

ADMINISTRATIVE LAW

Fair Labor and Standards Act – exhaustion of administrative remedies not required – The trial court erred by dismissing plaintiffs’ claims for relief under the Fair Labor and Standards Act (FLSA) based on lack of jurisdiction because plaintiffs were not required to exhaust administrative remedies under N.C.G.S. § 143-300.35(a). Plaintiffs were entitled to choose to pursue an FLSA claim in either a judicial or an administrative forum, but not both. **Brown v. N.C. Dep’t of Env’t & Natural Res.**,

APPEAL AND ERROR

Interlocutory orders and appeals – multiple appeals – Although there is typically no right of immediate appeal from an interlocutory order, the Court of Appeals reached the merits of this workers’ compensation case because the case had already been heard on appeal once before, was being heard on appeal a second time, and an issue had been reserved for future determination by the Industrial Commission which otherwise would result in an appeal for a third time. **Gregory v. W.A. Brown & Sons**,

Mootness – satisfaction of judgment – Defendant Board of Commissioners’ appeal was not moot even though it had already paid employment compensation and attorney fees in compliance with a writ of *mandamus*. Payment was not made by way of compromise, nor did the payment suggest that defendants did not intend to appeal. **Graham Cnty. Bd. of Elections v. Graham Cnty. Bd. of Comm’rs**,

Motion for appropriate relief – mootness – Defendant’s motion for appropriate relief under N.C.G.S. § 14A-1415(b)(3) in an assault on a female case was moot because the Court of Appeals vacated the trial court’s order and remanded for a new hearing on defendant’s motion and request for dismissal. **State v. Williamson**,

Preservation of issues – contempt – mootness – Plaintiffs’ argument that the trial court erred by allegedly failing to comply with the provisions of N.C.G.S. § 5A-23 that required notice or a show cause order of contempt proceedings and specific findings of fact by the trial court before it held plaintiffs’ trial counsel in willful contempt of a previous court order was dismissed as moot because the attorney suffered no injury or prejudice as a result of the contempt order. **Ray v. Greer**,

Preservation of issues – plain error – The trial court did not commit plain error or error by submitting the issue of defendant chief deputy’s guilt of

misdemeanor obstruction of justice to the jury or by its failure to instruct the jury concerning the sufficiency of a sergeant's justification for arresting a doctor for driving while impaired. **State v. Taylor,**

ATTORNEY FEES

Payment from county's general fund – no statutory authorization – The trial court erred by ordering defendant Board of Commissioners to pay the Graham County Board of Elections' legal expenses from the general fund of Graham County and not the amount already budgeted for the Graham County Board of Elections. There was no statutory authorization for attorney fees, and thus, this portion of the order was reversed. **Graham Cnty. Bd. of Elections v. Graham Cnty. Bd. of Comm'rs,**

CONSTITUTIONAL LAW

Right to counsel – failure to make sufficient inquiry for waiver – The trial court erred by allowing respondent mother to waive counsel and represent herself during a termination of parental rights hearing. The trial court failed to make sufficient inquiry under N.C.G.S. § 15A-1242 regarding whether respondent understood and appreciated the consequences of her decision to waive counsel, and whether she comprehended the nature of the hearing. **In re P.D.R.,**

Right to speedy trial – trial court's failure to make proper inquiry – The trial court erred in an assault on a female case by denying defendant's motion and request for dismissal based on the State's failure to comply with his request for a speedy trial under N.C.G.S. § 15A-711. The record was void of any evidence that the trial court made the appropriate inquiry in consideration of defendant's motion. The order was vacated and remanded for a new hearing on the motion. **State v. Williamson,**

CONTEMPT

Attorney's willful violation of court order – sanctions – dismissal of case – The trial court did not abuse its discretion by imposing the most severe sanction and dismissing plaintiffs' claims based on the willful contempt of their trial attorney. The trial court was not required to impose lesser sanctions, but only to consider lesser sanctions. The dismissal was imposed primarily due to a direct violation of a court order, which was permitted under N.C.G.S. § 1A-1, Rule 41(b). **Ray v. Greer,**

CONVERSION

Contested funds – no ownership interest – The trial court erred by granting summary judgment in favor of plaintiff on a conversion claim. Plaintiff did not retain an ownership interest in the contested funds. **Variety Wholesalers, Inc. v. Salem Logistics Traffic Servs., LLC,**

