Civil Case Summaries: November 6, 2012–June 4, 2013

North Carolina Conference of Superior Court Judges

2013 Summer Conference

I. CIVIL PROCEDURE, JURISDICTION, & JUDICIAL AUTHORITY

Rule 9(j); reasonable expectation of qualification

Braden v. Lowe, 734 S.E.2d 591 (N.C. App. 2012), *disc. rev. denied*, 738 S.E.2d 372 (N.C. 2013). Plaintiff had a reasonable expectation her expert would qualify as an expert witness under Rule 702 as to the standard of care for post-surgical, post-autostop antibiotic treatment where the expert testified he had engaged in re-ordering intravenous antibiotics as part of his practice on a weekly basis during the year of the disputed procedure. The trial court therefore erred in dismissing her complaint pursuant to Rule 9(j).

Dismissal under 12(b)(6); contradictory attached exhibits

Highland Paving Co., Inc. v. First Bank, __ S.E.2d __ (N.C. App. May 7, 2013). Affirming dismissal under Rule 12(b)(6) of plaintiff's claims for breach of contract and unfair trade practices. The material allegations in plaintiff's complaint were contradicted by the complaint's attached (incorporated) exhibits; the exhibits thus negated the allegations, requiring dismissal.

Rule 12(c); consideration unincorporated contract permitted

Erie Ins. Exchange v. Builders Mutual Ins. Co., __ S.E.2d __ (N.C. App. May 21, 2013). In considering a motion for judgment on the pleadings under Rule 12(c), the trial court reviewed and considered the terms of the underlying contract, which had not been attached to or incorporated by reference in the complaint. The non-movant argued that the trial court was bound to a consideration only of the contents of the pleadings themselves, and thus in effect converted the matter to a summary judgment hearing without allowing defendant to present additional materials. The court of appeals affirmed the trial court's ruling. The court stated that, although 12(c) reviews are indeed confined to the pleadings, "where the trial court considers the terms of a contract that is both the subject of the action and specifically referenced in the complaint, a dispositive motion under Rule 12 is not thereby converted into a Rule 56 motion."

Interpleader; intervention

Charles Schwab & Co., Inc. v. McEntee, 739 S.E.2d 863 (N.C. App. 2013). Wife was beneficiary of husband's Schwab IRA account. Later, upon their divorce, wife agreed in the equitable distribution agreement to relinquish all rights to the account. Husband, however, never changed the beneficiary designation, and when he died several years later, wife made a claim to Schwab for the IRA proceeds. Also making a claim to the proceeds was husband's estate (through the personal representative), arguing that wife had given up her claim in the divorce. Schwab therefore filed an interpleader action pursuant to Rule 22. Wife and the estate soon thereafter reached a settlement agreement, but before it was finalized

and the interpleader action heard, the American Diabetes Association (the "Association"), a major beneficiary of the husband's estate, moved to intervene to protect its right to the estate proceeds. The trial court declined to allow intervention. The court of appeals affirmed, holding that the trial court was not required to allow intervention pursuant to Rule 24 because the estate's personal representative could adequately represent the interest of all beneficiaries in the matter, including the Association.

Rule 32; depositions at trial

Manning v. Anagnost, 739 S.E.2d 859 (N.C. App. 2013). In a medical malpractice action, the trial court allowed defendant to introduce the deposition testimony of a treating physician. On appeal, plaintiff argued that this was improper under Rule 32 because the witness did not live more than 100 miles from the trial location. The court of appeals affirmed, stating that even where a witness is located within 100 miles (in this case, the same county), a trial court may still play deposition testimony "in the interest of justice and with due regard to the importance of presenting testimony of witnesses orally in open court." In this case, the trial had progressed more rapidly than either party expected, and by the time it was necessary to call the physician, he was still out of town at a conference both parties were aware he was attending.

Rule 41(a)(1) "relation back"; negligence and professional malpractice

Williams v. Lynch, 741 S.E.2d 373 (N.C. App. 2013). Plaintiff filed a negligence claim against a realtor in connection with a real estate closing asserting negligence. She later voluntarily dismissed her complaint pursuant to Rule 41(a)(1) and refiled one day later asserting "professional malpractice." The trial court dismissed the second complaint as outside the statute of limitations. The court of appeals reversed, holding that the professional malpractice claim should have related back to the date of filing of the initial negligence claim. Although the claims were captioned differently, they were of the same substantive nature and both arose out of the realtor's alleged breach of duty to perform his professional services to plaintiff.

