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Family Law - Wills and Estates - Elder Law - Personal Injury

The Letter of the Law

November 2018

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Meet Our New Attorney

Lindsey Weaver Alday

Personal Injury Lawyer

Lindsey Weaver Alday was born in Farmington, New Mexico. Her father's occupation as an engineer brought her family to various small towns across the United States including Gillette, Wyoming; Plymouth, North Carolina and finally Bear Grass, North Carolina. Although she came from afar, Lindsey is proud that in 1989 her family roots were planted in Bear Grass, North Carolina where she graduated from Bear Grass High School in 2003.

Lindsey was on the East Carolina University varsity tennis team and received honors in Chemistry during her first undergraduate year. She then transferred to University of North Carolina - Chapel Hill where she majored in Philosophy and graduated in 2007. She attended law school in Bloomington, Indiana at the Indiana University Maurer School of Law where she graduated cum laude in 2010. After graduating, she returned to eastern North Carolina to practice personal injury law. Lindsey has many active interests including horseback riding, tennis and volleyball. She met her husband, Alex Alday (who was also born afar in Manila, Philippines) while playing club volleyball here in Greenville. They soon

married and raise their three beautiful young children, one little girl and two twin toddler boys in Winterville.

Personal Injury Practice

Lindsey is committed to serving her eastern North Carolina community. She has a passion for making insurance companies pay fair compensation to those injured in accidents. She believes insurance premiums are paid not to increase the profits of the insurance company, but to compensate people who are injured. She has experience in all aspects of litigation including negotiations, depositions, hearings, mediations, arbitrations and cases tried to jury verdict. Over her five years of personal injury practice, she recovered millions of dollars on behalf of her clients. Lindsey's career goals are to continue to build relationships with satisfied clients by maintaining integrity and honesty throughout the representation.

Education

University of North Carolina - Chapel Hill, BA Philosophy & minor in Chemistry

Indiana University - Maurer School of Law, JD 2010, cum laude

Professional and Community Affiliations

North Carolina Advocates for Justice - Auto Torts Section

Beaufort County Bar Association (President 2014)

Pitt County Bar Association

North Carolina State Bar

Blind Center of North Carolina (Executive Board 2013-2015)



Overview of Personal Injury Law

By Lindsey Weaver Alday

A personal injury claim can be a slip and fall accident, car accident, truck accident, bicycle, motorcycle, pedestrian accident, etc. The elements are that someone was injured due to the negligence of another and did not contribute in causing their own injury.

What is the Law About Personal Injury?

You have to prove the negligent party had a DUTY and failed to do it. This

is negligence. Example: driver had the duty to stop at the stop sign and failed to do so. You also have to prove there is an INJURY. Sometimes people act negligently or even intentionally, but no injury occurs. Example: wrong medication is dispensed, or a punch is thrown but misses. This means proving who is at fault at trial would be easy. But if you weren't injured physically and didn't suffer any economic damages, then there is nothing to recover. Finally, your case must be RECOVERABLE. As they say in the south: "You can't bleed a turnip." If you are shot intentionally by someone with no money, who is at fault is easy to prove, and the damages are clear and easy to prove. However, the most important question is sometimes: CAN YOU RECOVER your damages? If there is no rainbow at the end of the tunnel, there is no monetary reason to proceed with your case.

Why Do I Need a Lawyer for My Personal Injury Case?

The insurance adjuster is NOT your friend. The adjuster will attempt to gain your trust. He or she will treat you so kindly, recording your every word. You will minimize your injuries when speaking to them because we like to please others (and it is a Southern thing to do). This will be used against you later. Something that is innocent, or out of your control, can be used and twisted by an experienced defense attorney in court and sometimes the best way to deal with this fact is to prevent these issues before they happen. Example: The office staff delayed your referral. At trial, the defense attorney argues that you must not have been that hurt because you didn't seek treatment urgently.

The Personal Injury Lawyer

Most importantly, if you are not represented by an attorney, then the insurance company knows that you most likely will not take them to court yourself. When you are represented by an attorney, your threats to take them to court in order to be treated fairly will not be idle threats. Knowing the ins and out of insurance coverage and where to look for additional insurance coverage is an essential part of the service your personal injury attorney provides.

