



NORTH CAROLINA
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE

FAMILY FORUM

Published by the NCBA's Family Law Section Section Vol. 30, No. 1 September 2009 www.ncbar.org

Legislative Update

Selected Ratified Bills Tracked for the Family Law Section

by Scott Montgomery

HB 1106 / SL 2009-185 –

Amendments and Clarifications to Adoption Law. Section 1 of this bill provides that an adoption pre-placement assessment required to be updated to meet North Carolina's requirements for such assessments (set forth in G.S. § 48-1-109 (b) (1)-(2) and G.S. 48-3-303 (c)-(h)) can now be updated by a person or entity authorized to gather the necessary information according to the laws of the state where the prospective adoptive parents reside. In accordance with this provision, an order for a pre-placement report to the court shall be sent to a *person or entity* authorized to prepare home assessments under the laws of the petitioner's state of residence. In the event that the petitioner moves to a different state before the completion of the pre-placement report, the report shall be requested from the *person or entity* authorized to prepare the home assessment under the laws of the petitioner's new state of residence.

Section 2 requires that where a man and woman jointly adopted a minor child in a foreign country while married, they must readopt jointly, regardless of whether they have since divorced. In the event that either party does not readopt jointly, then he or she must be joined as a necessary party as provided in Rule 19, N.C. R. Civ. Pro.

Section 3 clarifies that while G.S. §48-2-40 requires notice of the petition for adoption to be served on necessary parties, it expressly now states that "Issuance of a summons is not required to commence an adoption proceeding. . . ."

Sections 5-6 clarifies that if the final day permitted for revocation of consent or withdrawal of relinquishment falls on a Saturday, Sunday, or legal holiday when the North Carolina Courts are closed, then the revocation period extends to the next business day.

Effective Date: June 26, 2009.

HB 1091 / SL 2009-224 –

Representation of Incompetent Spouse.

The prior law stated that a *general guardian* could pursue certain actions under Chapter 50. This bill clarifies that an attorney-in-fact

appointed pursuant to a durable power of attorney, as well as a duly appointed guardian or guardian ad litem can represent the incompetent spouse in any action authorized by Chapter 50. However, only a competent spouse can commence an action for absolute divorce.

Effective Date: June 30, 2009.

HB 1112 / SL 2009-285 –

Putative Father Entered on Birth Certificate in Lieu of Husband. Even where the mother was married at the time between conception and birth, rather than the mother's husband being placed on the child's birth certificate, the putative father's name shall be placed on the birth certificate. This applies where paternity has been established by the court, or where the mother, mother's husband, and putative father each completes an affidavit acknowledging paternity and containing other necessary information.

This bill also requires that where a mother was unmarried from the date of conception through birth, the mother's acknowledgement of paternity must state that the mother was unmarried at all times from the date of conception through birth.

Effective Date: July 10, 2009.

HB 1449 / SL 2009-311 –

Various Revisions to Juvenile Code. This bill makes revisions and amendments to various sections of the Juvenile Code, including venue, notice, discovery, appointment of counsel and pretrial hearings. Family law practitioners should note that this bill provides that a district court judge presiding over a civil matter in which the Department of Social Services is not a party may order the release of confidential information held by the Department, upon good cause shown, so long as the applicable federal law requirements for the release of medical information are also met.

Effective Date: Oct. 1, 2009.

HB 1299 / SL 2009-314 –

Electronic Visitation. An example of the law catching up with existing practice, this

bill adds an additional subsection to G.S. 50-13.2, providing that an order for custody of a minor child may provide for visitation rights by electronic communication. The subsection states that such electronic communication may be used to supplement in-person visitation with the child, but may not be used as a substitute for in-person custody or visitation. Such communications may be subject to supervision.

Effective Date: July 17, 2009.

SB 817 / SL 2009-335 –

Criminal Contempt for Failure to Pay Child Support. This bill is intended to increase child support collections by permitting imprisonment of up to 120 days, rather than the 30 days otherwise authorized by the criminal contempt statute. The bill permits a contemnor to be found in criminal contempt for a single act of failing to comply with a child support order and to be given a suspended sentence of 120 days imprisonment, conditioned upon reasonable provisions for payment of the child support ordered.

