross monthly income, holding that the child support guidelines do not permit deductions for temporary child support payments or equitable distribution payments from a party's monthly gross income.

Bishop v. Bishop, 380 N.C. 458, 868 S.E.2d 850 (2022) (Wake County)

The North Carolina Supreme Court issued a per curiam opinion affirming the decision made in the Court of Appeals, 275 N.C. App. 457 (2020).

Mother filed a motion to modify child support from an initial order entered in 2012. In 2018, Judge Worley entered an order increasing father's child support and changing the parties' respective percentages of the responsibility for unreimbursed medical expenses. Father moved for a new trial and other relief, but the trial court denied father's motions, and he appealed the 2018 order and the order denying his post-trial motions. The Court of Appeals held that father had a significant increase in income since the issuance of the initial child support order in 2012, and the trial court did not abuse its discretion in determining that child support modification was appropriate.

The trial court's findings focused on the disparity in the parties' estates, among other factors in N.C. Gen. Stat. 50-13.4(c). Judge Berger filed a dissenting opinion because

the child support order was more than 100% of the minor child's reasonable needs and believed that the matter should be remanded for entry of an order limiting dad's child support obligation to the minor child's reasonable needs.

Wadsworth v. Wadsworth, 281 N.C. App. 201, 868 S.E.2d 636 (Johnston County)

The Court of Appeals affirmed findings in an order for child support and alimony but vacated provisions of the order requiring life insurance payments to secure husband's support obligations and attorney's fees to wife for equitable distribution.

The parties were married on July 28, 2001. The husband had one child at the time of the marriage, and the parties had three children together during the marriage.

The marriage unraveled further when the wife discovered that the husband had had two children with a different woman during their marriage and had been sending child support payments to her. In 2011, the husband began traveling frequently. He claimed that the trips were work related, but bank statements showed that the destinations were places like Daytona Beach, San Juan, and Myrtle Beach.

On December 13, 2017, the wife filed an action for child support, alimony, and attorney's fees. The trial court entered an order for all three to be paid to the wife. The husband appealed.

Husband first argued that several of the trial court's findings of facts were not supported by sufficient evidence. The Court of Appeals disagreed and held that there was sufficient evidence to support the challenged findings of fact.

Next, the father argued that there was no North Carolina statute that authorizes a trial court to require a spouse to maintain a life insurance policy to secure alimony and child support obligations. The Court of Appeals agreed and vacated this part of the order.

Finally, the father argued that the trial court awarded attorney's fees to Plaintiff for her claim of equitable distribution, which is not allowed under North Carolina statutes. The Court of Appeals agreed and held that ordering attorney's fees for an equitable distribution action was improper. The Court of Appeals vacated and remanded this part of the order for a finding of attorney's fees unrelated to the equitable distribution claim.

Brady v. Brady, 2022-NCCOA-200, 871 S.E.2d 565 (Mecklenburg County)

The Court of Appeals vacated and remanded an alimony award for further findings of fact and conclusions of law.
The parties were married on April 26, 1997, separated on June 11, 2017, and divorced on September 26, 2018. During the marriage, they had four children together.

Following their separation, the Plaintiff-wife filed claims for equitable distribution, child custody, child support, postseparation support, alimony, and attorney's fees. A consent order for child custody was entered on June 4, 2019, but hearings were held on contempt, equitable distribution, child support, alimony, and limited custody issues.

Following the hearings, the trial court entered an order in May 2020 that distributed 54% of the estate to the Plaintiff, required the Defendant to make a distributive award payment to the Plaintiff, and required the Defendant to pay alimony and child support to Plaintiff. Defendant appealed.

Defendant first argued on appeal that the trial court erred in setting the amount and duration of alimony. The Court of Appeals agreed that the finding of fact that stated Defendant's net income exceeded his reasonable needs was not adequately supported by the evidence. For this reason, the Court of Appeals vacated the alimony order and remanded for further findings of fact relating to Defendant's income.

Second, Defendant argued on appeal that the trial court erred in its distribution of marital bank accounts, in requiring a distributive award, and in unequally dividing the marital estate. The Court of Appeals found no such abuse of discretion. The distributive award was supported by sufficient findings of fact. Similarly, the distribution of certain bank accounts as personal property rather than as part of the value of Defendant's dental practice was adequately supported by the testimony of Plaintiff's expert, who had valued the dental practice. Finally, the trial court has discretion over the weight given to factors in N.C. Gen. Stat. § 50-20(c), and it did not abuse this discretion by awarding Plaintiff 54% of the marital estate.

ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION

Sprinkle v. Johnson, 278 N.C. App. 684, 863 S.E.2d 627 (2021) (Rowan County)

The Court of Appeals vacated and remanded a judgment against the Defendant for alienation of affection and criminal conversation when Defendant did not have proper notice of the trial, which violated his rights to due process.

Plaintiff's wife and the Defendant were coworkers and had an affair. Plaintiff learned of the affair when a photograph showing sexual conduct between Plaintiff's wife and the Defendant came to light. In March 2018, Plaintiff sued Defendant for alienation of affection and criminal conversation.

The parties entered court-ordered mediation in January 2019. While the mediator told the trial court that the matter had been settled, there was no indication as to the terms of the agreement. Defendant's attorney withdrew from the case in April 2019, and the Defendant was notified of the withdrawal by mail to an address on Beaten Path Road. Defendant was also later served with a notice of hearing at this same address.

Neither the Defendant nor his counsel appeared at trial. A jury rendered a verdict against the Defendant in the amount of $2,294,000. Defendant later learned of the verdict through a reporter, and he filed a Rule 59/60 motion requesting a new trial.

Defendant had moved from the Beaten Path Road address and could no longer receive mail there, so the Court of Appeals found that he did not receive requisite notice of the trial in violation of his Due Process rights under the Fourteenth Amendment. The Court of Appeals held that Defendant never received notice of his counsel's motion to withdraw, the pre-trial order, or notice of the trial. Due to this lack of notice, the Court of Appeals vacated and remanded the trial court's judgment, granting Defendant a new trial.

The appellate court relied on Rule 2 of the Appellate Rules of Procedure to permit appellate review. Rule 2 allows the court to "suspend or vary the requirements or provisions of any of [the rules]" sua sponte or upon the motion of a party, "[t]o prevent manifest injustice to a party, or to expedite a decision in the public interest." Considering the manifest necessity of due process, the Court invoked Rule 2 to permit review.

