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2024 North Carolina Caselaw Update

Municipal Cases

1. *Town of Forest City v. Florence Redevelopment Partners, LLC*, 292 N.C. App. 86 (2024)
   - Facts:

     Forest City sued Florence Redevelopment Partners to have a contract to sell a historic mill to the developer declared void because the contract was not pre-audited. Florence counter-claimed for breach of contract, unjust enrichment, breach of the covenant of good faith and fair dealing, and a declaration that the contract was enforceable.

     Forest City signed the contract 5 days before the end of the town's fiscal year and incurred no contractual expenses within that fiscal year.
   - Issue:

     Does a municipal contract that does not require the municipality to satisfy an obligation within the fiscal year require preclearance?
   - Holding:

     Contracts with local government do not always have to be pre-audited under N.C.G.S. § 159-28.

     Pre-audit is required when a total must satisfy an obligation in the year in which the contract is formed.
   - Practice pointer:

     Florence appealed the trial court's denial of summary judgment in its favor on the contract claims—and lost.

     It lost because it "faile[d] to cite a single legal authority in its argument, or anywhere else in its brief, to establish, at a minimum, the elements of the claims or how the evidence demonstrates the existence of any genuine issue of material fact pertinent to those arguments."

     It's the appellant's obligation to show error. Florence lost an argument it could have won because it didn't show error.

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2. *Askew v. City of Kinston*, 902 S.E.2d 722 (2024)
   - Facts:

     Askew and other African American property owners sued Kinston alleging it condemned their properties for racially discriminatory and arbitrary reasons in violation of due process and equal protection.
   - Issue:

     Whether *Corum* requires exhaustion of administrative remedies. Whether Plaintiffs stated constitutional claims.
   - Holding:

     Corum does not require exhaustion of administrative remedies. *Corum* is concerned with whether a plaintiff has access to meaningful redress through established claims and remedies. If administrative relief is not effective, it is not required.
3. *Currituck County v. Letendre*, 102 F.4th 252 (4th Cir. 2024)
   - Facts:

     Letendre owned a vacation home in Currituck County. The home violated the County's uniform development ordinance's definition of a "single family dwelling." North Carolina's Building Code defines building and dwelling and Letendre argued the County could not replace that definition.
   - Issue:

     Is a county UDO's definition of "building" enforceable when it conflicts with the State Building Code?
   - Holding:

     The Fourth Circuit agreed with Letendre. N.C.G.S. § 153A-346(b) says that "[a] county may not use a definition of building, dwelling, dwelling unit, bedroom, or sleeping unit that is inconsistent with any definition of the same in another statute or in a rule adopted by the State agency, including the State Building Code Council." The County's definition was inconsistent with the State Building Code, so it was invalid.
   - If you are interested in federal courts, there is an interesting discussion of the *Rooker-Feldman* doctrine in this case.

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4. *Bates v. Charlotte-Mecklenburg Historic Landmarks Commission*, 292 N.C. App. 1 (2024)
   - Facts:

     Plaintiffs tried to purchase an historic property in Huntersville from the Charlotte-Mecklenburg Historic Landmarks Commission. The Commission made the process quite difficult for them, and Plaintiffs eventually sued.
   - Issue:

     Is sovereign immunity a defense to a claim for the breach of the covenant of good faith and fair dealing implied in every contract?
   - Holding:

     Sovereign immunity is not a defense to the covenant of good faith and fair dealing. Governments waive sovereign immunity when they contract. The covenant is an aspect of the contract and so sovereign immunity is waived.
5. *Washington v. Cline*, 385 N.C. 824 (2024)
   - Holding: if you receive an adequate state remedy (i.e., vacating convictions) you cannot bring a *Corum* damages claim for a constitutional violation
6. *True Homes, LLC v. Greensboro*, 898 S.E.2d 52 (N.C. Ct. App. 2024)
   - Holding: prospective capacity fees are ultra vires. Capacity use fees for existing development are ultra vires when a city charges fees to both the original developer for the existing use and new developers for the use too.

Real Property Cases

1. *Hinman v. Cornett*, 900 S.E.2d 872 (2024)
   - Facts:

     Defendants had a driveway easement across the Plaintiffs property. Defendants believed that easement included a “strip of land” around the driveway, so they improved it by putting statutes and other items on the property. Plaintiff sued for quiet title and Defendants counter-claimed for adverse possession.

