

Domestic Violence: Any New Court Order Supersedes an Existing DVPO. What Exactly Does that Mean?

[S.L. 2019-168](#) amended [GS 50B-7](#) to specify that “[a]ny subsequent court order entered supersedes similar provisions in protective orders issued pursuant to this Chapter.” The amendment applies to DVPOs in effect on or after December 1, 2019. Legislation was introduced during the last session of the NC General Assembly to narrow the category of superseding orders to only those orders entered in Chapter 50 And Chapter 110 cases, but neither bill was enacted. See [SB 156](#) and [HB 1097](#).

Most Important Thing This Statute Means: Whenever a judge is being asked to enter *any* order involving litigants in a personal relationship as defined in [Chapter 50B](#), the judge must know whether there is an existing DVPO between those parties and must understand the impact of the order the judge is being asked to enter on any existing DVPO. I realize that often is much easier said than done, but it the only way to avoid unintended consequences that may leave families in situations that are at best confusing and at worst dangerous.

[NOTE on this issue: When child custody is requested in any type of civil action, parties are required to include information regarding existing custody orders. [GS 50A-209](#); [AOC CV-609](#) (Affidavit as to the Status of the Minor Child). The same statute that requires the party to provide information about existing custody orders also requires that party to inform the court of “proceedings relating to domestic violence” and “protective orders.” [GS 50A-209\(a\)\(2\)](#).]

What orders supersede provisions in a DVPO?

As originally drafted, [Chapter 50B](#) clearly was intended to provide temporary relief only. All protective orders initially must be limited to no more than one-year duration, [GS 50B-3\(b\)](#), and temporary custody orders entered as relief in a DVPO cannot exceed a total of one-year duration. [GS 50B-3\(a1\)\(4\)](#). The temporary nature of the relief became less clear when the statute was amended to allow DVPOs to be renewed for good cause for an unlimited number of successive two-year terms. [GS 50B-3\(b\)](#).

The recent enactment of [GS 50B-7\(b\)](#) seems intended to clarify that DVPOs still are intended to provide temporary relief only and to encourage parties to seek more permanent relief in other types of proceedings. At least theoretically, most remedies available for victims of violence in [Chapter 50B](#) also are available to victims on a more permanent basis through proceedings brought pursuant to Chapter 50 or Chapter 110 or through other common law civil tort actions and criminal proceedings. Of course, these other civil proceeding are not as accessible to parties without the

ability to hire an attorney.

In recognition of the more permanent nature of a Chapter 50 custody order, [GS 50B-3\(a1\)\(4\)](#) long provided that “any subsequent custody order entered under Chapter 50 of the General Statutes supersedes a temporary order issued pursuant to this Chapter.” The recent amendment replaced this provision regarding custody with the provision that “any” court order entered subsequent to the entry of a DVPO will supersede “similar provisions” in an existing DVPO.

So, for example, the terms of a custody order, a child support order, a PSS or alimony order, an equitable distribution order, or another 50B order involving the same parties will supersede similar terms in an existing DVPO.

What provisions of the DVPO will be superseded?

Any provision in the new order that is ‘similar’ to a provision in an existing DVPO will supersede the provisions in the DVPO. In the previous version of the statute, only ‘temporary custody provisions’ in the DVPO were superseded by a new Chapter 50 custody order. Provisions in a DVPO not designated as temporary custody were not superseded, such as provisions in a DVPO requiring that a parent have no contact with a child or that a parent stay away from the child’s school or day care. Similarly, if the child was the actual plaintiff in the domestic violence case, none of the provisions in the DVPO could be considered temporary custody orders and were unaffected by subsequent Chapter 50 custody orders.

Under the new statute, the terms of a new custody order will supersede all provisions in the DVPO between the parents relating to a parent’s contact with the child, not just those designated as temporary custody in the DVPO. It is not clear, however, that the new statute will change the impact of a new Chapter 50 custody order on an existing DVPO wherein the child is the actual plaintiff rather than either parent. This is because I believe it would be a violation of Due Process to interpret the statute to allow a court to affect the rights and protections of a person not subject to the jurisdiction of that court. See *e.g. Dechkovskaia v. Dechkovskaia*, 232 NC App 350 (2014). Since the child is not a party to a Chapter 50 custody case between the parents, it seems unlikely that interpreting [GS 50B-7\(b\)](#) to allow the terms of the custody order to supersede the rights and protections granted to the child in the DVPO would comply with Due Process.

Regarding custody, the court entering a Chapter 50 order after a DVPO has been entered between the parties should keep in mind that GS 50-13.2(b) specifies that when addressing custody in a Chapter 50 case, “[i]f the court finds that an act of domestic violence has occurred, the court shall enter such orders that best protect the children and the party who were the victims of domestic violence, in accordance with the provisions of [GS 50B-3\(a1\)\(1\)\(2\) and \(3\)](#).” This provision should help ensure that a judge considering Chapter 50 custody following the entry of a DVPO between the parents will consider all of the same safety related issues that the judge considered in the Chapter 50B proceeding.

Second DVPO between same parties.

A situation that arises with considerable frequency is one where a judge grants an ex parte DVPO giving plaintiff mother possession of the home and temporary custody of the children. On the same day or within a very short time thereafter, another judge grants an ex parte DVPO in another action filed by the defendant in the first action. The second DVPO grants plaintiff father possession of the home and temporary custody of the children. Which order is enforceable?

Until new [GS 50B-7\(b\)](#) was enacted, the answer was not at all clear. There simply is no legal doctrine holding that the first or second order is superior to the other or invalid due to the other. We simply have inconsistent orders that need to be reconciled by a judge. However, [GS 50B-7\(b\)](#) now seems to clearly provide that the terms relating to possession of the home and temporary custody of the children in the second order will supersede the similar provisions in the first ex parte DVPO.

However, that does not mean that the second claim can proceed to final trial on the request for a DVPO by father. If the second claim for domestic violence protection is based on the same incident upon which the first claim is based, the plaintiff in the first filed action can request that the second action be dismissed due to abatement, also referred to as the prior pending action doctrine. That doctrine provides that if a claim is one involving the same parties and the same cause of action as in a previously filed pending action, the court is required to dismiss the second claim. See *Jessee v. Jessee*, 212 NC App 426 (2011) (“Under the law of this state, where a prior action is pending between the same parties for the same subject matter in a court within the state having like jurisdiction, the prior action serves to abate the subsequent action.” [Eways v. Governor's Island](#), 326 N.C. 552, 558, 391 S.E.2d 182, 185 (1990)(further citations omitted)).

However, the prior pending action doctrine is not jurisdictional; the second claim can proceed to final adjudication if defendant in the second action does not raise the doctrine and request dismissal. See *Bethea v. Bethea*, 43 NC App 372 (1979).

If the second action is based on different incidents of alleged domestic violence, the prior pending action doctrine will not apply. However, a court has the discretion to either stay the second proceeding or to consolidate the two proceedings for trial to avoid the possibility of inconsistent orders. See G.S. 1A, Rule 42 (consolidation), and *Baldelli v. Baldelli*, 249 NC App 603 (2016)(action was not abated but due to the clear interrelationship between the actions, the second action should be held in abeyance until conclusion of first case).

I am sure the application of [GS 50B-7\(b\)](#) will be the subject of many future blog posts as we struggle to interpret it in light of the myriad of complicated situations certain to arise.

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