Clark v. Clark, 280 N.C. App. 403, 867 S.E.2d 704 (2021) (Cumberland County)

The Court of Appeals affirmed an order denying the Defendant's motion for JNOV after a jury found Defendant liable for intentional infliction of emotional distress and alienation of affection.

Plaintiff and her husband were married on April 3, 2010. In spring 2016, Plaintiff's husband met the Defendant while training for the Army. The two became close during the trip and spent time alone in each other's rooms. Plaintiff began to notice distant behavior by her husband, as he began texting the Defendant regularly. Plaintiff later discovered sexual photographs sent between her husband and the Defendant and confronted Defendant about the messages. After a fight, Plaintiff's husband left the marital home. Despite their separation, the couple maintained an emotionally and sexually intimate relationship.

Throughout 2017, the husband maintained an intimate relationship with both the Plaintiff and the Defendant. Plaintiff sent her husband photographs of her breasts and genitalia. Defendant became pregnant with the husband's child in July 2017 via IVF. Plaintiff stopped having sexual intercourse with her husband in September 2017.

Through the online alias "Brian Bragg," the husband sent Plaintiff the topless photo with a message saying, "Saw this floating around the internet in the Fayetteville chat rooms just letting you know," and posted photographs of Plaintiff in Kik chatrooms soliciting "no strings attached sex."

Plaintiff sued both her husband and the Defendant in August 2018 for libel per se, intentional and negligent infliction of emotional distress, and violation of N.C. Gen. Stat. 14-190.5A, a statute providing criminal sanctions for "revenge porn." Plaintiff also sued the Defendant for alienation of affection and criminal conversation.

At the jury trial, Derek Ellington gave testimony to demonstrate that Plaintiff had only sent the topless photo of herself to her husband. The jury found the Defendant liable for alienation of affection and intentional infliction of emotional distress and awarded $1.2 million in damages. Defendant filed a motion for JNOV, which was denied, and Defendant appealed both the judgment and the order denying her post-trial motion.

First, Defendant argued that the trial court erred by admitting Ellington's testimony when he was not qualified as an expert witness. The Court of Appeals disagreed with this argument, holding that Ellington's testimony was not pivotal in determining whether the husband and Defendant posted the Plaintiff's topless photos on the internet and that his testimony related to what he experienced when making a digital copy of Plaintiff's electronic devices. Therefore, the trial court did not err in allowing him to testify.

Defendant contended that the trial court erred in permitting Plaintiff to pursue her claim for IIED when the conduct was subsumed by the other causes of action. However, Defendant did not raise the defense of election of remedies at trial or in her post-trial motion so she could not raise the issue on appeal.

Defendant made numerous arguments that the trial court erred in denying her motion for JNOV. However, taking the evidence in the light most favorable to Plaintiff, the Court of Appeals held there was more than a scintilla of evidence she suffered severe emotional distress as a result of Defendant's conduct, more than a scintilla of evidence to find a causal link between the complained of conduct and Plaintiff's emotional distress, more than a scintilla of evidence of extreme and outrageous behavior, and more than a scintilla of evidence regarding the malicious or wrongful alienation of affection. The Court of Appeals also held that the trial court did not err in denying Defendant's motion for JNOV regarding damages because there is no requirement of pre-separation sexual intercourse to recover punitive damages for IIED. Therefore, the trial court order was affirmed.

EQUITABLE DISTRIBUTION

Bradford v. Bradford, 279 N.C. App. 109, 864 S.E.2d 783 (2021) (Yancey County)

The Court of Appeals affirmed the dismissal of a motion in the cause for equitable distribution in a lawsuit where all claims had been fully resolved or dismissed but reversed and remanded the dismissal of a motion in the cause for equitable distribution that was filed a few hours before the entry of an absolute divorce judgment.

The parties were married in 2011 and had one child together in 2015. They separated on September 26, 2018. One day later, on September 27, 2018, husband filed a complaint for *ex parte* temporary and permanent custody, and the trial court awarded him sole legal and physical custody of the child. On October 22, 2018, wife filed an answer and counterclaims.

Wife voluntarily dismissed all claims other than her claim for equitable distribution with prejudice on October 1, 2019. Wife eventually dismissed her counterclaim for equitable distribution in the 2018 lawsuit without prejudice in December 2019.

Husband then filed a separate lawsuit for absolute divorce on October 11, 2019.

On January 27, 2020, wife filed motions in the cause for equitable distribution in both the 2018 and 2019 lawsuits, and two hours later, the court entered an absolute divorce judgment in the 2019 action. Husband filed motions to dismiss wife's motions for equitable distribution in both lawsuits. The trial court granted husband's motions to dismiss, and wife appealed.

The Court of Appeals held that the trial court did not err in allowing husband's motion to dismiss wife's motion for ED in the 2018 action after all claims had been fully resolved or dismissed by the parties. The effect of wife's voluntary dismissal without prejudice under Rule 41(a)(1) in the 2018 lawsuit terminated the action.

However, the trial court erred in dismissing wife's motion for equitable distribution in the 2019 lawsuit because she asserted her claim prior to the entry of absolute divorce, if only by a couple hours.

The Court of Appeals also held that wife was not required to assert her claim for ED in a particular pleading. N.C. Gen. Stat. 50-20 and 50-21 do not limit the mechanism for "asserting" an ED claim to a particular form. It can be by complaint, counterclaim, or a motion in the cause.

Therefore, the dismissal of the equitable distribution motion in the 2018 lawsuit was affirmed, while the dismissal of the equitable distribution motion in the 2019 lawsuit was reversed and remanded to the trial court.

Poythress v. Poythress, 280 N.C. App. 193, 865 S.E.2d 892 (2021) (Wake County)

On reconsideration, the Court of Appeals affirmed in part, vacated in part, and remanded an equitable distribution order for further findings on whether certain property was separate property or marital property.

The parties were married in 2010. The parties signed a Premarital Agreement prior to their marriage. The parties bought several properties during their marriage and prior to their separation in 2017. The properties were titled either to wife, to husband and wife jointly, or to an entity which they jointly owned.

Husband brought this action claiming that certain assets acquired during the marriage were solely his based on the terms of the Premarital Agreement, regardless of how the assets were titled. Wife argued the assets were marital and should be divided equally pursuant to the Premarital Agreement.

The trial court determined that husband was the sole owner of the assets and required wife to execute documents to transfer her interest to husband. Wife appealed the trial court's order as to three specific assets: ownership in an LLC, a beach house, and properties in Peru.

