

APPEAL AND ERROR

Appealability – mootness – shackles – conviction vacated – Although defendant contended that he was denied a fair trial by virtue of his visible shackling during the habitual felon phase of a trial, this argument was not addressed because defendant’s habitual felon conviction was vacated. **State v. Boyd,**

Preservation of issues – failure to argue – personal jurisdiction – Defendant abandoned its defense of lack of personal jurisdiction on appeal based on its failure to make any argument that this would have been an alternative basis for the trial court’s dismissal of the action. **Stunzi v. Medlin Motors, Inc.,**

Preservation of issues — failure to raise constitutional issue at trial — no constitutional violation — Defendant failed to preserve for appellate review his constitutional argument that the trial court erred in a first-degree murder case by allowing the State’s expert forensic pathologist to testify about the autopsy of one of the victims and give her own opinion concerning the cause of death. Even if the issue had been preserved, the expert’s testimony did not violate defendant’s constitutional right of confrontation because the expert was actually present for the autopsy of the victim and testified as to her own independent opinion as to the cause of her death. **State v. McMillan,**

ATTORNEY FEES

Prevailing party – reversal of holding – The trial court erred by granting plaintiff attorney fees under N.C.G.S. § 44A-35. Plaintiff was not the prevailing party within the meaning of the statute given the Court of Appeals’ reversal of the trial court’s order granting plaintiff a lien on defendant’s real property. **Waters Edge Builders, LLC v. Longa,**

Substantial justification – plain meaning of statute – The trial erred by awarding attorney fees in favor of decedent’s estate under N.C.G.S. § 6-19.1. Defendant agency’s position did not lack substantial justification, and the argument advanced rested on the plain meaning of the relevant statutory provisions. **Estate of Joyner v. N.C. Dep’t of Health & Human Servs.,**

BURGLARY AND UNLAWFUL BREAKING OR ENTERING

First-degree burglary – failure to include “not guilty” final mandate – The trial court did not err by failing to include a “not guilty” final mandate in the jury’s instruction on first-degree burglary. The jury was instructed

explicitly that it could not return a guilty verdict should it have reasonable doubt as to any of the elements of first-degree burglary. **State v. Boyd,**

CONTRACTS

Unilateral contract – no condition for making promise – The trial court did not err by failing to find that a unilateral contract existed between the parties. The evidence was not conclusive that a final agreement between the parties invited plaintiff to perform some act for making the promise to complete the construction of defendant's staircase for \$9,000. **Waters Edge Builders, LLC v. Longa,**

CRIMINAL LAW

Prosecutor's argument – breaking into house – The trial court did not abuse its discretion by overruling defendant's objection and by failing to intervene *ex mero motu* in a portion of the State's closing argument regarding an assailant's entry into the victim's house for first-degree burglary. Counsel is typically given wide latitude in closing arguments. **State v. Boyd,**

EMINENT DOMAIN

Inverse condemnation – substantial compliance with statutory requirements – The trial court did not err by denying plaintiff Department of Transportation's motion to dismiss a counterclaim for inverse condemnation. Defendants may assert an inverse condemnation claim for a further taking during an ongoing condemnation proceeding. Further, defendants substantially complied with N.C.G.S. § 136-111. **N.C. Dep't of Transp. v. Cromartie,**

Inverse condemnation – sufficiency of findings of fact – The trial court erred by determining that plaintiff Department of Transportation had inversely condemned a .832-acre parcel. The trial court's factual findings had no competent basis in evidence, and thus, the order was reversed and remanded for further proceedings. **N.C. Dep't of Transp. v. Cromartie,**

EMPLOYER AND EMPLOYEE

Breach of employment — conduct grounds for termination — reasons not pretextual — summary judgment proper — The trial court did not err in a breach of employment contract case by granting defendants' motion for summary judgment. There were no genuine issues of material fact as to whether plaintiff engaged in conduct that met the employment agreement's grounds for termination and given the just cause for termination, defendant's

reasons for plaintiff's discharge were not pretextual. **Meehan v. Am. Media Int'l, LLC,**