Summary judgment; review of deposition testimony

Timber Integrated Investments, LLC v. Welch, 737 S.E.2d 809 (N.C. App. 2013). During their opposition to a summary judgment motion, plaintiffs' attempted to put forth deposition testimony but were rebuffed by the judge, who said "[n]ow listen to me…I don' think it's…wise at all to ask…me or anybody else to go fishing through your depositions to ferret out a fact that supports some issue that's in dispute. It's your obligation to put up affidavits about what exists and what does not exist." The court of appeals reversed, citing the fact that Rule 56 motions consist of a review of "pleadings, depositions, interrogatories, and admissions of file, together with any affidavits which are before the court." The court noted that "Rule 56 gives the trial court discretion over whether to consider certain evidence when ruling on a summary judgment motion[, but] [t]hat discretion is not so broad…as to allow the trial court to flatly refuse to consider competent and potentially relevant evidence that has been offered by one of the parties."

Rule 60(b); functus officio; attorney fees on advisory opinion

Morgan v. Nash Cty, 735 S.E.2d 615 (N.C. App. 2012). Where appeal was pending and the trial court issued an advisory opinion as to how it would rule on a Rule 60(b) motion, the trial court could not award attorney fees to the party in whose favor it would rule. The trial court's Rule 60(b) opinion was merely advisory; thus there was not yet a "prevailing party" on the motion. The trial court was without jurisdiction ("functus officio") as to the matter of attorney fees.

Rule 60(b); enforcement of foreign judgment

DOCRX, Inc. v. EMI Services of NC, LLC, 738 S.E.2d 199 (N.C. App. 2013). Plaintiff attempted to enforce a foreign judgment in North Carolina. Defendant asserted that plaintiff obtained the judgment by fraud and filed a Rule 60(b) motion to that effect. The trial court determined that the foreign judgment was procured by intrinsic fraud, misrepresentation, and misconduct, and therefore denied plaintiff's motion to enforce the judgment. On appeal, the court of appeals analyzed – largely as a matter of first impression – to what extent the Full Faith and Credit Clause of the U.S. Constitution limits the use of Rule 60(b) as a defense against foreign judgments. The UEFJA statute provides that, "a [foreign] judgment…has the same effect and is subject to the same defenses as a judgment of this state[.]" The Full Faith and Credit Clause, however, limits the grounds upon which a foreign judgment can be challenged, and the court of appeals concluded that the use of Rule 60(b) against a foreign judgment is limited to the following grounds: "(1) the judgment is based upon extrinsic fraud; (2) the judgment is void; and (3) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment shall have prospective application." Thus, while it was a "thorough and reasoned" decision for the trial court to allow defendant to seek relief under Rule 60 for "intrinsic fraud," such relief was outside constitutional limitations and must be reversed.

Rule 60(b); Necessity of a hearing

Novak v. Daigle, __ S.E.2d __ (N.C. App. April 2, 2013). The trial court dismissed plaintiffs' complaint with prejudice during a "clean up" calendar session. Plaintiffs later moved under Rule 60 for relief from the dismissal citing excusable neglect and lack of notice of the hearing. Trial court hand-wrote "order is not allowed" on plaintiffs' type-written proposed order. The court of appeals reversed and remanded due to lack of findings of fact and because the judge did not hold a hearing. The court stated that, "[p]laintiffs were not even given the opportunity to present any evidence or to make an argument in support of their motion" and "it is clear that [plaintiffs have] never had the proper hearing…to which [they are] entitled."

Rule 60(b); error of law, "newly-discovered evidence"

Hodgin v. United Community Bank, 734 S.E.2d 630 (N.C. App. 2012). Reversing the trial court's grant of relief to plaintiffs under Rule 60(b). In their Rule 60 motion, plaintiffs argued that the court had erred in determining that their claims were subject to arbitration, but they had neither appealed this ruling nor made any motions pursuant to Rule 59. Thus plaintiffs were improperly allowed to use Rule 60(b) to correct an error of law and as a substitute for appeal. Further, the Rule 60 order purported to grant relief on the basis that additional material was now available to plaintiffs, but the alleged evidence was in fact available to plaintiffs during the initial proceedings. It did not, therefore, constitute "newly-discovered" evidence necessary to qualify for relief under Rule 60(b)(2).