The Court of Appeals held that the trial court erred in two respects. The trial court erred in finding that husband had provided all the consideration for acquisition of the disputed assets, and the trial court erred in finding clear, cogent, and convincing evidence that husband did not intend to gift to the marriage his separate assets used to acquire the disputed assets.

Specifically, the Court of Appeals held that wife provided consideration for the LLC's assets by personally guaranteeing a loan used to acquire an asset of the LLC and signing her tenancy by the entirety interest in said properties to the LLC.

The Premarital Agreement provided that property acquired during marriage by husband with his separate assets would be solely his upon separation. However, the Premarital Agreement also provided that the parties could make gifts to the marital estate during marriage. The Court of Appeals held that the evidence was not "clear, cogent, and convincing" to overcome the gift presumption as a matter of law. The Court of Appeals did not find clear, cogent, and convincing evidence through husband's words or actions that wife's interests would revert to him if the marriage ended in divorce.

The Court of Appeals reversed the trial court's order regarding the LLC and concluded that the LLC was owned 50/50 by husband and wife, remanded the trial court's order concerning the beach house and the Peruvian assets (titled to the parties jointly or to wife solely), and affirmed the trial court's order in all other respects. On remand, the trial court is tasked with determining whether there is "clear, cogent, and convincing" evidence, apart from the terms of the Premarital Agreement, to overcome the gift presumption.

Purvis v. Purvis, 280 N.C. App. 345, 867 S.E.2d 700 (2021) (Moore County)

As a matter of first impression, the Court of Appeals held that educational loans incurred in husband's sole name during the marriage for education provided to the adult daughter were marital debt.

The parties were married in 1998 and separated on February 25, 2017. During their marriage, the parties shared one joint bank account and took out student loans for their daughter's college education. The loan was in the husband's name only, but the wife completed and submitted the loan application and payments were made through the joint bank account.

On August 5, 2019, the wife filed a motion for summary judgment to declare that the student loans were the husband's separate property/debt. The trial court denied the motion and ruled that the student loans were marital property as a matter of law. The trial court entered an equitable distribution order on March 20, 2020, which considered the loans as marital and assigned the outstanding balance of the loans 75/25 between the husband and the wife, respectively. The wife appealed the summary judgment order (but not the final ED order).

The Court of Appeals affirmed the classification of the student loans as marital property. In North Carolina, debt is marital when it is incurred during the marriage and before the date of separation by either spouse for the joint benefit of the parties. Wife argued that the student loan debt for the daughter was not for the joint benefit of the parties.

However, the Court of Appeals disagreed with the wife's argument, holding that the daughter's formal education was something both parties wanted and benefited from, and was, therefore, properly classified as marital debt. The "joint benefit" to the parties was the fact that their daughter's tuition, books, and living expenses were covered by the loan rather than out-of-pocket expenses.

Asare v. Asare, 281 N.C. App. 217, 869 S.E.2d 6 (2022) (Wake County)

The Court of Appeals vacated and remanded a portion of an ED and alimony order relating to the classification of a Vanguard investment account.

The parties were married on March 25, 1995, and after a disputed hearing, the court found that the parties' date of separation was August 18, 2015. On February 14, 2017, the trial court entered an order for postseparation support and attorney's fees in favor of wife.

On October 21, 2019, the trial court heard the equitable distribution and alimony claims. Following the hearing, on March 25, 2020, the trial court entered an order for alimony, attorney's fees, and equitable distribution. The trial court made numerous findings of fact and, in pertinent part, determined that the entire passive increase in a Vanguard retirement account was marital property and distributed it as such. The trial court also determined that an unequal distribution of assets in favor of the wife was equitable, and that alimony should be granted to wife.

Husband appealed, arguing that the trial court erred in its alimony award and in its classification, valuation, and distribution of property in equitable distribution. The Court of Appeals held that although the passive appreciation on the *marital* portion of the Vanguard account was properly classified as marital, the passive appreciation on husband's *separate* portion of the account from before date of marriage should have been classified as his separate property. This portion of the order was vacated and remanded for entry of an order correcting the valuation and classification of this account.

The Court of Appeals also found that the unequal distribution was supported by the evidence. Here, the trial court made specific findings regarding factors set out in 50-20(c) and was therefore within its discretion to award an unequal distribution.

Finally, the Court of Appeals affirmed the trial court's ruling as to alimony, which provided wife with a lump sum alimony payment, along with monthly periodic payments. The trial court supported its rationale for this arrangement because of the potential difficultly in enforcing the periodic payments with husband living in Ghana, as well as husband's lack of credibility as to his finances and assets.

Judge Tyson issued a dissenting opinion, arguing that the error in the Vanguard calculation, among other things, required the alimony and unequal distribution order to be reversed and remanded.

Shropshire v. Shropshire, 2022-NCCOA-411 (2022) (Mecklenburg County)

The Court of Appeals held that the trial court acted within its discretion in reopening the evidence. However, the record lacked sufficient evidence regarding Plaintiff's 401k, so the case was remanded for entry of additional findings and conclusions of law.

On August 7, 2018, an equitable distribution trial was conducted. Wife appeared pro se, and neither party offered expert witnesses. On October 1, 2018, the trial court judge sent an email to the parties advising them that she would be reopening the evidence in the ED matter to obtain date of trial values for his retirement accounts. Husband filed an objection and motion to recuse. The motion to recuse was denied.

A hearing was held on May 9, 2019, and the trial court put its requests on the record and allowed the parties to be heard. At the end of the hearing, the trial court requested documentation regarding passive appreciation for Plaintiff's Fidelity 401k. On November 17, 2020, the trial court entered the Order, and Plaintiff appealed.

The issues before the Court of Appeals were 1) whether the trial court abused its discretion by reopening evidence after the close of the ED trial; 2) whether the trial court abused its discretion by requesting Plaintiff provide the date of trial value for his 401k; 3) whether findings of fact relating to Plaintiff's 401k were supported by competent evidence; 4) whether the trial court abused its discretion when it determined an equal distribution was not equitable; and 5) whether the trial court abused its discretion by ordering Plaintiff to pay a $20,000 distributive award.

