



# Family Law Update

Cheryl Howell

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# Child Custody

# Modification

Smith v.  
Dressler (p.2)

Conroy v.  
Conroy (p. 4)

Durbin v.  
Durbin (p. 8)

Scott v. Scott  
(p. 10)

*Smith v. Dressler* (p.2)

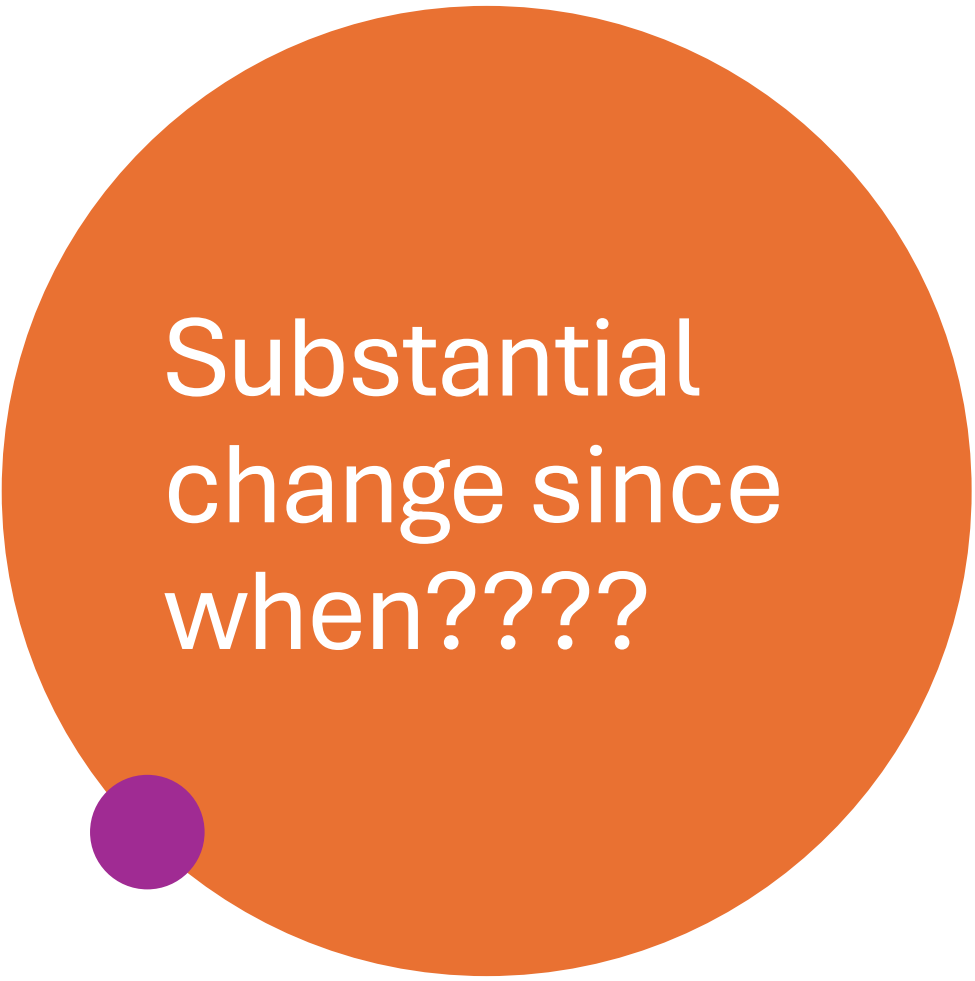
Initial custody trial

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graph TD; A[Initial custody trial] --> B[6-month delay in entry of order]; B --> C[Initial custody order]; C --> D[1 year later: Motion to modify];
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6-month delay in entry of order

Initial custody order

1 year later: Motion to modify



Substantial  
change since  
when????