Effective Date: Dec. 1, 2009.

HB 115 / SL 2009-342 –

10 Days to Answer Complaint for Domestic Violence or No-Contact Order.

In an action brought under G.S. 50B or 50C, the defendant shall be issued a summons requiring the defendant to answer within 10 days of the date of service. This 10 day rush-to-answer period is much shorter than under Rule 12 of the N.C. R. Civ. Pro. which provides that in all other civil suits a defendant shall serve his answer within 30 days of service. There is also noticeably lacking any provision similar to that found in G.S. 50-10 whereby the allegations of a complaint for divorce or annulment are deemed denied where the defendant fails to timely answer. The bill will likely cause many defendants to be deemed to have admitted all allegations against them where, as so often happens, the defendant retains a lawyer only after obtaining a continuance from the first

See LEGISLATIVE page 14

Legislative *from page 13*

hearing in the cause. Also left unanswered is whether the clerk of court can grant an extension of time to answer and, if granted, for how long.

Effective Date: Applies to actions or motions filed on or after Dec. 1, 2009.

HB 1255 / SL 2009-380 –

Permanent No Contact Order To Protect Victim. This bill is an addition to the North Carolina Criminal Procedure Act (G.S. 15A). As part of criminal sentencing, a judge may issue a permanent no contact order against the defendant for the protection of the sex offense victim. Upon request of the district attorney, the judge shall act as the trier of fact and hold a show cause hearing during which the defendant shall be required to show cause why a permanent no contact order shall not be issued. At this hearing, the victim has the right to be heard. Upon entry, the order will be permanent, unless upon motion to rescind by the State, the court determines there are no longer reasonable grounds for the victim to fear future contact.

Effective Date: Applies to offenses committed on or after Dec.1, 2009.

HB 1464 / SL 2009-389 –

Mandatory Arrest for Violation of Domestic Violence Protective Order. In 2006, the North Carolina Court of Appeals

held in the case of **Cockerham-Ellerbee v. The Town of Jonesville** (176 N.C. App. 372) that the requirement of G.S. 50B-4.1(b) that an officer make immediate arrest upon probable cause to believe that a defendant violated a protective order was discretionary for the purposes of applying the public duty doctrine as a defense in tort. The public duty doctrine generally bars negligence claims against the State and municipalities for injuries caused by acts of a third party. The crux of the doctrine is that law enforcement is not to be held liable where they are exercising a discretionary function in protecting overall public safety.

The Court of Appeals somehow found ambiguity in the prior 50B-4.1(b), explaining: “In order to find that the legislature intended a true mandate of police action, a stronger indication would be required.” *Id.*, at 376. Answering the Court of Appeal’s invitation, this bill explicitly states that G.S. 50B-4.1(b) creates a mandatory provision requiring arrest, with or without a warrant, where a law enforcement office has probable cause to believe that a defendant has knowingly violated a valid protective order. The message to law enforcement agencies is that they cannot rely on tort immunity from future similar claims based on the public duty doctrine.

Effective Date: July 31, 2009.

HB 1110 / SL 2009-400 –

Alienation of Affection and Criminal Conversation. Under this bill, no acts of the defendant occurring after the date of separation can give rise to a claim for alienation of affection or criminal conversation. It also eliminates both causes of action against businesses, permitting such lawsuits to be brought against natural persons only. The bill establishes a three year statute of limitations matched by a three year statute of repose.

Effective Date: Applies to actions arising from acts occurring on or after Oct. 1, 2009.

SB 1062 / SL 2009-425 –

Domestic Violence Protective Orders: Protection of Pets. Domestic violence protective orders may now grant possession, including the care, custody, and control of animals kept as pets by either party or a minor child in the household. Protective orders may also order a party to refrain from cruelly treating or abusing such pets.

Effective Date: Aug. 5, 2009. ■

Scott Montgomery practices family law in Cary. He can be reached at scott@montylaw.com or www.montylaw.com.