On the first issue, the Court of Appeals held that the trial court did not abuse its discretion because it is well established that "the trial court has discretionary power to permit the introduction of additional evidence after a party has rested." *McCurry v. Painter, 146 N.C. App. 547, 553 (2001).* Abuse of discretion occurs when the decision to reopen evidence is not supported by reason. Here, Defendant had provided passive income value of her own retirement account, so she would be prejudiced by Plaintiff not offering the same information on his accounts. The Court of Appeals noted that the trial court was under no obligation to request the information, but it found the evidence was necessary to accurately value marital and divisible property and achieve a fair and just equitable distribution.

In addition, the Court of Appeals could not determine whether competent evidence existed to support the trial court's findings regarding the Plaintiff's 401(k) retirement plan. For these reasons, the case was remanded back to the trial court, and Plaintiff's arguments as to the unequal division and the order for Plaintiff to make a distributive award were not considered.

Foxx v. Foxx, 2022-NCCOA-223, 872 S.E.2d 369 (Catawba County)

The Court of Appeals held that, on remand, the trial court had authority to reconsider the percentage of distribution of marital property, but the trial court's amended order was vacated and remanded because the trial court failed to make sufficient findings to support modification of the equitable distribution percentages.

Plaintiff and Defendant divorced on September 15, 2016. The court entered an Equitable Distribution Order on January 4, 2018. Both parties appealed the ED Order. The Court of Appeals vacated the 2018 ED Order because the trial court's findings ignored undisputed evidence of two post-separation distributions made to Plaintiff and applied an incorrect legal standard to the classification of Defendant's workers' compensation and personal injury claims.

Subsequently, the trial court issued a Remanded Equitable Distribution Order on February 19, 2021. This order increased Plaintiff's share of the net marital estate from sixty percent to seventy-five percent and decreased Defendant's share from forty percent to twenty-five percent. Defendant appealed this 2021 Order.

Defendant argued that the trial court lacked the authority to modify the unequal distribution percentage of marital assets following the first appeal because the issue was not raised. The Court of Appeals disagreed, citing authority that allows the trial court to "recalculate portions of the order that are impacted by the findings made on remand if necessary." *Bodie v. Bodie, 239 N.C. App. 281, 284 (2015).*

Defendant also argued there were insufficient findings of fact to support the change in distribution percentages. The Court of Appeals agreed. The Court noted that although the trial court has the discretion to make the determination, the trial court must make findings on each factor where evidence was presented. In addition, a finding that § 50-20 was given due regard is insufficient as a matter of law. *Rosario v. Rosario, 139 N.C. App. 258, 261 (2000).*

Here, the trial court did not conduct further proceedings on remand before issuing the 2021 Order. Instead, the trial court used the evidence in the existing record and included a finding that a § 50-20 factor was merely considered, which is insufficient. The findings and evidence in the record did not support the modification of the distribution percentages because the evidence in the record the trial court considered between the two orders remained the same and nothing in the 2021 Order justified reweighing the percentages. Therefore, the Court of Appeals vacated the trial court's order and remanded the case again.

DVPOS

Angarita v. Edwards, 278 N.C. App. 621, 863 S.E.2d 796 (2021) (Mecklenburg County)

The Court of Appeals affirmed a permanent civil no-contact order pursuant to N.C. Gen. Stat. § 50C.

The parties are next-door neighbors. In 2020, Plaintiff filed a complaint seeking a permanent civil no-contact order against the Defendant under North Carolina General Statute section 50C following a series of threatening remarks and actions by the Defendant toward the Plaintiff and his family. At a hearing in August 2020 in which neither party was represented by counsel, the trial court granted Plaintiff the civil no-contact order and concluded that the Defendant had continuously harassed the plaintiff and that she had called the plaintiff "smelly." The Defendant was also ordered to undergo a mental health evaluation. The Defendant later requested a more legible copy of the order, and the trial court sua sponte corrected a clerical error and checked the box requiring the neighbor to cease stalking Plaintiff.

In August 2020, the Defendant filed a *pro se* appeal, alleging that the trial court had misquoted her, was hostile toward her during the hearing, made an improper amendment to the order, erred in ordering a mental health evaluation, and erred by failing to consider her motion to dismiss.

The Court of Appeals affirmed the trial court's ruling on each issue. The Court of Appeals found that (1) the trial court had permissibly paraphrased the Defendant, (2) any bias on behalf of the trial court arose from the Defendant's conduct at the trial rather than from personal bias, (3) the amendment was a permissible correction of a clerical error, and (4) the trial court acted within the broad remedies in N.C. Gen. Stat. § 50C when it required that the Defendant undergo a mental health evaluation. The Court of Appeals also held that the trial court did not err in refusing to consider Defendant's procedurally defective motion to dismiss because it was not properly served (and Defendant was free to make an oral motion to dismiss at the hearing, but she did not).

Walker-Snyder v. Snyder, 281 N.C. App. 715, 870 S.E.2d 139 (2022) (Mecklenburg County)

The Court of Appeals vacated a DVPO, as it was unsupported by competent evidence.

Plaintiff filed a motion for a protective order against Defendant, her ex-husband, on November 21, 2019. Plaintiff sought a protective order for herself and the parties'

daughter, Kristen. The motion alleged that Defendant had committed acts of violence against Plaintiff and Kristen.

On February 17, 2020, a hearing was held on the motion for a protective order. At the hearing, Kristen testified that Defendant's text messages to her made her feel anxious and upset, covering topics such as her parents' divorce litigation and the defendant's inability to pay for Kristen's college expenses. The trial court granted the motion for a protective order as to Kristen, but not as to Plaintiff, finding that Defendant's text messages placed Kristen in fear of continued harassment and inflicted emotional distress on her. Defendant appealed the order.

First, Defendant argued that the trial court lacked jurisdiction to enter the order because Kristen reached the age of majority before the order was entered, and her mother could no longer seek a protected order on her behalf. The Court of Appeals disagreed, holding that, since Plaintiff filed the action while Kristen was seventeen years old, the court retained jurisdiction over the issue after she turned eighteen.

Second, Defendant argued that the order was unsupported by competent evidence of domestic violence. The Court of Appeals agreed with this argument. The trial court found that Defendant had harassed Kristen. N.C. Gen. Stat. § 14-277.3A defines "harassment" as "knowing conduct directed at [someone] that torments, terrorizes, or terrifies [them]." However, the Court of Appeals held that there was no competent evidence to suggest that Defendant's texts had tormented, terrorized, or terrified her. Kristen's testimony only said that the messages had made her feel anxious and upset, and Kristen's responses to her father's text messages did not indicate she was in any state of fear.

Therefore, the Court of Appeals vacated the DVPO for lack of competent evidence of domestic violence.