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- Issue:

  Can the owner of a dominant estate adversely possess part of a servient estate?

- Holding:

  You can adversely possess land you believe is in an easement benefiting you. A person can adversely possess land even "when he is unaware of the adverse nature of his possession" or the "claim of title is founded on a mistake."

  There was a genuine issue of material fact about the hostility of Defendants' possession. Defendants' evidence showed that they believed they owned the land they sought to adversely possess and that they had improved that land. That rebutted the presumption of permissive use and prevented summary judgment.

Family Law Cases

1. *Green v. Carter*, 900 S.E.2d 108 (2024)
   - Facts:

     Green and Carter are two women who never married but had an "on again off-again" romantic relationship. Mother had a child through IVF and Partner paid for the IVF process. Mother gave birth in Michigan, but Partner could not be listed on the birth certificate. The parties ended their relationship, and both moved to North Carolina. Partner filed a custody proceeding against Mother and Mother sued for child support.

   - Issue:

     Can a person who is not a biological parent but acts as a parent be required to pay child support under N.C.G.S. § 50-13.4(b).

   - Holding:

     No. You can only be required to pay child support if you are the father or mother or "agreed formally, in writing, to pay child support." N.C.G.S. § 50-13.4(b) only makes a person *in loco parentis* secondarily liable for child support if that person has "voluntarily assumed the obligation of support in writing."

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2. *Beavers v. McMican*, 385 N.C. 629 (2024)
    - Facts:

      Beavers sues his ex-wife's alleged paramour, McMican, for alienation of affection and criminal conversation. Beavers get summary judgment. McMican appeals arguing that the trial court incorrectly considered post-separation conduct.
    - Issue:

      Is evidence of post-separation conduct admissible in heartbalm tort suits?
    - Holding:

      Evidence of post-separation conduct can be used to corroborate pre-separation conduct as long as the evidence gives rise to more than mere conjecture.
3. *Durbin v. Durbin*, 895 S.E.2d 64 (N.C. Ct. App. 2024)
    - Holding

      The trial court's findings of fact did not support its determination that there was a substantial change in circumstances justifying a child custody modification. The parents had been and continued to be a high-conflict couple.
4. *Wenninger v. Wenninger*, 901 S.E.2d 677 (N.C. Ct. App. 2024)
    - Facts:

      The Wenningers created the Myra Louise Wenninger Revocable Trust during their marriage. After they divorced, the disputed ownership of three bank accounts and one car titled to the Trust. The trial court refused to distribute the trust property because it was not a party to the lawsuit. But it considered that some assets were in trust when making an unequal distribution to favor the wife.
    - Issue:

      Is a trust holding marital assets a necessary or proper party to an equitable distribution action?

      Can a trial court distribute trust assets if the trust is not joined as a party?
    - Holding:

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The Trust was a necessary party because it held title to property that was claimed as marital property. The Trust's involvement in the litigation would be limited to the issue of the property's ownership.

Rather than refusing to distribute the trust property, the trial court should have joined the Trust *ex mero motu*.

Personal Injury and Insurance Cases

1. *Farm Bureau v. Herbert*, 385 N.C. 705 (2024)
    - Facts:

      Herbert owned a car that was in an accident but was not the tortfeasor. He had insurance on the car, and he was an additional insured on his parents' car insurance.

      Herbert settled claims with the other victims of a car accident, then sought to qualify for underinsured motorist benefits (UIM).

      Farm Bureau sues Herbert seeking a declaration that Herbert is not entitled to UIM benefits under his policy and his parents' policy.

      The Court of Appeals has allowed UIM claimants to stack (i.e., add together) all of the UIM limits available to determine if a vehicle is an underinsured motor vehicle under N.C.G.S. § 20-279.21(b)(4). Herbert argued he could stack his policy and his parents policy.
    - Issue:

      Can a UIM claim stack outside policies to quality his vehicle as underinsured?
    - Holding:

      An insured can only stack UIM policies that are for the vehicle involved in the accident. § 20-279.21(b)(4)'s activation provision addresses UIM "coverages that pertain to the vehicle involved in the accident, not all UIM policies for which the claimant is personally eligible." The statute allows a comparison of the limits of liability for the at-fault vehicle with the applicable limited of UIM coverage for the vehicle involved in the accident and insured

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under the owner's policy—both of which were the same car in this case.

