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Drafting Good Court Orders in Juvenile Cases

Janet Mason

CONTENTS

Note: This bulletin and the checklists in the appendix reflect statutory changes that were made by S.L. 2013-129 and apply to all cases filed or pending on or after October 1, 2013.

Janet Mason retired from the School of Government faculty at the end of 2012. She now is an adjunct professor working part-time in the area of juvenile law.

I. Introduction

In abuse, neglect, dependency, and termination of parental rights cases (hereinafter juvenile cases[1]), an order of the court at any stage of the proceeding serves at least some of the following purposes:

1. to reflect the court's determination of legal issues that were properly before the court and the basis for the court's determination,
2. to specify legal relationships and rights,
3. to require or prohibit actions by one or more parties,
4. to inform the parties of the court's expectations,
5. to inform the parties of what has occurred at the hearing and what will happen next in the case,
6. to reflect compliance with statutory mandates,
7. to establish the basis for any later allegation of contempt,
8. to enable the court at a subsequent hearing to easily understand the background and posture of the case,
9. to create a record of judicial actions relating to the case, and
10. to enable appellate courts to conduct proper appellate review.

The Juvenile Code is exceptionally directive with respect to the contents of most kinds of juvenile court orders. An order that does not include a statutorily required finding of fact may be reversed and remanded even when the trial court's decision is otherwise legally sound. The trial court in a termination of parental rights case, for example, after adjudicating that a ground for termination existed, failed to make findings of fact about two of the statutory factors that were relevant to its conclusion that terminating parental rights was in the child's best interest.[2] The court of appeals affirmed the trial court's conclusion that a ground existed but remanded the disposition portion of the order for additional findings, noting that there was evidence in the record from which the trial court could have made the findings.[3]

Both the legislature and the courts have acknowledged the importance to children of resolving these cases quickly. Repeatedly the Juvenile Code refers to the need for every child to have a safe permanent home "within a reasonable period of time."[4] Toward that end, the code specifies the times within which the court must hold certain hearings[5] and enter certain orders,[6]

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1. In other contexts, *juvenile cases* might also refer to cases involving juveniles alleged to be delinquent or undisciplined pursuant to Subchapter II of the North Carolina Juvenile Code, Chapter 7B of the North Carolina General Statutes (hereinafter G.S.).

2. *In re* J.L.H., ___ N.C. App. ___, 741 S.E.2d 333 (2012). A requirement that the court make these findings, rather than just "consider" the statutory factors, had been added to G.S. 7B-1110(a) by an amendment that became effective after the termination action was filed but four months before the order was entered. *See* S.L. 2011-295, sec. 16.

3. *J.L.H.*, 741 S.E.2d at 338.

4. *See, e.g.*, G.S. 7B-101(18), 7B-507(b) and (c), and 7B-906.1(d)(3) and (g). *See also* G.S. 7B-100(5), which refers to a "reasonable amount of time."

5. *See, e.g.*, G.S. 7B-506 (hearing on the need for continued nonsecure hearing), 7B-801(c) (adjudication hearing), 7B-901 (dispositional hearing), and 7B-906.1(a) (review and permanency planning hearings).

6. *See, e.g.*, G.S. 7B-506(d) (continued nonsecure custody), 7B-897(b) (adjudication), 7B-900.1(f) (post-adjudication change of venue), 7B-905(a) (disposition).

and it discourages unnecessary continuances.[7] The North Carolina Supreme Court, in a rule of appellate procedure, has provided for expedited appeals in juvenile cases.[8] The Juvenile Code's emphasis on avoiding delays in these cases is frustrated when orders are reversed, remanded, or both. That is especially true when remands are for additional findings that could have been made in the original order or when cases are reversed for other reasons related to the drafting of the order rather than to the substance of the court's decision or the propriety of its procedures.

An informal review of recent appellate court decisions suggests that by far the most common reason for reversals in juvenile cases is the insufficiency of the findings of fact. A missing finding may be one that would not be supported by the evidence, but often the drafter of the order simply omitted a finding that could have been made. In either case, awareness of the required findings might have prevented reversal or remand. Other deficiencies in the drafting of orders, such as an order's failure to state a required standard of proof, can lead to reversal as well.[9] Poorly drafted orders that are not appealable or that do not include reversible error still may fail to satisfy some of the applicable purposes stated above, or slow the progress of a case, or both.

Drafting good court orders is both a skill and an art. It requires thoughtful consideration and takes time. The ability to write good orders and to critique orders drafted by others almost certainly improves with practice as well as with reversals that could have been avoided.

Judges and attorneys rarely begin with a blank slate when drafting orders in juvenile cases. The Administrative Office of the Courts (AOC) provides forms for almost every kind of order that is entered in a juvenile case.[10] Use of the AOC forms is not required, and some districts develop their own versions of some forms or create forms for matters not covered by a particular AOC form.[11]

The manual *Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings in North Carolina* discusses the statutory mandates and includes checklists for some juvenile court hearings and orders, including

1. hearing on the need for continued nonsecure custody,
2. order placing or continuing a child's placement in the custody of a social services department,
3. adjudication hearing,
4. disposition hearing,
5. review and permanency planning hearings,
6. termination of parental rights hearing,
7. post-termination of parental rights review hearing.[12]

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7. *See* G.S. 7B-803.

8. N.C. R. App. P. 3.1.

9. *See, e.g.*, *In re* O.W. 164 N.C. App. 699, 702, 596 S.E.2d 851, 853 (2004); *In re* Wheeler, 87 N.C. App. 189, 193, 360 S.E.2d 458, 461 (1987).

10. The forms are available on the AOC's web page at www.nccourts.org/Forms/FormSearch.asp, and a list of juvenile forms, by number, can be found at www.sog.unc.edu/sites/www.sog.unc.edu/files/FORMS3.pdf.

11. *See*, for example, Wake County's local juvenile forms at www.nccourts.org/Courts/CRS/Policies/LocalRules/Default.asp.

12. Kella W. Hatcher, Janet Mason, & John Rubin, Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings in North Carolina (2011). The juvenile court checklists are located at the very end of this manual, which can be accessed free of charge, along with periodic updates, at shopping.netsuite.com/s.nl/c.433425/it.A/id.4228/.f.

Checklists adapted from these and updated to reflect recent statutory changes appear in the appendix to this bulletin.[13]

Someone relatively new to juvenile court practice would do well to review any relevant forms and checklists when preparing for a juvenile court hearing as well as when drafting or reviewing orders. While these aids may be helpful, they also pose their own risks. Forms and checklists may contain mistakes and also may not reflect the most recent changes in the law. Using a form order that contains check blocks creates a danger of failing to check a necessary block, checking an incorrect box, or insufficiently supplementing the language in the form.[14]

An attorney in a juvenile case should think about, if not actually draft, the order he or she hopes will result from an upcoming juvenile hearing. Doing that can help the attorney keep the hearing focused on the proper issues, anticipate other parties' approaches to the hearing, and make concise arguments to the court. Questions the attorney might ask in thinking about the order and preparing for a hearing include the following:

1. What kind of hearing is it?
2. What sections of the Juvenile Code are relevant?
3. What is the court being asked to do?
4. What would the court have to conclude, as a matter of law, in order to have authority (or be required) to grant that relief?
5. What findings of fact would support or preclude that conclusion?
6. What evidence would support or preclude those findings?
7. What is the standard of proof?
8. Who has the burden of proof, if there is one?
9. Does the Juvenile Code require the court to make any specific findings or conclusions at the conclusion of this kind of hearing?

A judge preparing to hear a case can usefully ask many of the same questions.[15]

II. Drafting the Order

Although some judges write their own orders, more often the trial court assigns the responsibility for drafting an order to the prevailing party. This kind of delegation is clearly permissible. The court of appeals has rejected arguments that it is error for the trial court to direct

13. These checklists reflect changes that were made by S.L. 2013-129, which applies to actions filed or pending on or after October 1, 2013.

14. *See, e.g.*, *In re* H.J.A., ___ N.C. App. ___, ___, 735 S.E.2d 359, 363 (2012) (reversing an order that ceased reunification efforts and stating, "Although the form itself is an excellent form, the modifications made and handwritten additional findings . . . make it very difficult to determine exactly what the court actually found as to each separate parent. Only from reading the transcript of the trial court's statements in court can we determine that the court meant to cease reunification efforts as to the mother only and not to the father.").

15. *See, e.g., In re* D.W., 202 N.C. App. 624, 628, 693 S.E.2d 357, 360 (2010) (holding in a termination of parental rights case that the trial court abused its discretion in denying a motion for a continuance, noting that the trial court failed to ascertain the nature of the hearing before ruling on the motion, and, referring to the statute governing continuances, stating that "the nature of the proceeding informs what is necessary to ensure 'the proper administration of justice.'").

an attorney to draft an order, including findings of fact and conclusions of law, on the court's behalf.[16] Rule 58 of the North Carolina Rules of Civil Procedure contemplates the practice when it refers to "the party who prepares the judgment" in specifying who is responsible for serving the order if the court does not designate someone.[17] The court may specify findings of fact it wants included in the order. However, the court is not required to dictate the order or to make all of the findings of fact orally.[18]

Sending a draft order to the court is an *ex parte* communication, and the attorney who drafts an order should provide copies of it to all other attorneys and unrepresented parties either before or at the same time the attorney submits it to the judge.[19] Some districts address in their local juvenile court rules the timing and procedures for circulating draft orders and submitting them to the court. For example:

- A local rule in Judicial District 15A, Alamance County, sets out the following procedure for orders that result from hearings on the need for continued nonsecure custody:

  > Prior to the entry of the order, the DSS attorney shall mail, fax, or email the draft order to all parties. Each party shall have **five** (5) days from receipt of the draft order to notify the DSS Attorney of any changes they wish to make. If the DSS Attorney is not notified of any changes within this **five** (5) day time frame, the final order will be submitted to the judge.[20]

- In Wake County, a family court rule provides as follows:

  > All orders should be filed within 15 days following the conclusion of a hearing, but in no event shall an order be entered later than 30 days following the hearing. A draft of each order must be circulated among the attorneys (and any unrepresented parties who appeared at the hearing) involved in the proceeding within a reasonable time prior to the submission of the final order to the Court for signature. If the order was not circulated in compliance with this Rule, this must be brought to the Court's attention when the final order is submitted for signature.[21]

16. *See, e.g., In re* J.B., 172 N.C. App. 1, 616 S.E.2d 264 (2005) (referring to the practice of having the prevailing party draft the order as "routine" in civil actions). *See also In re* H.T., 180 N.C. App. 611, 637 S.E.2d 923 (2006); *In re* S.N.H., 177 N.C. App. 82, 627 S.E.2d 510 (2006).

17. G.S. 1A-1, Rule 58.

18. *See J.B.*, 172 N.C. App. at 25, 616 S.E.2d at 269 (holding in a termination of parental rights case that where the trial court's order conformed with the decision announced at trial, and the findings of fact were based on competent evidence in the record, the trial court did not err by failing to make specific oral findings about disposition).

19. *See* Inquiry #2 in N.C. State Bar, 97 Formal Ethics Op. 5 (1998), which can be found at www.ncbar.com/ethics/ethics.asp?id=257 and is reproduced in the sidebar on pages 6–7 of this bulletin.

20. Alamance County Local Juvenile Court Rule 13.g.(5)(b) (Oct. 1, 2012) (emphasis in original), www.nccourts.org/Courts/CRS/Policies/LocalRules/Documents/1026.pdf.

21. Rule 21.2 of the Tenth Judicial District Family Court Local Rules for Juvenile Abuse/Neglect/Dependency Court (Oct. 15, 2009), www.nccourts.org/Courts/CRS/Policies?LocalRules/Documents/782.pdf. Local rules from other districts that have them can be found on the AOC's web page at www.nccourts.org/Courts/CRS/Policies/LocalRules/Default.asp.

97 Formal Ethics Opinion 5

January 16, 1998

Editor's Note: This opinion was decided pursuant to the Revised Rules of Professional Conduct.

Ex Parte Submission of Proposed Order to Judge

Opinion rules that a lawyer must give the opposing counsel a copy of a proposed order simultaneously with the lawyer's submission of the proposed order to a judge in an ex parte communication.

Inquiry #1:

Attorney A represents a prisoner condemned to death. He files a motion for appropriate relief ("MAR") seeking a new trial, pursuant to G.S. § 15A-1415 *et seq.*, by mailing the motion to the clerk of Superior Court with a letter requesting that the MAR be brought to the court's attention. Attorney A also serves a copy of the motion on Attorney B who is the district attorney and represents the state of North Carolina in this matter. Attorney C, an assistant attorney general, also represents the state in the matter.

After receiving the MAR, Attorney C prepares an answer and proposed order. The proposed order decides numerous contested factual and legal issues in the state's favor, dismisses the MAR, and includes space for the judge's signature. Attorney B delivers the MAR, the unfiled answer, the proposed order, and documents from the court file to Superior Court Judge D in chambers. Judge D has had no previous involvement in the case. Attorney B offers to make any modifications to the proposed order requested by Judge D.

