Time Limits in Family Law Cases

Given the ever-increasing number of family law cases in the district courts, it is not surprising that questions frequently arise concerning the court's authority to place limitations on the amount of court time allowed to individual cases. My former colleague Michael Crowell wrote a bulletin titled Time Limits several years ago thoroughly discussing the law addressing this question. Below are excerpts from his article. The entire bulletin can be found at https://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/aojb0902.pdf.

By Michael Crowell

Appellate cases on restricting trial evidence

Few cases involving a trial judge's restrictions on presentation of evidence have reached the appellate courts in North Carolina, and their guidance is mixed. On the one hand, the panel in *Ange v. Ange*, 54 N.C. App. 686 (1981), easily affirmed the trial court's decision to limit the number of witnesses to testify about the plaintiff 's mental ability to make a deed. Five witnesses testified, but another thirteen were excluded because they were going to say essentially the same thing. The decision in *Ange* seems simple enough because of the repetitive and cumulative nature of the testimony. The court stated, "It is clear that a trial judge, in his discretion, may limit the number of witnesses that a party may call so as to prevent needless waste of time." *Id.* at 687. As discussed above, the current North Carolina Rules of Evidence support that authority.

On the other hand, in *Murrow v. Murrow*, 87 N.C. App. 174 (1987), the court of appeals reversed a trial judge who allowed evidence to be presented only by affidavit in an equitable distribution case. The appellate court cited Rule 43(a) of the Rules of Civil Procedure which states, "In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules." In the court's view that meant the trial judge could not exclude oral testimony altogether, but the court did not address whether the judge could limit the testimony in other ways.

One appellate decision, *Woody v. Woody*, 127 N.C. App. 626 (1997), speaks more directly to a party's right to present evidence. As was his standard procedure in child custody cases, the trial judge had informed the parties that each side would be limited to four witnesses. When three of the father's witnesses unexpectedly emphasized the child's lack of cleanliness while in the mother's care, the mother asked to call an additional rebuttal witness. The trial judge refused because she already had called her four witnesses to present her case in chief. The court of appeals reversed the decision, holding that the trial judge had abused his discretion. Agreeing with the general proposition that a trial judge may limit witnesses who will be offering cumulative testimony, the court of appeals found that the judge went too far in sticking to the four-witness limit when the cleanliness issue became more significant than it originally appeared. The best interest of the child is the "polar star" in a custody dispute, and the trial judge should not have shut off important

evidence on that issue.

The important point of *Woody*, although not explained at any length by the court, is that a party has a right to make its own case. Although a trial judge may bar repetitive testimony and otherwise control the presentation of evidence to keep the case moving, efficiency cannot override the need for a full and fair presentation of the case.

The extent of a trial court's discretion to control court time was emphasized in *Roberson v. Roberson*, 40 N.C. App. 193 (1979), when the defendant in a civil contempt proceeding objected to being denied the opportunity to make a closing argument to the court. After finding that "the power of the trial judge to maintain absolute control of his courtroom is essential to the maintenance of proper decorum and the effective administration of justice," the court of appeals found it wholly within the discretion of the trial judge whether to allow argument in a nonjury trial (a statute provided a right to counsel to argue to the jury).

In *Keene v. Wake County Hosp. Systems*, 74 N.C. App. 523 (1985), the court found no abuse of discretion in the trial judge limiting lawyers' opening statements to five minutes each in a medical malpractice case in light of the provision in Rule 9 of the General Rules of Practice, which states, "Opening statements shall be subject to such time and scope limitations as may be imposed by the court." Given the inherent authority of the trial judge to control courtroom proceedings, as demonstrated by *Roberson*, the five-minute time limit certainly would have been upheld even if there were no Rule 9.

Guidance on Time Limits in State Court

Judges may set time limits on trials and hearings, but they must be careful in how they do so. The authority comes from the inherent authority of trial judges in North Carolina to control the flow of a case, the state constitutional provision promising justice "without delay," the state rules of evidence and practice stressing the importance of efficiency, the case management responsibility given to senior resident superior court judges and chief district judges, and the deference afforded local rules by the appellate courts.

Based on the general state law on management of cases, and the federal case law on time limits, the following advice is offered.

1. A trial judge has the authority to control the presentation of evidence to crisply move a case along, whether it be by forbidding duplicative evidence, limiting lawyers' arguments, or setting reasonable time limits.
2. When imposing any restriction on the presentation of evidence, whether it be limiting witnesses or setting time limits, a trial judge must balance the need for efficiency and preservation of limited court resources against the need for a full presentation of the case.

3. When setting time limits for a specific case, a judge should first learn enough about the case to be sure that the limits are appropriate and then be flexible when implementing them.
4. Local courts have broad discretion to set rules, including time limits, on case management and can expect considerable deference from the appellate courts.
5. Time limits set by local rules for particular categories of domestic cases seem to be a reasonable response to the large volume of cases in need of processing and quick resolution.
6. Local time-limit rules should be applied flexibly to accommodate the circumstances of individual cases that may make the time allotment inappropriate.
7. The overriding concern in each case is for a judge to hear all the evidence necessary to make a fully informed decision, and time limits should never be applied so as to exclude critical information.