CRIMINAL LAW

Jury instructions – separate consideration of charges and defendants – instruction not given – The trial court committed plain error in an attempted first-degree murder and assault with a deadly weapon with intent to kill inflicting serious injury case by failing to instruct the jury to consider the charges against each defendant separately from the other charges, and to consider the charges against each defendant separately from the other defendant. Defendants were entitled to a new trial. **State v. Adams,**

EMPLOYER AND EMPLOYEE

Fair Labor and Standards Act – foresters – learned professional exemption inapplicable – The trial court erred by dismissing plaintiffs' claims for relief under the Fair Labor and Standards Act (FLSA) based on N.C.G.S. § 1A-1, Rule 12(b)(6). The learned professional exemption was not applicable because the primary duty of plaintiff state foresters was not management of the enterprise in which they were employed. **Brown v. N.C. Dep't of Env't & Natural Res.,**

Non-compete agreements – breach of contract claim – The trial court did not err in a breach of contract case by granting summary judgment in favor of defendants, denying plaintiff's motion for summary judgment, and dismissing plaintiff's complaint with prejudice. There was no genuine issue of material fact because defendants did not solicit, recruit, or induce two of plaintiff's former employees to work for defendants in violation of the non-compete agreements. Further, there were no terms in the non-compete agreements preventing defendants from hiring a former employee of plaintiff whom they had not solicited, recruited, or induced for employment. **Inland Am. Winston Hotels, Inc. v. Crockett,**

FRAUD

Constructive fraud – no fiduciary or confidential relationship – The trial court did not err by granting summary judgment in favor of defendant Ark on a constructive fraud claim. There was no evidence to warrant the existence of a fiduciary or confidential relationship between the parties. **Variety Wholesalers, Inc. v. Salem Logistics Traffic Servs.,**

IMMUNITY

Sovereign immunity – waiver — overtime compensation rights – The trial court erred by dismissing plaintiffs’ claim for overtime compensation under N.C.G.S. § 1A-1, Rule 12(b)(1) for lack of jurisdiction based on sovereign immunity. The State waived its sovereign immunity by conferring rights to overtime compensation on state foresters under N.C.G.S. § 113-56.1. **Brown v. N.C. Dep’t of Env’t & Natural Res.,**

JOINT VENTURE

Judgment creditor – subordinate rights – permanent injunction – The trial court did not err in a declaratory judgment action by ordering a permanent injunction based on its conclusion that plaintiff entered into a joint venture with defendant and was solely a judgment creditor whose rights to the proceeds from certain real property were subordinate to three deeds of trust. The parties’ contract expressly stated that the parties intended to form a joint venture, provided for the sharing of profits, and that each had the right to direct the other’s conduct in some measure. **Lake Colony Constr., Inc. v. Boyd,**

JURISDICTION

Entry of invalid judgment – guilty plea – arrested judgment – trial judge’s authority to correct error – The trial court erred by dismissing a charge of driving while impaired following defendant’s guilty plea based on alleged non-jurisdictional defects in the district court. The district court judge’s decision to arrest judgment constituted the entry of an invalid judgment, and the judge had the authority to correct this error on his own motion even after the court session had come to an end. Once defendant appealed to the superior court for a trial *de novo*, the superior court obtained jurisdiction over the charge. The case was reversed and remanded to the superior court for further proceedings. **State v. Petty,**

Personal jurisdiction – due process – lack of minimum contacts – The trial court erred in a declaratory judgment action by concluding that exercising personal jurisdiction would not violate defendants’ due process rights. Defendants did not have the requisite minimum contacts with North Carolina, defendants’ contacts were not the source of or closely related to this cause of action, and North Carolina did not have a strong interest in resolving the effects of a breach of contract under German law on matters of European and United States patent law. **Evonik Energy Servs. GmbH v. Ebinger,**

Personal jurisdiction – lack of continuous and systematic contacts – The trial court did not err in a class action alleging overwork and underpayment in violation of state and federal labor laws by granting non-resident defendant's motion to dismiss based on lack of personal jurisdiction. Plaintiffs' allegations did not arise out of defendant's connection to this state, and defendant's contacts with this state were not continuous and systematic in a matter sufficient to justify the exertion of general jurisdiction. **Vitela v. Richardson,**