Subsequently, Judge D signs the proposed order and returns it to Attorney B. Attorney B then files the answer and the signed order with the clerk of court and mails copies of the documents to Attorney A. This occurs five days after Attorney B delivered the answer and proposed order to Judge D. When Attorney A receives the answer and order from Attorney B, it is the first notice that Attorney A has received that the case was under consideration by Judge D. May lawyers make a written presentation to a judge without timely notice to the opposing lawyer?

Opinion #1:

No. Rule 3.5 of the Revised Rules of Professional Conduct addresses a lawyer's duty to maintain the impartiality of a tribunal. Comment [7] to Rule 3.5 includes the following observations:

> All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings, a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which the judge presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party.

This advice should be heeded in all *ex parte* communications with a judge.

Rule 3.5(a)(3)(ii) permits a lawyer to communicate *ex parte* with a judge in writing only "if a copy of the writing is furnished simultaneously to the opposing party." The repealed

(*continued*)

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rule on the same topic, repealed Rule 7.10(b)(2), allowed a written communication with a judge "if the lawyer promptly deliver[ed] a copy of the writing to opposing counsel . . . " The rule was changed to emphasize the importance of notifying the opposing counsel of an *ex parte* written communication with a judge. Delivery of a document to opposing counsel five days after its submission to a judge would not be "prompt" under the standard of the repealed rule, and it utterly fails to meet the requirement of "simultaneous" delivery under Rule 3.5(a)(3)(ii). To comply with Rule 3.5, a lawyer must hand deliver a copy of the written communication to the opposing lawyer at the same time or prior to the time that the written communication is hand delivered to the judge; or, if the written communication is mailed to the judge, the lawyer must put the written communication in the mail for delivery to opposing counsel at the same time or before it is placed in the mail for delivery to the judge.

Inquiry #2:

It is the practice of the bar in this judicial district to give the opposing lawyer prior or contemporaneous notice of the submission to the court of a proposed order and the opportunity to comment upon or object to the proposed order. May a lawyer fail to comply with this practice by submitting a proposed order to a judge in an *ex parte* communication prior to providing the proposed order to the opposing counsel?

Opinion #2:

No. *See* opinion #1 above. Such conduct also violates Rule 3.5(a)(4)(i) which prohibits conduct intended to disrupt a tribunal, including "failing to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving opposing counsel timely notice of the intent not to comply." Moreover, failure to give the opposing lawyer an opportunity to comment upon or object to a proposed order before it is submitted to the judge is unprofessional and may be prejudicial to the administration of justice. It is the more professional practice for a lawyer to provide the opposing counsel with a copy of a proposed order in advance of delivering the proposed order to the judge and thereby give the opposing counsel an adequate opportunity to comment upon or object to the proposed order.

At a minimum, Rule 3.5(a)(3)(ii) requires a lawyer to furnish the opposing lawyer with a copy of the proposed order simultaneously with its delivery to the judge and, if the proposed order is furnished to the opposing counsel simultaneously, Rule 3.3(d) requires the lawyer to disclose to the judge in the *ex parte* communication that the opposing lawyer has received a copy of the proposed order but has not had an opportunity to present any comments or objections to the judge. Rule 3.3(d) provides that "in an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse."

III. Timing of Entry of the Order

Entry of an order in a juvenile case occurs only when the written order is signed by the judge and filed with the clerk of court.[22] The Juvenile Code requires that most orders in juvenile cases be entered within 30 days after the hearing from which the order results. For abuse, neglect, and dependency proceedings that requirement is set out in the following statutes:

G.S. 7B-323(d)	Hearing on a petition for judicial review of a responsible individual determination.
G.S. 7B-506(d)	Hearing to determine the need for continued nonsecure custody.
G.S. 7B-807(b)	Adjudication hearing.
G.S. 7B-900.1(f)	Hearing on a motion to transfer venue after disposition.
G.S. 7B-905(a)	Disposition hearing.
G.S. 7B-906.1(h)	Review and permanency planning hearings.

For termination of parental rights proceedings the same requirement is found in these statutes:

G.S. 7B-1105(d)	Preliminary hearing on unknown parent. (The order may be entered more than 30 days after the hearing if the court determines that additional time for investigation is required.)
G.S. 7B-1109(e)	Adjudication hearing.
G.S. 7B-1110(a)	Hearing to determine best interest.
G.S. 7B-1114(l)	Hearing on motion to reinstate parental rights.

Most of these statutes contemplate that some orders will not be entered within 30 days despite the statutory requirement. In that circumstance, the clerk of court is required to schedule a hearing, at the next session of court scheduled for juvenile matters, to "determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order."[23] It makes sense that this hearing would be held in front of the judge who will be entering the order, although in multi-county districts in which the judges rotate, that may create scheduling difficulties. However, the statute makes no provision for delaying the hearing in order to schedule it before a particular judge. The statutes provide that the order must be entered within 10 days after this subsequent hearing is held.

A series of appellate court decisions before 2008 considered on a case-by-case basis whether the untimely entry of a juvenile court order was prejudicial error. Then, the North Carolina Supreme Court held that a trial court's failure to enter an order within the prescribed 30-day time period was not a proper issue for appeal. Rather, the court held, the appropriate means

22. G.S. 1A-1, Rule 58; G.S. 7B-1001(b).

23. The code does not provide for these follow-up hearings when orders are not entered within 30 days following hearings on review of a responsible individual determination (G.S. 7B-323(d)), hearings to determine the need for continued nonsecure custody (G.S. 7B-506(d)), or hearings on unknown parents in termination of parental rights cases (G.S. 7B-1105(d)). The clerk could schedule follow-up hearings in those cases as well pursuant to local rules, local practice, or an administrative order entered by the chief district court judge.

of addressing a trial court's failure to enter a timely order in a juvenile case is to seek a writ of mandamus.[24]

IV. Orders for Multiple Children (or Parents)

The Juvenile Code specifically authorizes the use of a single petition to initiate abuse, neglect, or dependency proceedings regarding more than one child when "the juveniles are from the same home and are before the court for the same reason."[25] There is no statutory or case law guidance as to what constitutes "the same reason" or when separate petitions and orders are preferable or necessary.[26] Regardless of the number of children covered by one petition, each child's case is separate and has a separate file and file number in the clerk's office.[27] The court must have jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, G.S. Chapter 50A, with respect to each child.[28]

Even when children live in the same home and are alleged to be subject to the same kind of abuse, neglect, or dependency, filing only one petition may be inappropriate if the children's parentage differs. Likewise, the court should carefully consider whether to enter an order that relates to multiple children who do not have both parents in common, whose adjudications are based on substantially different facts, or for whom significantly different dispositions are being ordered. When separate petitions are filed nothing prevents the court from consolidating cases for hearing in appropriate circumstances. But filing separate petitions and entering separate orders can help provide clarity and ensure that a respondent looking at his or her child's file would not have access to confidential information to which he or she is not entitled about another child or parent.[29]

When siblings' cases are appropriately initiated with one petition, the allegations, evidence, findings, conclusions, or dispositions still may suggest that separate orders are preferable at some point in the case. When the grounds alleged for terminating parental rights are not the same for both parents, separate petitions or motions and orders for each parent may be preferable. Of course, because a termination of parental rights case is titled in the child's name, separate orders terminating the mother's and father's rights would have the same file number and go into the same file. Any order that does relate to more than one child or more than one parent

24. *In re* T.H.T., 362 N.C. 446, 665 S.E.2d 54 (2008). The procedure for seeking a writ of mandamus is set out in G.S. 7A-32(b) and (c) and in Rule 22 of the North Carolina Rules of Appellate Procedure.

25. G.S. 7B-402(a). Although there is no comparable provision for termination of parental rights cases, it is routine for petitions, motions, and orders in those cases to relate to more than one child and to both of the child's or children's parents.

26. In a different context, when the statute forbade amendments that changed the nature of the condition alleged in a petition, the N.C. Supreme Court held that adding an allegation of sexual abuse to a petition that already alleged abuse "did not change the nature of the condition" alleged. *In re* M.G., 363 N.C. 570, 574, 681 S.E.2d 290, 292 (2009).

27. *See* Rule 12.1 of the Rules of Recordkeeping of the North Carolina Administrative Office of the Courts.

28. *See, e.g.*, Beck v. Beck, 123 N.C. App. 629, 473 S.E.2d 789 (1996) (holding that the trial court had jurisdiction to enter a custody order regarding one child but not to modify another state's order relating to an older child).

29. See G.S. 7B-2901, which governs access to juvenile files maintained by the clerk of court.

should be carefully structured to clearly distinguish findings, conclusions, and directives that do not relate to all of the children or to both parents.

In a case reversing both an order that terminated parental rights and an earlier permanency planning order that ceased reunification efforts, the court of appeals said of the permanency planning order,

> We note that the confusion evident in this order arises from the fact that although the court was addressing two parents with very different situations, the court entered one order as to both parents using a form order as its basis, with some additional handwritten findings. In some places, the order notes that a particular finding addresses only one parent; in other places, provisions appear to apply to both parents, although it seems that the trial court really meant to refer to only one parent.[30]

V. Structure and Contents of the Order

There is not just one proper way to write an order, but an order's structure should be logical and easy to follow and consistent with the purposes of the order.

A. Technical Aspects

Obviously care should be taken to ensure that the order reflects the proper caption and file number(s). It should indicate the date(s) of the hearing and who was present, along with each person's status or role. In addition to the judge's signature, the judge's name should be typed or clearly printed on the order. The judge should indicate the date on which he or she signs the order, though if the order is not signed and filed on the same date, the actual date of entry will be determined by the clerk's stamp.

Anything that the court incorporates into the order by reference or refers to as part of the order should be attached to it.[31] Reports and other documents do not need to be attached to an order if they are merely evidence the court considered at the hearing. When a report or any other document is attached to the order, language in the order should make very clear whether

- some or all of the contents of the attachment are being incorporated by reference as findings of fact, or
- the court is finding as a fact that the document exists, or
- the court received the attachment into evidence and considered its contents (in which case attaching it to the order is not necessary).[32]

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30. *In re* H.J.A., ___ N.C. App. ___, ___, 735 S.E.2d 359, 362–63 (2012).

31. *See, e.g., In re* L.H, 210 N.C. App. 355, 368, 708 S.E.2d 191, 199 (2011) (noting that the trial court incorporated two court summaries by reference but did not attach them to the order or make findings about their contents); *In re* T.A.B., 182 N.C. App. 765, 643 S.E.2d 83 (2007) (unpublished) (reversing a dispositional order in a delinquency case where (1) the order stated that the court received and considered a predisposition report but did not incorporate it by reference or include it as an attachment and (2) under "Other Findings," the order said, "See attached," when nothing was attached to the order).

32. Incorporation is discussed further in section F, titled "Findings of Fact," below.

B. Case and Statutory Contexts

The order should indicate near the beginning why the case was before the court, and in some instances it should refer to the applicable statute or statutes.[33] Some orders, such as disposition, review, and permanency planning orders, should provide a brief background of the case without unnecessarily repeating the content of prior orders.

When two or more cases have been consolidated for hearing, the court should either enter separate orders for each case or in one order make clear which parts of the order relate to which matter. After a hearing in a consolidated civil custody action and juvenile neglect and dependency case, the trial court entered a "temporary custody order" that removed custody from the department of social services, awarded custody to the father, gave the mother supervised visitation, and directed that the order be reviewed in four months.[34] The court of appeals rejected the mother's argument that the order was a juvenile disposition order that changed custody and was therefore immediately appealable under G.S. 7B-1001(a)(4). Instead, the court dismissed the appeal, holding that the order was an interlocutory temporary child custody order under G.S. Chapter 50 that did not affect a substantial right and was not appealable.[35] In another case, the court of appeals encouraged trial courts in consolidated hearings "to either: (a) issue separate orders addressing the separate components of the consolidated hearings; or (b) sub-divide a single order into independent sections addressing each component of the consolidated hearing, with each section containing its own evidentiary standard recitation, findings of fact, conclusions of law, and appropriate order."[36]

C. Subject Matter Jurisdiction

An order entered by a court that lacks subject matter jurisdiction is void and can be set aside at any time.[37]

1. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

An order entered early in the case, such as an order on the need for continued nonsecure custody, should make clear the basis for the court's exercise of subject matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), G.S. Chapter 50A. It is preferable, and possibly necessary, for the trial court to make findings of fact to support its conclusion that it has jurisdiction under the UCCJEA. The court of appeals has said that findings of fact to support the trial court's conclusion that it has subject matter jurisdiction are not

33. *See, e.g., In re* A.P., 179 N.C. App. 425, 634 S.E.2d 561 (2006) (noting that it was not clear whether the order on appeal resulted from a review hearing pursuant to (former) G.S. 7B-906 or an initial permanency planning hearing pursuant to (former) G.S. 7B-907).

34. *In re* N.T.S., 209 N.C. App. 731, 707 S.E.2d 651 (2011).

35. *Id*. at 735, 707 S.E.2d at 654.

36. *In re* R.B.B., 187 N.C. App. 639, 645, 654 S.E.2d 514, 519 (2007) (holding that the trial court did not err by consolidating the adjudicatory and dispositional hearings on an abuse and neglect petition and on a termination of parental rights petition).

