Family Law Case Update
Cases Decided and Legislation Enacted: June 5, 2007 through October 2, 2007

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Child Support
Cases Decided Between June 5, 2007 and October 2, 2007
Legislation Enacted 2007

Hartley v. Hartley, 645 S.E.2d 408 (N.C. App., June 19, 2007).

- Trial court erred by determining that deviation from guidelines was appropriate in case where children began receiving monthly social security payments following the death of their step-father. Court of appeals held that contributions on behalf of a third party can be considered to support deviation only after a showing that the parent is unable to provide support for the children. Dissent by Calabria.

Father requested modification of child support after children began receiving monthly social security payments due to the death of their step-father. Father alleged that the needs of the children had changed in that they no longer needed all of the support he was required to pay pursuant to the current child support order. The trial court agreed and modified his support obligation. In setting the new amount, the trial court deviated from the guidelines finding "the only reason and basis for the downward deviation from the guidelines was the social security payments received by the children due to the death of plaintiff's husband." The court of appeals reversed, holding that when payments are made directly to children by or on behalf of a nonparent third party, a trial court cannot "credit" those payments to the financial needs of the children without first finding that the parent is unable to provide support to the children,

Row v. Row, -- N.C. App. --, -- S.E.2d -- (August 21, 2007).

- North Carolina Child Support Guidelines are constitutional.
- Trial court did not err in refusing to consider evidence of needs and expenses not included in financial affidavit.
- Trial court did not err in "slightly" deviating from the guidelines

Plaintiff appealed trial court's denial of his request for modification of his support obligation and trial court's rejection of his argument that the NC Child Support Guidelines are unconstitutional. The court of appeals rejected each argument made by plaintiff regarding the constitutionality of the guidelines:

1) The guidelines do not violate the supremacy clause. Plaintiff argued that the guidelines are invalid because they fail to comply with federal regulation requiring that guidelines reflect the cost of raising children. The court of appeals held that the federal law does not preempt state law in this area and that the income shares model upon which the guidelines are based does comply with federal regulations.
2) The guidelines do not violate the equal protection clause. Court rejected argument that non-custodial parents constitute a suspect class entitled to heightened scrutiny.
3) The guidelines do not violate plaintiff's procedural or substantive due process rights. There was no procedural issue because the child support statutes give parents ample opportunity to be heard on issues relating to support. There is no substantive issue because the state has a compelling interest in caring for children and the statute authorizing guidelines is narrowly drawn in that it allows parents to request deviation

> when application of the guidelines would not meet or would be in excess of the needs of the children.

Plaintiff also argued that the trial court miscalculated his liabilities and expenses by failing to consider evidence offered by his expert witness. The court of appeals held that "upon signing his affidavit, plaintiff swore to the truthfulness and completeness of the Financial Affidavit. The affidavits were competent evidence on which the court was allowed to rely in determining the cost of raising the parties' children."

Finally, the court of appeals rejected plaintiff's argument that the trial court abused its discretion by deviating "insignificantly" from the guidelines. The court held that the trial court order contained findings as to the needs of the children and the financial circumstances of the parties and was therefore sufficient to support the deviation. Deviation award will not be disturbed on appeal absent a showing that the deviation is "manifestly unsupported by reason."

Legislation

Enforcement Fee for Non-TANF Families

S.L. 2007-469 *"Authorizing the Department of Health and Human Services to Implement a Federally Required Mandatory Fee for Successful Child Support Collection for Families That Have Never Received TANF"*

Effective August 28, 2007, amends GS 110-130.1(a) to authorize the state to impose an annual fee of $25 for each case in which IV-D services collect support in excess of $500 for a family that has never received TANF. The agency cannot retain the fee from the first $500 collected for the family. Amounts retained must be used to support the on-going operation of the IV-D program.

Domestic Violence
Cases Decided Between June 5, 2007 and October 2, 2007
Legislation Enacted 2007

State v. Byrd, 649 S.E.2d 444 (N.C. App., September 4, 2007).

