

APPEAL AND ERROR

Aggrieved party on appeal — subsequent summary judgment — An appeal by Wake County from the denial of its motions to dismiss plaintiff's claims was itself dismissed where Wake County was subsequently granted summary judgment. Wake County was not an aggrieved party on appeal. **Gaines & Co. Inc. v. Wendell Falls Residential, LLC,**

Appealability — mootness — Respondent's appeal from the trial court's authorization of a substitute trustee to proceed with a foreclosure sale of certain real property as permitted by the deed of trust was dismissed as moot. The foreclosure was complete, the real property had been duly conveyed to the highest bidder at the foreclosure sale, and the Court of Appeals was unable to consider respondent's claims that the completed sale was void in violation of a bankruptcy stay. **In re Foreclosure of Hackley,**

Cross-assignment of error — denial of summary judgment — dismissed — A cross-assignment of error from the denial of summary judgment was dismissed. **Jim Lorenz, Inc. v. O'Haire,**

Interlocutory orders and appeals — child support order — pending alimony claim resolved — temporary support moot — The appeal of a child support order was interlocutory when filed because an alimony claim was still pending, but the case became ripe for appeal when the alimony claim was dismissed without prejudice. The challenge to the temporary support order became moot when the permanent support order was entered. **Metz v. Metz,**

Interlocutory orders and appeals — denial of motions to reconsider and to compel discovery — An appeal was dismissed where the order appealed from denied motions to compel discovery and to reconsider and was interlocutory; N.C.G.S. § 1-2277(b) does not extend to motions to reconsider; the trial court did not certify the order for appeal; and plaintiff did not argue that a substantial right was affected. **Zairy v. VKO, Inc.,**

Interlocutory orders and appeals — failure to set specific date to reconvene and review — The trial court failed to set forth a specific date on which to reconvene and review plaintiff father's mental and emotional evaluation in a modification of child custody case, and thus, the Court of Appeals viewed the order as permanent and appropriate for immediate appellate review. **Maxwell v. Maxwell,**

Interlocutory orders and appeals — motion to change venue and dismiss — prior related action — An order denying a motion to change

venue and dismiss a complaint because of a prior related action did not dispose of the case and was interlocutory, but the Court of Appeals issued a writ of *certiorari* on its own motion to reach the merits. **Jesse v. Jesse,**

Interlocutory orders and appeals — personal jurisdiction — Although plaintiff's appeal from an order denying her motion to dismiss based on lack of personal jurisdiction was from an interlocutory order, it was proper under N.C.G.S. § 1-277(b). **Lab. Corp. of Am. Holdings v. Caccuro,**

Juveniles — underlying charge dismissed — adjudication not dismissed — appeal proper — An appeal in a juvenile matter was properly before the Court of Appeals where the trial court dismissed a charge of resisting a public officer and ordered commitment to the Department of Juvenile Justice and Delinquency Prevention. Although the trial court dismissed the case of resisting a public officer, the adjudication order was not dismissed. **In re A.J.M.-B.,**

Notice of appeal — designation of order — There was no appellate jurisdiction to consider an order from which there was no notice of appeal. Plaintiff's notice of appeal stated that it "included but was not limited to" appeal of a different order. **Zairy v. VKO, Inc.,**

Preservation of constitutional issues — no specific objection — waiver — Constitutional arguments not raised by a specific objection at trial were waived. **State v. Edmonds,**

Record on appeal — closing argument not recorded — contention dismissed — An argument on appeal concerning the limitation of defendant's closing argument was dismissed where closing arguments were not recorded. **State v. Edmonds,**

ATTORNEY FEES

After appeal — jurisdiction — The trial court lacked jurisdiction under N.C.G.S. § 1-294 to enter an award of attorney fees where petitioner had already appealed an order dismissing the underlying action. The trial court's deferral of the issue at the time the dismissal order was entered did not create jurisdiction. **In re Foreclosure of Johnson,**