37. *See, e.g., In re* T.R.P., 360 N.C. 588, 636 S.E.2d 787 (2006) (affirming the court of appeals decision vacating a review hearing order because the initial petition had not been verified, depriving the trial court of subject matter jurisdiction).

required if evidence in the record supports that determination.[38] In other cases, however, the court has said that a trial court must make findings of fact to support its conclusion that it has jurisdiction under the UCCJEA.[39] Clearly the first order addressing subject matter jurisdiction should include findings of fact to support the court's exercise of jurisdiction. The nature of the findings will vary depending on whether the court has

- initial jurisdiction,[40]
- exclusive continuing jurisdiction,[41]
- jurisdiction to modify,[42] or
- temporary emergency jurisdiction.[43]

Making these findings should be facilitated by a pleading or affidavit that contains the information required by G.S. 50A-209 regarding the child's status.[44]

Jurisdiction to modify. If the court is modifying another court's order in a nonemergency situation, the court must have jurisdiction to enter an initial custody order based either on this being the child's home state or on the other state's declining to exercise jurisdiction under G.S. 50A-207 (inconvenient forum) or 50A-208 (conduct of a party). In addition, the court here must either determine that neither the child nor either parent continues to reside in the other state or obtain a court order from the other state making that determination, or a determination that it no longer has exclusive continuing jurisdiction, or a determination that a North Carolina court would be a more convenient forum.[45] When a determination by the other state's court is required, a record of the North Carolina judge's conversation with a judge in that state is not sufficient. An order from the other state's court must be in the court file here.[46]

Temporary emergency jurisdiction. When the court lacks jurisdiction to enter an initial or modification order, the court still may exercise temporary emergency jurisdiction if a child is present in North Carolina and it is necessary to protect the child in an emergency.[47] When entering a temporary emergency order the court needs to know—or instruct the parties to find out—whether a custody action has been filed or a custody order has been entered in

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38. *See, e.g., In re* E.X.J., 191 N.C. App. 34, 662 S.E.2d 24 (2008), *aff'd per curiam*, 363 N.C. 9, 672 S.E.2d 19 (2009); *In re* T.J.D.W., 182 N.C. App. 394, 397, 642 S.E.2d 471, 473 (stating that the UCCJEA requires only that certain circumstances exist, not that the court specifically make findings to that effect, but that making findings "would be the better practice"), *aff'd per curiam*, 362 N.C. 84, 653 S.E.2d 143 (2007).

39. *See, e.g., In re* E.J., ___ N.C. App. ___, ___, 738 S.E.2d 204, 207 (2013) (stating that to "exercise either emergency or exclusive jurisdiction, the trial court must make specific findings of fact to support such an action"); Williams v. Williams, 110 N.C. App. 406, 411, 430 S.E.2d 277, 281 (1993) (stating that North Carolina requires trial courts, "in exercising jurisdiction over child custody matters, . . . to make specific findings of fact supporting its actions").

40. *See* G.S. 50A-201.

41. *See* G.S. 50A-202.

42. *See* G.S. 50A-203.

43. *See* G.S. 50A-204.

44. *See* AOC-CV-609, Affidavit as to Status of Minor Child (July 2011), www.nccourts.org/Forms/Documents/269.pdf.

45. G.S. 50A-203.

46. *See, e.g., In re* K.U.-S.G., 208 N.C. App. 128, 702 S.E.2d 103 (2010).

47. G.S. 50A-204.

another state. When there is no custody order and no action has been filed in a state that has jurisdiction, the temporary North Carolina order terminates when an order is entered in a state that has jurisdiction. If no order is entered in the other state and North Carolina becomes the child's home state, the temporary order entered here becomes a final determination "if it so provides."[48]

When the court here enters a temporary emergency order and there is either a custody order or a pending custody action in a state that has jurisdiction, the North Carolina court must immediately contact the court in the other state. The order here must specify a time the court, perhaps in consultation with the other state's court, considers adequate for a party to obtain an order in the other state. The North Carolina order expires either when that period of time ends or earlier if a custody order is entered in the other state. When the North Carolina action is brought by a county social services department and the action in the other state is between the parents, the specified time period may well end without either parent seeking a custody order. North Carolina has no means of forcing a social services agency in another state to either initiate or seek an order in a juvenile case in the other state. North Carolina's only recourse may be to determine whether the other state's court will enter an order under G.S. 50A-203 allowing North Carolina to modify the other state's order.

2. Standing

In a termination of parental rights case it is good practice to include in the order the basis for the petitioner or movant having standing to bring the action. Unless the action is initiated by a person or agency listed in G.S. 7B-1103(a), the court lacks subject matter jurisdiction and any order it enters is void.[49]

D. Personal Jurisdiction

Findings of fact relating to personal jurisdiction are required only if requested by a party.[50] However, it should be clear from the record that each necessary party either was properly served or waived service of process.

A particular issue of personal jurisdiction may arise in actions to terminate the rights of an out-of-state parent.[51] The North Carolina Court of Appeals has held that personal jurisdiction in that circumstance requires that the parent have minimum contacts with North Carolina,[52]

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48. *Id*. *See In re* E.X.J., 191 N.C. App. 34, 662 S.E.2d 24 (2008). *See also In re* K.M., No. COA12-1252 (N.C. Ct. App., June 4, 2013) (unpublished).

49. *See, e.g., In re* Miller, 162 N.C. App. 355, 358, 590 S.E.2d 864, 866 (2004) (holding that the trial court lacked subject matter jurisdiction where the department of social services did not have custody of the child and therefore did not have standing when it filed the termination action).

50. *See, e.g.,* Seal Polymer Indus.-BHD v. Med-Express, Inc., USA, ___ N.C. App. ___, 725 S.E.2d 5 (2012).

51. For a fuller discussion of this issue see Hatcher, Mason, & Rubin, *supra* note 12, section 3.4.C, pages 78–79. This publication can be accessed free of charge, along with periodic updates, at shopping.netsuite.com/s.nl/c.433425/it.A/id.4228/.f.

52. *In re* Finnican, 104 N.C. App. 157, 408 S.E.2d 742 (1991) (holding that where the nonresident parent had no contacts with North Carolina and made no appearance in the action, the termination order was void and could be set aside at any time under G.S. 1A-1, Rule 60(b)(4)), *overruled in part on other grounds*

except when the child was born out of wedlock and the parent has taken no steps to demonstrate parental commitment to the child.[53] Two statutes suggest that minimum contacts are never required, but these statutes conflict with the constitutional due process basis for the appellate courts' holdings.[54]

In an order terminating the rights of a nonresident parent of a legitimate child, it may be advisable for the trial court to make clear the basis for its exercise of personal jurisdiction over the respondent. The same would be true in the case of a nonresident parent of a child born out of wedlock, if the parent had taken steps to demonstrate a personal commitment to the child.

E. Standard of Proof

An order entered as a result of any adjudicatory hearing must state the applicable standard of proof.[55] The statutes state the standards as clear and convincing evidence in abuse, neglect, and dependency cases[56] and as clear, cogent, and convincing evidence in termination of parental rights cases.[57] However, the courts have held that these standards are the same.[58] Thus the omission of "cogent" from the statement of the standard of proof in an order terminating parental rights is not fatal.

Although appellate courts have not disapproved of consolidating adjudication and disposition hearings, they have stressed the importance of applying the proper evidentiary standard to the respective stages of the proceeding.[59] An order resulting from a consolidated hearing should make clear that the adjudicatory findings are based on clear and convincing (or, in a termination of parental rights case, clear, cogent, and convincing) evidence.

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by Bryson v. Sullivan, 330 N.C. 644, 412 S.E.2d 327 (1992); *In re* Trueman, 99 N.C. App. 579, 393 S.E.2d 569 (1990) (holding that the trial court should have granted respondent's motion to dismiss a termination of parental rights action when his only contact with North Carolina was the payment of child support under a court order in another state).

53. *See In re* Dixon, 112 N.C. App. 248, 435 S.E.2d 352 (1993) (holding that the trial court erred in dismissing for lack of personal jurisdiction an action to terminate the rights of a nonresident father, when the child was born out of wedlock and the father had not established paternity, legitimated the child, or provided substantial care or support to the child and mother). *See also In re* Williams, 149 N.C. App. 951, 563 S.E.2d 202 (2002).

54. *See* G.S. 7B-1101 (providing that the court shall have jurisdiction to terminate parental rights "irrespective of the state of residence of the parent"); G.S. 50A-201(c) (stating that personal jurisdiction over a parent is not necessary in order for a court to make a child custody determination, which G.S. 50A-102(4) defines as including an action to terminate parental rights).

55. *See, e.g., In re* T.K., 171 N.C. App. 35, 613 S.E.2d 739 (2005); *In re* Church, 136 N.C. App. 654, 525 S.E.2d 478 (2000).

56. G.S. 7B-805, 7B-807(a).

57. G.S. 7B-1109(f), 7B-1111(b).

58. *See, e.g., In re* Montgomery, 311 N.C. 101, 109, 316 S.E.2d 246, 252 (1984) (stating that it is "well established" that the two describe the same evidentiary standard).

59. *See, e.g., In re* R.B.B., 187 N.C. App. 639, 654 S.E.2d 514 (2007); *In re* O.W., 164 N.C. App. 699, 596 S.E.2d 851 (2004).

Logically the statement of the standard of proof would immediately precede the findings to which the standard applies. The court of appeals has said, though, that "there is no requirement as to where or how such a recital of the standard should be included" in the order.[60]

The standard of proof also should be stated in orders from any other hearings for which the Juvenile Code requires clear and convincing (or clear, cogent, and convincing) evidence. These include orders

- finding that a respondent, without lawful excuse, obstructed or interfered with a required assessment;[61]
- finding that a child's continued nonsecure custody is necessary and continuing nonsecure custody;[62] or
- waiving further review hearings, requiring written reports in lieu of review hearings, or ordering that review hearings be held less often than every six months.[63]

Case law has made clear that the court may not apply the best interest standard to order a permanent plan of guardianship or custody with someone other than a parent without first finding that the parents are unfit or have acted inconsistently with their constitutionally protected parental status.[64] This critical finding also must be based on clear and convincing evidence.[65]

F. Findings of Fact

Rule 52 of the Rules of Civil Procedure provides that in all civil cases tried without a jury the court must "find the facts specially."[66] Appellate courts have held that this rule applies in termination of parental rights cases[67] and have applied and discussed it in abuse, neglect, and dependency cases.[68]

In addition to this general requirement, the Juvenile Code includes numerous, and often very specific, requirements for making findings of fact in particular types of orders in juvenile cases.[69]

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60. *See O.W.*, 164 N.C. App. at 702, 654 S.E.2d at 853 (holding that the requirement was met by a statement in the order that the court "concluded through clear, cogent and convincing evidence" that the child was abused and neglected).

61. G.S. 7B-303(c).

62. G.S. 7B-506(b).

63. G.S. 7B-906.1(n).

64. *See, e.g., In re* T.P., ___ N.C. App. ___, ___, 718 S.E.2d 716, 719 (2011); *In re* B.G., 197 N.C. App. 570, 574, 677 S.E.2d 549, 552 (2009) (citing Price v. Howard, 346 N.C. 68, 79, 484 S.E.2d 528, 534 (1997)). It is not clear whether this finding is required when the court orders guardianship or custody to a nonparent as a disposition that is not a permanent plan.

65. *See* Adams v. Tessener, 354 N.C. 57, 63, 550 S.E.2d 499, 503 (2001).

66. G.S. 1A-1, Rule 52(a)(1).

67. *See In re* T.P., 197 N.C. App. 723, 729, 678 S.E.2d 781, 786 (2009). *See also In re* B.S.O., ___ N.C. App. ___, 740 S.E.2d 483 (2013).

68. *See, e.g., In re* J.L., 183 N.C. App. 126, 130, 643 S.E.2d 604, 607 (2007).

69. *See, e.g.,* G.S. 7B-506(d) and (h) (order continuing nonsecure custody); 7B-507(a) (order placing or continuing placement of child in DSS custody); 7B-507(b) (order ceasing reunification efforts); 7B-906.1 (review and permanency planning orders).

The sufficiency of the findings of fact in an order may be assessed in several related ways. Four of these are discussed below.

1. Are the Findings Actually Findings?

A finding of fact must be a *definite* statement of something the court determines to be true.[70] Neither recitations of witnesses' testimony nor descriptions of evidence constitute findings of fact.[71] A finding is what the court determines to be true, after considering the testimony of witnesses and other evidence.[72]

The following "findings" would not be helpful or support a conclusion of law:

- "Dr. Lee testified that the child's injuries could/could not have been caused accidentally."
- "Ms. Ray testified that DSS arranged weekly visits that the respondents attended/failed to attend."
- "DSS introduced a mental health report stating that the respondent suffered/did not suffer from a personality disorder."

These statements merely describe the evidence before the court. If in an adjudicatory hearing the court finds the evidence to be credible, clear, and convincing, the court can make the following proper findings of fact:

- "The child's injuries could/could not have been caused accidentally."
- "DSS arranged weekly visits that the respondents attended/failed to attend."
- "The respondent suffered/did not suffer from a personality disorder."

