

Preparing a North Carolina Family Law Case for Appeal

1. Preserving Issues for Appeal

In order to preserve an issue for appellate review, the party has to present to the trial court “a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” App. R. 10(a)(1).

a. Motions in Limine

Motions in limine and evidentiary objections made prior to trial will not preserve for appeal issues about the admissibility of evidence. To preserve the issue for appeal, the party must “object to the evidence at the time it is offered at the trial (where the motion was denied) or attempt to introduce the evidence at the trial (where the motion was granted).”¹ Even if the trial court allows the party a standing objection prior to trial, the party is not relieved of his obligation to object at trial.²

b. Evidentiary Objections at Trial

The attorney should state at trial the specific evidentiary basis for each objection. “A general objection, if overruled, will not be preserved on appeal unless there was no purpose for which the evidence could have been admitted.”³ Moreover, if the “evidence is admitted over objection and the same evidence has been previously admitted or is later admitted without objection, the benefit of the objection is lost.”⁴

Using “line objections” or “standing objections” will preserve the evidentiary issue for appeal. When “there is objection to the admission of evidence involving a specified line of questioning, it shall be deemed that a like objection has been taken to any subsequent admission of evidence involving the same line of questioning.”⁵ Our Supreme Court expanded this concept for one fortunate attorney who did not literally satisfy the Rule 46(a)(1) requirement; however, “the line of questioning objected to [was] apparent to the court and the parties.”⁶ Nonetheless, the best practice is to clearly state the basis and scope of the line objection.

¹ *State v. Hill*, 347 N.C. 275, 293, 493 S.E.2d 264, 274 (1997), *cert. denied*, 523 U.S. 1142 (1998).

² *State v. Gray*, 137 N.C.App. 345, 348, 528 S.E.2d 46, 48, *disc. review denied*, 352 N.C. 594, 544 S.E.2d 792 (2000).

³ *Knott v. Washington Housing Auth.*, 70 N.C. App. 95, 99, 318 S.E.2d 861, 864 (1984) (citation omitted).

⁴ *State v. Alford*, 339 N.C. 562, 570, 453 S.E.2d 512, 516 (1995).

⁵ N.C.R. Civ. P. 46(a)(1).

⁶ *Duke Power Co. v. Winebarger*, 265 S.E.2d 227, 300 N.C. 57 (1980)(internal quotes omitted).

c. Offers of Proof

Offers of proof are usually necessary to preserve a sustained objection because an “exception to the exclusion of evidence cannot be sustained where the record fails to show what the witness’ testimony would have been” if he had testified.⁷ However, an offer of proof may not be necessary to preserve an issue for appellate review if the substance of the excluded testimony is apparent from the context within which the question was asked.⁸

2. Ensuring the Order or Judgment is Appealable

Court orders are either final or interlocutory. N.C. R. Civ. P. 54(a). A final judgment disposes of the case as to all the parties, leaving nothing left for the trial court to adjudicate. A final judgment is immediately appealable.

An interlocutory order does not dispose of the case; rather, it leaves the case open for the court to conclude at a later date.⁹ An interlocutory order is immediately appealable only under two circumstances. First, an interlocutory order is immediately appealable if the order affects a substantial right of the appellant that would be lost without immediate review.¹⁰ Second, if the order is final as to some, but not all of the claims or parties, the trial court can certify the case for appeal pursuant to N.C. R. Civ. P. 54(b). Doing so will make appellate review mandatory.¹¹

The 2013 amendment to N.C. Gen. Stat. § 7A-27 and addition of N.C. Gen. Stat. § 50-19.1, appear to make the Rule 54 motion unnecessary. These changes, contained in ratified House Bill 122,¹² now allow immediate appeals from orders that resolve some but not all of the parties’ family law claims.

3. Beginning the Appeal Process

a. Notice of Appeal

The appeal process begins by filing a notice of appeal in District Court. App. R. 3(a). Filing the notice of appeal is a jurisdictional requirement.¹³ Failure to do so both timely and properly will almost certainly result in the dismissal of the appeal.

⁷ *State v. Simpson*, 314 N.C. 359, 370, 334 S.E.2d 53, 60 (1985).

⁸ N.C.R. Evid. 103(a)(2); *State v. Braxton*, 352 N.C. 158, 184, 531 S.E.2d 428, 443 (2000), *cert. denied*, 531 U.S. 1130 (2001) (“Substance of the excluded testimony [must be] apparent from the context within which the question was asked.”).

⁹ *Embler v. Embler*, 143 N.C.App. 162, 164–65, 545 S.E.2d 259, 261 (2001).

¹⁰ See *Goodwin v. Zeydel*, 96 N.C.App. 670, 387 S.E.2d 57 (1990) (where denial of motion to amend answer would result in forfeiture of any future claim for equitable distribution, a substantial right is at issue and the denial is immediately appealable).

¹¹ *Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999).