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- Only consider changes AFTER entry if last order, UNLESS there were circumstances unknown to the last trial judge

# Parents' Contentious Relationship....

- *Conroy* (p. 4)
  - Inability to communicate and cooperate as parents can be a substantial change even if it is not a new problem
  - Change can be the ongoing impact on the children
- *Durbin* (p.8)
  - But you cannot presume ongoing conflict between the parents has a negative impact on children

# *Scott v. Scott*

(p.10)

- Agreement in consent order to mediate did not deprive court of jurisdiction to consider modification before parties attempted mediation
- Substantial change:
  - Inability of parents to follow schedule and to coparent as required by consent order
  - Change in child's temperament

# Third Party Custody

Evans v.  
Myers (p.5)

Linker v.  
Linker (p.6)

Maness v.  
Kornegay  
(p.6)

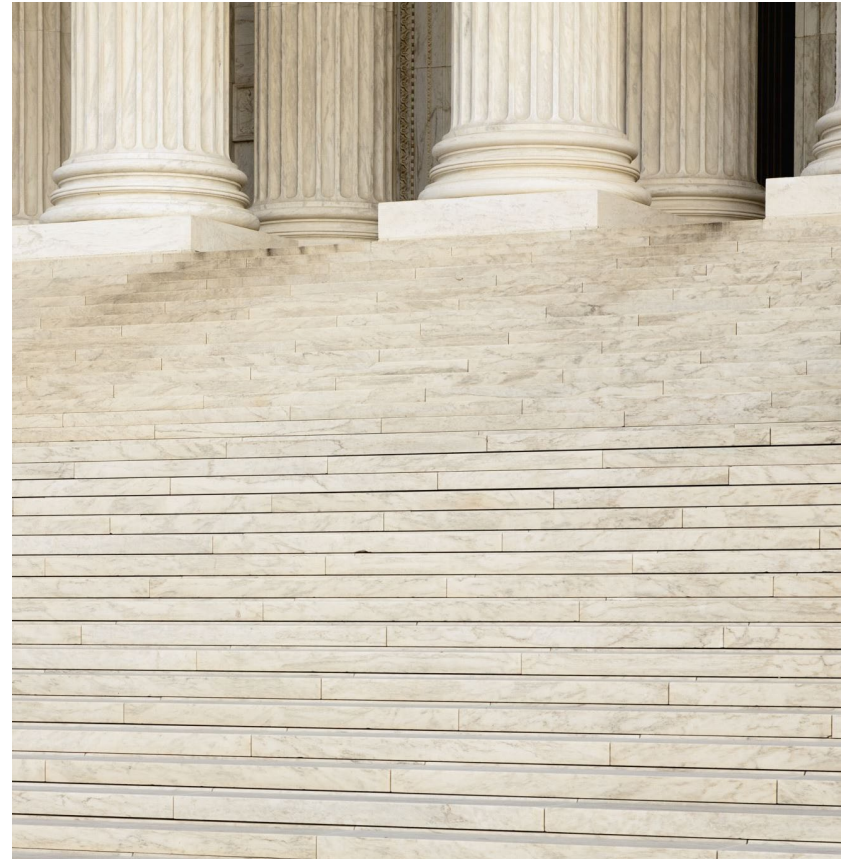
Deanes v.  
Deanes  
(p.11)



# Intervention

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- *Linker* (p.6)
  - Where grandparents filed request to intervene before death of father, court retained jurisdiction to proceed with their claim even though father died **BEFORE** the motion to intervene was granted





# Intervention

- *Deanes* (p.11)
    - Third party does not become a party until intervention is allowed
  - Court determines whether to allow intervention based ONLY on the pleading; an evidentiary hearing is not appropriate
    - Pleading must allege relationship and
    - Claim under grandparent visitation statute, or
    - Facts to support conclusion that parents have waived their constitutional right to custody
  - Discovery proceeds only AFTER intervention is allowed
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# Waiver of Parental Right to Custody

*Evans v.  
Myers* (p.5)

Failure to take child to school  
Unsafe and unsuitable home conditions

*Maness v.  
Kornegay* (p.6)

Temporary custody order or bifurcated trial???  
“Acting as a reasonable parent” when other parent is hiding child

*Deanes v.  
Deanes* (p.11)

Did parent **intend** to permanently cede parental control and responsibility and create a permanent parent-like relationship between child and nonparent?