A judge, of course, is not qualified to make medical determinations and cannot know firsthand whether the parents attended visits. What the judge is deciding (in an adjudicatory hearing) is whether the evidence is credible and sufficiently clear and convincing to permit the court to say that something is a fact with a level of certainty that need not be beyond a reasonable doubt but that is more than just the greater weight of the evidence. The court of appeals has explained that verbatim recitations of testimony are not findings of fact "because they do not reflect a conscious choice between the conflicting versions of the incident in question which emerged from all the evidence presented."[73]

A report or other document, by itself, does not constitute findings of fact. The court of appeals held in one case that it was not error for the trial court to incorporate into its order by reference reports by the social services department and the child's guardian ad litem (GAL) for the purpose of summarizing the evidence on which the court was relying.[74] However, the court

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70. *See, e.g.,* Anderson v. Century Data Sys., Inc., 71 N.C. App. 540, 547, 322 S.E.2d 638, 642 (1984) (holding that a statement in an order was "so equivocal as to be of no legal significance").

71. *See, e.g., In re* H.J.A. ___ N.C. App. ___, ___, 735 S.E.2d 359, 363 (2012) (holding that the trial court's findings of fact were insufficient, although "the trial court recited a good deal of testimony which might support" the required findings); *In re* O.W., 164 N.C. App. 699, 703, 596 S.E.2d 851, 854 (2004) (holding that a purported finding was not really a finding of fact because it merely recited a social worker's testimony).

72. Technically, descriptions of evidence or recitations of testimony may be findings but only about what a witness said or what evidence was presented—not about what the court found to be true.

73. *In re* L.B., 184 N.C. App. 442, 450, 646 S.E.2d 411, 415 (2007) (quoting *In re* Green, 67 N.C. App. 501, 505 n.1, 313 S.E.2d 193, 195 (1984)).

74. *In re* A.S., 190 N.C. App. 679, 693–94, 661 S.E.2d 313, 322 (2008).

went on to say that the trial court was "required to make its own findings of fact based on those reports and any testimonial evidence presented. The trial court's bare finding that 'the statements set forth' in the reports 'are true' does not tell this Court upon which assertions in those reports the trial court was relying."[75]

There is no requirement that a court order describe or summarize the evidence on which the court is relying, and it is rarely necessary or helpful to attach evidence to an order. An appellate court will be concerned not with the trial court's description of the evidence, but with whether the evidence in the record supports the trial court's findings and whether those findings are relevant to and sufficient to support the trial court's conclusions.

In general, the court should incorporate by reference sparingly, if at all, in its orders. The court of appeals has stated that "merely incorporating . . . reports by reference without making specific findings is not sufficient."[76] Similarly, adopting as findings anything external to the order itself is rarely advisable. The court of appeals has held numerous times that the trial court may not delegate its duty to make findings of fact.[77] Appellate courts are most likely to find an improper delegation of the trial court's fact-finding responsibility when the trial court either

- adopts or recites the allegations in the petition as its findings of fact[78] or
- incorporates by reference, as its findings, entire reports or other documents prepared by someone else.[79]

Especially when a record is lengthy, references in the order to particular evidence may aid an appellate court in its review by directing the court to the evidence on which the trial court's findings are based.[80] But the trial court must ensure that summaries or descriptions of evidence are not presented as or substituted for findings of fact.

2. Are the Findings Based on Competent Evidence in the Record?

An appellate court will be looking for a connection between the trial court's findings of fact and competent evidence in the record. On appeal, a party may raise the issue of the sufficiency of the evidence to support the findings, regardless of whether the party made any objection or motion regarding the findings in the trial court.[81] In one case, the court of appeals concluded that "significant portions" of the trial court's findings of fact were "wholly unsupported by the evidence

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75. *Id*. at 694, 661 S.E.2d at 322.

76. *H.J.A.*, ___ N.C. App. at ___, 735 S.E.2d at 363.

77. *In re* Z.J.T.B., 183 N.C. App. 380, 386–87, 645 S.E.2d 206, 211–12 (2007).

78. *See, e.g., In re* S.C.R., ___ N.C. App. ___, ___, 718 S.E.2d 709, 713 (2011) (reversing and remanding adjudication and disposition orders because "the trial court erred in adopting the petition allegations as its findings of fact"); *In re* O.W., 164 N.C. App. 699, 702, 596 S.E.2d 851, 853 (2004) (remanding adjudication and disposition orders for appropriate findings of fact and stating that "the trial court's findings must consist of more than a recitation of the allegations.").

79. *See, e.g., A.S.*, 190 N.C. App. at 692–93, 661 S.E.2d at 322 (vacating and remanding a disposition order and directing the trial court to specify the facts and reasoning on which the order was based, where the trial court had incorporated by reference exhibits, a DSS court report, a family reunification assessment, a family assessment of strengths and needs, and a GAL court report); *In re* J.S., 165 N.C. App. 509, 511, 598 S.E.2d 658, 660 (2004) (holding that "the trial court may not delegate its fact finding duty" and stating that "the trial court should not broadly incorporate . . . written reports from outside sources as its findings of fact.").

80. *H.J.A.*, ___ N.C. App. at ___, 735 S.E.2d 359 at 363.

81. G.S. 1A-1, Rule 52(c).

presented during the termination proceeding."[82] The appellate court found it "curious that the trial court order contain[ed] information that was neither introduced nor admitted at trial."[83] So, first and foremost, findings of fact must be based on the evidence.

This bulletin does not attempt to cover questions about the competence and admissibility of evidence in juvenile proceedings.[84] It is important to note, however, that while competent evidence may take a variety of forms, statements by counsel are not evidence and will not support findings of fact.[85]

Proper findings may be based on stipulations by a party or parties but only pursuant to specific provisions of the Juvenile Code. The record must show that any stipulations of adjudicatory facts were either

a. reduced to writing, signed by each stipulating party, and submitted to the court or
b. read into the record, followed by an oral statement of agreement from each stipulating party.[86]

When a court bases a finding of fact on a stipulation, the court should ensure that the finding reflects the parties' intended construction of the stipulation.[87] Stipulations are judicial admissions and should be limited to statements of fact. Attempted stipulations to questions of law generally are "'invalid and ineffective, and not binding upon the courts, either trial or appellate.'"[88] Thus parties may not stipulate that a ground for termination of parental rights exists or that a child is abused, neglected, or dependent. Instead, stipulations can establish facts from which the court could conclude that a ground for termination exists or that a child is an abused, neglected, or dependent juvenile. Similarly, parties may stipulate that a social services department has taken specified actions to facilitate reunification, but they may not stipulate that the department has made "reasonable efforts."[89]

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82. *In re* C.W., 182 N.C. App. 214, 224, 641 S.E.2d 725, 732 (2007).

83. *Id*. at 224 n.2, 641 S.E.2d at 732.

84. A thorough discussion of evidence issues in juvenile cases can be found in chapter 11 of *Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings in North Carolina* (Hatcher, Mason, & Rubin, *supra* note 12). This manual, along with periodic updates, can be accessed free of charge at shopping.netsuite.com/s.nl/c.433425/it.A/id.4228/.f. *See also* Jessica Smith, *Evidence Issues in Criminal Cases Involving Child Victims and Child Witnesses*, Admin. Just. Bull. No. 2008/07 (Dec. 2008), http://shopping.netsuite.com/s.nl/c.433425/it.I/id.369/.f.

85. *See, e.g., In re* D.L. 166 N.C. App. 574, 582, 603 S.E.2d 376, 382 (2004) (reversing a permanency planning order and holding that "[s]tatements by an attorney are not considered evidence.").

86. *See* G.S. 7B-807(a).

87. *See, e.g., In re* A.K.D., ___ N.C. App. ___, 745 S.E.2d 7 (2013) (reversing and remanding a termination of parental rights order when the adjudication of the ground of willful abandonment was based on respondent's stipulation that he had abandoned the children, but not that his abandonment was willful); *In re* I.S., 170 N.C. App. 78, 87, 611 S.E.2d 467, 473 (2005) (reversing a termination of parental rights order where the trial court's findings were more extensive than the stipulation on which they were based).

88. *A.K.D.*, ___ N.C. App. at ___, 745 S.E.2d at 9 (quoting State v. Prush, 185 N.C. App. 472, 480, 648 S.E.2d 556, 561 (2007)).

89. *In re* Helms, 127 N.C. App. 505, 510–11, 491 S.E.2d 672, 675–76 (1997) (stating that both "reasonable efforts and best interest determinations are conclusions of law").

Stipulations to support findings of fact may be made in connection with consent orders. In abuse, neglect, and dependency proceedings, the court may enter consent orders for adjudication, disposition, review, or permanency planning hearings but only if

a. each party is either present in court or is represented by an attorney who is present and authorized to consent on behalf of the party,
b. the child is represented by counsel, and
c. the court makes sufficient findings of fact.[90]

Before entry of a typical consent order the trial court would not be hearing evidence. The findings would be based on the parties' consent. The wording of the statute suggests that the signature or oral statement of a party's attorney, who is authorized to consent on behalf of the party, could substitute for that of the party when facts are stipulated in the context of a consent order. If a party is not present when a consent order is entered, however, the better practice is for his or her attorney to provide written stipulations or a copy of the proposed consent order signed by the party.

3. Does the Order Include Findings That Are Required for the Type of Order Being Entered?

Using AOC or local form orders can help ensure that findings required by statute are included in an order. Nevertheless, parties and the court should be aware of the requirements for specific findings and make sure that they are included not as boilerplate, but based on evidence in the record. An attempt to create a detailed listing of every kind of finding required for every type of order would inevitably omit something and would not be very useful. Not all required findings are identified in the Juvenile Code, and sometimes findings about factors listed in the code must be included only if they are relevant in a particular case.[91]

When a statute requires the court to consider certain factors or criteria but does not require the court to make findings about them,[92] making findings of fact nevertheless is the surest way to demonstrate to an appellate court that the trial court did consider the relevant factors.[93] When a termination of parental rights order addressed only some of the statutory best interest factors, the court of appeals remanded for additional findings of fact.[94] The court said that although the record included evidence from which the trial court could have made findings about the other factors, the order did not reflect that the court had considered them.[95]

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90. G.S. 7B-801(b1).

91. *See, e.g.*, G.S. 7B-906.1(d) and (e), which list criteria the court must consider at review and permanency planning hearings and require the court to make written findings about "those that are relevant."

92. *See, e.g.,* G.S. 7B-900.1(e), which requires the court to consider "relevant factors" before ordering a post-adjudication change of venue and lists nine factors that may be relevant but includes no requirement for findings of fact about relevant factors.

93. *See, e.g., In re* S.T.P., 202 N.C. App. 468, 689 S.E.2d 223 (2010) (holding that the trial court's uncontested findings of fact demonstrated that the court had properly considered the required statutory factors.) (Note that *S.T.P.*, which involved the disposition stage of a termination of parental rights action, was decided under prior law, before G.S. 7B-1110(a) was rewritten to require the trial court to make written findings about listed criteria. *See* S.L. 2011-295, sec. 16, which became effective October 1, 2011.)

94. *In re* E.M., 202 N.C. App. 761, 762, 692 S.E.2d 629, 629 (2010). This case, too, was decided before G.S. 7B-1110(a) was amended to require findings of fact about relevant disposition factors in termination of parental rights cases.

95. *Id*. at 764–65, 692 S.E. 2d at 631.

The statutes themselves are the best guide to what must be in an order. Even when a statute does not explicitly require specific findings, the wording of the statute may imply that certain findings are required. For example, G.S. 7B-903(a)(2) lists dispositional options that are available to the court after adjudicating a child to be abused, neglected, or dependent. It provides that "[i]n the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may," among other things, place the child in the custody of the county department of social services. The court of appeals, reversing a disposition order, held that before placing neglected children in the custody of the department of social services, the trial court was required to make an explicit finding that the children "needed more adequate care or supervision."[96] Presumably that finding also would be required before the court, under the same statute, ordered that a child be supervised by the social services department in the child's home or placed a child in the custody of a parent, relative, or other suitable person.[97]

Orders that are particularly susceptible to failing to include statutorily required findings include

- orders ceasing reunification efforts pursuant to G.S. 7B-507(b),[98]
- review and permanency planning orders following hearings under G.S. 7B-906.1 (formerly G.S. 7B-906 and 7B-907),[99] and
- orders waiving further review hearings, as authorized by G.S. 7B-906.1(n) (formerly G.S. 7B-906(b)).[100]

Orders for continued nonsecure custody are similarly susceptible, given the extent of the inquiries and findings the court must make pursuant to G.S. 7B-506. Because these orders are not final orders for purposes of appeal, however, compliance with those statutory requirements is rarely the subject of appellate court decisions.[101]

4. Are the Findings Sufficient to Support the Conclusions of Law?

Even when all of the findings required by statute are included, are properly worded, and are supported by the evidence, an order will fail if those findings do not support the court's conclusions of law. When appellate courts review orders in juvenile cases, after considering whether the

96. *In re* S.H., ___ N.C. App. ___, ___, 719 S.E.2d 157, 160 (2011). See also *In re* V.M., 211 N.C. App. 389, 712 S.E.2d 213 (2011), one of a number of cases holding that a disposition order in a delinquency case must include findings to show that the court considered the five factors on which G.S. 7B-2501(c) says the court's selection of a disposition must be based, although the statute itself does not require findings.