2. *Land v. Whitley*, 898 S.E.2d 17 (N.C. Ct. App. 2024)
    - Holding: Covid-19 immunity statute (N.C.G.S. § 90-21.133) does not immunize gross negligence, reckless misconduct, or intentional infliction of harm
3. *Terry v. Public Service Company of NC*, 385 N.C. 797 (2024)
    - Facts:

      Plaintiff rented a home for 11 years. Defendant did not inspect the home regularly. Plaintiff smelled gas and called the utility company. The utility company said everything was fine. A month later, a gas explosion in the bathroom catastrophically injured Plaintiff. Plaintiff sued Defendant for negligence, negligence per se, violations of North Carolina's Residential Rental Agreements Act, and breach of warranty of habitability.
    - Issue:

      Did the landlord have an obligation to inspect the property and repair floors and leaking gas pipes?
    - Holding:

      Neither the Common Law nor the Residential Rental Agreements Act impose a duty on landlords to inspect or repair premises without actual notice of defects. N.C.G.S. § 42-42(a)(4) and (8) make a landlord's obligation to repair contingent upon knowledge or notification of a hazard.

      Negligence per se based on violations of building or housing codes likewise requires that the "owner knew or should have known" of the violation.
4. *Bouvier v. Porter*, 900 S.E.2d 838 (N.C. 2024)
    - Facts:

      Attorneys and candidates' defense fund identified specific voters, including Plaintiffs, as having voted twice in an election. Plaintiffs sued for defamation. Defendants argued their statements were protected by absolute privilege because they were the subject matter of election-protest proceedings.
    - Issue:

Whether defamatory statements made during an election protect proceeding are entitled to any privilege.

- Holding:

  Absolute privilege applied to statements made in the due course of judicial or quasi-judicial proceedings, including election protest proceedings.

5. *Robinson v. Halifax Regional Medical Center*, 899 S.E.2d 11 (2024)
   - Holding:

     Rule 9(j) requires that a medical malpractice complaint be reviewed by a person who is reasonably expected to qualify as an expert under Rule 702 of the Rules of Evidence and is willing to testify that the medical care did not comply with the applicable standard of care. If the reviewer is a plaintiff's sole expert and is later disqualified under Rule 702, that is sufficient to dismiss the complaint.

Business & Contract Cases

1. *Canteen v. Charlotte Metro Credit Union*, 900 S.E.2d 890 (N.C. 2024)
   - Facts:

     Canteen was a customer of Charlotte Metro Credit Union. Charlotte Metro unilaterally changed its contract terms to include an arbitration agreement. The contract included a change of terms provision. Charlotte Metro notified Canteen of these changes through its website and included an opt-out. Canteen did not opt out. When Canteen sued, Charlotte Metro moved to dismiss based on the arbitration agreement.
   - Issue:

     Is a unilateral contract change enforceable when a contract has a change of terms provision? Or is a unilateral change a breach of the covenant of good faith and fair dealing?
   - Holding:

     A unilateral modification under a change of terms provision is enforceable when it reasonably relates to subjects discussed and reasonably anticipated in the original agreement. An arbitration agreement may not satisfy this standard when the contract includes no provision on the method or forum for resolving disputes. The contract in *Canteen* did include a governing law provision, so a change to an arbitration provision did reasonably relate to the subject discussed in the contract and could be reasonably anticipated in the original agreement.

2. *Smith Debnam v. Muntjan*, 292 N.C. App. 141 (2024)
    - Facts:

      Muntjan promised to pay his son's legal fees. Smith Debnam sued him to enforce that promise.
    - Issue:

      Whether a promise to be responsible for attorney fees is subject to the statute of frauds and, if so, whether the father's emails satisfied the statute of frauds.
    - Holding:

      Promises to pay attorney fees are subject to the statute of frauds at N.C.G.S. § 22-1. Father's email did not include the price, parties, and goods or services to be exchanged, so it did not satisfy the statute of frauds.
3. *Turpin v. Charlotte Latin Schools, Inc*, 900 S.E.2d 352 (2024)
    - Facts:

      Parents sued Charlotte Latin after Charlotte Latin terminated their enrollment contract. Parents had organized a group to challenge decisions they believed were "indicative of the adoption of a political agenda." Parents claimed breach of contract among other things.
    - Issue:

      Whether Parents' complaint stated a claim for breach of contract when the plaint language of the contract, which was attached to the complaint, allowed Charlotte Latin to terminate the contract.
    - Holding:

      The Court of Appeals held, over a dissent, that the Parents complaint did not state a claim. The contract said Charlotte Latin "reserve[d] the right to discontinue enrollment if it conclude[d] that the actions of a parent/guardian make [a positive, collaborative working relationship] impossible or seriously

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interfere with the School's mission." That provision, given its ordinary meaning, gave Charlotte Latin discretion to conclude Parents' actions made such a relationship impossible and terminate the contract. Charlotte Latin made that determination and did not breach.

Judge Flood's dissent reasoned that it was improper to consider Charlotte Latin's reasoning or the discontinuation provision on a 12(b)(6) motion to dismiss.

4. *Garland v. Terra Equity*, 900 S.E.2d 689 (N.C. Ct. App. 2024) [1]
   - Facts:

     Adjacent property owner sued to prevent development. After taking a voluntary dismissal of his original complaint, he refiled a complaint within one year—but the refiled complaint would have, absent Rule 41, been untimely under the statute of limitations. The original complaint did not specifically allege the County Board of Commissioners' decision was arbitrary and capricious, though it alleged the decision violated the UDO.

     The Parties attended mediation and reached a settlement agreement. At the close of mediation, Developer's counsel sent an email memorializing the terms of the mediated settlement and promising to draft a settlement agreement to circulate for review and signature. Property owner moved to enforce the settlement after Developer refused to sign the settlement agreement
   - Issues:

     Whether an email memorializing a mediated settlement and promising a draft settlement agreement satisfies the statute of frauds.

     Whether Plaintiff's complaint related back to his initial filing.
   - Holding:

     The email was an agreement to agree because it contemplated a future, formal settlement agreement the Parties would sign.

     Because the initial complaint did not specifically allege the Board's actions were arbitrary and capricious and violated due process but the refiled complaint did, the refiled complaint stated new claims and did not relate back to the original filing.

[1] Full disclosure: Dan Gibson was counsel for appellee in this case.

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5. *Warren v. Cielo Ventures, Inc.*, 901 S.E.2d 437 (N.C. Ct. App. 2024)
    - Facts:

      The Warrens sued Cielo for unfair and deceptive trade practices, alleging Cielo deceived them about water remediation work. Cielo argued the Warrens claim was barred by a one-year limitation of liability clause in Cielo's contract.
    - Issue:

      Does Defendant's one-year limitation of liability clause bar an unfair and deceptive trade practices claim filed more than one year after the Parties executed the contract?
    - Holding:

      Cielo's one-year limitation of liability clause did not bar the Warrens' unfair and deceptive trade practices claim. Allowing shortened contractual limitations for unfair and deceptive trade practices claims "would circumvent the General Assembly's stated purpose in enacting the UDTPA."
6. *SmartSky Networks, LLC v. DAG Wireless, LTD*, 93 F.4th 175 (4th Cir. 2024)
    - Facts:

      Wireless communication company sues competitors for breach of contract, trade-secret misappropriation, and deceptive trade practices. Plaintiff demands arbitration. Arbitrator finds that all claims, except preliminary injunction request, are subject to arbitration. The trial court then stays the litigation to allow the arbitration to proceed. Arbitrator finds in Plaintiff's favor, and the Plaintiff moved the trial court to confirm the award under the FAA. Defendant appealed arguing the trial court lacked jurisdiction to enforce the arbitration award.
    - Issue:

      Does the FAA allow a trial court to stay an action to allow arbitration to proceed and later enter an order confirming the arbitration award?
    - Holding

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No. An application to confirm or deny an arbitration is not a motion in a pending action. It is a separate action that is distinct from any related lawsuit. The Parties were no longer litigating the underlying claims; they were litigating the enforceability of the arbitration award. Subject matter jurisdiction under one section of the FAA does not necessarily extend to other sections of the FAA.