- Temporary Restraining Order and Injunction entered pursuant to Rule 65 of the North Carolina Rules of Civil Procedure was a valid domestic violence protective order entered pursuant to Chapter 50B.
- TRO entered *ex parte* was a protective order entered "upon hearing."

Defendant's wife filed a civil action against defendant alleging that he physically assaulted her on several occasions and requesting a TRO and an injunction pursuant to Rule 65 of the Rules of Civil Procedure. The trial court granted the *ex parte* TRO ordering defendant to "not go about, assault, threaten, molest, harass, interfere with, or bother" wife. Before the first hearing in the civil matter, defendant was arrested for coming to wife's office with a shot gun and seriously wounding her by shooting her in the head. Defendant was charged with a number of offenses, including violation of a valid protective order entered pursuant to Chapter 50B. At the criminal trial, the jury convicted defendant of assault with a deadly weapon with intent to kill inflicting serious injury and violating a valid protective order. Based on GS 50B-4.1, defendant's sentence was enhanced due to the fact that he was convicted of a felony that occurred while he was violating a valid protective order entered pursuant to Chapter 50B. Defendant argued on appeal that the court erred in determining he was subject to a Chapter 50B protective order. Plaintiff's civil complaint made no reference to Chapter 50B nor did the civil judgment. However, the court of appeals held that a cause of action brought pursuant to 50B can be filed as a civil action or by motion in the cause in another Chapter 50 proceeding. As plaintiff's claim for the TRO was brought together with a claim for divorce from bed and board and the complaint alleged acts that fit the definition of domestic violence contained in Chapter 50B, the civil TRO was an order entered "pursuant to Chapter 50B." The court also rejected defendant's contention that the TRO was not a valid protective order because GS 50-1(c) defines a valid protective order to be one entered after hearing. Defendant argued that because the TRO was entered *ex parte*, there had been no hearing. The court of appeals disagreed, holding that a hearing takes place when a judge considers a request and reviews affidavits or supporting documents, even if only one party is present. Dissent on this issue.

Legislation

Name Change Confidentiality; Information to Victims
S.L. 2007-116 *"To Provide Greater Protection for Domestic Violence Victims as Recommended by the Joint Legislative Committee on Domestic Violence."*
Amends name change statute GS 101-2 to provide that persons participating in the address confidentiality program set out in GS Chapter 15C or persons who provide evidence that they are a victim of domestic violence, sexual assault or stalking, will not have to comply with the requirement that the name change request be published at the courthouse door. Also specifies that all records pertaining to the name change of such a person shall not be public record.

Also amends GS 50B-3(c1) to provide that the information sheet given to victims by clerks of court to inform victims of their right to apply for a concealed weapon permit must also include information about domestic violence agencies and services, sexual assault agencies and services, victim compensation services, legal aid services, and address confidentiality services.

Separation Agreements and Property Settlements
Cases Decided Between June 5, 2007 and October 2, 2007
Legislation Enacted 2007

Unpublished Decision

- Trial court did not err by finding defendant in contempt for failure to comply with terms of incorporated property settlement agreement even though agreement provided plaintiff the option of seeking alimony rather than or in addition to pursuing contempt. Agreement was not ambiguous and clearly gave plaintiff the option to request enforcement through contempt.
- Although not relevant to the outcome of this particular case, trial court correctly held that the agreement was an integrated property settlement not subject to modification even after incorporation.