97. G.S. 7B-903(a)(2)a., b.

98. *See, e.g., In re* A.P.W. ___ N.C. App. ___, 741 S.E.2d 388 (2013) (holding that the statutory findings were required when the order implicitly ceased reunification efforts by changing the plan to adoption and ordering social services to file a petition to terminate parental rights); *In re* I.R.C., ___ N.C. App. ___, 714 S.E.2d 495 (2011).

99. See, e.g., *In re* J.B., 197 N.C. App. 497, 508, 677 S.E.2d 532, 539 (2009) (reversing and remanding a combined review and permanency planning hearing order that "lack[ed] numerous requisite findings to establish what precisely the custody plan" for the juvenile was).

100. *See, e.g., In re* A.Y., ___ N.C. App. ___, 737 S.E.2d 160 (2013); *In re* V.A., ___ N.C. App. ___, 727 S.E.2d 901 (2012).

101. *See* G.S. 7B-1001(a)(4).

findings are supported by evidence in the record, they consider whether the findings support the trial court's conclusions of law.[102]

Appellate courts distinguish between "evidentiary findings" and "ultimate findings," and many orders require both. In juvenile cases some findings required by statute are considered the ultimate findings, while the "evidentiary facts are those subsidiary facts required to prove the ultimate facts. Ultimate facts are the final resulting effect reached by processes of logical reasoning from the evidentiary facts."[103] While the distinction is not always crystal clear, it is not necessary that the order label a finding as one or the other.

Reversing and remanding a permanency planning order that ceased reunification efforts, the court of appeals said that the order lacked ultimate findings "that it [was] not possible for the juveniles to be returned to their mother's home within six months and *why* returning the juveniles to their mother [was] not in their best interest."[104] These findings were specifically required by (former) G.S. 7B-907(b). Evidentiary findings would be those relating to the mother's circumstances and progress or lack of progress in specific areas and to other facts derived from witnesses' testimony and other evidence presented.

In another case in which the court of appeals reversed and remanded an order ceasing reunification efforts, the trial court had made findings about social services' reunification efforts and about the respondent's failure to complete her case plan. However, the court of appeals said, the trial court "did not ultimately find, as required by the statute, that: (1) attempted reunification efforts would be futile, or (2) reunification would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time."[105] Therefore, the court said, the findings did not support the conclusion that reunification efforts should cease.

Findings also may fail to support a conclusion if they are simply inconsistent with it. For example, the court of appeals reversed an order that ceased reunification efforts with the father and awarded guardianship to a relative, where the trial court found both that there was an "appreciable risk that respondent father would physically or sexually abuse" the child and that the father should have unsupervised visitation with the child.[106] The court held that the finding as to the "appreciable risk" was not supported by the evidence and that other findings, which included reference to many positive steps taken by the father, did not support a conclusion that reunification efforts should cease.

Whether findings are sufficient may depend in part on their specificity. Reversing an order terminating parental rights, the court of appeals characterized the trial court's findings as

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102. *See, e.g., In re* W.V., 204 N.C. App. 290, 293, 693 S.E.2d 383, 386 (2010) (reviewing adjudication and disposition orders); *In re* P.O., 207 N.C. App. 35, 41, 698 S.E.2d 525, 530 (2010) (reviewing permanency planning order); *In re* J.D.L., 199 N.C. App. 182, 681 S.E.2d 485 (2009) (reviewing termination of parental rights order).

103. *In re* H.J.A., ___ N.C. App. ___, ___, 735 S.E.2d 359, 363 (2012) (quoting Appalachian Poster Adver. Co., Inc. v. Harrington, 89 N.C. App. 476, 479, 366 S.E.2d 705, 707 (1988) (citations, quotation marks, and brackets omitted)). *See also, e.g., In re* Webber, 201 N.C. App. 212, 227, 689 S.E.2d 468, 478–79 (2009) (stating that ultimate facts are the "final facts required to establish the plaintiff's cause of action or the defendant's defense" and that "evidentiary facts are those subsidiary facts required to prove the ultimate facts" (quoting Woodard v. Mordecai, 234 N.C. 463, 470, 67 S.E.2d 639, 644 (1951))).

104. *H.J.A.*, ___ N.C. App. at ___, 735 S.E.2d at 363.

105. *In re* I.R.C., ___ N.C. App. ___, 714 S.E.2d 495, 498 (2011).

106. *In re* I.K., ___ N.C. App. ___, ___, 742 S.E.2d 588, 592 (2013).

"vague and insufficient to show neglect" and "inadequate to demonstrate willfulness."[107] The trial court had found

- that the respondent continued to have issues in criminal court (without saying what "issues" meant, referring to any particular charges, or indicating whether respondent had been convicted),
- that respondent's employment circumstances "seem to be sporadic," and
- that respondent had several addresses and that DSS was not sure where she was living.[108]

Instead of finding that a parent has a drinking problem, an order should describe what that problem is, how it is manifested, and whether and how it affects the children.[109] A finding that a parent has refused to cooperate with DSS or that a parent has failed to comply with a case plan, without more descriptive detail, provides weak support for any conclusion of law. Similarly, a finding that a parent has made some progress in addressing the problems that led to the child's placement should describe what those problems were and the precise nature of the parent's progress.

G. Conclusions of Law

Distinguishing between ultimate findings of fact and conclusions of law can be difficult,[110] and some appellate court decisions have treated various determinations as both. For example, reversing an order that ceased reunification efforts, the court of appeals referred to the trial court's failure to make the "ultimate finding" that "(1) attempted reunification efforts would be futile, or (2) reunification would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time."[111] (The opinion characterized as conclusions the trial court's determinations that reunification efforts should cease and that the permanent plan should be adoption.[112]) Elsewhere in the opinion the court referred to that same determination as a conclusion of law and even an "ultimate conclusion."[113]

Fortunately, appellate courts do not punish trial courts for mischaracterizing a finding as a conclusion or vice versa. In one case a trial court included in its order, as both findings and conclusions, statements that the child was a neglected juvenile, that social services had made reasonable efforts to prevent removal, and that it was in the child's best interest to remain in the custody of social services.[114] The court of appeals stated that all of these were "more properly designated conclusions of law," and the court treated them that way for purposes of appellate review.[115]

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107. *In re* E.A.C., ___ N.C. App. ___, ___, 727 S.E.2d 405, *7 (2012) (unpublished).

108. *E.A.C.,* ___ N.C. App. at ___, 727 S.E.2d at *2–3.

109. *See, e.g.*, Carpenter v. Carpenter, ___ N.C. App. ___, ___, 737 S.E.2d 783, 788 (2013) (reversing and remanding a civil custody order, noting that none of the trial court's eighty findings of fact resolved a central issue of whether one party abused alcohol to an extent that might adversely affect the child).

110. The court of appeals appeared to equate them in an appeal from a voluntary commitment order when it stated that the "trial court must . . . record the facts that support its 'ultimate findings,' i.e., conclusions of law, that the respondent is mentally ill and dangerous to himself or others." *In re* Whatley, ___ N.C. App. ___, ___, 736 S.E.2d 527, 530 (2012).

111. *In re* I.R.C., ___ N.C. App. ___, ___, 714 S.E.2d 495, 498 (2011).

112. *Id*.

113. *Id*. The court said, "We recognize that . . . this Court has upheld dispositional orders where the trial court made findings of fact that supported an ultimate conclusion of law by the trial court that reunification efforts would be futile or inconsistent with the juveniles [sic] health, safety, and need for a safe, permanent home."

114. *In re* Helms, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997).

115. *Id*.

After acknowledging the difficulty of classifying determinations as findings of fact or conclusions of law, the court explained the difference between findings and conclusions as follows:

> As a general rule . . . any determination requiring the exercise of judgment . . . or the application of legal principles . . . is more properly classified a conclusion of law. Any determination reached through "logical reasoning from the evidentiary facts" is more properly classified a finding of fact. . . . The determination of neglect requires the application of the legal principles set forth in [the statutory definition of *neglected juvenile*] and is therefore a conclusion of law. The reasonable efforts and best interest determinations are conclusions of law because they require the exercise of judgment.[116]

The court reviewed various findings and related them to the conclusions of law they supported. In so doing, the court referred to "the conclusion of law that [the child] lived in an environment injurious to her welfare."[117] This language, coming directly from the statutory definition of a neglected juvenile, might as easily be characterized as an "ultimate finding" that allowed the court to proceed to a conclusion of law that the child was a neglected juvenile.

Making proper conclusions is the step that allows the court to exercise its dispositional and other statutory authority. Regardless of the extent of a trial court's findings of fact, an appellate court will not infer a conclusion of law that is not stated in the order.

H. Decretal Section

Assuming that the findings and conclusions are sufficient, the decretal section of an order should flow from and be consistent with those. A lack of internal consistency in an order may leave the parties and an appellate court confused, unsure, or mistaken regarding the trial court's intention. In one case the court of appeals, after affirming an adjudication of neglect, vacated the disposition and remanded for additional findings and clarification of the decretal portion of the order.[118] Apparently the trial court's findings appeared to support changing the plan from reunification to guardianship, while elsewhere the order appeared to require continued reunification efforts, and the decretal portion of the order was silent with respect to reunification efforts. The court of appeals stated that it was unable to "determine from the order the precise disposition of the trial court . . . or its reasoning in making that disposition."[119]

Careful selection and use of key terms in the decretal section of an order can avert confusion and unintended consequences. In a civil custody action in which the trial court had awarded "primary care, custody and control" to one parent and "secondary care, custody, and control" to the other parent, the court of appeals stated that on remand it might "be advisable for the trial court to define its grant of . . . custody . . . more clearly, as failure to do so may increase the opportunities for discord between the parties."[120] Noting that the custody statutes do not define *custody*, the appellate court found the trial court's use of the term "care, custody, and control," without more detail, to be confusing and imprecise.[121]

Occasionally a trial court's order will conclude by stating that the case is "closed." Since "closed" is not a statutory term, assumptions about the effect of the order may differ. In several

116. *Id.* at 510–11, 491 S.E.2d at 675–76 (citations omitted).

117. *Id.* at 513, 491 S.E.2d at 677.

118. *In re* A.S., 190 N.C. App. 679, 661 S.E.2d 313 (2008), *aff'd per curiam*, 363 N.C. 254, 675 S.E.2d 361 (2009).

119. *Id.* at 681, 661 S.E.2d at 315.

120. Carpenter v. Carpenter, ___ N.C. App. ___, ___, 737 S.E.2d 783, 791 (2013).

121. *Carpenter*, ___ N.C. App. at ___, 737 S.E.2d at 791 n.7.

cases the appellate courts have equated a trial court's closing a case with the court's terminating its jurisdiction.[122] In a more recent case, however, the court of appeals began its opinion by saying, "Closing a case file is not the equivalent of the trial court terminating its jurisdiction."[123] The court looked beyond the use of the word "closed," noted that the court's order had not restored the parties to their previous positions,[124] and rejected the respondents' assertion that use of the phrase "case closed" reflected the trial court's intent to terminate its jurisdiction.[125]

In addition to being consistent with the preceding parts of the order (the nature of the hearing, the findings of fact, and the conclusions of law) and using clear and precise language, portions of the order that require parties to do or not do specific things should be assessed in terms of the following:

- *the court's authority to require or prohibit the conduct*,[126]
- *the reasonableness of the requirements* (ordering a party to do something the party is not realistically able to do, or more than the party can do, reduces the likely effectiveness of the order; the party may misjudge the relative importance of items in a long list of directives or feel that it is hopeless to even attempt to comply with everything in the order; in some cases it may be more effective to order only a few critical things, leaving other desirable but not immediately essential actions to be addressed later, and to bring the case back for review more quickly than the Juvenile Code requires), and
- *whether the party understands the possible consequences of failing to comply*. (Is compliance with particular terms of the order a necessary prerequisite to or a strong consideration in the child's returning home? Could failing to comply with a particular term result in a finding of contempt? If neither of those is true, or if the court will not consider a party's failure to comply with a part of the order as particularly significant, the purpose of including the directive should be questioned.)

Finally, this portion of the order must comply with some specific statutory requirements. For example, a disposition order must "state with particularity . . . the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested."[127] If the order places the child outside the home, it must include provisions for "appropriate visitation."[128] And if the child is in

122. *See, e.g., In re* P.L.P., 173 N.C. App. 1, 6, 618 S.E.2d 241, 245 (2005) (holding that the trial court's jurisdiction terminated when it entered an order stating that the juvenile file was "closed"), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006). *See also In re* A.P., 179 N.C. App. 425, 634 S.E.2d 561 (2006) (Levinson, J., dissenting), *rev'd per curiam for reasons stated in dissenting opinion*, 361 N.C. 344, 643 S.E.2d 588 (2007) (holding that the trial court's jurisdiction had terminated when it closed the case); *In re* D.D.J., 177 N.C. App. 441, 628 S.E.2d 808 (2006).

123. *In re* S.T.P., 202 N.C. App. 468, 468, 689 S.E.2d 223, 224 (2010) (holding that the trial court had jurisdiction to consider DSS's motion to reassume custody and its later petition to terminate parental rights, although an earlier dispositional order had stated that the case was "closed.").

124. See G.S. 7B-201, which describes the effect of terminating jurisdiction in a juvenile case.

125. *S.T.P.*, 202 N.C. App. at 472, 689 S.E.2d at 226.