Jury examination of evidence during deliberations

Redd v. Wilcohess, LLC, __ S.E.2d __ (N.C. App. May 21, 2013). Where jury requested review of a videotape during its deliberation over a slip-and-fall case, the trial court gave the parties' counsel sufficient opportunity to be heard before allowing the videotape to be reviewed pursuant to G.S. 1-181.2.

Costs; GAL

Stark v. Ford Motor Co., 739 S.E.2d 863 (N.C. App. 2013). Reversing the trial court's order taxing costs against minor plaintiffs' guardian ad litem who had been appointed by the clerk of superior court.

Pursuant to G.S. 6-31, in the absence of a finding of bad faith or mismanagement of the litigation, only a "party represented" may be charged with costs. Further, a guardian ad litem is not a "guardian" responsible for costs incurred by an infant plaintiff pursuant to G.S. 6-30.

Costs; assessment after dismissal of claims

Green v. Kearney, 739 S.E.2d 156 (N.C. App. 2013) (with dissent). After entry of final judgment resolving all issues in a multi-plaintiff case, the trial court assessed costs against all plaintiffs. Two plaintiffs against whom summary judgment had been issued earlier in the action appealed, arguing that they should not be responsible for costs incurred by defendants after their own claims had been disposed of. The court of appeals affirmed the award of costs against them, holding that the language of Rule 54 provides that a plaintiff is still a party to an action until final judgment is entered resolving all issues in a case.

Ve**nue; "transitory" interest in real property**

Kirkland's Stores, Inc. v. Cleveland Gastonia, LLC, 733 S.E.2d 885 (N.C. App. 2012). Plaintiff commercial tenant brought suit in Wake County against its landlord and a neighboring tenant for breach of lease and various business torts. The defendants moved for a change of venue pursuant to G.S. 1-76, which provides that venue for actions for recovery of an interest in real property is the county in which the property is situated. The change of venue was denied, and the court of appeals affirmed, holding that because the claim "merely seeks interpretation and enforcement of the terms of a lease, as opposed to termination of the lease, [it] is transitory for venue purposes." Therefore the action fell within G.S. 1-82, and was properly brought in the county in which the plaintiff resided.

Consent to jurisdiction clause

Davis v. Hall, 733 S.E.2d 878 (N.C. App. 2012). An employment agreement stated that defendant "will not assert as a defense or as a bar to [a breach of contract] action or claim the absence or lack of personal jurisdiction over [defendant] of any court selected by the [plaintiff], including, but not limited to, the Superior Court of Guilford County, North Carolina." Defendant's motion to change venue from Guilford County was denied, and the court of appeals affirmed, stating that "the agreement is permissive and is a consent to jurisdiction clause. Consequently, it serves to waive objections to both personal jurisdiction and venue."

II. TORTS, UDTPA, AND IMMUNITY

Sovereign immunity; official or individual capacity?
White v. Trew, 736 S.E.2d 166 (**N.C.** 2013) (with two justices dissenting). A tenured university professor sued his department head for libel an unfavorable annual review. The complaint did not specify whether the department head was being sued in his individual or official capacity. If official, then an intentional tort claim against the supervisor would be barred on the basis of sovereign immunity. The Supreme Court determined that, "if clarity is lacking, we must presume the defendant is being sued only in his official capacity." Because the professor's complaint did not specify "individual capacity", it was barred by sovereign immunity.

Sovereign immunity; N.C. Const. Art. IX
Richmond Cty Bd of Educ. v. Cowell, 739 S.E.2d 566 (N.C. App. 2012). A school board brought suit under Article IX, Section 7 of the North Carolina Constitution based on a recent statute that diverts a penalty collected by a county into the State's general fund. The State moved to dismiss based on sovereign immunity. The court of appeals held that the sovereign immunity doctrine does not preclude a direct constitutional claim. The court stated that "the law in this state does not permit the State to assert sovereign immunity to preclude a plaintiff from seeking redress for an alleged constitutional injury under Article IX, Section 7 of our constitution."

Sovereign immunity; valid contract
Martinez v. University of North Carolina, 741 S.E.2d 330 (N.C. App. 2012). Trial court erred in dismissing a breach of contract action against the University on grounds of sovereign immunity. Where the State or its agency enters into a valid contract, it waives its sovereign immunity from suit based on breach of that contract.

Governmental immunity; private road
White v. Northwest Prop. Grp-Hendersonville #1, LLC, 739 S.E.2d 572 (N.C. App. 2013). Where a city graded an established public street pursuant to lawful authority and for a public purpose, the abutting property owner could not recover from the contractor for damages to his land caused by the change in the absence of negligence in the manner or method of doing the work. The harm to the landowner was *damnum absque injuria* ("loss without injury") and not compensable.