Prejudgment interest — costs — The trial court did not err by granting summary judgment in favor of defendants on the issue of prejudgment interest for legal fees recovered from an estate. The trial court properly characterized the attorney fees as costs, which were specifically excepted

from the interest provisions of N.C.G.S. § 24-5(b). **Nexsen Pruet, PLLC v. Martin,**

CHILD CUSTODY AND SUPPORT

Children's expenses and parents' ability to pay — not reached — imputed income proper — Contentions in a child support case concerning findings or conclusions about the children's expenses and the parent's ability to pay were not reached where those issues involved an alternate route to the amount of support awarded and the initial route, imputation of income to the father, was proper. **Metz v. Metz,**

Imputed income — bad faith — The trial court did not err in a child support case by finding that a father acted in bad faith, so that income could be imputed to him, where the father molested his daughter and lost his position as a nurse anesthetist. **Metz v. Metz,**

Imputed income — findings sufficient for review — There were sufficient findings in a child support case to allow appellate review of the trial court's imputed income conclusions. **Metz v. Metz,**

Imputed income — money under father's control — The trial court did not err in a child support case in the amount of income imputed to a father who had molested his daughter where the father could no longer work as a nurse anesthetist, but had more than \$355,000 under his control. **Metz v. Metz,**

Requiring parent to submit to mental and emotional evaluation — court discretion — The trial court did not err in a child custody modification case by requiring plaintiff father to submit to a mental and emotional evaluation in the absence of a motion or sufficient notice under N.C.G.S. § 1A-1, Rule 35. The trial court's authority arose from the broad discretion granted to courts in child custody proceedings. **Maxwell v. Maxwell,**

CHILD VISITATION

Improper suspension — written findings of unfitness as parent or best interest of child required — The trial court erred in a child custody modification case by suspending plaintiff father's visitation absent written findings of his unfitness as a parent or that it was in the best interest of the minor children. **Maxwell v. Maxwell,**

CONFESSIONS AND INCRIMINATING STATEMENTS

Denial of pretrial motion to suppress — not in custody — The trial court did not err in a second-degree murder case by denying defendant's pretrial motion to suppress the statement he made to detectives at the police station. Considering the totality of circumstances, defendant was not in custody at the time of his recorded statement to police. **State v. Carter,**

CONSTITUTIONAL LAW

Confrontation clause — defendant not present at in-chambers conference — harmless error — The trial court's error in excluding defendant from an in-chambers conference prior to the sentencing hearing was harmless where the conference was recorded, defendant was represented by counsel at the conference, he was given an opportunity to be heard and to make objections at the sentencing hearing, and the trial court reported the class level for each offense and any aggravating or mitigating factors on the record in open court. **State v. Wright,**

Double jeopardy — one course of conduct — multiple victims — Defendant's constitutional right against double jeopardy was not violated where he was sentenced for two attempted murder convictions consolidated with two assault convictions arising from a single course of conduct with multiple shots and two victims. **State v. Wright,**

CONTEMPT

Civil — present ability to comply — The trial court did not err in a child custody modification case by holding plaintiff father in civil contempt based on competent evidence in the record regarding plaintiff's present ability to comply with the contempt order. **Maxwell v. Maxwell,**

CRIMINAL LAW

Self-defense — instruction — deadly force or non-deadly force — There was no plain error in a prosecution for assault with a deadly weapon inflicting serious injury where defendant contended that the trial court should have given the self-defense instruction concerning death or great bodily harm rather than bodily injury or offensive physical contact. Taking the evidence in the light most favorable to defendant, there was sufficient evidence to reach the jury on the question of whether defendant had a reasonable apprehension of death or great bodily harm. **State v. Whetstone,**

Self-defense — knife as deadly weapon — The trial court did not err in an assault prosecution in which defendant claimed self-defense by concluding on the evidence that the knife defendant used was a deadly weapon as a matter of law. **State v. Whetstone,**

Voluntary intoxication — instruction not given — no plain error — There was no plain error in a prosecution for the rape of a child under the age of thirteen and indecent liberties where the court did not give an instruction on voluntary intoxication. Defendant did not present evidence to support a conclusion that, at the time the acts were committed, his mind and reason were so completely intoxicated and overthrown as to render him utterly incapable of forming the requisite intent. **State v. Merrell,**

