



Amy Edwards
& ASSOCIATES, PLLC
ATTORNEYS AT LAW



P.O. Box 686, Greenville, NC 27835
www.NCLawyersForYou.com 252.758.3430

The Letter of the Law

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When Does Child Support Stop in North Carolina?

By Amy A. Edwards

Each state specifies the age at which child support ends. In North Carolina, NC Gen. Stat. §50-13.4 requires child support to be paid until a child is age 18 or graduates from high school, whichever is longer. Support may end sooner than that if a child becomes emancipated. There is a legal proceeding that allows a minor who is at least 16 years old to file seek a decree of emancipation from a judge. But most commonly, a minor is automatically emancipated when he or she marries or joins the military. Unless parents have agreed otherwise in a separation agreement or consent order, if parents have multiple children, support does not automatically drop by 50% when another child graduates or reaches 18, etc. Instead, child support is recalculated based on the child support guidelines and the remaining child or children if a parent files a motion to modify support.

Ages 18 to 20

Support may last longer than age 18 or graduation if the 18-year-old is still in school after reaching age 18 but hasn't graduated. In that event, childsupport continues until he or she quits high school, fails to attend

school on a regular basis or make satisfactory academic progress towards graduation, or reaches age 20, whichever is first. "If the child is enrolled in a cooperative innovative high school program . . . then payments shall terminate when the child completes his or her fourth year of enrollment or when the child reaches the age of 18, whichever occurs later." NC Gen. Stat. §50-13.4(c)(3).

Past Due Support

There is one big exception to the general rule. If a parent owes outstanding child support when the payments would usually terminate, the payments will continue in the same amount, to be applied to the outstanding support until the balance is satisfied.

Support from Grandparents

When a minor has a baby, the grandparents have primary liability for the support of the grandchild. However, even though the parent of the baby is a minor child, he or she is secondarily liable for the baby's support. The court determines the proper share of financial responsibility for the baby. A grandparent's responsibility for child support ends for both the parent and the grandchild when the minor parent reaches the age of 18 or becomes emancipated. If only one of the baby's parents was a minor when the child was conceived, all four of the baby's grandparents are liable for child support arrearages that were owed by the adult (or emancipated) parent until the other parent reaches the age of 18 or becomes emancipated.

College Expenses

The court can't order a parent to pay college expenses. However, the court will enforce an agreement for college expenses made by the parents in a contract, such as a separation agreement, or in a consent order. If parents agreed to pay a share of college expenses, the child has the right to sue one or both of them for failure to pay those expenses. The court will also enforce an agreement between parents to pay child support past the age of 18 (regardless of college).



Forgive and Forget: Condonation in North Carolina

By Amy A. Edwards

Judges have a good deal of leeway in deciding what to do about marital fault and defenses when they are proven in court. Traditional sex roles are rapidly changing in some ways but not in others, and judges react differently to the behavior that constitutes marital fault. Some think fault is very important, but others do not. Marital fault relates to alimony, not equitable distribution, which is the division of marital property.

What Are the Marital Fault Grounds?

A spouse commits marital fault if he or she abandons the family, commits adultery, "maliciously turns the other out of doors" or "by cruel or barbarous treatment endangers the life of the other." If a spouse "becomes an excessive user of alcohol or drugs so as to render the condition of the other spouse intolerable and the life of that spouse burdensome" that is also marital fault. The last ground of marital fault,

known as indignities, is a catchall for bad behavior generally. It occurs when a spouse "offers such indignities to the person of the other as to render his or her condition intolerable and life burdensome." NC Gen. Stat. §50-7.

Consequences of Marital Fault

Marital fault is not a requirement for alimony. But if someone commits marital fault, the judge can financially penalize the person receiving or paying support. In cases of adultery, the financially-dependent spouse who cheated cannot receive alimony, and the supporting spouse who is the bread-winner must pay alimony if he or she cheats. The policy is based on the historical tradition of an innocent dependent spouse who was left financially stranded by the other, who left for greener pastures with another romantic interest, for example.

What is a Defense to Marital Fault?

A defense means that you can be shielded from the consequences the marital fault that you committed. A defense excuses the bad behavior (*i.e.*, the marital fault) and gives the spouse at fault a "clean slate" legally. From our example above, if you are an adulterous supporting spouse without the legal defense of condonation, you are automatically required to pay alimony. The only remaining questions at the point is the amount of alimony to be paid, and for how long.

The Defense of Condonation

Condonation, condoning bad behavior, is as a defense to a spouse's marital fault. [Black's Law Dictionary](#) defines condonation as "conditional remission or forgiveness, by one of the married parties. . . the condition being that the offense shall not be repeated." If you forgive your spouse for having an affair, for example, you do so on the condition that he or she never cheat again. Critics of condonation argue that it discourages reconciliation because the victim of the fault can be penalized for trying to save the relationship. On the other hand, the policy makes sense when you consider a 25-year-marriage, and the prospect of arguing about an affair that happened 21 years ago. Although the law delves into the reason for the separation, it does not delve into the marriage.

How Do You Prove Condonation?