By using her knowledge of the law and insurance coverage, your attorney can maximize your recovery by tens of thousands of dollars under the

right circumstances. Most likely, this is your first accident or injury due to someone's negligence. Your lawyer has extensive experience with these types of claims and the law that affects their value. Don't wait until you have been extended a low offer before you call your attorney. Unavoidable damage may have already been done to your claim.

Medical Treatment and Protecting Your Legal Claim

Issues with medical providers come up. Issues with medical billing come up. Issues with insurance payments and insurance reimbursement come up. Delay in medical treatment can occur and hurt the value of your claim. There are many things that can, and do happen along the road of your physical recovery. Your lawyer can help you to navigate these issues to protect the value of your claim. Your personal injury attorney helps you to preserve evidence of your damages.

We appreciate it most when our client focuses on getting better and we focus on preserving evidence and protecting the value of your claim. Taking photographs, calling often to get updates on client recovery, and assisting in presenting and describing your recovery are all things your attorney will do to add value to your claim. If you don't think like an attorney, and you trust the insurance company to treat you fairly, you may forget just how bad your injury looked or just how bad it hurt by the time you are ready to fight for a settlement.

Estimating the Value of Your Claim

Each case is unique and completely independent of any other case your attorney has handled. Also, no one can tell you the absolute value of your claim. You will only know the value of your claim if you litigate it in open court and get a verdict either from the judge or a jury of your peers. Your attorney has a better ability at estimating a value range for what is fair because your attorney has experience with the trial process and jury verdicts.

Lindsey Weaver Alday is a personal injury attorney at Amy Edwards & Associates, PLLC. This information is not legal advice. An attorney must communicate with you (or someone acting on your behalf) to evaluate your particular circumstances. No attorney-client relationship is formed by viewing this article. Our attorneys are licensed only in the state of North Carolina. Call us at



Is Credit Card Debt Marital?

By Amy A. Edwards

In short, credit card debts can be marital, just as any other type of debt. In contrast with marital property, the law doesn't assume a debt is marital just because it was incurred during the marriage. If a debt is marital, each party is equally responsible for it, although the court usually assigns it to one party to equalize the net part of property each party gets. If a debt is separate, it isn't calculated into the marital estate, and the person who has the account in his or her name is responsible for it. To understand credit card debt, we must first look at what a marital debt is.

The Timing of Marital Debt

A marital debt must generally be incurred by one or both spouses while

they are married and before the date of separation (DOS). One exception to that rule is when one spouse takes a loan after DOS to pay off the "old" marital debt that existed on DOS. [1] Like marital property, marital debt must exist at DOS. If you just paid off your credit card with your bonus from work, and then you separate, the debt doesn't exist at DOS and it is not a marital debt for which you would get credit for paying.

What's in a Name?

Marital debt can be in the names of one spouse or both. However, there is one important distinction between debt and marital debt. The court can say who is responsible but only as between two spouses. But the court can't tell a third party, such as Mastercard or Visa, that they can only enforce the debt against one person when two people signed the agreement to repay them.

The court may indemnify a spouse, meaning that if the husband is assigned to pay the credit card debt and he fails to do so, he has to repay the wife if the credit card company sues her for payment. But if the other spouse had the money to repay you, he or she would've probably paid the debt in the first place. In practice, indemnification only goes so far.

Joint Benefit: The Key Issue

Unlike marital property, to call a debt marital, it must be incurred for the joint benefit of the parties. [2] There is no presumption that the debt was incurred for the benefit of both parties. If you want to prove the credit card debt is marital, you have the burden of proof to show that the charges were made before DOS and that the charges were incurred for the joint benefit of the parties. Courts have vast discretion in ruling on whether charges benefited both parties. Charges for groceries and gas probably are, but charges for one spouse's dental treatment [3] or student loan debt probably aren't. [4]

Most people make on-going charges, including charges made *after* DOS. Another difficulty can be non-descriptive statements. It is difficult to prove what you purchased from Wal-Mart for \$175.43 from six or seven months ago, and then prove it was a joint benefit. Another serious difficulty is proving what the outstanding credit card balance on DOS

(none can be after DOS) was used to purchase. If the balance at DOS resulted from purchases made over the last three years, you still have to prove which ones were marital, incurred for the joint benefit of the parties.

