Chapter 4
Procedural Rules and Orders

4.1 Introduction

The first place to look for rules governing the procedures that apply in abuse, neglect, dependency, and termination of parental rights (TPR) actions is Subchapter I of G.S. Chapter 7B. The Juvenile Code (G.S. Chapter 7B) establishes the procedures for these cases. However, there are times when a certain rule of the North Carolina Rules of Civil Procedure applies. This Chapter highlights procedural issues in abuse, neglect, dependency, and TPR cases, with an emphasis on statutes and cases that implicate the Rules of Civil Procedure. The Chapter is not meant to address all aspects of procedure in juvenile cases. Some procedural issues have an impact on jurisdiction and are discussed in Chapter 3. Local rules may also affect procedure and should be consulted.

A. Applicability of Rules of Civil Procedure in Juvenile Proceedings

The first stated purpose of the Juvenile Code in G.S. 7B-100 is to "provide procedures for the hearing of juvenile cases. . . ." In addition, the legislative intent regarding the termination of parental rights statutes includes a general purpose "to provide judicial procedures for terminating the legal relationship between a juvenile and … [their] parents." G.S. 7B-1100(1). When the Juvenile Code provides a procedure, that procedure prevails over the Rules of Civil Procedure. However, a specific Rule of Civil Procedure may apply when it does not conflict with the Juvenile Code and only to the extent that it advances the purposes of the Juvenile Code. *In re M.M.*, 272 N.C. App. 55 (2020); *In re E.H.*, 227 N.C. App. 525 (2013); *In re L.O.K.*, 174 N.C. App. 426 (2005).

1. Rules apply when explicitly required by the Juvenile Code. The Juvenile Code specifically states that certain Rules of Civil Procedure apply in particular circumstances, in which case those rules must be followed. Rules of Civil Procedure that are referenced in the Juvenile Code include

- **Rule 4** (process),
- **Rule 5** (service and filing of pleadings and other papers); *see In re H.D.F.*, 197 N.C. App. 480, 496 (2009) (emphasis in original) (urging trial courts to check certificates of service to ensure that "*all* parties are served with *all* documents required to be served" after determining that respondent father did not receive notices and, therefore, did not have a meaningful opportunity to participate in the action when his appointed counsel withdrew),
- **Rule 17** (parties, as it pertains to guardians ad litem),
- **Rule 42** (consolidation), and
- **Rule 58** (entry of judgment).

2. A rule or part of a rule will not apply where the Juvenile Code provides a different procedure. In juvenile cases many procedures that ordinarily would be governed by the Rules of Civil Procedure are established instead by the Juvenile Code itself. For example, provisions in G.S. 7B-800 relating to amending petitions prevail over Rule 15 of the Rules of Civil Procedure related to amendments. *In re B.L.H.*, 190 N.C. App. 142 (discussing former G.S. 7B-800 and applying it to a TPR petition), *aff'd per curiam*, 362 N.C. 674 (2008).

3. Rules or parts of rules apply when required to fill procedural gaps. Where the Juvenile Code does not identify a specific procedure to be used, the Rules of Civil Procedure may be

used to fill procedural gaps. *See In re S.D.W.,* 187 N.C. App. 416 (2007) (termination of parental rights proceeding). Some appellate court decisions have held that specific rules apply in abuse, neglect, dependency, and termination of parental rights (TPR) proceedings. In other opinions, the court has referenced or applied a Rule of Civil Procedure without discussion and with no suggestion that the rule's applicability was in doubt. The following rules apply:

- **Rule 7(b).** *In re McKinney,* 158 N.C. App. 441 (2003) (applying Rule 7(b)(1) to determine whether a TPR motion was sufficient to confer jurisdiction).
- **Rule 8.** *In re Dj.L.*, 184 N.C. App. 76, 80 (2007) (applying the rule to construe the petition "as to do substantial justice").
- **Rule 11(a), (b), (d)**. *In re Triscari Children,* 109 N.C. App. 285 (1993) (applying Rule 11(a) and (b) when holding verification of a TPR petition is required by statute and verification by the respondent mother, who was the petitioner, was insufficient);*In re C.N.R.*, 379 N.C. 409 (2021) (examining Rule 11(b) in an appeal challenging the validity of the verification of the TPR motion); *In re N.T.*, 368 N.C. 705 (2016) (quoting Rule 11(b) to address verification of a pleading); *In re Dj.L.*, 184 N.C. App. 76 (applying Rule 11(b) to determine whether verification of abuse, neglect, or dependency petition was sufficient); *In re N.X.A.*, 254 N.C. App. 670 (2017) (applying Rule 11(d), verification by the State, when holding verification by the DSS attorney of the petition alleging neglect and dependency was sufficient as the county DSS was acting as agent of the North Carolina Department of Health and Human Services when implementing the statutory provisions of the Juvenile Code).
- **Rule 12(b), (h)**. *In re J.L.K.,* 165 N.C. App. 311 (2004) (applying Rule 12(b)(3) to require respondent to timely object to venue or the right to seek a change of venue is waived); *In re A.D.H.*, 295 N.C. App. 480 (2024), *rev'd and remanded on other grounds*, 388 N.C. 578 (2025) and *In re K.G.,* 260 N.C. App. 373 (2018) (both examining rulings on Rule 12(b)(6) motions to dismiss petitions alleging abuse, neglect, or dependency for failure to state a claim upon which relief may be granted); *In re J.S.K.,* 256 N.C. App. 702 (2017) and *In re Quevedo*, 106 N.C. App. 574 (1992) (both applying Rule 12(b)(6) to determine if the TPR petition/motion was sufficient to state a claim upon which relief may be granted); *In re M.L.C.*, 289 N.C. App. 313 (2023) and *In re K.J.L.*, 363 N.C. 343 (2009) (both discussing Rule 12(h) and waiver of defense of personal jurisdiction when not timely raised).
- **Rule 30.** *In re K.D.L.,* 176 N.C. App. 261 (2006) (discussing incarcerated respondent father's request for deposition and how it could have been taken by telephone). *See In re D.R.*, 172 N.C. App. 300 (2005) (holding no abuse of discretion when court denied respondent's motion for expenses to conduct telephone deposition). See section 4.6.B.4., below, discussing discovery procedure under G.S. 7B-700.
- **Rule 32(a).** *In re Quevedo*, 106 N.C. App. 574 (1992) (where the respondent father in a TPR action was imprisoned in Massachusetts, discussing the rule allowing for the use of depositions at hearing when a witness is unable to attend because of imprisonment).
- **Rule 33.** *In re J.D.,* 234 N.C. App. 342 (2014) (reviewing the factual background of the action, which included interrogatories). See section 4.6.B.4., below, discussing discovery procedure under G.S. 7B-700.
- **Rule 35.** *In re Williams*, 149 N.C. App. 951 (2002) (applying the rule to determine that respondent was not entitled to a mental examination of the child). See section 4.6.B.4,