Employment contracts — Wage and Hour Act — terms ambiguous — genuine issues of material fact — summary judgment improper — The trial court erred in a North Carolina Wage and Hour Act claim by granting defendants' motion for summary judgment. The language of the employment contract was ambiguous and genuine issues of material fact existed as to which iteration of the Consumer Price Index should be used. **Meehan v. Am. Media Int'l, LLC,**

Tortious interference with contract — no intentional inducement — summary judgment proper — The trial court did not err in a tortious interference with contract case by granting defendants' motion for summary judgment. Defendant DSI did not breach its contract with plaintiff because it had just cause for termination. Since there was no breach of contract, plaintiff's claim failed. Additionally, as just cause for termination existed, defendants Clark and AMI had legal justification for discharging plaintiff. **Meehan v. Am. Media Int'l, LLC,**

EVIDENCE

Mouth swabbing — photographs — belt and shoes — defendant's consent — motion to suppress properly denied — The trial court did not err in a first-degree murder and robbery with a dangerous weapon case by denying defendant's motion to suppress certain evidence. The findings of fact supported the conclusion of law that defendant freely and voluntarily consented to the swabbing of his mouth, the photographs of his injuries, and the collection of his belt and shoes. **State v. McMillan,**

HOMICIDE

First-degree murder — jury instruction — voluntary manslaughter — no evidence to support instruction — The trial court erred in a first-degree murder case by refusing to charge the jury on the lesser-included offense of voluntary manslaughter as to each victim. **State v. McMillan,**

First-degree murder — second-degree murder — sufficient evidence — motion to dismiss properly denied — The trial court did not err in a murder case by denying defendant's motion to dismiss the charges of second-degree murder of one victim and first-degree felony murder of another. The State offered sufficient evidence to establish every element of these crimes. **State v. McMillan,**

INDICTMENT AND INFORMATION

First-degree murder — short-form indictment proper — The trial court did not err in a first-degree murder and robbery with a dangerous weapon case by refusing to dismiss the short-form first-degree murder indictment against defendant. The issue of short-form indictments has been repeatedly decided against defendants and the Court of Appeals was bound by this precedent. **State v. McMillan,**

KIDNAPPING

Second-degree – erroneous instruction – no evidence of removal – The trial court erred by including removal in its jury instruction for second-degree kidnapping. No evidence was presented at trial indicating defendant removed the victim from her living room. The State failed to meet its burden of demonstrating beyond a reasonable doubt that defendant’s constitutional right to a unanimous jury verdict was not violated, and thus, defendant was entitled to a new trial on the kidnapping charges. Further, defendant’s habitual felon conviction was vacated because it was formed partially based on the kidnapping conviction. **State v. Boyd,**

PUBLIC ASSISTANCE

Medicaid – improper transfer or disposal of assets – The trial court erred by determining that decedent’s execution of the pertinent deeds of trust did not constitute a transfer or disposal of assets in violation of 42 U.S.C. § 1396p(c)(1)(A) and N.C.G.S. § 108A-58.1(a) governing the operation of the Medicaid program. **Estate of Joyner v. N.C. Dep’t of Health & Human Servs.,**

Medicaid – uncompensated transfer – lump sum payment arrangement – The Department of Health and Human Services did not err by concluding that a transaction evidenced in and secured by a second note and deed of trust constituted an uncompensated transfer that terminated decedent’s long-term care Medicaid benefits. The lump sum payment arrangement contemplated by the agreement did not reflect the fair market value of the services, if any, that decedent actually received pursuant to that contract. **Estate of Joyner v. N.C. Dep’t of Health & Human Servs.,**

QUANTUM MERUIT

Hospital charges — damages — material issue of fact — summary judgment improper — The trial court erred in an action to recover hospital fees in *quantum meruit* by granting summary judgment in favor of plaintiff

hospital on the issue of damages. There was a material issue of fact concerning whether the charges plaintiff billed defendant were reasonable for the goods and services rendered. **Charlotte-Mecklenburg Hosp. Auth. v. Talford,**

