

## What Happens to Temporary Orders When a Case is Dismissed?

Temporary orders are very common in domestic cases; ex parte domestic violence protective orders, temporary custody and child support orders, and orders for postseparation support are some examples. What happens to these temporary orders when plaintiff takes a voluntary dismissal of the underlying claim? Does the temporary order remain in effect until the court affirmatively sets it aside or does a voluntary dismissal automatically terminate all temporary orders? Do findings or conclusions made in the temporary orders have any impact on claims brought after the dismissal?

### Dismissal Terminates All Interlocutory Orders

The appellate courts have been clear that a voluntary dismissal generally automatically vacates all existing temporary orders. If a plaintiff files an appropriate Rule 41 dismissal, all interlocutory, temporary orders also are nullified without any requirement for court action. [For a short summary of the law relating to when a plaintiff can take a voluntary dismissal pursuant to Rule 41, read Ann Anderson's post [Taking a Voluntary Dismissal: Some Pitfalls](#), May 18, 2015.]

In *Doe v. Duke University*, 118 NC App 406 (1995), plaintiff filed an action against Duke alleging claims for conversion of personal property and unfair and deceptive trade practices and requesting imposition of a constructive trust. Shortly after the case was filed, Duke requested a protective order pursuant to Rule 26 of the Rules of Civil Procedure and the court entered an order requiring that the personal property at issue be turned over to plaintiff's attorney to preserve and keep for at least five years while the litigation proceeded. Plaintiff requested an amendment of the protective order and the trial court denied her request. She filed an appeal of both the protective order and the denial of her motion to amend the protective order. Soon after taking the appeal, she filed a voluntary dismissal of all of her claims pursuant to Rule 41. The court of appeals dismissed her appeal, stating:

"Once a party voluntarily dismisses her action pursuant to [N.C.Gen.Stat. § 1A-1, Rule 41\(a\)\(1\) \(1990\)](#), "it [is] as if the suit had never been filed," [Tompkins v. Log Sys., Inc.](#), 96 N.C.App. 333, 335, 385 S.E.2d 545, 547 (1989), *disc. rev. denied*, 326 N.C. 366, 389 S.E.2d 819 (1990), and the dismissal "carries down with it previous rulings and orders in the case." [Gibbs v. Light Co.](#), 265 N.C. 459, 464, 144 S.E.2d 393, 398 (1965) (*quoting* 11 A.L.R.2d 1407, 1411). Therefore, because plaintiff has entered a dismissal in her action for claim and delivery of the [property], her present argument in this Court that the trial court erred in entering the protective order concerning possession of the [property] is moot, and we need not consider it. See [Walker v. Walker](#), 59 N.C.App. 485, 489, 297 S.E.2d 125, 128 (1982). Because the protective order was nullified by plaintiff's dismissal, it is vacated and remanded. On remand, the trial judge shall enter an order directing that possession of the [property] be returned to defendant.

See also *Barham v. Hawk*, 165 NC App 708 ((2004)(voluntary dismissal nullified a discovery order entered in the case so trial court could not sanction party for failure to comply with the order).

In *Collins v. Collins*, 18 NC App 45 (1973), plaintiff filed a complaint seeking custody, child support and alimony. The trial court entered temporary custody and child support orders but denied temporary alimony after concluding plaintiff was not a dependent spouse. Approximately one month after the entry of the order, plaintiff filed a voluntary dismissal of all claims without prejudice. A couple of days after filing the dismissal, plaintiff filed a new complaint alleging the same claims as in the first action. A couple of months after the second action was filed, the court held defendant in contempt for violating the temporary custody order entered by the trial court in the initial case filed by plaintiff.

Eventually the second case was appealed. The court of appeals held that following the entry of the voluntary dismissal in the first action, the trial court lost all authority to act that case. Regarding the adjudication of contempt for violation of the temporary custody order, the court held:

“Defendant next assigns as error that portion of the 26 May order adjudging him in contempt of court and ordering him confined in jail for 15 days for that this action by the court was based on a finding that defendant had violated the conditions of the order entered in the previous action. The assignment of error is sustained. As stated above, the previous action was completely terminated on 18 February 1972 and no valid order based on that case could be made thereafter.”

### **Temporary Orders in Dismissed Cases Do Not Effect Subsequently Filed Actions**

Findings of fact and conclusions of law made in a temporary order are not binding on a trial court in proceedings that follow the entry of the temporary order. See *Wells v. Wells*, 132 NC App 401 (1999); *Langdon v. Langdon*, 183 NC App 471 (2007); *Megremis v. Megremis*, 179 NC App 117 (2006). The court in *Collins* made it clear that temporary orders entered in cases that have been dismissed also have no impact on the courts’ authority in subsequently filed proceedings.

In *Collins*, the trial judge in the second action determined that the court could not grant plaintiff’s request for temporary alimony because the court in the first action had denied her request after concluding she was not a dependent spouse. The court of appeals reversed the court’s decision, stating that

“On competent evidence the court found facts sufficient to support an award of alimony pendente lite but denied the award on an erroneous understanding of the law. The present action is affected by the previous action in no way except that plaintiff may not again voluntarily dismiss her action without prejudice.”

### **But A Party Cannot Dismiss a Final Order**

The result is very different when a party files a voluntary dismissal following the entry of a final

order or judgment. In *Massey v. Massey*, 121 NC App 263 (1996), the trial court entered a final custody and support order in November, 1991. The parties subsequently reconciled and filed a “stipulation of dismissal” of the case. When the parties separated a second time, plaintiff filed a new action seeking custody and support. The trial court *sua sponte* ruled that the stipulation of dismissal filed in the first action was void and had no effect on the final order entered in November 1991. Citing *Wood v. Wood*, 37 NC App 570 (1978), the court held that the dismissal was of “no legal efficacy,” and stated:

“a voluntary dismissal under Rule 41 will lie only prior to entry of *final judgment*. After *final judgment*, any correction, modification, amendment, or setting aside can only be done by the court.”