Borgersrode v. Borgersrode, *unpublished,* 645 S.E.2d 903 (N.C. App., June 19, 2007).
Parties entered into a property settlement agreement wherein plaintiff was to receive 100% of defendant's military pension payments for a number of years in exchange for her waiver of support. The agreement contained a provision allowing plaintiff to pursue alimony if defendant breached provision requiring the payment of the retirement to plaintiff. The agreement also contained a general provision stating that either party could pursue specific performance of the agreement upon breach. The agreement was incorporated into the divorce judgment. Following plaintiff's remarriage, defendant stopped paying plaintiff the retirement pay. Plaintiff filed motion for contempt and trial court found defendant was willfully failing to comply with the incorporated agreement. On appeal, defendant argued that pursuant to the terms of the agreement, plaintiff was limited to the remedy of seeking alimony rather than requesting enforcement by contempt. Court of appeals held that the trial court correctly interpreted the unambiguous agreement as providing plaintiff the option of seeking contempt or seeking alimony, or both.
In addition, defendant argued that enforcement by contempt actually amounted to modification of the property settlement, which was not appropriate because the agreement was integrated. The court of appeals held that the integration issue was not relevant to the determination of this case because the trial court did not modify the agreement but instead enforced the property settlement provisions. However, the appellate court did acknowledge that when a property settlement is integrated, i.e. when support provisions are set or waived in consideration for the property settlement provisions, then the support provisions cannot later be modified by the trial court even after the agreement is incorporated.

Small v. Parker, 646 S.E.2d 658 (N.C. App., July 3, 2007).

- Trial court did not err by setting aside a consent order incorporating an agreement reached in mediation after concluding plaintiff had withdrawn her consent to entry of the order before the judge signed the order.
- Superior court did not err in transferring case to district court division after setting aside consent judgment regarding enforcement of separation agreement.

Plaintiff filed complaint in superior court seeking enforcement of a separation agreement. The case was referred to mandatory mediation wherein the parties executed a memorandum of

consent. Following execution of the agreement but before the judge signed the order incorporating the agreement into a court order, plaintiff communicated to her attorney that she no longer consented to the entry of the order. The judge signed the order and plaintiff moved to set aside the consent order. The trial court granted the motion and also transferred the matter to the district court after concluding that district court is the proper division for claims to enforce separation agreements. Defendant appealed and the court of appeals affirmed the trial court. The court held without discussion that the trial court acted within its discretion in transferring the case to district court because GS 7A-244 provides that district court is the proper division for the enforcement of agreements between spouses. In addition, the trial court correctly determined that the consent order incorporating the mediated agreement was void due to plaintiff's lack of consent at the time the judge signed the order.

Unpublished Decision

- Trial court did not err in concluding that separation agreement had been incorporated into divorce judgment even though decretal portion of judgment did not specify that the agreement was incorporated.
- Trial court did not err in considering "the *pro se* nature of this action" when determining whether the judgment appropriately incorporated the agreement.

Cordell v. Doyle (Cordell), -- N.C. App. --, -- S.E.2d -- (*unpublished,* August 7, 2007). Plaintiff filed a *pro se* complaint for divorce. The complaint alleged that the parties had settled all issues relating to custody, equitable distribution and support through a separation agreement and requested that the agreement be incorporated into the final divorce judgment. The divorce judgment contained the finding that "there are no issues of child support, custody, alimony or equitable distribution pending between the parties as they had heretofore entered into a separation agreement that they wished to be incorporated into the divorce judgment." The decretal portion of the judgment granted the absolute divorce and also granted "such other relief as the Court may deem just and proper" but made no specific mention of the agreement. When plaintiff later filed a motion for modification of the custody and visitation provisions of the agreement, defendant claimed that the agreement had not been incorporated. The trial court disagreed, finding that "in light of the *pro se* nature of this proceeding" it was reasonable to conclude that the statement "and such other relief as the court may deem just and proper" was sufficient to incorporate the agreement. Court of appeals affirmed, agreeing that it was appropriate for the trial court to consider plaintiff was acting *pro se*.

Custody
Cases Decided Between June 5, 2007 and October 2, 2007
Legislation Enacted 2007

Unpublished Decision

- Consent order entered between father and couple who had known the child only a few days was void because couple lacked standing under GS 50-13.1 to file the custody case.