DECLARATORY JUDGMENTS

Writ of mandamus — mandatory injunction — The trial court did not err in a declaratory judgment action by concluding that plaintiff was not entitled to a writ of *mandamus* or a mandatory injunction because plaintiff had no right to demand that the Board of Commissioners consider its 2009 application for a modification to a special use permit. **Wake Forest Golf & Country Club, Inc. v. Town of Wake Forest,**

DISCOVERY

Privileged documents — failure to disclose material exculpatory information — The trial court erred in an indecent liberties and statutory rape case by failing to disclose material exculpatory information contained in privileged documents reviewed *in camera*. On remand for a new trial, the trial court should review the material *de novo* to determine whether it should be made available to defendant. **State v. Martinez,**

EVIDENCE

Impeachment — victim's prior sexual history — not admissible — The trial court did not err in a prosecution for indecent liberties and statutory rape by not admitting evidence of the victim's prior sexual activity for impeachment purposes. The prosecuting witness offered no testimony about her previous sexual activity, the testimony defendant sought to elicit involved activity months earlier that had no direct relationship to this incident, and there was no issue of consent. **State v. Edmonds,**

Rape shield law — victim's inconsistent statements — not admissible — Evidence in an indecent liberties and statutory rape prosecution concerning the victim's inconsistent statements about her sexual history did

not fit within any of the exceptions to the exclusionary mandate of the rape shield law. **State v. Edmonds,**

Sexual abuse — vouching for victim's credibility — The trial court erred in an indecent liberties and statutory rape case by admitting a DSS social workers' testimony that she substantiated the minor victim's claim of sexual abuse by defendant. There was a reasonable possibility that had the testimony not been admitted, the jury would have reached a different verdict. **State v. Martinez,**

Statutory rape — victim's unredacted medical records — not admissible — The trial court did not err in a prosecution for indecent liberties and statutory rape by excluding the victim's un-redacted medical records, which contained statements about her sexual history. **State v. Edmonds,**

HOMICIDE

First-degree murder — means to kill — evidence not sufficient — The State did not present sufficient evidence that defendant had the means to kill a first-degree murder victim where the State could only establish that a high velocity rifle that might have been an M16 could have fired bullets associated with shell casings found at the scene, but could not establish that an M16 actually fired that type of shell casing, that defendant had an M16, or how defendant could have obtained one other than his boasts and vague testimony that such a theft might have been possible. **State v. Hayden,**

First-degree murder — motive to kill — evidence sufficient — Taking the evidence in the light most favorable to the State, there was sufficient evidence in a first-degree murder prosecution for a rational juror to find the existence of a motive to kill the victim where there was evidence of hostility between the victim and defendant that erupted at times into physical violence and threats. **State v. Hayden,**

First-degree murder — opportunity to kill — evidence not sufficient — In a first-degree murder prosecution, the State did not present sufficient evidence of defendant's opportunity to kill the victim where the only evidence was a statement made 26 years after the murder that defendant was located two miles away. There was no evidence placing defendant at the scene of the crime, much less at the scene when the crime was committed. **State v. Hayden,**

Second-degree murder — motion to dismiss — sufficiency of evidence — intentional use of deadly weapon — The trial court did not err by

denying defendant's motion to dismiss the charge of second-degree murder. Evidence of defendant's intentional use of a deadly weapon, a semi-automatic handgun, that proximately caused death triggered a presumption that the killing was done with malice. **State v. Carter,**

INJUNCTIONS

Right to enter property — fence mistakenly built on neighbor's property — The trial court did not err in a declaratory judgment action by granting plaintiffs' motion to allow them to enter upon defendant's property to remove and relocate a fence mistakenly constructed on defendant's property, and requiring plaintiffs to pay the costs of this procedure including any damage that may be caused to defendant's property. It was within the trial court's discretion to consider whether the injunctive relief sought was an appropriate remedy. **Mathis v. Hoffman,**