Hospital charges — guaranty claim — summary judgment improper — The trial court erred in an action to recover hospital fees in *quantum meruit* by granting summary judgment in favor of plaintiff hospital on the issue of damages. Even if summary judgment in favor of plaintiff was improper on its implied contract claim, summary judgment was not proper based on plaintiff's guaranty claim. **Charlotte-Mecklenburg Hosp. Auth. v. Talford,**

Lien on real property – precluded absent express contract – The trial court erred by enforcing plaintiff's claim of lien when the trial court allowed plaintiff's recovery on the theory of *quantum meruit*. Absent an express contract or one implied-in-fact, plaintiff was precluded from placing a lien on real property. **Waters Edge Builders, LLC v. Longa,**

Materials and services – inexact nature of costs – reasonableness – The trial court did not err by awarding plaintiff a recovery in the amount of \$5,000.00 on the theory of *quantum meruit*. Given the evidence and the inexact nature of ascertaining a definite cost for the type of service provided, the value assessed by the trial court for materials and services was reasonable and supported by competent evidence. **Waters Edge Builders, LLC v. Longa,**

SEXUAL OFFENSES

Sexual battery – instruction – The trial court did not err by allegedly instructing the jury on a theory of sexual battery not supported by the evidence. Defendant's argument went to the weight of the evidence and not its existence. **State v. Boyd,**

STATUTES OF LIMITATION AND REPOSE

Expiration – lemon motor vehicle – fraud or misrepresentation should have been discovered – The trial court did not err by granting defendant's motion to dismiss plaintiff's claims with prejudice arising from plaintiff's purchase of a motor vehicle from defendant. Plaintiff reasonably should have discovered any fraud or misrepresentation by defendant as to the status of the car as a "lemon" on 16 August 2004, and the pertinent statutes of limitation had all expired before commencement of this action. **Stunzi v. Medlin Motors, Inc.,**

TAXATION

Capitalization rate – not arbitrary or capricious – A whole record review revealed that the North Carolina Property Tax Commission’s use of a 10% capitalization rate was supported by the evidence and was not arbitrary or capricious. **In re Appeal of Blue Ridge Mall, LLC,**

Valuation – rebuttable presumption of correctness – A *de novo* review revealed that the North Carolina Property Tax Commission did not err by concluding a taxpayer rebutted the presumption of correctness by producing competent, material, and substantial evidence tending to show the County used an arbitrary or illegal method of valuation, and the County’s assessment substantially exceeded the true value in money of the property. **In re Appeal of Blue Ridge Mall, LLC,**

Valuation – retention pond parcel – The North Carolina Property Tax Commission did not err by its valuation of a 5.15-acre retention pond parcel. The Commission assigned the same value as the County. **In re Appeal of Blue Ridge Mall, LLC,**

TERMINATION OF PARENTAL RIGHTS

Best interests of child – abuse of discretion standard – The trial court did not abuse its discretion by concluding that termination of respondent father’s parental rights was in the best interests of the juveniles. **In re C.I.M.,**

Cessation of reunification efforts – sufficiency of findings of fact – The trial court erred in a termination of parental rights case by failing to make sufficient findings of fact setting forth the basis for ceasing reunification efforts under N.C.G.S. § 7B-507(b). The case was remanded to the trial court for further proceedings. **In re I.R.C.,**

Grounds – willful abandonment – The trial court did not err by determining that grounds existed for terminating respondent father’s parental rights based on willful abandonment under N.C.G.S. § 7B-1111(a). **In re C.I.M.,**

UTILITIES

Renewable energy facilities – biomass resource – renewable energy source – The North Carolina Utilities Commission did not err by determining that wood derived from whole trees in primary harvest was a

biomass resource, and thus, a renewable energy source within the meaning of N.C.G.S. 62-133.8(b) when it approved two thermal electric generating stations as renewable energy facilities. **State ex rel. Utilities Comm'n v. Env'tl. Def. Fund,**

WORKERS' COMPENSATION

Independent contractor – employer-employee relationship – The Industrial Commission erred by dismissing plaintiff's workers' compensation benefits claim on the grounds that plaintiff worked for defendant company as a subcontractor instead of an employee. Defendant exerted the degree of control of plaintiff that was characteristic of an employer's control over an employee. **Capps v. Se. Cable,**