Tilley v. Diamond, *unpublished,* 646 S.E.2d 865 (N.C. App., July 17, 2007).
Father was incarcerated for drug-related offenses when mother was killed in car accident. Maternal grandfather gave custody of child to plaintiffs following mother's funeral. Within a few days, plaintiffs filed suit seeking custody pursuant to GS 50-13.1 alleging father had waived his constitutional right to custody by conduct inconsistent with his protected status. Father had been released from prison by the time he was served with the complaint. He filed an answer contesting jurisdiction but before the matter could be heard, he signed a consent order giving custody to plaintiffs. A month later, he filed a motion pursuant to Rule 60(b) requesting that the consent order be set aside on jurisdictional grounds. Defendant's motion was not heard by the trial judge until more than 2 years after it was filed. The trial judge denied the motion but the court of appeals reversed. According to the court of appeals, GS 50-13.1 does not grant "strangers" standing to seek custody of a child. As standing is jurisdictional, father did not waive the defect by signing the consent order. The court held without discussion that plaintiffs were "strangers" to the child because they had met the child only days before filing the case. Interestingly, the court noted that plaintiffs could immediately file a new action for custody and allege standing based upon the relationship they have built with the child since the time the original case was filed.

Unpublished Decision

- When determining whether there has been a substantial change of circumstances, trial court probably can consider evidence of circumstances occurring after the date the motion in the cause was filed.
- Inability of parents to communicate and work together was a substantial change of circumstances affecting the welfare of the child.

Cordell v. Doyle (Cordell), -- N.C. App. --, -- S.E.2d -- (*unpublished*, August 7, 2007).
Plaintiff had custody of one child and defendant had custody of another child. At the time the settlement agreement containing the custody arrangement was incorporated, both parties lived in NC. Thereafter, defendant moved to New Jersey. Problems arose with visitation between plaintiff and the child living with defendant, and plaintiff filed a motion to modify visitation. Trial court found that the move and the lack of effective communication between the parties regarding visitation amounted to a substantial change of circumstances, and that the change affected the children in that "the children's best interest is being harmed because of the lack of contact with parents caused by the inability of the parents to work together on visitation issues." Court of appeals affirmed, holding that those findings were sufficient to show the effect of the change on the children. Court of appeals rejected defendant's argument that the trial court erred

in considering communication difficulties occurring after the motion to modify was filed. The court stated: "defendant has not cited, nor have we found any, authority that a trial court cannot consider evidence after the filing of a motion in the cause when determining whether there has been a substantial change in circumstances since the entry of the previous order."

Williams v. Walker, 648 S.E.2d 536 (N.C. App., August 21, 2007)

- North Carolina had jurisdiction to modify an Illinois guardianship order under the PKPA where Illinois court had "granted defendant leave to file visitation action in North Carolina."
- North Carolina can modify an order from another state only if that state no longer has exclusive continuing jurisdiction and NC has a basis for exercising initial determination jurisdiction.

Mother consented to award of guardianship to paternal grandparents in Illinois. Thereafter father filed another action in Illinois to establish paternity and determine visitation rights for both natural parents, and the Illinois court granted both parents visitation rights. The following year, plaintiff filed an action in North Carolina requesting modification of the Illinois order. Soon thereafter, father filed a motion in the Illinois action to enforce visitation. The Illinois court "granted defendant leave to transfer his motion to the pending case in North Carolina." The North Carolina court then entered a custody order granting plaintiff custody of the child. Paternal grandparents then filed a motion to intervene in the North Carolina case. Grandparents requested that the custody order be set aside pursuant to Rule 60(b) due to the failure of plaintiff to serve them with notice of the North Carolina proceeding and arguing that North Carolina did not have jurisdiction under the UCCJEA or the PKPA to modify the Illinois guardianship order. The trial court granted the grandparents' motion and set aside the North Carolina custody order. On appeal, the court of appeals held that grandparents had the right to intervene and were appropriately allowed to request Rule 60(b) relief. However, the court of appeals held that the trial court erred in determining that North Carolina did not have subject matter jurisdiction to modify the Illinois order. According to the court of appeals, the Illinois court clearly gave up continuing exclusive jurisdiction when the court "granted defendant leave to file visitation in North Carolina." Once Illinois gave up jurisdiction, North Carolina could exercise jurisdiction as long as it had either home state or significant connection jurisdiction. North Carolina was the home state because the child had resided in North Carolina with the mother for at least six months at the time the custody action was filed.