Governmental immunity; governmental vs. proprietary function
Town of Sandy Creek v. East Coast Contracting, Inc., 741 S.E.2d 673 (N.C. App. 2013). The Town of Northwest was sued for breach of contract, negligence, and indemnity by an engineering contractor it hired to construct a sewer system. Northwest moved to dismiss on grounds of governmental immunity, arguing the construction of the sewer system was a governmental function. The court of appeals disagreed, holding that "a governmental unit acts in a proprietary function when it contracts with engineering and construction companies, regardless of whether the project under construction will be a governmental function once it is completed."

Governmental immunity; gross negligence
Green v. City of Greenville, 736 S.E.2d 883 (N.C. App. 2013). A policy officer's conduct during a high-

speed pursuit did not constitute gross negligence under G.S. 20-145, thus the city and officer's estate had immunity under G.S. 20-145 from the wrongful death claim of a third party killed during the pursuit. Although the officer failed to notify police communications of the pursuit and exceeded the speed limit by 30 m.p.h., the officer's reason for engaging in the pursuit—smelling marijuana from a passing vehicle—was valid and lawful; another officer testified that no vehicle traffic impeded their pursuit and no pedestrians crossed the path of travel; there was no indication of unusually dangerous terrain; the cruiser managed to slow to approximately five m.p.h. over the speed limit before impact; the officer followed common procedure and exercised his discretion by waiting to activate the siren and lights; and the officer's loss of control was an attempt to avoid a crash with another vehicle making an un-signaled turn.

Legal malpractice; assignability

Revolutionary Concepts, Inc. v. Clements Walker PLLC, __ S.E.2d __ (N.C. App. May 7, 2013). An individual assigned all his interest in a patent application to an LLC. Later, the individual and the LLC brought a malpractice claim against a law firm relating to the filing of the patent application. The trial court dismissed the complaint against the individual on grounds that he no longer had standing to bring the malpractice action. In a matter of first impression, the court of appeals reversed and held that malpractice claims are not assignable in North Carolina. Thus the right to bring the action remained with the individual.

Legal malpractice; statute of repose

Carle v. Wyrick, Robbins, Yates, & Ponton, LLP, 738 S.E.2d 766 (N.C. App. 2013). Where plaintiff filed a malpractice claim regarding legal advice and closing of a particular transaction, the "last act of the defendant giving rise to the cause of action" was the completion of the transaction, not any part of the law firm's continued representation of the plaintiff thereafter. Thus, because suit was filed more than four years after completion of the transaction, the four-year statute of repose in G.S. 1-15(c) had run, and the action was properly dismissed.

Medical malpractice; "apparent agency"

Estate of Ray v. Forgy, __ S.E.2d __ (N.C. App. May 7, 2013). Summary judgment was properly granted to hospital on plaintiff's claims of liability through the doctrine of "respondeat superior" for the actions of the treating physician. It was clear that the plaintiff looked to the physician himself for treatment, rather than the hospital, by seeing the doctor separately at his clinic prior to the hospital procedure, specifying the doctor's name in the request for treatment forms, and signing a release form noting the independent contractor status of many of the physicians at the hospital.

Medical malpractice; "same or similar community"

Higginbotham v. D'Amico, 741 S.E.2d 668 (N.C. App. 2013). In a suit against Duke medical center, plaintiff's expert witness properly addressed the "same or similar community" standard of care required by G.S. 90-21.12 by comparing the standard at Duke to the standard at other top university teaching hospitals and "the best hospitals in the nation." It was not necessary for the expert to testify regarding Durham or similar *geographic* communities; it was instead appropriate for him to evince familiarity with Duke "in regard to physician skill and training, facilities, equipment, funding, and also the physical and financial environment of a particular medical community." Directed verdict for Duke was improper.

Medical malpractice; physician assistant; special jury instruction

Katy v. Capriola, __ S.E.2d __ (N.C. App. April 16, 2013). A treating physician who was properly allowed to testify regarding his own compliance with the standard of care should also have been permitted to testify regarding his physician assistant's (and fellow defendant's) compliance with the standard of care. The physician met the qualifications to testify regarding physician assistants pursuant to Rule of Evidence 702(d), and it was reversible error to prevent him from doing so.