Civil Procedure Cases

1. *Slattery v. Appy City, LLC*, 385 N.C. 726 (2024)
   - Facts:

     An investor sued the company he invested in. The investor obtained entry of default and ultimately summary judgment. After the court entered judgment, Defendant moved to claim exempt property. Defendant also moved to set aside the summary judgment and vacate the entry of default, arguing defective service and lack of personal jurisdiction.
   - Issue:

     Is moving to claim exempt property after a judgment is entered a general appearance that waives objections to personal jurisdiction?
   - Holding:

     Moving to claim exempt property is a general appearance that waives objections to personal jurisdiction. A party makes a general appearance whenever she invokes the court's judgment on anything other than personal jurisdiction. If the party has not already objected to personal jurisdiction, then making a general appearance waives those objections. Moving to claim exempt property invokes the court's jurisdiction on an issue other than personal jurisdiction, so it is a general appearance. The Supreme Court adopted the reasoning of *Faucett v. Dickerson*, 103 NC App. 620 (1991), which addressed similar facts, and rejected a contrary line of cases including *Dowd v. Johnson*, 235 N.C. App. 6 (2014).
2. *Society for the Historical Preservation of the 26th North Carolina Troops v. Asheville*, 385 N.C. 744 (2024)

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- Facts:

  Asheville removed a monument to Zebulon Vance. Plaintiff sued challenging that decision

- Holding:

  The trial court dismissed Plaintiff's breach of contract claim under 12(b)(6) but the Court of Appeals incorrectly reviewed its decision under 12(b)(1) (lack of subject matter jurisdiction). The Court of Appeals reasoned that Plaintiff lacked standing because it did not allege a proper breach of contract claim. That was incorrect. But Plaintiff did not argue their claim survived 12(b)(6), which abandoned their argument, and the Supreme Court affirmed regardless.

3. *Taylor v. Bank of America*, 385 N.C. 783 (2024)
   - Facts:

     Plaintiffs participated in BofA's Home Affordable Modification Program (HAMP), a federal mortgage relief program. Plaintiffs alleged BofA intentionally and fraudulently prevented them and others from receiving permanent HAMP modifications they were eligible for. Plaintiffs lost their homes to foreclosure between April 2011 and January 2014 but didn't sue until May 2018. They argued they could not have reasonably discovered the fraud until they retained their attorneys.
   - Issue:

     Whether the statute of frauds barred Plaintiffs' claims.
   - Holding:

     The harm to the Plaintiffs was complete when they lost their homes through foreclosure—which was at least four years before they filed their initial complaint. All of their claims were thus barred by the statute of limitations.
4. *Upchurch v. Harp Builders, Inc*, 385 N.C. 816 (2024)
   - Holding:

     Filing of a compulsory counterclaim relates back to the filing of the complaint for statute of limitations purposes.
5. *TH v. SHL Health Two*, 900 S.E.2d 719 (N.C. Ct. App. 2024).
   - Facts

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The trial court severed Plaintiff's complaint against Defendants into two separate complaints by ordering Plaintiff to refile a separate complaint *in the same action* with the same facts and the same claims against one defendant. Plaintiff mistakenly filed a new complaint in a new action. To correct this mistake, Plaintiff filed a voluntary dismissal *with prejudice* of the new action.

When Plaintiff filed the new complaint in the old action, Defendant moved to dismiss based on the dismissal with prejudice. Plaintiff moved to set aside the dismissal under Rule 60.

- Issue

  Does Plaintiff's legal error in filing a dismissal with prejudice entitle Plaintiff to relief under Rule 60?

- Holding

  No. Relief under Rule 60(b)(1) "hinges on the intention of the party seeking relief." The relevant is "not the intended outcome;" it is the "intended action." Misunderstanding the consequences of an action is not enough. The "material question is whether Plaintiff deliberately took the action for which Plaintiff requests relief." Plaintiff intended to file a voluntary dismissal and so cannot get relief under Rule 60(b)(1).

  Nor can Plaintiff get relief under Rule 60(b)(6). Rule 60(b)(6) "cannot be the basis for a motion to set aside judgment if the fact supporting it are facts which more appropriately would support one of the five preceding clauses." In this case, that clause is Rule 60(b)(1). Even if 60(b)(6) relief were appropriate, the trial court did not abuse its discretion by denying that relief. It found that Plaintiff's counsel "made material untruthful statements to the Court," which is sufficient to support its denial of Rule 60(b)(6) relief.