Legislation

Modification Due to Military Deployment
S.L. 2007-175 (H 1634). *"To Establish Custody, Visitation, Expedited Hearing and Electronic Communications Procedures When A Parent Receives Military Temporary Duty, Deployment, or Mobilization Orders."*
Adds GS 50-13.7A to provide that when a parent who has custody or joint custody with primary physical custody receives temporary duty, deployment, or mobilization orders from the military that have a material effect on the parent's ability to exercise custody responsibilities any temporary custody order during the parent's absence ends no later than 10 days after the parent returns. Authorizes a hearing for emergency custody upon return of parent under certain

circumstances. Also provides that the temporary duty and its disruption in the child's schedule cannot be considered a factor in determination of change of circumstances if a motion is filed to transfer custody from the service member. Authorizes court to delegate parent's visitation rights to family member while parent is deployed. Provides for court to hold expedited hearings in custody and visitation matters when military duties of parent will affect ability to appear at regularly scheduled hearing and allows parent to present testimony by electronic means (telephone, video teleconference, or internet) in such hearings if military duties affect ability to be present. Specifies that nothing in the new section shall alter the duty of the court to consider the best interest of the child in deciding custody or visitation matters. Effective for custody and visitation actions instituted on or after October 1, 2007.

Disclosure of Sex Offense Conviction

S.L. 2007- 462 (H 1328). *"Requiring a person convicted of a sex offense who is pursuing child custody ex parte to disclose the conviction in the pleadings*."

Amends GS 50-13.1 to require a person instituting an action for child custody ex parte to disclose any conviction of a sexually violent offense in the pleadings. Effective Oct. 1, 2007 for proceedings filed on or after that date.

Equitable Distribution
Cases Decided Between June 5, 2007 and October 2, 2007
Legislation Enacted 2007

McIntosh v. McIntosh, 646 S.E.2d 820 (N.C. App., July 17, 2007).

- Trial court did not err in denying *pro se* plaintiff's request for continuance to have more time to hire counsel.
- Consent order was not void for lack of consent where record showed plaintiff consented only because she felt she could not try the case without the assistance of a lawyer.
- Plaintiff's failure to obtain a lawyer before trial was not excusable neglect sufficient to support setting aside the consent judgment pursuant to rule 60(b).

Following several requests for continuances by both parties, an equitable distribution trial was held in January 2005. However the judgment was set aside due to problems with stipulations and a new trial was scheduled for August 2005. At the August date, plaintiff's attorney was allowed to withdraw due to plaintiff's failure to pay attorney fees. The case was continued until September 2005. At the September date, plaintiff again requested a continuance, stating she had been unable to hire counsel. The trial court denied the motion to continue. Plaintiff then agreed to a consent order after negotiating with defendant's counsel. When questioned by the court before the consent judgment was entered, plaintiff stated she was not happy with the consent order but was concerned that her claim would be dismissed altogether if she tried to proceed without counsel. Plaintiff thereafter filed a motion to set aside the consent judgment pursuant to Rule 60(b), arguing she did not actually consent but felt "duress and pressure applied by the trial court due to her lack of counsel." The trial court denied her motion and the court of appeals affirmed. The court of appeals held the trial court did not abuse its discretion in refusing to grant the continuance. According to the court, plaintiff had been given appropriate opportunity to hire counsel when the trial court granted her request for a continuance at the August trial date. The court also noted that there is no constitutional right to counsel in an equitable distribution case. In addition, the trial court did not err in denying the Rule 60(b) motion. The court of appeals noted that the decision to grant or deny a Rule 60 motion is a discretionary ruling and these facts did not show an abuse of discretion. The court held that plaintiff did in fact consent to the judgment, even though she did not in fact like the judgment. The fact she had been unable to hire counsel did not amount to excusable neglect as a matter of law.