INSURANCE

Motor vehicles — identical excess clauses — The trial court erred in a declaratory judgment action arising out of a motor vehicle accident by granting summary judgment in favor of plaintiff insurance company. Defendant insurance company's policy did not provide primary coverage for the personal injury claim, but instead, the claim was prorated between the two insurers according to the limits specified in the policies because the "excess" clauses of both companies were identically worded and deemed mutually repugnant. **Integon Nat'l Ins. Co. v. Phillips,**

JURISDICTION

Minimum contacts — due process — The trial court did not err by concluding that the exercise of personal jurisdiction satisfied the minimum contacts requirement of due process. **Lab. Corp. of Am. Holdings v. Caccuro,**

Pending related equitable distribution action — second action not subsumed by first — The trial court correctly denied defendants' motion to dismiss a Forsyth County action that alleged fraud where there was an equitable distribution action pending in Alamance County. Although defendants contended that plaintiff's claims were subject to the exclusive jurisdiction of the district court pursuant to N.C.G.S. § 7A-244, they offered no specific reasons for the Forsyth County claims being barred by or completely subsumed within the pending Alamance County domestic action. **Jesse v. Jesse,**

Personal — long-arm statute — The trial court did not err in a breach of contract, breach of covenant of good faith and fair dealing, conversion, and unfair competition case by denying defendant's motion to dismiss for lack of personal jurisdiction based on the long arm statute under N.C.G.S. § 1-75.4(5)(d). All that was required to satisfy the statute was that defendant demanded money from plaintiff, and plaintiff paid the money from North Carolina. **Lab. Corp. of Am. Holdings v. Caccuro,**

JURY

Batson challenge — race-neutral reasons — failure to show purposeful discrimination — The trial court did not err in a second-degree murder case by excluding prospective African-American jurors from the jury. The trial court found the prosecutor made race-neutral explanations and defendant failed to show purposeful discrimination. **State v. Carter,**

LIENS

Condominium assessment — calculation of unit share — The trial court erred by dismissing a foreclosure of claim of lien for unpaid condominium assessments where respondents contended that the assessment was not computed properly. Petitioner had the authority to assess the cost of windows and doors for a building solely against the unit owners in that building, but separate findings and conclusions should have been made for the portions of the renovations that were for the common areas and facilities. **In re Foreclosure of Johnson,**

Materialman's — work after sale and lien waiver— no contract with county — Plaintiff could not enforce a materialman's lien against Wake County where it had begun the work while the property was owned by a developer, a portion of the property was sold to Wake County, there was no contractual relationship between plaintiff and Wake County, and plaintiff sought to enforce a lien for work that was done after the conveyance and accompanying lien waiver. Plaintiff could not enforce the lien without a contractual relationship with Wake County. **Gaines & Co. Inc. v. Wendell Falls Residential, LLC,**

MORTGAGES AND DEEDS OF TRUST

Subsequent deed of trust — debt not extinguished — The trial court did not err by granting summary judgment for BB&T on the issue of whether an exclusion in a 2003 title insurance policy applied to BB&T's cause of action. Chicago Title contended that no amount remained to be paid on a promissory note secured by a 2003 deed of trust because it was effectively replaced by a

2005 deed of trust on the same property. Enforcing the document as written, the debt owed on the 2003 deed of trust was renewed and extended by a new document, the 2005 deed of trust, and the 2003 debt was not extinguished. **Branch Banking and Trust Co. v. Chicago Title Ins. Co.,**

MOTOR VEHICLES

Mobile home — completion of sale — right to resell — Defendant had the right to sell plaintiff a mobile home even though defendant had not paid consideration and the certificate of title had not been issued at the time of the agreement between defendant and plaintiff. Plaintiff, not defendant, bore the loss of the mobile home when it burned. **Singletary v. P & A Invs., Inc.,**

NEGLIGENCE

Contributory — collision at intersection — limited sight distances — failure to reduce speed or keep proper lookout — The trial court did not err by submitting to the jury the issue of contributory negligence in an action arising from the collision of a motorcycle on the dominant road with a pickup truck on the servient road, with both drivers having limited sight distances. A jury could conclude from the evidence that circumstances existed that would reasonably put plaintiff on notice that he could not assume that the other driver would yield at the intersection. **Fisk v. Murphy,**