Subject matter jurisdiction – county boards of elections – issuance of writ of mandamus – The trial court had subject matter jurisdiction in a case seeking a writ of *mandamus* that would require the Board of Commissioners to pay an employee of the Graham County Board of Elections. County boards of elections have the power to sue and be sued, and they are distinct legal entities from the counties in which they are located. **Graham Cnty. Bd. Of Elections v. Graham Cnty. Bd. of Comm'rs,**

MANDAMUS

Payment of employee – Board of Elections – waiver of sovereign immunity – The trial court did not err by issuing a writ of *mandamus* that required the Board of Commissioners to pay an employee of the Graham County Board of Elections. This duty was purely ministerial and there was no discretion involved. Further, the Board of Commissioners waived any potential sovereign immunity protection by failing to assert it at trial. **Graham Cnty. Bd. of Elections v. Graham Cnty. Bd. of Comm'rs,**

OBSTRUCTION OF JUSTICE

Failure to instruct – lack of legal authority – The trial court did not err in an obstruction of justice case by denying defendant chief deputy's motion for appropriate relief on the grounds that the trial court failed to instruct the jury on the legal authority to require the processing with which defendant allegedly interfered. Defendant failed to establish that he had any right or obligation to determine that a subordinate had arrested a suspect without possessing the required probable cause and to take corrective action. **State v. Taylor,**

Misdemeanor conviction – felonious indictments – motion for appropriate relief – The trial court did not err by denying defendant chief deputy's motion for appropriate relief based on alleged lack of jurisdiction to accept a verdict and enter a judgment convicting him of misdemeanor

obstruction of justice even though the original and superseding indictments charged defendant with felonious obstruction of justice. **State v. Taylor,**

STATUTES OF LIMITATION AND REPOSE

Fraud – misrepresentation – Securities Act violations – breach of fiduciary duty – The trial court did not err by granting a directed verdict in favor of defendant based on expiration of the statutes of limitation. Plaintiffs' fraud, misrepresentation, North Carolina Securities Act violations, and breach of fiduciary duty claims were required to be filed within three years of their discovery of the facts giving rise to their claim. Under N.C.G.S. § 1-15(c), plaintiff Trexler's negligence claim must have been filed within one year of his discovery of his loss and plaintiff Orr's negligence claim was barred by the four-year statute of repose regardless of when she may have discovered her loss. **Orr v. Calvert,**

Misdemeanor – motion for appropriate relief – lesser-included offense – The trial court did not err by denying defendant chief deputy's motion for appropriate relief on the grounds that the trial court permitted him to be convicted for committing a time-barred lesser-included offense. The statute of limitations set out in N.C.G.S. § 14-1 did not control the submission of the issue of defendant's guilt of a misdemeanor lesser-included offense to the jury since the greater offense was properly charged in a timely manner. **State v. Taylor,**

WORKERS' COMPENSATION

Death benefits – method and calculation – The Industrial Commission erred in a workers' compensation case by the method and calculation used to determine plaintiff's death benefits. The case was remanded for more specific findings as to why the first method of N.C.G.S. § 97-2(5) would be unjust and to recalculate plaintiff's compensation. **Johnson v. Covil Corp.,**

Failure to give timely written notice of incident – failure to show prejudice – The Industrial Commission did not err in a workers' compensation case by concluding that defendants were not prejudiced by plaintiff's failure to give written notice of her work injury within thirty days after the incident as required by N.C.G.S. § 97-22. The evidence supported the Commission's findings that defendant had actual notice under the circumstances of this case that satisfied the twin aims of providing notice including opportunity both to promptly investigate the facts surrounding plaintiff's injury and visible pain, and to direct plaintiff's medical treatment. **Gregory v. W.A. Brown & Sons,**

Occupational disease – carpal tunnel syndrome – The Industrial Commission did not err in a workers' compensation case by concluding that plaintiff's carpal tunnel syndrome was a compensable occupational disease. The testimony by plaintiff's expert witnesses was supported by competent evidence. **Newman v. New Hanover Reg'l Med. Ctr.,**

Temporary total disability – ability to earn wages – The Industrial Commission erred in a workers' compensation case by awarding plaintiff temporary total disability benefits. Plaintiff failed to meet the requirements of the first method of proof under *Russell*, 108 N.C. App. 762, since she presented no medical evidence that she was incapable of work in any employment following her surgery. Further, the case could not be remanded for additional findings because there was no medical evidence found in the transcripts to support this finding. **Newman v. New Hanover Reg'l Med. Ctr.,**