Cooke v. Cooke, 647 S.E.2d 662 (N.C. App., August 7, 2007)

- Trial court did not err in ordering plaintiff to reimburse defendant for mortgage payments made by defendant on marital residence during separation while plaintiff was residing in the residence.
- Mortgage payments made by defendant were not divisible property. Amendment to GS 50-20(b)(4)(d) to expand definition of divisible property to include decreases in marital debt applies only to payments made on marital debt after October 11, 2002, the effective date of the amendment.

Trial court entered judgment in equitable distribution case ordering defendant to reimburse plaintiff $10,807.65 for mortgage payments made on marital residence debt during separation.

Defendant had possession of the residence during separation. The court of appeals held that the trial court erred in classifying the payments made by defendant as divisible property. According to the court of appeals, decreases in marital debt are divisible property only if made after the effective date of the statute, October 11, 2002. As the payments in this case were made before that date, they are not divisible property. However, the court of appeals held that the trial court acted within its discretion when it determined plaintiff should reimburse defendant for all money spent on the mortgage payments. Before October 11, 2002, trial courts had discretion to order all or a portion of marital debt payments to be reimbursed by the non-paying party.

Alimony
Cases Decided Between June 5, 2007 and October 2, 2007
Legislation Enacted 2007

Phillips v. Phillips, 647 S.E.2d 481 (N.C. App., August 7, 2007).

- Trial court did not err by failing to make detailed findings regarding the financial worth or estates of the parties. Judgment was sufficient where findings showed the real property owned by both along with their personal savings accounts, and listed the major debts being paid by each.
- Trial court properly considered that condominium owned by plaintiff was actually the residence of her mother even though the mother had no formal life estate in the property.
- Trial court erred in failing to make findings regarding plaintiff's health insurance benefits and potential income from an IRA.
- Plaintiff did not admit allegations of marital misconduct in defendant's counterclaim by failing to file a reply to the counterclaim. Rule found in GS 50-10(a) that all material facts in a complaint seeking divorce are deemed denied applies to counterclaims as well.

On appeal from award of alimony to defendant, plaintiff argued that the trial court erred by failing to make detailed findings regarding the estates, assets and liabilities of both parties. The court of appeals held that the alimony statute requires only that the court assess the "relative assets and liabilities … and the relative debt services of the parties." Order was sufficient because it listed the major debts being paid by each party. Also, judgment contained sufficient findings as to the estates of both parties where it listed the real property owned by both as well as their separate savings accounts. However, the case had to be remanded to the trial court for findings regarding the health insurance benefits available to plaintiff and the potential income available to her from her IRA, as required by GS 50-16.3A(b)(4). Court of appeals rejected argument that trial court erred in considering fact that a condominium gifted to plaintiff by her mother remained the mother's primary residence. Defendant and dissent argued that because the mother did not retain a formal life estate in the property, the property should be given full value in consideration of plaintiff's estate. Majority held trial court had discretion to consider the actual use of the real property. Court of appeals also rejected defendant's argument that plaintiff admitted allegations of marital misconduct made in his counterclaim by failing to file a reply to the counterclaim. He argued that the allegations are deemed admitted pursuant to Rule 8(d) of the Rules of Civil Procedure. The court of appeals disagreed, stating "defendant overlooks NCGS 50-10(a) which states that the material facts in every complaint or counterclaim seeking divorce shall be deemed denied." [Evidently defendant's counterclaim included a request for absolute divorce, although opinion is not clear on that point].