To have the benefit of the forgiveness, the condonation defense, the spouse at fault must first prove that the innocent spouse *knew* that the misconduct occurred. It isn't enough that he or she suspected the misconduct happened. The second requirement of condonation is to show that the innocent spouse voluntarily chooses to *continue* or resume the marital relationship. This is shown in one of two ways. A spouse can directly communicate forgiveness, such as writing a letter or sending an e-mail. Or, forgiveness can be shown when the innocent spouse voluntarily engages in sexual intercourse *after knowing* about the marital fault. But isolated acts of sexual intercourse are not enough to give a spouse the defense of condonation.

Recent Condonation Case

On December 18, 2018, the NC Court of Appeals made a ruling about marital fault and defenses to it in [*Gilmartin v. Gilmartin*](#). The husband had an addiction to pornography and communicated with women online. Multiple times, he denied doing these things. When his wife discovered that he was in fact doing these things again, he admitted doing them and promised her that he would go to counseling. He continued the behavior and stopped going to counseling. When he argued that she had condoned his behavior, the Court of Appeals agreed with the trial court, that she did not condone his "continuing 'use of pornography and online sexual solicitations' because Husband 'deceiv[ed]' her into believing he had ceased the behavior." Without *knowing* about the behavior, she couldn't forgive him for it.

Amy A. Edwards is a family law attorney 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 2019. ©



How Are Marital Assets Valued in Court?

By Amy A. Edwards

In equitable distribution marital property cases, the court has a legal duty to identify assets and classify them as marital, separate, divisible or mixed assets (part marital and part separate). Parties are always free to stipulate or agree that assets have certain values, but if they cannot, the judge must make the decision on what each asset is worth.

What Does the Law Say About Value?

For marital property purposes, the value of a marital assets is fair market value, "the price which a willing buyer would pay to purchase the asset on the open market from a willing seller, with neither party being under any compulsion to complete the transaction."^[1] The court must use the net value of marital property, meaning the fair market value minus the outstanding debt at the time the parties separate. ^[2] If the court finds

that a property is worth the same thing as the outstanding debt, the value is zero. Courts also assign *negative* values to assets worth less than the outstanding debt. New vehicles often fall into this category when the down payment is not substantial.

Valuing Marital Assets is Mandatory

Only if an asset, or part of an asset, is marital does the court then have to make a ruling on the value of it. It sounds like common sense but if neither of the parties presents evidence to the court of the value, the court cannot just make up a value. In one case^[3], a couple owned a gas station, and the business was in the husband's name. Although the wife proved that the business was established after marriage and before the separation, she failed to offer any credible evidence on the value of the business. The court must value an asset in order for it to become a marital asset. Therefore, the court had no choice but to award the business as his separate property.

Property Appraisers

The most obvious way to prove the value of an asset is by an appraiser who has special skill and experience with the asset at hand. People frequently have appraisals performed for jewelry, real estate and antiques. Often, the appraiser is hired by one or both of the parties to prepare a report for the court, to be used during the trial. Appraisers value marital property and the increases in value of separate property when the non-owner says there is an increase in value during the marriage. They also determine values of "divisible property," which includes certain increases or decreases in the value of marital property from the date of separation until the date of the trial.

Certified Public Accountants

CPAs value any number of things, including the value of ownership interests in corporations, medical or legal practices, stock options and investment accounts, and other intangibles (*i.e.*, the abstract concept instead of something you can hold in your hand). One routine asset that CPAs value is the marital portion of retirement accounts, meaning the value created between the date of the marriage and the date of the

separation. All benefits generated before the marriage and after the separation belong to the employee spouse. If there are contributions to, or withdrawals from, a retirement account such as a 401(k) plan, the CPA also values those in comparison with the overall value.

Do-It-Yourself Values

There are a few assets that are straight forward enough for clients to testify about in court, with the help of a few trial exhibits. Vehicles sometimes fall into this category, mainly because there is a ready-made source of information concerning the value, such as the N.A.D.A Blue Book for vehicles. The value of whole life insurance is based on the cash-surrender-value of the policy, which is easy to obtain. Term life insurance has a zero-dollar value. The value of publicly traded shares (not a closely held corporation) on a given date can be shown by using the stock market index. However, when the shares are part of a larger portfolio or investment package, or if some of them are bought and sold before reaching the courtroom, a spouse must value the entire portfolio or investment package which isn't as easy to value.

If you have unique personal property, like a moose head, you might find a ready-made market on E-bay or some other similar site. Depending on which side you're on in a case, one disappointing (or exciting) thing is depreciation. The value of personal property, such as household furniture, at the date of separation is a depreciated value, meaning garage-sale value. This usually arises with brand new vehicles and household property. For example, a \$1,500.00 computer purchased three years ago might be worth \$200.00 on your date of separation, for example.

[1] *Becker v. Becker*, 127 NC App. 409, 414 (1997), quoting *Carlson v. Carlson*, 127 NC App. 87, 91 (1997).

[2] NC Gen. Stat. §50-20(c).

[3] *Grasty v. Grasty*, 125 NC App 736 (1997).

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