M.E. v. T.J., 380 N.C. 539, 869 S.E.2d 624 (2022) (Wake County)

The North Carolina Supreme Court held that the exclusion of same-sex couples in dating relationships from DVPOs under N.C. Gen. Stat. § 50B was unconstitutional and reversed and remanded the dismissal of a 50B complaint arising from a same-sex dating couple.

The parties, both women, were in a dating relationship. Plaintiff ended the relationship on May 29, 2018, alleging that Defendant had become verbally and physically threatening toward her. On May 31, 2018, Plaintiff sought a DVPO pursuant to N.C. Gen. Stat. § 50B.

Plaintiff filled out the Chapter 50B forms, alleging that Defendant had become aggressive after the dating relationship ended and that she feared she was in danger of serious and

imminent injury. Plaintiff returned later that day for her hearing, and the trial court told her she could not file a Chapter 50B DVPO request, as 50B orders could not be used for dating relationships between people of the same sex. The trial judge informed her she could pursue a Chapter 50C no-contact order against the Defendant instead.

Plaintiff returned to the clerk's office and filled out a voluntary dismissal form for the 50B request. However, after learning from staff members in the clerk's office that she could request a 50B order even if the judge were to deny it, she wrote "I do not want to dismiss the action" on her voluntary dismissal form.

A hearing was held on both the 50B motion and the 50C motion on June 7, 2018. Since the 50B statute specifically references opposite-sex couples in dating relationships, the trial court dismissed the 50B motion. At trial, the judge said that there was "room for [the] argument" that 50B should apply to same-sex couples, but the trial court was not willing to hear that argument on a simple motion. The trial court granted the 50C motion, ordering Defendant not to visit, assault, molest, or otherwise interfere with Plaintiff. Plaintiff appealed the dismissal of her 50B complaint.

The majority in the Court of Appeals ruled that the same-sex or opposite-sex nature of the dating relationship shall not be a factor in the decision to grant or deny a DVPO claim under Chapter 50B. A dissenting opinion from Judge Tyson made five arguments: (1) that Plaintiff voluntarily dismissed her 50B complaint, (2) that Plaintiff did not file a post-dismissal Rule 60 motion, (3) that Plaintiff failed to argue and preserve the constitutional issue for appellate review, (4) that Plaintiff failed to join necessary parties, and (5) that Plaintiff failed to comply with Rule 3 to invoke appellate review (arguing the notice of appeal was defective because it did not have a manuscript signature of the attorney of record).

Defendant subsequently appealed to the North Carolina Supreme Court, citing many of Judge Tyson's arguments. The Supreme Court addressed each in turn.

In response to arguments (1) and (2), the Supreme Court held that Plaintiff's amendment to the voluntary dismissal form functioned as a refiling, and it would be unjust to fully dismiss this claim based on the uninformed actions of a *pro se* plaintiff. To argument (3), the Supreme Court held that Plaintiff clearly raised the constitutional issue to properly preserve the issue for appeal. To argument (4), the Supreme Court held that Defendant did not properly preserve the joinder argument, as it was first raised by the Court of Appeals dissent rather than at the hearing.

The Supreme Court affirmed the ruling by the Court of Appeals, holding that the exclusion of same-sex relationships from DVPO protection was unconstitutional, and that same-sex couples should be included under the "dating relationships" umbrella in Chapter 50B.

Justice Berger dissented on the basis that Rule 41(a) dismissals strip the court of authority to enter further orders in a case.

Jabari v. Jabari, 2022-NCCOA-379 (Wake County)

The Court of Appeals upheld a DVPO renewal, as it was supported by sufficient findings of fact and conclusions of law.

On October 10, 2019, Plaintiff-Wife filed a Motion for DVPO against Defendant-Husband. After an initial ex parte DVPO, the trial court entered a consent DVPO on October 17, 2019, which included a temporary custody addendum. As part of the consent DVPO order, the parties agreed to no findings of fact.

On April 7, 2020, Plaintiff filed to renew the DVPO because Defendant had violated the consent DVPO on multiple occasions, leading to criminal charges including felony stalking and felony intimidating a witness.

On April 17, 2020, the trial court held a hearing on Plaintiff's motion to renew the DVPO. Defendant's attorney said that Defendant would stipulate to an extension of the protective order because the parties wanted to focus on custody issues during the hearing because courts were generally closed due to the start of the COVID-19 pandemic. Defendant confirmed this stipulation during his testimony. Plaintiff testified that she continued to be afraid of Defendant and said that Defendant had been charged with multiple violations of the original DVPO. At the end of the hearing, the trial court announced it was going to enter the DVPO without "a lot of findings of fact." Neither party objected. The trial court found that "Plaintiff remains in fear of Defendant," and "both parties consent to the entry of the renewal order."

On September 15, 2020, Defendant filed a Rule 60(b) motion to declare the DVPO null and void. Defendant argued that it was null and void because the parties did not state in writing that they consented to an order without findings of fact or conclusions of law and that the trial court had no evidence to support its finding that Plaintiff remained in fear of Defendant. The trial court denied the Rule 60(b) motion, and Defendant appealed only the order denying his Rule 60(b) motion.

The Court of Appeals found that the trial court did not abuse its discretion in denying the Rule 60 motion. The Court reasoned that the initial DVPO was attached and incorporated into the DVPO renewal. Therefore, all of the information in the original DVPO was part of the renewal order. Second, the initial DVPO was signed by both parties and agreed that no findings of fact or conclusions of law would be included. In addition, Defendant stipulated in open Court that he would consent to a renewal. Thirdly, the trial court announced that it would enter the renewed DVPO without many findings of fact. Finally,

the renewed DVPO did contain the finding that "Plaintiff remains in fear of Defendant, and both parties consent to the entry of the renewal." After reviewing all of Defendant's arguments, the Appellate Court found that the trial court did not abuse its discretion in denying his Rule 60 motion. The motion to renew was filed before the original DVPO expired, and as a result, the trial court had jurisdiction to enter the renewal order, so it was not void.

CONTEMPT

Walter v. Walter, 279 N.C. App. 61, 864 S.E.2d 534 (2021) (Forsyth County)

The Court of Appeals vacated a civil contempt order where the child custody schedule was ambiguous, and the father's interpretation of the child custody order was reasonable.

The parties were married in 2000 and divorced in February 2016. The parties reached an agreement pertaining to child custody and child support, and a consent order was entered by the court. The consent order stated, in pertinent part, "[T]he father shall have summer vacation with the minor children for *at least* two non-consecutive weeks during each summer vacation period of the minor children," requiring notice before April 1 of each year of any summer vacations.