Miscellaneous Cases and Legislation
Cases Decided Between June 5, 2007 and October 2, 2007
Legislation Enacted 2007

Brown v. Ellis, 646 S.E.2d 408 (N.C. App., July 3, 2007).

- Trial court erred in concluding North Carolina long-arm statutes allowed exercise of personal jurisdiction over California resident in case alleging alienation of affection based on conduct that occurred in the state of Washington.

Plaintiff filed this case against defendant alleging defendant alienated the affections of plaintiff's wife. Defendant filed a Rule 12(b) motion contesting personal jurisdiction, claiming he had never visited North Carolina and that none of the acts alleged in the complaint occurred within North Carolina. The trial court denied the motion to dismiss and proceeded to trial. The jury awarded plaintiff both compensatory and punitive damages. The court of appeals reversed, finding that the North Carolina long-arm statutes do not provide grounds for exercising personal jurisdiction over defendant. The only evidence of any occurrence within North Carolina was evidence that defendant and plaintiffs' wife talked on the telephone about work-related issues while the wife was present in North Carolina. However, all acts supporting the alienation of affection took place during a business trip to the state of Washington and to Vancouver, Canada.

Cotter v. Cotter, 648 S.E.2d 552 (N.C. App., August 21, 2007).

- Trial court did not err in recognizing an order from Israel pursuant to the provisions of the North Carolina Foreign Money Judgment Recognition Act found in GS 1C-1800 *et. seq*.
- While the NCFMJRA controls recognition of foreign judgments, the North Carolina Uniform Enforcement of Foreign Judgment Act, GS 1C-1700, *et. seq*., provides the procedure for seeking recognition and for enforcement of the foreign order.

Plaintiff and defendant were divorced in Tel Aviv Israel. Along with child support provisions, the Israeli order required defendant to make two $40,000 payments to plaintiff. Plaintiff filed a complaint seeking enforcement of the order in North Carolina and the trial court granted summary judgment on the issue relating to recognition of the portion of the Israeli order requiring the two $40,000 payments. The court of appeals affirmed, finding that the order is subject to recognition under the NC Foreign Money Judgment Recognition Act. As that Act does not provide the procedure for recognition, the procedures in the NC Uniform Enforcement of Foreign Judgment Act apply. Plaintiff complied with provisions where complaint seeking recognition gave appropriate notice of the order to be recognized and defendant failed to raise any ground for non-recognition. The court of appeals noted that when plaintiff is ready to enforce the recognized order, she must follow the procedures for enforcement found in the Uniform Enforcement of Foreign Judgment Act.

Wiseman Mortuary v. Hazelene Burrell and Valerie Burrell
649 S.E.2d 439 (N.C. App. , September 4, 2007).

- Trial court did not err in entering judgment declaring that respondent Valeria was the legal wife of decedent at the time of his death and therefore was entitled to possession his body for burial.
- Trial court correctly concluded that respondent Hazelene failed to rebut the presumption that service of process in a divorce proceeding was appropriate where evidence from court file showed a signed return receipt.

Mortuary filed declaratory judgment action requesting the court to determine which respondent was the spouse of decedent John Edward Burrell because both women were requesting possession of his body for burial. Trial court concluded that decedent and Hazelene were divorced by order of a Missouri court in 1969 and that respondent Valerie was John's legal spouse at the time of his death. On appeal, Hazelene argued that the trial court erred in concluding the Missouri divorce was proper because she was not served with process. First she argued that the summons contained the name "Mazelene" rather than Hazelene. The court of appeals held that "errors or defects in pleadings not affecting substantial rights are to be disregarded." According to the court, "a name merely misspelled is nevertheless the same name." In addition, the court held that Hazelene failed to rebut the presumption of valid service arising from the signed return receipt from the Missouri court file. Although she claimed the signature was not her signature, other evidence showed that the signature resembled her signature on other documents and that she had represented herself as unmarried on several occasions in the years since the divorce judgment.