[1] *Huguelet v. Huguelet*, 113 NC App. 533 (1994).

[2] *Wornom v. Wornom*, 126 NC App. 461 (1997).

[3] *Becker v. Becker*, 127 NC App. 409 (1997).

[4] *Baldwin v. Baldwin*, 232 NC App. 521 (2014), distinguished by *Warren v. Warren*, 241 NC App. 634 (2015).

Amy A. Edwards is a family law attorney at Amy Edwards & Associates, PLLC, in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of 2018.

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Can't We Just Pick a Date of Separation and Get Our Divorce?

By Amy A. Edwards

We hear this question all the time. The short answer is no, you can't

choose a date of separation. In the real world, efficiency and common sense would suggest that you could. But this is not an agreement to apply for "services" from the government. It is a lawsuit, and a judge must use the law. Divorce is a legal status, similar to a legal status of biological parent in a paternity case, for example. Each state has laws dictating how long a married couple must be separated before they are eligible to divorce. Here in North Carolina, the law requires a one-year separation. This should not be confused with our residency requirement. It requires at least one spouse to live in this state for six months before he or she is allowed to file a claim for divorce, even if the parties have already been separated for a year when one spouse moves here.

All Divorces Are Lawsuits

It can be easy to forget that even uncontested divorces are filed by a plaintiff, served on a defendant, and ruled upon by a judge. In fact, most people don't even have to be in court. Except for incurable insanity, the only ground for a divorce in North Carolina is a one-year separation. This requires that at least one spouse intends for the separation to be permanent, although there is no requirement that the lawsuit say which spouse intends to remain apart. Examples of one-year separations that don't fit into this category are couples who are only separated by military service or incarceration. They are not separated unless one spouse intends to remain separated (*i.e.*, that person does not want to move back home when no longer physically separated).

The divorce complaint, the document that starts the lawsuit, cannot even be signed until the day *after* the year has passed. When you sign the complaint, you do so under oath, under penalty of perjury, which is a crime. Worse yet, if you lie about the DOS, your fraudulently obtained divorce can be set aside (voided) because you were not separated for one full year.

Why Do We Have to Wait a Year?

The government doesn't want you to have a fight with your husband or wife, separate for a few days or weeks, get divorced and then reconcile and remarry. Many lawyers, myself included, believe the length of separation is too long. Some states require a longer wait only if the

couple has children, and let the non-parents divorce much sooner. Although many believe the waiting period is excessive, it is the law and we must all obey it. There are plenty of others who believe one year isn't long enough. Our state laws used to require a two-year waiting period. Not too long ago, there was a proposed "Healthy Marriage Act" that would've restored the two-year waiting period. In fact, it would have required counseling of some sort for parents and non-parents alike.

Can We Just Stay on Opposite Ends of the House?

Although the idea of separating in the same house is a clever one, it is inadequate. A separation requires living under two different roofs. This can be difficult for couples who don't have enough money to establish two separate homes. But if separate homes weren't required for a separation, it would be impossible to clearly identify who is or isn't separated. Your spouse could claim the one-year separation had already occurred, and you could have a sheriff serve you with a divorce complaint out of the blue. Brand new parents need the whole nine months to figure out what they are doing with this new legal title of parents. And, so it is with divorces. You have to figure out medical insurance, where you will be living for the immediate future, your short-term finances, sometimes your employment, and perhaps what to do about your children. On the upside, the clock no longer stops ticking if there are "isolated incidents of sexual intercourse between the parties" In the past, you could be separated for a long time but any sexual intimacy restarted the clock for one-year separation.

See NC Gen. Stat. §50-6

Amy A. Edwards is a family law attorney at Amy Edwards & Associates, PLLC, in Greenville, NC. She is certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of 2018.

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