50B Consent Orders: Findings of Fact/Conclusions of Law

Chapter 50B expressly authorizes entry of consent DVPOs, GS 50B-1(c), and many cases are resolved in this way. Overall, this is a good thing because consent orders:

- Spare both parties, who often are appearing pro se, the stress and uncertainty of a trial;
- Allow the parties to create orders that will best meet their specific needs; and
- Conserve valuable court time.

It is not uncommon for a defendant to be willing to agree to the entry of an order but not willing to agree that the specific acts alleged in the complaint actually occurred. Can a DVPO be entered without the specifics?

Kenton

While it is perfectly clear that when a court enters a DVPO following an evidentiary hearing the court must make findings of fact and conclusions of law to support the order, consent judgments generally are valid even if the parties choose not to include findings and conclusions. *See Buckingham v. Buckingham*, 134 NC App 82 (1999).

However, in *Kenton v. Kenton*, 218 NC App 603 (2012), the court held Chapter 50B requires that any order – including consent orders – entered pursuant to that Chapter must contain the finding of fact/conclusion of law that defendant committed an act of domestic violence. According to *Kenton*, any order entered without that finding/conclusion is *void ab initio*.

How Much Detail is Required by Kenton?

While *Kenton* repeatedly refers to both findings of fact and conclusions of law, the opinion states clearly that the statement an order must include is "defendant committed an act of domestic violence." *Kenton* does not state that any additional or more specific facts must be included. In a case decided shortly after *Kenton*, the court explained that the statement "defendant committed an act of domestic violence" actually is a conclusion of law rather than a finding of fact. *Kennedy v. Morgan*, 221 NC App 219, fn 2 (2012).

These two cases together indicate that *Kenton* requires only the general conclusion of law that defendant committed an act of domestic violence. Parties probably can leave out more specific factual findings about the details of the act.

Statutory Amendment

In response to *Kenton*, S.L. 2013-237(H 209) added new section GS 50B-3(b1) to provide that:

"A consent order may be entered pursuant to this Chapter without findings of fact and conclusions of law if the parties agree in writing that no findings of fact and conclusions of law will be included in the consent protective order."

The new law applies to **ORDERS ENTERED ON OR AFTER OCTOBER 1, 2013.** The AOC form DVPO was amended to include the necessary language and signature lines to allow parties to "agree in writing" that no findings or conclusions are required. This portion of the form must be completed in order for the consent DVPO to be valid without the conclusion 'defendant committed an act of domestic violence.'

Two things to remember; first, this new law allows the waiver of findings and conclusions **only in consent orders**. The parties cannot by consent relieve the trial court of the obligation to conclude that an act of domestic violence occurred before entering an order based on an evidentiary hearing.

Second, the law applies only to consent orders entered on or after October 1, 2013. Any order entered before that date without the required statement that defendant committed an act of domestic violence is void. While any initial one-year DVPO entered before that date has expired by now, many orders entered before October 1, 2013 have been renewed. If the initial order was *void ab initio*, any renewal of the initial order also is void. *See Kenton* (renewal order vacated because initial DVPO was void).

What about agreements not to bother each other?

"Mutual" DVPOs are prohibited by Chapter 50B unless both parties actually file a complaint against the other and each order contains detailed findings of fact. GS 50B-3(b) states:

"Protective orders entered, including consent orders, shall not be mutual in nature unless both parties file a claim **and** the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due-process is preserved."

Chapter 50B does not define 'mutual' and there has been no case law to date providing guidance. There also has been no case law indicating whether a violation of this provision will render a DVPO void. Given the appellate court's interpretation of the mandatory language in Chapter 50B in *Kenton*, it seems likely that the court would hold that because GS 50B-3(b) states clearly that these orders "shall not" be entered, a 'mutual' consent order entered without the required findings of fact will be void. *See also Bryant v. Williams*, 161 NC App 444, fn.2 ("We recognize that mutual claims require an additional complaint and detailed findings by the court").

The 2013 statutory amendment regarding consent orders made no change to this provision, so parties cannot waive these factual findings by consent.

So ‘mutual’ DVPOs may be entered only when two complaints have been filed and the findings required by GS 50B-3(b) are made. Black’s Law Dictionary defines ‘mutual’ as “reciprocal; … [a] relation in which like duties and obligations are exchanged.” Clearly, a consent order entered in a single case requiring that neither party assault/harass the other is prohibited.

When each party files a separate complaint, the statute requires that, if orders are entered in each case granting both parties protection, the findings of fact specified in GS 50B-3(b) must be included in both orders. This means consent orders in these individual cases will be void unless the required findings are made.

This can present quite a challenge to the court because a judge in one case may not know about the other case. If the court has no other way to identify these situations, the court probably should inquire in every case whether both parties have filed complaints.