Legislation

50C Civil No-Contact Orders
S.L. 2007-199 *"Act Amending Certain Definitions Under the Laws Pertaining to Civil No-Contact Orders"*
Amends GS 50C-1 to provide that only persons age 16 or older can commit an act of unlawful conduct. Therefore, effective July 8, 2007, defendants in 50C cases must be at least 16 years old. Also amends that section to specify that alleged conduct must have occurred on more than one occasion to constitute "harassing" within the meaning of this statute. That amendment also was effective July 8, 2007.

Rule 45 Subpoenas – Opportunity to Inspect Material Produced
S.L. 2007-524 *"Amending Rule 45 of the Rules of Civil Procedure to Establish an Obligation to Provide Notice to All Parties to an Action of Receipt of Material Produced in Compliance with a Subpoena, and to Provide a Reasonable Opportunity to Inspect Such Material."*
For actions filed on or after October 1, 2007, a party or attorney who is responsible for issuing a subpoena must, within 5 days after receipt of material produced in compliance with the subpoena, serve all other parties with notice of receipt of the material produced and, upon request, must provide all parties a reasonable opportunity to copy and inspect the material at the expense of the inspecting party.

Juror Challenges in Civil Cases
S.L. 2007-210 (H 244). *"To Provide for Equity Between the Parties With Respect to Juror Challenges in Civil Cases."*
Amends GS 9-20, which before amendment allowed the judge to apportion challenges among multiple defendants and to increase the number of challenges, to add the same provision for multiple plaintiffs. Allows a judge who increases the number of challenges for plaintiffs or defendants to also increase the number for the other side. Effective Oct. 1, 2007 for actions called for trial on or after that date.

Court Costs in Civil Cases
S.L. 2007-212 (H 21). *"To Clarify the Court's Discretion to Allow Court Costs".*
Amends GS 7A-305 to provide that list of costs in the statute is the complete and exclusive list of costs assessable in civil actions and the list constitutes a limit on the judge's discretion in awarding costs under GS 6-20. Also adds to the costs that are allowed to be assessed the following: fees of mediators; reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions and for the cost of deposition transcripts; and reasonable and necessary fees of expert witnesses solely for actual time spent providing testimony at trial, deposition or other proceeding. However, provides that GS 7A-305 and GS 6-20 may not be construed to limit the court's authority to award fees and expenses in connection with pretrial discovery matters as provided in Rules 26(b) or 37 of the Rules of Civil Procedure. Effective for all motions for costs filed on or after Aug. 1, 2007.

Civil Trial Exhibits
S.L. 2007-407 (S 1117). *"To provide that the presiding trial judge in civil cases has the sole discretion to determine whether jurors may take into the jury room exhibits introduced into evidence and passed to the jury in the course of the trial, photographs admitted into evidence, shown to the jury and used by any witnesses in their testimony, and any illustrative exhibit admitted into evidence and used by any witnesses in their testimony except summaries of testimony, lists made in the courtroom and such similar documents and that the consent of all parties is not necessary, and to provide that depositions may only be taken into the jury room with consent of the parties."*
Adds new GS 1-181.2 to set out when evidence in a civil jury trial may be given to the jury during deliberations. If jury requests review of evidence, court must bring jury back into the courtroom and, after notice to and opportunity to be heard by parties, may allow testimony to be read to the jury and allow the reexamination of evidence. If the jury requests to see exhibits, court may, after notice to and opportunity to be heard by parties, allow jury to have exhibits, photos and illustrative exhibits that were passed to the jury during the trial. Summaries of evidence and lists made by parties may not be sent to jury room, even if they were admitted into evidence. If parties consent, any exhibit may be taken into jury room. Court must insure evidentiary integrity when sending items to jury room. Effective Oct. 1, 2007 for trials that begin or after that date.