

And Now We Don't Have to Record Ex Parte DVPO Hearings

In [Stancill v. Stancill, 773 SE2d 890 \(NC App, June 16, 2015\)](#), the court of appeals held that a hearing on a request for an ex parte DVPO pursuant to Chapter 50B is a “civil trial” within the meaning of [GS 7A-198](#) – a statute that requires that all “civil trials” be recorded when court reporting personnel is unavailable. But the recording requirement for these ex parte orders was short-lived. The General Assembly very quickly amended [GS 7A-198\(e\)](#) to specifically exclude ex parte and emergency hearings conducted pursuant to GS Chapters 50B and 50C on or after July 31, 2015.

Stancill v. Stancill

In [Stancill](#), the trial court granted plaintiff’s request for both an ex parte DVPO and a one-year DVPO. On appeal, defendant argued in part that the trial court erred by failing to record the ex parte DVPO hearing and the court of appeals agreed. According to [Stancill](#), the “general rule is that reporting will be provided in civil trials before district court judges.”

Civil District Court Is a Court of Record

Reporting is required because, unlike most sessions held in criminal district court, district court is a court of record for civil proceedings. Appeals from civil orders and judgments go straight to the Court of Appeals. [GS 7A-27](#).

[G.S. 7A-198](#) provides that:

- (a) Court-reporting personnel shall be utilized, if available, for the reporting of civil trials in the district court. If court reporters are not available in any county, electronic or other mechanical devices shall be provided by the Administrative Office of the Courts upon request of the chief district judge. ...
- (d) Reporting of any trial may be waived by consent of the parties.

Ex Parte DVPO Can Be Entered only after a ‘Hearing’

Focusing on the specific language in GS 50B-2, the court in *Hensey v. Hennessy*, 201 NC App 56 (2009), held that an ex parte DVPO may not be issued or denied based on the verified pleading or on affidavits. The court must hold a hearing, take evidence and grant an ex parte only upon “specific facts shown” that there is a danger of domestic violence.

So an ex parte DVPO hearing is a “civil trial”

After reviewing the *Hensey* decision, the court in [Stancill](#) held that a hearing on a request for an ex

parte DVPO is a civil trial that must be recorded because:

- Parties have the right to appeal the granting of an ex parte DVPO. Review is very difficult without a record;
- Unlike requests for Rule 65 restraining orders, Chapter 50B requires that ex parte DVPOs be granted or denied only after an evidentiary hearing; and
- The court is required to make findings of fact and conclusions of law after hearing evidence

Legislative Response

Recording equipment generally is available only in courtrooms. Other areas of the courthouse, such as chambers and conference rooms, are not equipped with recording equipment. The [Stancill](#) decision caused immediate and wide-spread concern that plaintiffs seeking protection from domestic violence would face significant delays in obtaining access to a judge due to the need to wait for a courtroom to become available. It has been a common practice across the state for ex parte hearings to be conducted outside of the courtroom – in chambers and conference rooms – because of limited available courtroom space.

The General Assembly reacted quickly to the concern by enacting [S.L. 2015-173 \(H 59\)](#) to amend G.S. 7A-198(e) to provide:

(e) Reporting will not be provided in *ex parte or emergency hearings before a judge pursuant to Chapter 50B or 50C of the General Statutes*, trials before magistrates, or in hearings to adjudicate and dispose of infractions in the district court." [italics indicates language added by the legislation].

The amendment applies to ex parte and emergency hearings held on or after July 31, 2015. Hearings held before that date should have been recorded.

What Must be Recorded Now?

All trial in civil district court must be recorded, except for ex parte and emergency 50B and 50C hearings and small claims cases heard by magistrates. GS 7A-198. That means the final adjudication of the claim for a DVPO pursuant to Chapter 50B and the final adjudication of the claim for a civil no-contact order pursuant to Chapter 50C clearly must be recorded, as must all final adjudications of other civil claims. In *Miller v. Miller*, 92 NC App 351 (1988), the court of appeals held that motions to modify child custody orders are civil trials that must be recorded. And, *Coppley v. Coppley*, 128 NC App 658 (1998), held that motions to set aside judgments pursuant to Rule 60(b) also must be recorded.

But *Coppley* also held that a 5-minute hearing to approve the entry of a consent order does not need to be recorded.

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[Stancill](#) suggests without holding specifically that motions which can be determined based upon a verified pleading or affidavit are not civil trials that must be recorded, mentioning specifically a request for a TRO pursuant to Rule 65 of the Rules of Civil Procedure. If matters that can be decided based on affidavits alone do not need to be recorded, that would mean requests for temporary custody and PSS also do not need to be recorded. See *Story v. Story*, 57 NC App 509 (1982)(temporary custody can be decided based on affidavits) and GS 50-16.8 (PSS can be determined based on affidavits). But it is best to record those hearings when possible until we have a definitive answer from the appellate court.