126. *See, e.g., In re* W.V., 204 N.C. App. 290, 693 S.E.2d 383 (2010) (holding that the trial court did not have authority to order respondent to obtain and maintain steady employment, when there was no indication that employment issues were related to the adjudication or to the child's removal from the home); *In re* A.S., 181 N.C. App. 706, 640 S.E.2d 817 (2007) (holding that the trial court lacked authority to order respondent to contact the child support enforcement agency).

127. G.S. 7B-905(a).

128. G.S. 7B-905.1.

the custody of social services, any visitation plan arranged by social services must be "expressly approved or ordered" by the court.[129] Appellate courts have held repeatedly that the trial court must provide precise details of any visitation plan it orders and may not delegate decisions about visitation to social services or to a guardian, custodian, or other person.[130]

An adjudication order in a termination of parental rights case must "adjudicate the existence or nonexistence" of each of the grounds alleged in the petition or motion.[131] Failure to address a ground that is alleged operates as a judicial determination that the ground does not exist.[132] Thus, when a trial court's order adjudicated the abandonment ground and was silent as to two other alleged grounds and that order was reversed and remanded, the trial court could not adjudicate the existence of either of the other grounds.[133]

Conclusion

Regardless of who drafts an order, it is the judge's order. It needs to clearly reflect the judge's understanding and assessment of the evidence and the law and to accomplish what the judge intends. A paper on drafting orders for district court, by Judge Martha Geer of the North Carolina Court of Appeals, includes a section titled "If It's Not in the Order, It Didn't Happen,"[134] which says, in a nutshell, why the careful drafting and reviewing of court orders by attorneys and judges is critical. A reversal caused by an error or omission in drafting an order can be frustrating, costly, and time consuming in any case. In a juvenile case, it may also delay or disrupt a child's adoption, postpone a child's reunification with his or her family, or simply leave a child's status and a parent's rights in a state of limbo for an extended period.

In juvenile cases the challenges of drafting good orders are enhanced by the legislature's unusually prescriptive approach to orders required in abuse, neglect, dependency, and termination of parental rights cases. Despite the challenges, getting it right the first time is to everyone's benefit.

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129. *Id.*

130. *See, e.g.*, *In re* S.C.R., ___ N.C. App. ___, ___, 718 S.E.2d 709, 713 (2011) (reversing and remanding a disposition order that did not include a minimum outline of visitation specifying the time, place, and conditions of visitation and that did not even indicate whether visitation was granted); *In re* T.T., 182 N.C. App. 145, 149, 641 S.E.2d 344, 346 (2007) (describing the award of visitation as a judicial function that the court may not delegate).

131. G.S. 7B-1109(e).

132. *In re* S.R.G., 200 N.C. App. 594, 598, 684 S.E.2d 902, 905 (2009).

133. *Id.*

134. Judge Martha Geer, Drafting Orders for District Court Bench Trials (June 2011), www.sog.unc.edu/sites/www.sog.unc.edu/files/Geer_DraftingOrdersHandout.pdf.

Appendix: Checklists for Certain Juvenile Court Hearings and Orders

Checklist 1. Hearing on the Need for Continued Nonsecure Custody	Applicable Statutes and Forms
Purpose To determine whether a child who has been placed in nonsecure custody should remain in nonsecure custody pending the adjudication hearing.	7B-506 AOC-J-151
Timing *First hearing*: • *When initial nonsecure order was entered by a judge*—within 7 calendar days of the time the juvenile is taken into nonsecure custody; may be continued up to 10 business days with consent of parents and child's GAL; may not be waived. • *When initial order was entered by person with delegated authority*—on day of next regularly scheduled session of court but within 7 calendar days; may not be waived. *Second hearing*: within 7 business days of the first hearing. *Subsequent hearings*: at least every 30 calendar days thereafter. *Waivers and continuances*: after the first hearing, waiver allowed with consent of child's parent, guardian, or custodian and GAL; court may require consent of additional parties and may schedule a hearing even if parties consent to waiver or continuance.	7B-506 7B-502
Preliminary Inquiries and Determinations (if not already addressed) *Proper petition and jurisdiction* ___ Have the parties been properly served or waived service? ___ Is the petition properly verified? ___ Is the information required by G.S. 50A-209 contained in the petition or an attached affidavit? ___ Does the court have jurisdiction under the UCCJEA on the basis that: ___ N.C. is the juvenile's home state? ___ N.C. has exclusive continuing jurisdiction? ___ N.C. has jurisdiction to modify another state's order? ___ N.C. has temporary emergency jurisdiction? ___ Is venue proper? If petition is not filed in county of the child's legal residence, has DSS in that county been given notice as required by G.S. 7B-402? *Representation* ___ If a parent has provisional counsel, should the appointment be confirmed or should counsel be dismissed? ___ If a parent is present and does not have counsel, does the parent want counsel and, if so, is the parent indigent? ___ If a parent is under age 18 and not emancipated, has a Rule 17 GAL for the parent been appointed as required by G.S. 7B-602(b)? ___ Is there a need to conduct a hearing to determine whether a Rule 17 GAL should be appointed for a parent due to incompetence, as authorized by G.S. 7B-602(c)? ___ If abuse and/or neglect is alleged, have a GAL and attorney advocate been appointed for the juvenile? ___ If only dependency is alleged, should a GAL and attorney advocate be appointed for the juvenile?	7B-400 7B-402 7B-406 7B-407 50A (UCCJEA) AOC-J-141 AOC-J-142 AOC-J-130 7B-601 7B-602 AOC-J-143 AOC-J-207 AOC-CR-226

Evidence and Burden of Proof • DSS has the burden of proving by clear and convincing evidence that the juvenile's continued placement in nonsecure custody is necessary. • Court is not bound by usual rules of evidence but must receive testimony and allow parties to introduce evidence and cross-examine witnesses; evidence should be limited to that which relates to the need for continued custody pending adjudication.	7B-506
Required Inquiries and Determinations for all Nonsecure Custody Hearings ___ Is there a reasonable factual basis to believe that the matters alleged in the petition are true? ___ Do one or more of the conditions specified in G.S. 7B-503(a) exist? ___ Are other reasonable means available to protect the juvenile? ___ Is paternity at issue? If so, what efforts have been made to establish paternity? ___ If a parent is absent, what is known about the identity and location of that parent, and what efforts have been undertaken to locate and serve that parent? ___ Are there other juveniles in the home and, if so, what are DSS's assessment findings relating to those children, and what if any actions has DSS taken or services has DSS provided to protect those children? ___ Has a petition been filed pursuant to G.S. 7B-303(d1) (caregiver with history of violence)? If so, what are the results of any resulting mental health evaluation?	7B-503 7B-506
Outcomes • The court may order that the child remain in nonsecure custody with DSS or a person designated in the order for temporary residential placement (in a licensed foster home or home authorized to provide foster care, a DSS facility, or any other home or facility approved by the court and designated in the order). • The court may return custody of the child to the parent. • The court may not dismiss the petition, award permanent custody to a parent or other person, or direct orders to the parents under G.S. 7B-904, which applies only after adjudication.	7B-505 7B-506
Required Findings and Considerations if Court Orders Child to Remain in Nonsecure Custody ___ Has DSS made reasonable efforts to prevent or eliminate the need for the child's placement? (*See* Checklist 2. Any Order Placing Child in DSS Custody.) ___ What efforts have been made to identify and notify relatives as potential resources for placement or support? ___ Is a relative willing and able to provide care for the child, and if so, is placement with the relative consistent with or contrary to the child's best interest? ___ If the court does not place the juvenile with a relative, is any "nonrelative kin" willing and able to provide care and supervision of the juvenile in a safe home? (Nonrelative kin is defined in G.S. 7B-505(c).) ___ If the juvenile is a member of a state-recognized Indian tribe as set forth in G.S. 143B-407(a), should the court order DSS to notify the juvenile's state-recognized tribe of the need for nonsecure custody for the purpose of locating relative or kinship placement resources? ___ If the child is (or is eligible to be) a member of a federally recognized Indian tribe, does the placement comply with the Indian Child Welfare Act (ICWA)? ___ Does the placement comply with the Multiethnic Placement Act (MEPA)?	7B-503 7B-505 7B-506 7B-507

Required Findings and Considerations if Court Orders Child to Remain in Nonsecure Custody (*continued*) ___ If the placement is out of state, does it comply with the Interstate Compact on the Placement of Children (Art. 38, G.S. Ch. 7B) if applicable? ___ Is it in the child's best interest to remain in the community? Have the child's community ties, e.g., to siblings, relatives, friends, school, church, activities, special services, etc., been considered in making placement determinations?	
Other Considerations when Child Remains in Nonsecure Custody *The court also may consider and address the following issues as appropriate*: ___ visitation (for parents and siblings); ___ efforts to ensure that the child is not required to change schools; ___ services the child and parents should be receiving prior to adjudication and how, when, and by whom the services should be provided or arranged; ___ financial support for the child; ___ authorization for caregiver to consent to health care or other treatment.	

Requirements for Order Continuing Nonsecure Custody
An order for continued nonsecure custody must be in writing and must be entered (signed and filed with the clerk) within 30 days after the hearing.
The order must include findings
• based on clear and convincing evidence, to support a conclusion that continued nonsecure custody is necessary;
• to support a conclusion that criteria in G.S. 7B-503 for nonsecure custody are satisfied;
• about the evidence relied on in reaching the decision;
• about the purposes of continued nonsecure custody.
If the order places the juvenile in the nonsecure custody of DSS, the order must include
• a finding that continuation in or return to the child's own home would be contrary to the child's best interest;
• reasonable efforts findings—both
  ○ whether such efforts have been made (unless the court has ordered that they are not required) and
  ○ whether they should continue;
• a statement that the child's placement and care are the responsibility of DSS.
If the court provides for a specific placement that differs from DSS's recommendation, the order should reflect that the court gave bona fide consideration to DSS's recommendation.
If the order terminates DSS's obligation to make reunification efforts, it must include one of the findings specified in G.S. 7B-507(b). (Most often, the finding is that efforts clearly would be futile or inconsistent with the child's health, safety, and need for a safe, permanent home within a reasonable period of time.)
Whenever possible, the order should address visitation consistent with G.S. 7B-905.1.
(Revised August 2013)
	7B-506
	7B-507
	
	AOC-J-151

Checklist 2. Any Order Placing Child in DSS Custody
(G.S. 7B-507 Requirements)

When the court orders a child to be placed in DSS custody or to remain in DSS custody (or gives DSS "placement responsibility"), the hearing and the resulting order must address the following:

___ **Best interest**. The order must include a finding that the child's continuation in or return to his or her own home would be contrary to the child's best interest.

___ **Reasonable efforts—past**. The order must include specific findings to support a conclusion as to whether DSS has made reasonable efforts to prevent or eliminate the need for placement (unless the court has determined that efforts are not required). Where efforts to prevent the need for placement were precluded by an immediate threat of harm to the child, the court may find that placement in the absence of such efforts was reasonable.

___ **Reasonable efforts—future**. The order must address whether DSS should continue to make reunification efforts.

- The court may order that efforts to reunify the family be made concurrently with efforts to plan for another permanent arrangement.
- The court may order that reunification efforts are not required or shall cease, but *only if* the court makes written findings
  - that efforts would be futile or inconsistent with the child's health, safety, and need for a safe permanent home within a reasonable period of time; or
  - that a court has terminated involuntarily the parent's rights to another child; or
  - that a court has determined that the parent has subjected the child to "aggravated circumstances," as defined by G.S. 7B-101; or
  - that a court has determined that the parent committed murder or voluntary manslaughter of another child of the parent; aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; committed a felony assault resulting in serious bodily injury to the child or another child of the parent; committed sexual abuse against the child or another child of the parent; or has been required to register as a sex offender on any government-administered registry.

___ **Schedule permanency planning hearing**. If the court ceases reunification efforts, it must direct that a permanency planning hearing be held within 30 days and schedule the hearing if practicable.

___ **DSS responsibility**. The order must state that the child's placement and care are the responsibility of DSS. (If the court directs a specific placement that differs from DSS's recommendation, DSS must be given an opportunity to be heard and the order should reflect that the court gave bona fide consideration to DSS's recommendation.)

- **Health and safety**. The child's health and safety must be the paramount concern in determining reasonable efforts.
- **Other services and efforts**. The court may order services or other efforts aimed at returning the child home or achieving another permanent plan.
- **Required finding**. If custody to DSS is ordered or continued pursuant to G.S. 7B-903(a)(2) at a disposition or review hearing, the order must contain a finding that the child needs more adequate care or supervision or needs placement. *See In re* S.H., ___ N.C. App. ___, 719 S.E.2d 157 (2011).