# Child Support

*Sinclair* (p.13)

## Modification of order from another state

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- Registration is required
  - Registration of custody order does not register support provisions in same order
  - GS 52C-6-602 (to enforce); 52C-6-603 (to modify)
- Modification jurisdiction is required
  - If no one lives in issuing state, moving party must file in state where other party lives; the 'play-away' rule
  - GS 52C-6-611(a)



# Income

- *Groseclose* (p.15)
  - Girlfriend's "gifts" counted as obligor's income
  - Reduction in income is not a substantial change if there is no change in obligor's standard of living
- *Sternola v. Aljian* (p.17)
  - Imputing income is not allowed unless evidence shows obligor is suppressing income in deliberate disregard of the support obligation
  - It was error for court to take judicial notice that there were "substantial opportunities in banking and finance" in the community



## Nonparent third party

- Unless the nonparent has undertaken an obligation of support in writing, GS 50-13.4 does not allow the court to order a nonparent to pay support, even if that nonparent has custody rights

*Green v. Carter* (p.18)

\*\*GS 50-13.4 does allow for limited grandparent support when parents are minors

# Equitable Distribution



- An **interim distribution** order distributed the marital home and the mortgage debt on the home to the wife. The order stated that the value of the home and the mortgage debt would be determined at trial.
- At the ED trial, you find:
  - DOS FMV value of house: \$350,000
  - DOT FMV value of house: \$400,000 (increase due to market forces)
  - DOS mortgage: \$150,000
  - DOT mortgage: \$130,000 (decrease due to wife's payments)
- The wife claims she is entitled to a **“credit”** for mortgage payments she made during separation.
- The husband claims there is **divisible property** in the amount of \$50,000 due to the passive increase in the value of the home during separation.
- How do you “account” for the interim distribution in your final ED judgment? Is wife entitled to a “credit”? Is there divisible property?



*Johnson v. Johnson*, 230 N.C. App. 280, 750 S.E.2d 25 (2013) (when wife made post–interim distribution payments on the marital residence, which she received in the interim distribution, the payments were payments on her own personal residence—they were not made for the marital estate, were not payments on marital debt, and were not payments that benefitted husband—and did not have to be accounted for in the final equitable distribution order).]

***Lowder v. Lowder*, unpublished opinion, 893 SE2d 276 (N.C. App., Nov. 7, 2023)(p.24).** Property distributed by means of an interim distribution order becomes the sole, separate property of the party to which it was distributed; the date of distribution for purposes of the valuation of that property is the date of the interim distribution order, even if the issue of valuation is held open for resolution at a later trial date.

Any passive increase in the value of property after it is distributed pursuant to an interim distribution order is not divisible property but is the sole, separate property of the party to which it was distributed.

*Daly v. Daly*, unpublished opinion, 255 NC App 448 (2017)(same)



***But see***

- *Brackney v. Brackney*, 199 NC App 375 (2010)(language in order preserved wife's claims regarding the classification and distribution of a house).

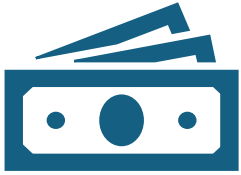
## *Wenninger* (p.26)

- Where parties stipulated that property owned by a revocable trust was marital property, the trust was a necessary party even though trial court refused to distribute the property
- Entire ED judgment was void due to the lack of a necessary party



Alimony

# *Meeker* (p. 30)



**Support payments in a contract are not “alimony” as defined in Chapter 50**



**Provisions in Chapter 50 do not apply unless contract specifies otherwise**

Statutory definition of cohabitation does not apply

GS 50-16.7(j) does not apply to allow enforcement during appeal



**Contract is enforced through breach of contract action with request for specific performance**

# *Sunshine* (p.34)

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- Income
  - When trial court deducted labor expense it deemed unreasonable from her business income, it imputed income to her
  - When trial court ignored an unusual one-time inventory expense when determining her business income, it did not impute income; it determined present actual income using the norm from past years
- Reasonable expenses
  - Must be established in light of the accustomed standard of living during the marriage rather than the current actual 'needs' of a spouse