The father took the children on two separate vacations during summer 2019, spanning three total weeks. The mother filed a motion to show cause why the father should not be held in contempt. The trial court ultimately held the father in contempt for willful violation of the vacation language of the custody order. Father appealed.

The Court of Appeals found that the language stating "at least two . . . weeks" was ambiguous, and the father's understanding that he could go on vacation with the children for longer than two weeks was a reasonable conclusion based on the common understanding of "at least" to mean "no less than." Therefore, the Court of Appeals vacated the contempt order against the father and found there was no legal basis for an award of attorney fees to mother.

Blanchard v. Blanchard, 279 N.C. App. 280, 865 S.E.2d 693 (2021) (Mecklenburg County)

The Court of Appeals affirmed an order holding father in contempt for violations of a consent order regarding custody.

The parties were married in 2007 and separated on March 2, 2015. A custody order was entered on November 6, 2015, which granted primary physical custody to the mother and regular specific visitation to the father. One provision of this consent order required the custodial parent to allow fifteen minutes of telephone or FaceTime conversation between the minor children and the non-custodial parent each evening.

The mother filed a motion for contempt on January 3, 2019, alleging that the father had violated the telephone/FaceTime provision. An Order to Show Cause was entered by the court on January 10, 2019, and the show cause hearing was set for February 12, 2019. Father filed a motion to dismiss for failure to state a claim, as the mother had not specified whether the hearing would be for criminal contempt or civil contempt. The trial court, however, denied the father's motion to dismiss and entered an order finding the father in civil contempt in April 2019. The father appealed.

First, the father argued that his constitutional due process rights were violated since he was unaware if mother was proceeding under civil or criminal contempt. The Court of Appeals dismissed this argument, as mother only proceeded under civil contempt.

Second, the father argued that he was in compliance with the custody order at the time of the hearing. The Court of Appeals determined that the trial court had sufficient findings of fact to suggest that he was not in compliance. For example, the trial court found that the father had blocked the mother on his phone, that sixty-four FaceTime calls by the mother had not been answered on the minor children's iPad, and that the father turned off the children's iPad each evening.

The father also argued that the purge conditions were vague and improperly modified the custody order. The Court of Appeals disagreed with both arguments, holding that the purge conditions, requiring that the father unblock the mother and set the children up with FaceTime, were appropriate for the situation and did not modify the custody order. The Court of Appeals, therefore, affirmed the order.

Guilford Cty. v. Mabe, 279 N.C. App. 561, 866 S.E.2d 305 (2021) (Guilford County)

The Court of Appeals reversed and remanded an order for paternity testing prior to a hearing on an order to show cause, as the father failed to demonstrate any legal basis for requesting paternity testing since the trial court previously adjudicated paternity in 2015.

The Guilford County Child Support Enforcement Agency filed a complaint on behalf of the mother against the father of a minor child on July 3, 2014. The father did not respond to the complaint. On November 24, 2015, the trial court entered a default judgment against the father establishing child support. The order included a finding and conclusion of law

that the Defendant was the father of the child and decreed that "[p]aternity is established between the Defendant and child." Father did not appeal the child support order.

In February 2016, the Guilford County Child Support Enforcement Agency filed a motion for order to show cause for the father's failure to pay child support. On February 25, 2016, the trial court entered a show cause order. At least three show cause orders were entered.

The father filed a motion requesting that the court recall the order for arrest and to require a paternity test. The trial court recalled the Defendant's order for arrest and allowed a continuance of the show cause hearing to allow the father to take a paternity test. The Guilford County Child Support Enforcement Agency appealed, arguing that paternity had already been established in 2015.

The Court of Appeals ruled that this appeal was interlocutory, which requires the appellant to point to some substantial right making the interlocutory appeal necessary. First, the Court of Appeals ruled that the finality of a paternity adjudication by a prior court order demonstrates a substantial right that would be adversely affected if review were delayed, so it did not dismiss the appeal.

With regard to the request for a paternity test, the Court of Appeals ruled that the Defendant was required, under N.C. Gen. Stat. § 49-14(h), to show fraud, duress, mutual mistake, or excusable neglect when filing a motion to set aside an order of paternity. The father did not include these requisite allegations in his motion. N.C. Gen. Stat. § 49-14(h) would not be applicable if the child was born of the marriage, however, the record did not establish whether the child was born of the marriage or born out of wedlock. Regardless, the Court found his motion for modification was not a "proper motion" under N.C. Gen. Stat. § 49-14(h). The trial court's order for a paternity test, therefore, was reversed and remanded by the Court of Appeals, and the trial court was permitted to schedule a new hearing date for the Order to Show Cause.

Hirschler v. Hirschler, 281 N.C. App. 30, 868 S.E.2d 619 (2021) (Mecklenburg County)

The Court of Appeals dismissed a civil contempt order as moot but recognized that a court could not *sua sponte* order civil contempt after conducting a hearing only on criminal contempt.

The mother filed a motion for criminal contempt of court against the father for violation of the custody order. The criminal contempt hearing was held on September 15, 2020, and the attorneys confirmed at the start of the hearing that it was for criminal contempt.

The trial court ordered *sua sponte* that the Defendant be held in civil contempt. The Defendant appealed this order, arguing that the trial court erred in ruling *sua sponte* that the Defendant be held in civil contempt when the hearing was on a motion for criminal contempt.

The Court of Appeals agreed with the Defendant's argument, holding that a trial court may not *sua sponte* order civil contempt during a criminal contempt hearing. The Defendant was given notice of a hearing on criminal contempt and prepared for the hearing under that assumption. The Court of Appeals ruled that civil contempt and criminal contempt were two entirely separate forms of contempt, and the judge cannot decide to switch between them *sua sponte*.

The case, however, was rendered moot, as the minor child at issue had reached the age of majority by the time the appeal reached the Court of Appeals.

Bossian v. Bossian, 2022-NCCOA-443 (Wake County)

The Court of Appeals affirmed the trial court's orders finding the Defendant in civil contempt, ordering his arrest, denying his Rule 59 motion, and granting the Plaintiff's Rule 60 motion.