(Revised August 2013)

Checklist 3. Adjudication Hearing	Applicable Statutes and Forms
Purpose To adjudicate the existence or nonexistence of the conditions alleged in a petition for abuse, neglect, or dependency.	7B-802
Timing Must be held within 60 days from the time the petition is filed. A continuance is permissible only • for good cause, for as long as is reasonably required to receive additional evidence, reports, or assessments the court has requested, or other information needed in the best interests of the child; or • to allow a reasonable time for the parties to conduct expeditious discovery; or • in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the child.	7B-801 7B-803
Preliminary Inquiries and Determinations (if not already addressed) (*Note the Requirements in G.S. 7B-800.1 for a Pre-adjudication Hearing*.) *Proper petition and jurisdiction* ___ Have the parties been properly served or waived service? ___ Is the petition properly verified? ___ Is the information required by G.S. 50A-209 contained in the petition or an attached affidavit? ___ Does the court have jurisdiction under the UCCJEA on the basis that ___ N.C. is the child's home state? ___ N.C. has exclusive continuing jurisdiction? ___ N.C. has jurisdiction to modify another state's order? ___ N.C. has temporary emergency jurisdiction? ___ Is venue proper? If petition is not filed in the county of the child's residence, has DSS in that county been given notice as required by G.S. 7B-402? *Representation* ___ If a parent has provisional counsel, should the appointment be confirmed or should counsel be dismissed? ___ If the parent is present and does not have counsel, does the parent want counsel? If so, is the parent indigent? ___ If a parent is under age 18 and not emancipated, has a Rule 17 GAL for the parent been appointed as required by G.S. 7B-602(b)? ___ Is there a need to conduct a hearing to determine whether a Rule 17 GAL should be appointed for a parent due to incompetence, as authorized by G.S. 7B-602(c)?	7B-400 7B-402 7B-406 7B-407 50A (UCCJEA) AOC-J-141 AOC-J-142 AOC-J-130 7B-601 7B-602 AOC-J-143 AOC-J-207 AOC-CR-226

Representation (*continued*) ___ If abuse and/or neglect is alleged, have a GAL and attorney advocate been appointed for the child? ___ If only dependency is alleged, should a GAL and attorney advocate be appointed for the child?	
Evidence and Burden of Proof • DSS has the burden of proving the allegations in the petition by clear and convincing evidence. • The rules of evidence apply. • No default judgment or judgment on the pleadings is permitted; the court must hold a hearing. • All parties have the right to present evidence and cross-examine witnesses. • Evidence is limited to that which relates to the allegations in the petition. • Predisposition reports may not be submitted to or considered by the court until after adjudication.	7B-802 7B-804 7B-805
Outcomes • The court must adjudicate the existence or nonexistence of the condition(s) alleged in the petition. • If the court does not adjudicate the child to be abused, neglected, or dependent, the court must dismiss the petition and release a child who is in nonsecure custody to his or her parents. • If the court adjudicates the child to be abused, neglected, or dependent, the court must immediately proceed to a disposition hearing or set a date for the disposition hearing within 30 days.	7B-802 7B-807 7B-901
Additional Issues for Hearing and Order If the court adjudicates the child to be abused, neglected, or dependent but does not proceed immediately to disposition, the court should address the following: ___ Custody and placement of the child pending disposition. ___ Visitation and communication between the child and parent or siblings pending disposition. In effect, the court should enter a "temporary disposition" order pending a full hearing on disposition. (See Checklist 4. Disposition Hearing.)	
Requirements for Adjudication Order An adjudication order must • be in writing; • contain appropriate findings of fact (supported by evidence in the record); • contain appropriate conclusions of law (supported by the findings of fact); and • be entered (reduced to writing, signed, and filed with the clerk) no later than 30 days following completion of the hearing.	7B-807 AOC-J-153

Requirements for Adjudication Order (*continued*) If the order adjudicates abuse, neglect, or dependency, it must state that the facts were found by clear and convincing evidence. If the petition alleged more than one condition (abuse, neglect, dependency), the order should make findings and conclusions about each. The order may not adjudicate a condition that was not alleged in the petition. **Consent Order** A consent order is permissible only if all parties are present or represented by counsel who is present and authorized to consent, the child is represented by counsel, and the court makes sufficient findings of fact. The order must comply with all other requirements for adjudication orders. (Revised August 2013)	7B-801

Checklist 4. Disposition Hearing (Initial disposition hearing following adjudication)	**Applicable Statutes and Forms**
Purpose To design an appropriate plan to meet the needs of the child that takes into account the child's need for safety, continuity, and permanence while respecting family autonomy and avoiding unnecessary separation of children and parents.	7B-100 7B-900
Timing Immediately following adjudication or when the court receives sufficient social, medical, psychiatric, psychological, and educational information but must be concluded within 30 days after the adjudication hearing.	7B-901 7B-808(a)
Evidence and Burden of Proof • Hearing may be informal, and the rules of evidence are relaxed. • Any evidence, including hearsay, is allowed if reliable, relevant, and necessary to determine the child's needs and best interests. Cumulative testimony may be excluded. • No burden of proof on any party, but sufficient evidence must be presented to allow the court to make required determinations. • All parties may present evidence. DSS must prepare and submit a report, and other parties may submit reports.	7B-901 7B-808
Available Dispositions The following dispositional options are available to the court: ___ Dismissal: appropriate when no purpose would be served by continuing to exercise jurisdiction; legal status of the child and parents reverts to the status that existed prior to the filing of the petition. ___ Continuance: • to allow the parent, guardian, custodian, caretaker, or others to take appropriate action; • to receive additional evidence, reports, assessments, or other information needed in the best interests of the child; or • to address extraordinary circumstances when necessary for the proper administration of justice or in the best interest of the child. ___ In-home supervision and services (*requires a finding that the child needs more adequate care or supervision or needs placement*): The court may require that the child be supervised by DSS (or other personnel available to the court but not the GAL) while remaining at home, subject to any conditions placed on the parent, guardian, custodian, or caretaker. (If an alleged abuser had a history of violent behavior, the court must consider the opinion of the mental health professional who performed an evaluation required by G.S. 7B-302(d1) before returning the child to the custody of the alleged abuser.)	7B-903 7B-803

Available Dispositions (*continued*)

___ Out-of-home placement (*requires a finding that the child needs more adequate care or supervision or needs placement*):

Specific placement alternatives:

___ placement in the custody of DSS in the county of the child's residence (or, if the child's residence is in another state, in the county where the child is found for return to appropriate authorities in the child's home state);

___ placement in the custody of a parent, relative, agency offering placement services, or other suitable person;

___ appointment of a guardian (*this option is in G.S. 7B-600, not the dispositional statutes, and technically does not require a finding that the child needs more adequate care or supervision or needs placement*).

Considerations and findings for all out-of-home placements:

- If a relative is willing and able to provide care, the child must be placed with the relative unless the placement is contrary to child's best interest.
- The court must consider whether it is in the child's best interest to remain in his or her community. (Factors may include ties related to siblings, relatives, friends, school, church, activities, special services, etc.)
- If the child is (or is eligible to be) a member of a federally recognized Indian tribe, compliance with the Indian Child Welfare Act (ICWA) is required. If the child is a member of a state-recognized tribe, the court may contact the tribe as a means of identifying placement resources.
- The placement must comply with the Multiethnic Placement Act (MEPA).
- An out-of-state placement must comply with the Interstate Compact on the Placement of Children (Art. 38, G.S. Ch. 7B) when applicable.
- The court must verify that any person (other than a parent or DSS) receiving custody or guardianship understands the legal significance of the placement and will have adequate resources to care for the child appropriately.
- If placement is in another county, in some cases the court should consider whether a transfer of venue under G.S. 7B-900.1 is appropriate.
- The court should consider whether the parent is able and should be ordered to pay a reasonable portion of the cost of the child's care.

Note: An award of custody or guardianship may be designated the "permanent plan" only if the parent was given the notice required by G.S. 7B-906.1(b) that the court would be considering a permanent plan for the child at the hearing.

7B-903
7B-904
7B-905
7B-507
7B-600

Available Dispositions (*continued*) ___ Evaluation and Treatment for Children and Parents *The court may order the following*: ___ evaluation of the child by a physician, psychiatrist, psychologist, or other qualified expert, to determine the needs of the child; ___ treatment for the child, after a hearing for which notice has been given to the county manager or person designated by the chair of the board of county commissioners; ___ participation in child's treatment by a parent, guardian, custodian, stepparent, adult member of the child's household, or an adult relative caring for the child, if found to be in the child's best interest; ___ evaluation and treatment for parents (or guardian, custodian, stepparent, adult member of the child's household, or an adult relative caring for the child), if found to be in the child's best interest; ___ custody or placement conditioned on parent's (or other person's) receipt of treatment; ___ Payment of cost of evaluation or treatment • for treatment of child (and participating adult), by the parent or other responsible parties or, if the parent is unable to pay, by the county; • for treatment of the parent or other adult, by that person or, if unable to pay, court may order treatment currently available from local mental health program; • if court has conditioned custody on receipt of treatment, by the adult receiving treatment or, if unable to pay, by the county.	7B-903 7B-904
Orders Directed to Parents or Others The court may order a parent, guardian, custodian, or caretaker who has been served with a summons (or has otherwise submitted to the court's jurisdiction) to: ___ attend and participate in parenting classes if classes are available in the judicial district where he or she lives; ___ provide transportation for the child to keep appointments for any treatment ordered by the court (if the child is in the home and to the extent the person is able to provide transportation); ___ take appropriate steps to remedy conditions in the home that led or contributed to the adjudication or to removal of the child from the home.	7B-904
Disposition Order A disposition order: • must be entered (reduced to writing, signed, and filed with the clerk) within 30 days of completion of the disposition hearing; • must contain appropriate findings of fact and conclusions of law; • must address the required findings (detailed above in checklist) for the specific dispositional options the court orders; • must state the precise terms of the disposition, including the person(s) responsible for carrying out whatever is required in the disposition, as well as the person or agency in whom custody is vested;	7B-905 7B-507 AOC-J-154 7B-905.1

Disposition Order (*continued*) • if the child is removed from the home, must include the terms of an appropriate visitation plan, consistent with the provisions of G.S. 7B-905.1; • must include the findings required by G.S. 7B-507 if the order places or continues placement of the child in the custody or placement responsibility of DSS (*see* Checklist 2. Any Order Placing Child in DSS Custody); • must set the date of any required review hearing if practicable; • if the court orders that reunification efforts cease, ○ must include findings required by G.S. 7B-507(b) and ○ must direct that a permanency planning hearing be held within 30 days (and should set the date for the hearing if practicable). **Consent Order** A consent order is permissible only if all parties are present or represented by counsel who is present and authorized to consent, the child is represented by counsel, and the court makes sufficient findings of fact. The order must comply with all other requirements for disposition orders. (Revised August 2013)	7B-801

Checklist 5: Review and Permanency Planning Hearings	Applicable Statutes and Forms
Purpose At review hearings, including permanency planning hearings, the court reviews and evaluates the child's circumstances and makes any needed changes to prior disposition or review orders. A *permanency planning hearing* is a review hearing that may be held at any time, but an initial permanency planning hearing must be held within one year after the child's removal from the home. Parties must be given notice that the court will be making or reviewing a permanent plan for the child. After the initial permanency planning hearing, all subsequent review hearings are permanency planning hearings. *Note:* Most review hearings are held pursuant to G.S. 7B-906.1. However, reviews also may be held on motion of a party pursuant to G.S. 7B-1000. If guardianship has been made the permanent plan for the child, G.S. 7B-600(b) also will apply. The court should specify at the hearing and in its order the statute(s) under which the review is held.	7B-906.1 7B-1000 7B-600
Timing *First review hearing*: When custody is removed from the parent at disposition, a review hearing must be held within 90 days from the date of the disposition. *Subsequent review hearings*: At least every six months. *First permanency planning review hearing*: Within one year after child's initial removal from the home, even if removal was before disposition, pursuant to nonsecure custody. *Waiver of review hearings*: The court may waive further review hearings, require written reports in lieu of review hearings, or have review hearings less frequently than every six months *but only if the court finds all of the following by clear, cogent, and convincing evidence*: ___ 1. The child has lived with a relative or been in the custody of another suitable person for at least one year; ___ 2. The placement is stable and continuation of the placement is in the child's best interests; ___ 3. Neither the child's best interests nor any party's rights require that review hearings be held every six months; ___ 4. All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and ___ 5. The court order has designated the relative or other suitable person as the child's permanent caretaker or guardian of the person. • A review hearing must be held if a party files a motion seeking review. • Review hearings are no longer required if custody is placed with a parent; however, the court has discretion to continue to conduct reviews as long as it retains jurisdiction. • Placement of the child in the custody or guardianship of someone other than a parent, even if the placement is the permanent plan, does not affect the requirement for review hearings. They must continue unless waived as described above.	7B-906.1 7B-1000 AOC-J-140