In addition, the trial court should have granted defendants' request for a special jury instruction regarding *probable*, rather than merely *possible*, consequences of failure to timely refer plaintiff to a specialist. Because the proposed instruction was a proper statement of the law and, without it, the instructions failed to fully encompass the substance of the law, the defendants were entitled to a new trial.

Medical malpractice; Rule 9(j); reasonable expectation of qualification

Braden v. Lowe, 734 S.E.2d 591 (N.C. App. 2012), *disc. rev. denied*, 738 S.E.2d 372 (N.C. 2013). Plaintiff had a reasonable expectation her expert would qualify as an expert witness under Rule 702 as to the standard of care for post-surgical, post-autostop antibiotic treatment where the expert testified he had engaged in re-ordering intravenous antibiotics as part of his practice on a weekly basis during the year of the disputed procedure. The trial court therefore erred in dismissing her complaint pursuant to Rule 9(j).

Doctrine of "sudden emergency"

Fulmore v. Howell, __ S.E.2d __ (N.C. App. May 7, 2013). Defendant driver of tractor trailer truck jerked the wheel of his truck and hit his brakes hard in an effort to avoid a collision with another vehicle that suddenly approached him driving the wrong way in his lane. In the process, defendant's truck collided with plaintiff's car, killing plaintiff. Plaintiff's estate sued for negligence, and the trial court granted summary judgment for defendant based on the doctrine of "sudden emergency", which provides that "one confronted with an emergency is not liable for an injury resulting from his acting as a reasonable man might act in an emergency." The court of appeals affirmed, agreeing that any forecast of evidence that Defendant might have "veered right instead of left [or] stopped more quickly" "is exactly the sort of hindsight which the doctrine of sudden emergency precludes."

Negligent misrepresentation; duty of appraiser to purchaser

Hernandez v. Coldwell Banker Sea Coast Realty, 735 S.E.2d 605 (N.C. App. 2012), *disc. rev. denied*, 736 S.E.2d 192 (2013). Real estate appraiser did not owe a duty to home purchaser where the appraiser's report clearly defined the user as the lender/client, not the purchaser. The purchaser was not in privity (or "near privity") with the appraiser, and the appraisal report was not created for her benefit or guidance.

III. CONTRACTS AND INSURANCE

Power of attorney; condition precedent
Suntrust Bank v. C&D Custom Homes, LLC, 734 S.E.2d 588 (N.C. App. 2012). Wife executed a durable power of attorney (POA) appointing husband as attorney-in-fact. Husband later executed several personal guaranties in wife's name to secure commercial loans through Suntrust Bank for husband's business ventures. Ultimately the loans were foreclosed and resulted in deficiencies. Summary judgment was granted against wife (and others) for the amount of the deficiencies. Wife appealed and court of appeals reversed. Wife argued that the POA was not effective to vest husband with power to execute guarantees in wife's name: the POA contained a section entitled "RESTRICTIONS ON EXERCISE OF POWERS" and stated that the attorney-in-fact's powers "shall not be exercised…until a physician has certified…that…I am no longer able (physically or mentally) to handle my personal and business affairs." Such a certification was never made. Thus husband's powers never vested. Although Suntrust Bank was not actually aware of the condition precedent in the POA, it was on constructive notice of the fact and its failure to inspect the POA was at its own peril. Summary judgment against wife was, therefore, granted in error.

Settlement agreement with county; pre-audit certificate
Howard v. County of Durham, __ S.E.2d __ (N.C. App. May 7, 2013). Plaintiff and Durham County reached a settlement agreement (with "Memorandum of Settlement") after mediation, but Durham County declined to execute a written settlement agreement. Plaintiff sued for breach of contract, and the trial court dismissed on the basis that the settlement agreement was not accompanied by a pre-audit statement required by G.S. 159-28(a). The court of appeals affirmed the dismissal, reciting its holding in a prior case that "[a] settlement agreement requiring a county to pay money is subject to the requirements of [G.S.] 159-28(a)."

Arbitration order; findings of fact required
Cornelius v. Lipscomb, LLC, 734 S.E.2d 870 (N.C. App. 2012). Reversing and remanding trial court's order denying a motion to compel arbitration where trial court did not include findings of fact and conclusions of law. Even where a party does not request them under Rule 52, a court must make written findings of fact when denying motions to compel arbitration to explain the basis for the decision. The findings must address whether the parties had a valid agreement to arbitrate and, if so, whether the dispute between the parties falls within the substantive scope of that agreement.