On February 12, 2015, Judge Christian entered an Order for Permanent Child Custody and Permanent Child Support. The 2015 Order granted Plaintiff primary physical custody of the children and Defendant secondary physical custody with visitation during the children's Spring Break and two weeks during the summer, as Defendant lived in Rhode Island, where he is a practicing attorney. The 2015 Order also ordered Defendant to pay Plaintiff $1,225.87 in child support each month until the order was modified or child support was terminated pursuant to North Carolina law.

On March 11, 2020, Plaintiff filed a Motion for Order to Show Cause and, in the alternative, a Motion for Contempt for Defendant's failure to pay child support, unreimbursed medical expenses, and a distributive award payment owed to Plaintiff from the parties' equitable distribution settlement. On May 1, 2020, the trial court entered an Order to Appear and Show Cause against Defendant and set the show cause hearing for August 25, 2020.

On August 11, 2020, Defendant, through counsel on a limited appearance, filed a Motion to Continue the show cause hearing. On the same day, Defendant also filed (*pro se*) a "Motion to Dismiss or Discontinue Plaintiff's Complaint." At calendar call held via WebEx on August 25, 2020, Judge Worley denied Defendant's Motion to Continue and set the case for live hearing that afternoon in front of Judge Dunston "with the understanding that Defendant would be physically present for the live hearing." When the matter was called for hearing, Plaintiff and her attorney were present in the courtroom, and Defendant appeared remotely via WebEx. The trial court found that Defendant

"intentionally chose not to appear in-person for the hearing; although he continuously stated that he wanted an in-person hearing." Judge Dunston found that the court "could have issued an Order for Arrest for Defendant for failing to appear; however, elected to allow Defendant to testify from Rhode Island via WebEx to prevent an Order for Arrest."

Defendant's primary argument was that the parties modified their 2015 custody and child support order when the parties youngest child moved to Rhode Island to live with Defendant from 2016-2018. The "Consent modification of custody agreement" that Defendant referenced was not part of the Record nor part of the underlying court file. The record also did not contain any document purporting to modify the terms of the parties' underlying child support order.

At the show cause hearing on August 25, 2020, Defendant was found in contempt by Judge Dunston for willfully violating prior orders of the Court by failing to make any child support payments to Plaintiff since January 2016. Judge Dunston's Order for Civil Contempt and Attorney's Fees was entered September 18, 2020. Defendant did not give notice of appeal from the 2020 Contempt Order.

In the 2020 Contempt Order, the trial court recognized that even though the 2015 Order was never modified, and no motion to modify custody or child support was filed after the 2015 Order was entered, Plaintiff and Defendant agreed for one of the minor children, Justin, to reside with Defendant in Rhode Island from July 2016 through June 2018. Therefore, the trial court—while recognizing that it could not retroactively modify the permanent child support terms in the 2015 Order—ultimately set a lower purge amount than the total child support arrears owed to Plaintiff based upon an equitable calculation of the lesser amount Defendant would owe Plaintiff if child support had been modified.

The 2020 Contempt Order made detailed findings of fact regarding Defendant's adequate notice of the show cause hearing and his attempts to avoid service. The trial court found that Plaintiff attempted to serve Defendant via several means, including through Deputy Alan Whitton with the Rhode Island Sheriff's Department who certified on the Return of Service that he "spoke to Defendant several times on phone. Will not meet. Defendant avoiding service." The trial court also found that Defendant made multiple general appearances in the matter, including but not limited to, sending an email to Judge Worley on July 14, 2020; appearing via WebEx for his advisement hearing on July 23, 2020; and filing various motions to dismiss/discontinue and continue prior to the show cause hearing.

The 2020 Contempt Order provided that if Defendant failed to meet the purge conditions, "he shall be taken into custody at 12:00 p.m. on November 2, 2020 and shall remain there until he purges himself of contempt by paying $33,198.52," and if he has not met his purge conditions by that date, "an order for arrest shall be issued. No further notice will be provided as Defendant was advised in open court that he is in contempt."

On September 25, 2020, Plaintiff filed a Motion for Relief (Rule 60 Motion) to correct clerical errors in the 2020 Contempt Order. Thereafter, Defendant filed a *pro se* Rule 59 Motion for Relief.

On April 29, 2021, Judge Stevens presided over the hearing on the parties' respective Rule 59 and Rule 60 Motions. At the conclusion of the hearing, Judge Stevens used a form titled "Order for Civil Contempt" to arrest Defendant for his continued contempt of the 2020 Contempt Order. Judge Stevens also entered written orders granting Plaintiff's Rule 60 Motion and denying Defendant's Rule 59 Motion. The Arrest Order and the respective orders granting Plaintiff's Rule 60 Motion and denying Defendant's Rule 59 Motion were the only orders subject to the appeal.

Defendant raised several issues on appeal. Defendant first argued that the trial court erred in holding him in contempt for violating the Contempt Order because he had no notice. The Appellate Court held that the trial court did not err because Defendant was given proper notice when he was held in contempt at the August 25, 2020, hearing. Defendant's second argument was that he was not in willful violation of the Contempt Order because the order contained errors. However, Defendant did not file a motion to stay the Contempt Order pending a hearing on his Rule 59 motion, and his compliance with the Contempt Order was mandatory, not optional. Pending motions did not relieve Defendant of his obligation to comply with it. Defendant's refusal to pay any amount of owed arrears was a clear indication of his "stubborn resistance" to the trial court's orders.

Thirdly, Defendant argued that the trial court erred in denying his Rule 59 motion as the evidence demonstrated that Defendant's nonpayment of child support was not willful because the parties had modified their custody agreement. Again, the Appellate Court disagreed. The Court stated that a parent possesses "no authority to unilaterally modify the amount of court-ordered child support payment." Since no modification of the 2015 Custody Order was ever sought, and Defendant failed to comply with the support terms of the 2015 order, his failure to pay was "willful, knowing and stubbornly resistant."

Lastly, Defendant argued that Plaintiff's Rule 60 motion should have been denied because the trial court's error was more than a mere "clerical error." The Appellate Court disagreed, holding that it was clear that the trial court simply miscalculated the number of months the youngest son lived in Rhode Island with his father.

PROCEDURE

Hull v. Brown, 279 N.C. App. 570, 866 S.E.2d 485 (2021) (Iredell County)

The Court of Appeals dismissed Defendant's appeal in an AA/CC matter as interlocutory, as not all matters had been fully resolved pursuant to North Carolina Rule of Civil Procedure 42.