The Hearing; Evidence; and Burden of Proof • The clerk must give notice to the parents, the child if 12 or older, the guardian, the person providing care for the child (who may be given notice by DSS), the custodian or agency with custody, the guardian ad litem, and anyone else the court specifies. • The hearing may be informal, and the rules of evidence are relaxed. • Any evidence, including hearsay, is allowed if relevant, reliable, and necessary to determine the child's needs and the most appropriate disposition. Cumulative testimony may be excluded. • The court may consider evidence or testimony from any person or agency that will aid the court in its review. • No burden of proof on any party, but sufficient evidence must be presented to allow the court to make required determinations. • All parties must have an opportunity to present evidence.	7B-906.1
Specific Criteria *At every hearing*. The court is required to consider the following criteria and to make *written findings concerning any that are relevant*: ___ 1. Services that have been offered to reunite the child with either parent, regardless of whether the child resided with the parent at the time of removal, or with the guardian or custodian from whom the child was removed. ___ 2. Reports on visitation and whether there is a need to create, modify, or enforce an appropriate visitation plan in accordance with G.S. 7B-905.1. ___ 3. Whether efforts to reunite the child with either parent clearly would be futile or inconsistent with the child's safety and need for a safe, permanent home within a reasonable period of time. The court must consider reunification efforts. If the court determines further efforts would be futile or inconsistent with the child's welfare, the court must consider a permanent plan of care for the child or schedule a permanency planning hearing to do so. ___ 4. Reports on placements the child has had, the appropriateness of the child's current placement, and the goals of the child's foster care plan, including the role the current foster parent will play in the planning for the child. ___ 5. If the child is 16 or 17 years of age, a report on an independent living assessment and, if appropriate, an independent living plan. ___ 6. Whether termination of parental rights should be considered and, if so, when. ___ 7. Any other criteria the court deems necessary. *In addition, at any permanency planning hearing where the child is not placed with a parent*. The court must consider the following criteria and make *written findings about those that are relevant*: ___ 1. Whether it is possible for the child to be placed with a parent within the next six months and, if not, why such placement is not in the child's best interests. ___ 2. Where placement with a parent is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established and, if so, rights and responsibilities the parents should retain. ___ 3. Where the child's placement with a parent is unlikely within six months, whether adoption should be pursued and, if so, any barriers to the child's adoption. ___ 4. Where the child's placement with a parent is unlikely within six months, whether the child should remain in the current placement, or be placed in another permanent living arrangement and why.	7B-906.1 7B-507

___ 5. Whether the county department of social services, since the initial permanency planning hearing, has made reasonable efforts to implement the permanent plan. ___ 6. Any other criteria the court deems necessary. *If any of the following circumstances exist*, the court must determine whether there is an exception to the requirement that DSS initiate a proceeding to terminate parental rights. *See* G.S. 7B-906.1(f). ____ Is the child now in the custody or placement responsibility of DSS, and has the child been in placement outside the home for 12 of the most recent 22 months? ____ Has a court of competent jurisdiction determined that the parent has • abandoned the child, or • committed murder or voluntary manslaughter of another child of the parent, or • aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent? *If the answer to either question above is* yes*, DSS is required to initiate a proceeding to terminate parental rights unless the court finds one of the following*: • The permanent plan for the child is guardianship or custody with a relative or some other suitable person. • Filing of a petition for termination of parental rights is not in the child's best interests, based on specific findings of fact and stated reasons. • DSS has not provided the child's family with services DSS deems necessary when reasonable efforts are still required to enable the child's return to a safe home.	
Available Dispositions *See* Checklist 4. Disposition Hearing. *The dispositional options available to the court, along with required considerations and findings for those options, are the same as those available at disposition*.	7B-903 7B-906.1 7B-803
Order * If the child is placed or continued in the placement of DSS, *see* Checklist 2. Any Order Placing Child in DSS Custody. * The order must comply with requirements for any disposition order. *See* Checklist 4. Disposition Hearing. * If the court orders a permanent plan of guardianship or custody to someone other than a parent, the order must include a finding that the parents are unfit or have acted inconsistently with their constitutionally protected parental status. *A review hearing or permanency planning review hearing order* • must include findings about any of the criteria listed above that are relevant; • must include specific findings as to the best plan of care to achieve a safe, permanent home for the child within a reasonable time; • must include appropriate conclusions of law; • must be entered (signed and filed with the clerk) within 30 days after the review hearing; • if another review hearing is required within the next 6 months, must set the date for that hearing if practicable;	7B-903 7B-904 7B-905 7B-906.1 7B-507 7B-902

Order (*continued*)

- if the court orders that reunification efforts cease, must direct that a permanency planning hearing be held within 30 days and should set the date for the hearing if practicable;
- if custody is restored to a parent, should specify whether the court retains or terminates jurisdiction.

(Revised August 2013)

Checklist 6. Hearing on Termination of Parental Rights (TPR)	Applicable Statutes and Forms
Purpose To determine whether any of the statutory grounds for termination of parental rights (TPR) as alleged in the petition exist and, if so, whether termination of parental rights is in the child's best interest.	7B-1109 7B-1110
Timing Must be held within 90 days after the TPR petition or motion is filed, unless the court orders that it be held at a later time. • Continuance up to 90 days from the date of the initial petition may be permitted for good cause, to receive additional evidence, or to allow parties to conduct expeditious discovery. • Continuance beyond 90 days permitted only in extraordinary circumstances, when necessary for the proper administration of justice, and court must enter a written order stating grounds for the continuance. • Continuance permitted for reasonable extension of time where counsel for parent is first appointed and needs time to prepare.	7B-1109
Evidence and Burden of Proof • During the adjudication phase, the court must determine the existence or nonexistence of any alleged ground(s) for TPR. The standard of proof is clear, cogent, and convincing evidence, and the burden of proof is on the petitioner or movant. The rules of evidence apply. • At the disposition phase the court may hear additional evidence to make a discretionary determination as to whether TPR is in the child's best interest. There is no burden of proof on any party at disposition. • The court may not rely solely on documentary evidence, and default proceedings are not permitted. The court must take evidence, including some live testimony.	7B-1109 7B-1110
Preliminary Inquiries and Determinations *Pretrial hearings, motions, or agreements* ___ Has the pretrial hearing required by G.S. 7B-1108.1 been conducted, or is the pretrial hearing being combined with the adjudication hearing? ___ Do any prehearing motions need to be decided? ___ If the name or identity of a parent is unknown, has there been a hearing pursuant to G.S. 7B-1105 to determine the parent's name or identity? *Proper petition and jurisdiction* ___ Have the parties been properly served or waived service? ___ Did the respondent file an answer or response to the petition or motion? ___ Did the petitioner/movant have standing to initiate the action? ___ Is the petition/motion verified? ___ Is the information required by G.S. 50A-209 contained in the petition/motion or an attached affidavit?	7B-1108.1 7B-1105 7B-1103 7B-1104 7B-1106 7B-1106.1 7B-1108 7B-1101 50A-209

Proper petition and jurisdiction (*continued*) ___ Does the court have jurisdiction under the UCCJEA on the basis that: ___ N.C. is the child's home state? ___ N.C. has exclusive continuing jurisdiction? ___ N.C. has jurisdiction to modify another state's order?	AOC-J-208 AOC-J-210
Representation and participation ___ If respondent is present, is he or she represented by counsel? If not, does the respondent want counsel? Is respondent indigent? ___ If provisional counsel was appointed, has the appointment been confirmed or should provisional counsel be dismissed pursuant to G.S. 7B-1101.1(a)? ___ If respondent wants to waive the right to counsel, has the court examined the respondent on the record and made findings to show that the waiver is knowing and voluntary? ___ If respondent is under age 18 and not emancipated, has a Rule 17 GAL been appointed as required by G.S. 7B-1101.1(b)? ___ Is there a need for a hearing to determine whether a Rule 17 GAL should be appointed for a respondent based on incompetence, as authorized by G.S. 7B-1101.1(c)? ___ If a respondent is incarcerated in North Carolina, does respondent want to attend the hearing? Should the court issue a writ to have the respondent brought to court? ___ If an answer or response was filed denying material allegations in the petition or motion, have a GAL and attorney advocate been appointed for the child? ___ If no answer or response denying material allegations has been filed, should a GAL and attorney advocate be appointed for the child?	
Adjudication For an adjudication of a ground for termination of parental rights, the petitioner or movant must present clear, cogent, and convincing evidence that supports findings of fact sufficient to support a conclusion of law that the alleged ground exists.	7B-1109 7B-1111
Dispositional Determination of Best Interest ___ If one or more grounds for termination are adjudicated, is it in the child's best interest to terminate parental rights? The court is required to consider the following factors and *make findings of fact* about those that are relevant: ___ the child's age; ___ likelihood of the child's being adopted; ___ whether termination will help achieve the permanent plan for the child; ___ the bond between the child and the parent; ___ quality of the relationship between the child and the proposed adoptive parent, guardian, or custodian; and ___ any other relevant factor.	7B-1110
Order ___ ***Dismissal.*** If the court concludes that grounds have not been proved by clear, cogent, and convincing evidence OR that it is not in the child's best interest to terminate parental rights, the court must dismiss the petition or deny the motion but must first make findings of fact and conclusions of law.	7B-1109 7B-1110 7B-1111 7B-1112

Order (*continued*)

___ ***Address grounds***. The court must find facts and adjudicate (i.e., make a conclusion of law regarding) the existence or nonexistence of each ground alleged in the petition or motion.

___ ***Standard of proof***. Any order that adjudicates a ground must state that the findings are based on clear, cogent, and convincing evidence.

___ ***Address best interest***. If one or more grounds are adjudicated, the court must determine whether TPR is in the child's best interest. The order must include findings of fact about relevant dispositional factors listed above.

___ ***Entry***. The order must be entered (signed by the judge and filed with the clerk) within 30 days following completion of the hearing.

Findings Relating to Particular Grounds

Following are reminders of *some* of the necessary findings of fact relating to three of the most frequently alleged grounds.

Neglect (or abuse)

Requires findings of

1. current neglect (or abuse) or
2. past neglect (or abuse) and a likelihood of repetition of neglect (or abuse) if the child were returned home.

Willfully leaving the child in foster care or other placement for more than a year without making reasonable progress under the circumstances to correct conditions that led to the child's removal

- Requires findings sufficient to support a conclusion of willfulness, which requires findings about what the parent did in relation to what the parent was capable of doing.
- Findings must address a parent's failure to make reasonable progress in relation to the conditions that led to the child's removal from the home.
- Findings must show that the child's placement outside the home for at least a year has been pursuant to a court order.

Nonsupport

If the child is in the custody of DSS or another child-placing agency, findings must include:

- nonpayment of a reasonable portion of the cost of the child's care for at least six months before the filing of the petition or motion and
- facts about employment, earnings, assets, etc., to support a conclusion that the parent was physically and financially able to pay and that the parent's failure to pay was willful.

In a private termination of parental rights action, findings must include:

- that one parent has custody of the child pursuant to a court order or a custody agreement between the parents;
- that the court order or agreement requires the respondent to pay for the care, support, and education of the child;
- that for at least one year before the filing of the petition or motion respondent failed to pay support as required by the court order or agreement; and
- that the nonpayment was willful and without justification.

(Revised August 2013)

Checklist 7. Post-TPR Review Hearing	Applicable Statutes and Forms
Purpose To ensure that every reasonable effort is being made to provide a permanent placement for the child consistent with the child's best interests.	7B-908
Timing *This hearing is required when*: • parental rights have been terminated pursuant to a petition brought by one of the following: (i) a guardian of the person of the child, (ii) DSS or other licensed agency, or (iii) a person with whom the child has lived continuously for at least two years immediately preceding the filing of the action; and • the child is in the custody of DSS or another licensed child-placing agency. *The first post-TPR review hearing* must be conducted within six months of the date of the hearing at which parental rights were terminated. *Subsequent post-TPR review hearings* must be conducted at least every six months after the first hearing until the child is adopted. *Cancellation of a post-TPR review hearing* is permissible only if the juvenile is the subject of a final decree of adoption prior to the date of the review hearing.	7B-908(b), (e)
Preliminary Considerations ___ Was notice of the hearing sent to the following persons? • the child, if the child is 12 years of age or older; • a legal custodian of the child; • the person who is providing care for the child; • the child's guardian ad litem, if there is one; • a parent whose rights have been terminated *but only if* the parent has appealed the order terminating the parent's rights and a court has stayed the order pending the appeal; and • any other person or agency the court specified. ___ Was a GAL appointed previously to represent the child in the TPR proceeding? (If so, determine whether the GAL will continue to represent the child.) ___ If a GAL was not appointed previously or has been relieved, should a GAL be appointed to represent the child? If so, should the hearing be continued to give the GAL time to prepare?	7B-908(b)(1), (2)
Evidence • The court may consider any evidence, including hearsay, that the court finds to be relevant, reliable, and necessary to determine the needs of the child and the most appropriate disposition. • The court may consider information from DSS or a licensed child-placing agency, from any other participants, and from any other person or agency the court determines is likely to aid in the review.	7B-908(a)

Considerations *The court is required to consider the following:* ___ Is the DSS or agency plan for permanent placement adequate and in the child's best interests? ___ What efforts have been made to implement that plan, and have efforts been adequate? ___ Has the child been listed for adoption with the N.C. Adoption Resource Exchange, the N.C. Photo Adoption Listing Service (PALS), or any other specialized adoption agency? ___ What previous efforts have been made by DSS or the agency to find a permanent home for the child? *The court should also consider:* ___ Is there any other information that should be obtained or taken into account to determine whether reasonable efforts are being made to provide a permanent placement for the child or whether another plan or additional steps are necessary to provide a permanent placement for the child?	7B-908(c)
Order *The court must make findings of fact and conclusions of law, and the order must either*: • affirm the DSS's (or other agency's) plans, or • require specific additional steps that are necessary in order to accomplish a permanent placement that is in the child's best interest. (Revised August 2013)	7B-908(d)