Arbitration agreement; impossibility
Crossman v. Life Care Ctrs of America, Inc., 738 S.E.2d 737 (N.C. App. 2013). Upon entering a care facility, a patient signed an arbitration agreement that specified that disputes would be handled before a board of three arbitrators selected from the American Arbitration Association ("AAA") and applying the AAA arbitration rules. The trial court denied the care facility's motion to compel arbitration, and the court of appeals affirmed on grounds of impossibility. The AAA had since issued a policy on healthcare arbitration declining to accept administration of cases of individual patients unless the agreement was signed post-dispute. Because the material terms of the agreement could not, therefore, be met, the court could not enforce the agreement against the patient.

Oral contract to maintain wills; statute of frauds

Hankins v. Bartlett, __ S.E.2d __ (N.C. App. March 5, 2013). In an action attempting to enforce an oral contract between a husband and wife to make and maintain mutual wills, the trial court held that such a contract is not enforceable. The court of appeals affirmed. Because the will in question would necessarily have conveyed real property, such an agreement was subject to G.S. 22-2, the statute of frauds, and therefore could not be enforced unless it was in writing.

Noncompetition agreement; public policy

Phelps Staffing, LLC v. C.T. Phelps, Inc., 740 S.E.2d 923 (N.C. App. 2013). A temporary staffing agency required the workers it employed as "general laborers" to enter into an agreement not to become employed by the companies where they were placed for work. The trial court refused to enforce the agreement on grounds that it was an impermissible restriction on competition. The court of appeals affirmed, holding that the agreement was unenforceable as a matter of public policy, and served "only to hamper lawful competition while placing an unreasonable burden on the ability of [the] former employees to make a living."

V. FORECLOSURES

Foreclosure; "holder"

In re Bass, 738 S.E.2d 173 (**N.C.** 2013). At a Chapter 45 foreclosure hearing, Wells Fargo presented the original note and deed of trust through the testimony of its litigation specialist. Attached to the note was an allonge bearing three stamps purportedly indorsing and transferring the note among the prior holders and, ultimately, to Wells Fargo. The purported indorsement between the original lender and the next holder, however, consisted only of a stamp, and did not contain a signature indicating authorization or capacity to transfer. In the absence of this signature, the court of appeals held there was a break in the chain of transfer from the original lender to Wells Fargo preventing Wells Fargo from demonstrating it was the current holder. The Supreme Court reversed, interpreting the relevant provisions of the UCC and holding that the stamp constituted a sufficient indorsement indicating transfer of the note. Wells Fargo had, therefore, established that it was the current holder and could proceed with foreclosure.

Foreclosure; offset defense

Wells Fargo Bank, N.A. v. Arlington Hills of Mint Hill, LLC, __ S.E.2d __ (N.C. App. March 19, 2013). After a foreclosure sale, the lender sought a deficiency judgment against debtor and guarantor. Summary judgment was granted for the lender, and the guarantor appealed, asserting that he should have been allowed to assert the offset defense provided in G.S. 45-21.36. The court of appeals affirmed, holding that the offset defense is available only to the property owner and not to a guarantor of the debt.

VI. GOVERNMENT AUTHORITY

Driveway permit; statutory authority

High Rock Lake Partners, LLC v. NCDOT, 735 S.E.2d 300 (**N.C.** 2012). A developer sought a driveway permit from the Department of Transportation for access to Highway 1135 from its proposed subdivision. The owner of an adjacent railway objected, and the DOT ultimately granted the permit conditioned on the developer (1) implementing and financing a widening of the road adjacent to the railway one-quarter of a mile from the subdivision; and (2) getting the railway owner and operator's permission to widen the road. Reversing the trial court and the court of appeals, the supreme court held that the DOT had no statutory authority to impose such conditions. The Driveway Permit Statute "authorizes no improvements away from the applicant's property," and "fails to empower DOT to require an applicant to obtain another property owner's approval, giving that property owner veto power over the…project."

Towing regulations; ordinance-making authority

King v. Town of Chapel Hill, __ S.E.2d __ (N.C. App. June 4, 2013). The Town of Chapel Hill's ordinances regulating towing practices were a valid exercise of the Town's general ordinance-making power granted in G.S. 160A-174. The requirements of (1) signage every fifth parking space informing drivers of walk-off towing policies; (2) requirements that towing companies accept credit card payments for fees; (3) receipts and explanations of the reason a car was towed; and (4) a required towing fee schedule each fell within the Town's authority to "regulate…acts, omissions, or conditions, detrimental to the health, safety, or welfare of [the] citizens…and the peace and dignity of the [Town]."

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