PROBATION AND PAROLE

Post-supervision release — revoked — violation of condition — An order revoking a juvenile's post-release supervision was affirmed even though the underlying charge, resisting a public officer, was reversed where the juvenile had also violated an unrelated condition of his post-supervision release. **In re A.J.M.-B.,**

PROCESS AND SERVICE

Package left at front desk — rebuttable presumption of service — The trial court abused its discretion by granting defendant's motion for relief from a default judgment without considering the presumption of proper service provided by N.C.G.S. § 1A-1, Rule 4(j)(2). Federal Express delivered a package containing the summons and complaint to the "front desk" of the registered agent, and the delivery form was signed by someone other than the addressee. **Dougherty Equip. Co., Inc. v. M.C. Precast Concrete, Inc.,**

REAL PROPERTY

Realtor's commission — breach of purchase agreement — right of first refusal — Plaintiff-realtor was not entitled to a commission under the terms of a fee agreement where an outside party came forward to exercise a right of first refusal. Defendants were not responsible for a breach of the terms of the purchase agreement. **Jim Lorenz, Inc. v. O'Haire,**

Realtor's commission — buyer meeting conditions — notice of defect in title — Plaintiff-realtor did not produce a buyer who met all of the conditions of the purchase agreement and was not entitled to a commission from the sale of the certain premises where an outside party (Smith) exercised a right of first refusal and the buyer (Legasus) did not provide timely notice of a title defect under the purchase agreement. Although plaintiff contended that the first refusal was within the chain of title and was not a marketable title defect as contemplated by the agreement, the plain and unambiguous language of the agreement did not distinguish between defects within and those without the chain of title. **Jim Lorenz, Inc. v. O'Haire,**

REFORMATION OF INSTRUMENTS

Title insurance — exclusion of prior deed — The trial court did not err by granting summary judgment for BB&T on the issue of reformation of a 2003 title insurance policy where Chicago Title did not forecast a showing that BB&T and Chicago Title mutually intended to exclude a prior deed of trust from the policy and that the policy failed to express those intentions as a result of mutual mistake. **Branch Banking and Trust Co. v. Chicago Title Ins. Co.,**

SATELLITE-BASED MONITORING

Statutory premise for order — incorrect — The trial court erred by ordering a defendant convicted of the rape of a child under the age of thirteen and indecent liberties to register as a sex offender and to submit to lifetime satellite-based monitoring. The trial court's order was premised on violation of a statute under which defendant was not convicted. **State v. Merrell,**

SEARCH AND SEIZURE

Anonymous tip — assertion of illegality — reliability — The denial of a juvenile's motion to dismiss a charge of resisting a public officer at the adjudication stage was reversed, along with the resulting adjudication of delinquency, where officers received an anonymous call about two juveniles walking behind a residence in an open field with a shotgun, responding

officers saw two juveniles in a wood line but not in the field and not carrying a firearm, and the juveniles ran from the officers. One element of the offense presupposes lawful conduct by the officer and reasonable suspicion requires that a tip be reliable in its assertion of illegality. Since there were insufficient indicia of reliability as to any criminal activity by the juvenile, the State presented insufficient evidence that the officer acted lawfully in discharging or attempting to discharge a duty of his office. **In re A.J.M.-B.,**

Traffic stop — lack of reasonable suspicion — The trial court erred in a drugs and carrying a concealed weapon case by denying defendant's motion to suppress evidence based on lack of reasonable suspicion to conduct a valid stop of defendant's vehicle where the stop was merely based on the possibility that a thirty-day tag was fictitious. **State v. Burke,**

SENTENCING

Aggravating factors — committed against police officer — The trial court did not err in a second-degree murder case by submitting to the jury the aggravating factor under N.C.G.S. § 15A-1340.16(d)(6) that the offense was committed against a police officer engaged in the performance of his official duties. Sentencing factors that might lead to sentencing enhancement do not have to be alleged in the indictment. **State v. Carter,**