¹² <http://www.ncleg.net/Sessions/2013/Bills/House/HTML/H122v6.html>

¹³ *Smith v. Smith*, 43 N.C.App. 338, 258 S.E.2d 833 (1979), *disc. rev. denied*, 299 N.C. 122, 262 S.E.2d 6 (1980).

i. Deadline to file the Notice of Appeal

In *most* family law cases,¹⁴ the notice of appeal filing deadline is 30 days from the date of the judgment, but precisely how and when the time begins to run depends on how the judgment is served. If the judgment is served with the three day period prescribed by N.C. R. Civ. R. 58, then the notice of appeal must be filed within *30 days after entry* of the judgment. App. R. 3(c)(1). If the judgment is *not* served with the three day period prescribed by N.C. R. Civ. R. 58, then the notice of appeal must be filed within *30 days after service* of the judgment. App. R. 3(c)(2). The usual *three day mail rule* does not apply to computing the time for filing a notice of appeal. App. R. 3(c). The time period to file the notice of appeal is tolled if a timely motion is made under N.C.R. Civ. P. 50(b) [motion for judgment notwithstanding the verdict], 52(b) [motion to amend judgment], or 59 [motion for a new trial]. App. R. 3(c)(3).

ii. Contents of the Notice of Appeal

The notice of appeal, shall: [1] specify the party taking the appeal; [2] designate the judgment or order from which appeal is taken and the court to which appeal is taken; and [3] be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record. App. R. 3(d). A sample *Notice of Appeal* is found on page 4. The sample suggests attaching and incorporating by reference the order that is being appealed. Doing so unmistakably designates “the judgment or order from which appeal is taken.” If the notice of appeal incorrectly identifies the judgment or order appealed from, having the judgment or order attached to the notice of appeal should satisfy App. R. 3(d).¹⁵ The notice of appeal can be served by any of the methods listed in App. R. 26, including first class mail.

b. Preparing the Hearing Transcript

Once the notice of appeal is filed, the appellant has 14 days to contract with a court reporter to transcribe the hearing and to file in District Court written documentation of the transcript contract. App. R. 7(a)(1). The contract should be served on the opposing party and on the court reporter. *Id.* A sample *Transcript Documentation* and a court reporter contract are found on pages 5 and 6. The court reporter must prepare and electronically deliver the transcript within 60 days “from the date the requesting party serves the written documentation of the transcript contract.” App. R. 7(b). The appellant must serve a proposed Record on Appeal on the appellee within 35 days after either (1) the court reporter certifies delivery of the transcript (if it was ordered), or (2) after appellant files a notice of appeal. App. R. 11.

¹⁴ The primary notable exception is juvenile cases. See App. R. 3(b) and 3.1.

¹⁵ A “mistake in designating the judgment, or in designating the part appealed from if only a part is designated, should not result in loss of the appeal as long as the intent to appeal from a specific judgment can be fairly inferred from the notice and the appellee is not [midled] by the mistake.” *Smith v. Indep. Life Ins. Co.*, 43 N.C.App. 269, 274, 258 S.E.2d 864, 867 (1979).

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
___ CVD _____

[NAME OF PLAINTIFF],)
)
Plaintiff,)
)
v.)
)
[NAME OF DEFENDANT],)
)
Defendant.)

NOTICE OF APPEAL

TO: THE HONORABLE NORTH CAROLINA COURT OF APPEALS:

NOW COMES Plaintiff [Name of Plaintiff], by and through undersigned counsel, pursuant to N.C. R. App. 3 and N.C. Gen. Stat. § 7A-27(b), and hereby gives notice of appeal to the Court of Appeals of North Carolina from the [Title of Order] of [Name of Judge], District Court Judge, entered on [date entered] in the District Court of Wake County. A copy of the [Title of Order] is attached hereto and is incorporated by reference.

Respectfully submitted, this the ____ day of _____, ____.

[Attorney signature line]

[Certificate of service on opposing party/attorney]

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
____ CVD _____

[NAME OF PLAINTIFF],)
)
Plaintiff,)
)
v.)
)
[NAME OF DEFENDANT],)
)
Defendant.)

TRANSCRIPT DOCUMENTATION

NOW COMES Plaintiff [Name of Plaintiff], by and through undersigned counsel, pursuant to N.C. R. App. 7(a)(1), and hereby files a copy of her agreement with [Name and Address of Court Reporter] to contract for the transcription of the proceedings that took place on [Date of Hearing or Trial] in this action. (See Attachment A.)

[Attorney signature line]

[Certificate of service on:

- (1) opposing party/attorney and
- (2) court reporter]

[Sample Contract for Transcription]

February 1, 2014

[Name and Address
of Court Reporter]

RE: Plaintiff v. Defendant, _____ County District Court
____ CVD _____

Dear [Name of Court Reporter]:

This letter memorializes our discussion today and confirms our contract for a transcript for the appeal in the above-referenced case. We have agreed that you will prepare a complete transcript of the proceedings that took place in this case on [date or dates]. My firm agrees to pay your usual and customary fees for this transcription.

The transcript is due in electronic ".pdf" format sixty (60) days after I serve you with this contract, per App. R. 7(b). If you are unable to meet that deadline, please let me know immediately, and I will assist you in obtaining an extension of time. Please mail a CD with the transcript in ".pdf" format to [opposing party/attorney and mailing address].

Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your help with this appeal.

Sincerely,

[Attorney]