Plaintiff filed a lawsuit against the Defendant for alienation of affection, criminal conversation, NIED, and IIED. Defendant filed a motion to dismiss and a request for transfer to the superior court for determination by a three-judge panel, pursuant to North Carolina Rule of Civil Procedure 42. The trial judge denied Defendant's transfer request and his motion to dismiss. Defendant appealed from this denial.

The Court of Appeals held that the trial court's order denying the transfer to the three-judge panel and denying the motion to dismiss did not affect a substantial right of the paramour, so the appeal was dismissed as interlocutory. Nothing prevents Defendant from raising his constitutionality claims before a three-judge panel after all other issues in the case are resolved.

Shebalin v. Shebalin, 2022-NCCOA-410 (Durham County)

The Court of Appeals held that the trial court's order for the appointment of a parenting coordinator was interlocutory and thus not immediately appealable and held that sanctions against the father and his attorney were warranted.

Plaintiff and Defendant were married in May 2010 and divorced in March 2016. There was a child born on September 15, 2013. Defendant filed a Motion for a Parenting Coordinator Appointment on September 23, 2019. Plaintiff filed a Reply and Motion to Dismiss. The matter was heard on July 16, 2020, and the trial court entered an "Order for Appointment of Parenting Coordinator." On September 29, 2020, Plaintiff filed a notice of appeal of this order.

On February 3, 2021, the trial court commenced a hearing via WebEx to appoint a parent coordinator following the 2020 order. Plaintiff's counsel objected to the WebEx hearing and the appointment of the parenting coordinator, stating that the order had been appealed and, therefore, the trial court did not have jurisdiction to proceed with the appointment of the parenting coordinator.

The trial court honored Plaintiff's objection to the WebEx hearing and continued the hearing until March 18, 2021. At this hearing, Plaintiff's counsel again contended the trial

court lost jurisdiction to proceed because of the pending appeal, and Defendant's counsel contended the appeal was interlocutory, allowing the trial court's jurisdiction to continue. The trial court appointed a new parenting coordinator for a term of one year.

The Court of Appeals held that the appeal was patently interlocutory because the 2020 order decreed that the appointment of a parenting coordinator was just and necessary but said appointment would occur via another order at a later date. The 2020 order did not dispose of the case.

The Court of Appeals then implemented sanctions against the Plaintiff and his counsel. Plaintiff repeatedly and baselessly asserted that the 2020 Order was a final order, despite its interlocutory nature being apparent on its face and multiple admonitions from opposing counsel on the interlocutory nature.

Preston v. Preston, 2022-NCCOA-207, 872 S.E.2d 141 (Mecklenburg County)

The Court of Appeals dismissed Defendant's appeal as interlocutory.

Plaintiff filed a complaint for absolute divorce in October 2018. Defendant filed an answer and motions to dismiss for lack of subject matter jurisdiction and venue. On January 15, 2020, a hearing on the motion to dismiss was conducted. At the motion to dismiss hearing, the trial court indicated that Defendant argued "profusely" that the court lacked jurisdiction because Plaintiff was not a citizen or resident of Mecklenburg County. However, the trial court found jurisdiction was proper, and that Plaintiff was, in fact, a North Carolina resident.

One day before the motion to dismiss hearing, Defendant verified a complaint for PSS, alimony, ED, and attorney's fees that indicated Plaintiff was a resident of North Carolina and that jurisdiction was proper.

Plaintiff then filed a motion for sanctions and attorney's fees under Rule 11. On September 1, 2020, the trial court issued a written order granting Plaintiff's request for sanctions and ordered Defendant to pay Plaintiff $15,000 in attorney fees, to be remitted in monthly increments of $3,000. Defendant filed an appeal.

The Court of Appeals held that Defendant's appeal was interlocutory because it was made during the pendency of an action. Even though an order for a party to pay a "significant amount of money" may be appealed immediately if it affects a substantial right, the burden falls on the appellant to establish that a substantial right will be affected unless he is allowed an immediate appeal from an interlocutory order.

The Court of Appeals then distinguished this case from *Beasley*, where attorney's fees were awarded in an action for custody and child support pursuant to N.C. Gen. Stat. §50-

16.4. Here, attorney fees were imposed through Rule 11 sanctions to address and deter Defendant's conduct. Defendant's argument that she is a dependent spouse is insufficient to support the contention that she has a substantial right to be heard by the Court of Appeals. Therefore, Defendant's appeal was dismissed as interlocutory.

MISCELLANEOUS

Medina v. Medina, 281 N.C. App. 690, 870 S.E.2d 253 (2022) (Mecklenburg County)

The Court of Appeals affirmed an Amended Order Appointing a Parenting Coordinator, holding that the trial court had good cause to amend its original order under N.C. Gen. Stat. § 50-99.

The parties were married on December 17, 1999, and subsequently separated on November 27, 2014.

Following years of litigation over issues such as the children's religion, residence, and extra-curricular activities, the parties reached an agreement in 2018 that required, in part, that the parties would appoint a parenting coordinator. The parties could not decide on a parenting coordinator, so the Plaintiff-Father filed a motion for contempt and attorney's fees against the Defendant-Mother, and a motion to appoint a parenting coordinator. In response to these motions, the Defendant filed motions for contempt, a temporary parenting arrangement, and to modify custody. The On November 2, 2018, the trial court granted the Plaintiff's motion to appoint a parenting coordinator but did not include information about which issues the parenting coordinator was to address.

Shortly thereafter, the trial court made note of several factual misstatements in the order and alerted the parties that it intended to file a *sua sponte* Rule 60(b)(1) order to amend the factual and legal errors. A new hearing was held on the Rule 60(b)(1) order in February 2020. The trial court proceeded by entering an Amended Parenting Coordinator Order, establishing the scope and authority of the parenting coordinator in more detail. Plaintiff appealed, arguing that the trial court abused its discretion by amending its original parenting coordinator order.

The Court of Appeals disagreed with the Plaintiff. Specifically, the Court of Appeals held that N.C. Gen. Stat. § 50-99 gives trial courts wide discretion over parenting coordinator orders. This statute states that "[f]or good cause shown, the court may . . . modify the parenting coordinator appointment . . . by the court on its own motion." The Court of Appeals ruled that lack of reasonable progress toward the appointment of a parenting coordinator was sufficient to establish good cause under this statute. Additionally, the fact that the original parenting coordinator order did not establish the issues about which

the parenting coordinator would decide was also sufficiently good cause under N.C.G.S. § 50-99.

The Court of Appeals affirmed the order of the trial court and held that it had not abused its discretion in amending the parenting coordinator order.