Restitution — greater than evidence — remanded — A restitution order was remanded for amendment where the record on appeal supported only \$15,400 rather than the \$15,760 awarded. **State v. Wright,**

STATUTES OF LIMITATION AND REPOSE

Title insurance — prior deed of trust — notice and exclusion — The trial court did not err in its determination of the statute of limitations applicable to a title insurance case where Chicago Title would not have been barred by either N.C.G.S. § 1-52(9) or N.C.G.S. § 1-15 from filing a claim for professional malpractice or negligent misrepresentation when it was notified of a prior deed of trust. Additionally, Chicago Title had issued a policy for the prior deed of trust, and, by excluding prior unrecorded liens, Chicago Title implicitly agreed to insure against liens that were recorded. **Branch Banking and Trust Co. v. Chicago Title Ins. Co.,**

TRIALS

Prior pending action doctrine — second action not subsumed by first — second action held in abeyance — The trial court did not err by denying defendants' motion to dismiss a Forsyth County complaint alleging

fraud while there was a pending domestic action in Alamance County. Defendants contended that the action should have been dismissed under the "prior pending action doctrine" but did not demonstrate that any of the issues raised in the Forsyth County action were completely subsumed in the Alamance County action. However, there was a clear interrelationship between the cases and the Forsyth County action was to be held in abeyance pending resolution of the Alamance County action. **Jesse v. Jesse,**

UNIFORM COMMERCIAL CODE

Mobile homes — goods — not a part of real estate — Mobile homes are generally goods in North Carolina, and, given the trial court's findings on severability and relocation, the mobile home in this case was personal property under the Uniform Commercial Code and not a part of the real estate. **Singletary v. P & A Invs., Inc.,**

Mobile home — risk of loss — controlled by UCC — The risk of loss for a mobile home that burned during a sale was controlled by the Uniform Commercial Code (UCC) rather than the North Carolina Motor Vehicle Act. Under the UCC, plaintiff was the owner of the vehicle when it was destroyed. **Singletary v. P & A Invs., Inc.,**

WORKERS' COMPENSATION

Authorization for medical treatment — reasonable time — The Industrial Commission's conclusions in a workers' compensation case that plaintiff sought authorization for medical treatment within a reasonable time were supported by the findings, which were supported by the evidence. **James v. Carolina Power and Light,**

Authorized medical care — prior to date of request — The Industrial Commission erred in a workers' compensation case by limiting authorized medical care to that received on or after the date plaintiff requested authorization for the treatment. **James v. Carolina Power and Light,**

Average weekly wage — method of calculating — The Industrial Commission erred in a workers' compensation case in calculating plaintiff's average weekly wage where the nature of her work for the employer varied and the Commission found that plaintiff had worked less than fifty-two weeks, triggering the third statutory method of calculating compensation, without a finding that method one would be unfair. **James v. Carolina Power and Light,**

Denial of extension of time — no abuse of discretion — The Industrial Commission did not abuse its discretion in a workers' compensation case by denying defendants' motion for extension of time to take additional expert testimony where the case was already over seven years old and the additional testimony would have been duplicative. **Gray v. United Parcel Servs.,**

Disability — evidence and findings — The evidence in a workers' compensation case regarding plaintiff's disability supported the findings, which supported the conclusions. **James v. Carolina Power and Light,**

Pickrell presumption — presumption rebutted — The Industrial Commission erred in a workers' compensation case where it correctly concluded that the *Pickrell* presumption applied to plaintiff's workplace death, but erroneously held that the presumption had not been rebutted by defendant's expert testimony. On remand, plaintiff had the burden of showing that the death was the result of an accident arising out of the course and scope of employment. **Gray v. United Parcel Servs.,**

ZONING

Modification of special use permit — estoppel — The trial court did not err in a declaratory judgment action by concluding that defendant town's refusal to consider and act upon plaintiff's 2009 application for a modification to a special use permit was not unlawful. Plaintiff was estopped from attacking the zoning ordinance because it voluntarily designated the golf course as open space. **Wake Forest Golf & Country Club, Inc. v. Town of Wake Forest,**