below, discussing discovery procedure under G.S. 7B-700.

- **Rule 41(a)(1)(i).** *In re E.H.,* 227 N.C. App. 525 (2013) (applying the rule to affirm DSS's voluntary dismissal of its action before the adjudicatory hearing).
- **Rule 41(b).** *In re Blackburn*, 142 N.C. App. 607 (2001) (applying to TPR and holding no abuse of discretion in denying respondent parent's motion to dismiss at close of DSS evidence); *see In re G.E.,* 291 N.C. App. 519 (2023) (unpublished) and *In re H.P.*, 194 N.C. App. 200 (2008) (unpublished) (both applying to adjudication and holding no abuse of discretion in denying motion to dismiss at close of DSS evidence).
- **Rule 43(a).** *In re A.M.*, 192 N.C. App. 538 (2008) (applying the rule to require at least some live testimony at a TPR hearing); *see In re S.P.,* 267 N.C. App. 533 (2019) and *In re J.T.*, 252 N.C. App. 19 (2017) (both holding oral testimony needed at permanency planning hearing). *But see In re K.W.*, 272 N.C. App. 487 (2020) (describing initial dispositional hearing as second step of two-step adjudication and disposition hearing; sworn testimony not required at initial dispositional hearing if no new evidence is introduced).
- **Rule 45.** *In re A.H.*, 250 N.C. App. 546 (2016) (applying the "unreasonable or oppressive" standard set forth in subsection (c) of the rule to determine whether there was abuse of discretion in quashing a subpoena for the child to testify at hearing).
- **Rule 52(a).** *In re X.I.F.,* 297 N.C. App. 799 (2025) (applying and discussing Rule 52(a)); *In re R.B.,* 280 N.C. App. 424 (2021) (referring to Rule 52); *In re K.R.C.,* 374 N.C. 849 (2020) (applying Rule 52 to the trial court order dismissing the TPR; discussing impact on insufficient findings and conclusions in an appellate review); *In re C.M.C.,* 373 N.C. 24 (2019) (applying Rule 52 to a TPR order when holding the order was a nullity when it was signed by a judge who did not preside over the TPR hearing); *In re D.E.M.,* 257 N.C. App. 618 (2018) and *In re T.P.,* 197 N.C. App. 723 (2009) (both applying the rule in a TPR action to require that the court find the facts specially and state its conclusions separately); *In re E.N.S.*, 164 N.C. App. 146 (2004) (referring to Rule 52(a)(1) when determining sufficiency of findings of fact and conclusions of law in a neglect and dependency adjudication order).
- **Rule 59(a).** *In re S.G.V.S.*, 258 N.C. App. 21 (2018) (applying Rule 59(a)(1) when reversing and remanding TPR order and order denying Rule 59 motion to reopen the evidence to allow for respondent to present evidence; holding trial court's denial of respondent's motion to continue the TPR hearing or reopen the case to present evidence constituted an irregularity by which a party was prevented from having a fair trial; the court scheduled the TPR hearing at the same time as respondent's previously scheduled criminal hearing in another county and refused to grant a continuance or reopen the evidence due to a misapprehension of the law, which was an unreasonable and substantial miscarriage of justice). Note that Rule 59 does not apply if the court has terminated its jurisdiction as the court lacks subject matter jurisdiction to hear the motion. *In re K.C.,* 292 N.C. App. 231 (2024) (vacating adjudication and dispositional orders as being void; court granted a Rule 59 motion after dismissing petition with prejudice and lacked jurisdiction to grant the motion).
- **Rule 60(a)**. *In re J.K.*, 253 N.C. App. 57 (2017) (referring to Rule 60(a) and holding when a clerical error is discovered on appeal, remand to the trial court for correction is appropriate so that the record speaks the truth); *In re J.K.P.*, 238 N.C. App. 334 (2014) (court has jurisdiction to correct a clerical mistake, which in this case was the inadvertent

checking of a box on an AOC form, pursuant to Rule 60(a) so long as the correction occurs before an appeal is docketed); *In re C.N.C.B.*, 197 N.C. App. 553 (2009) (applying Rule 60(a) to prohibit the trial court from making substantive modifications to a judgment versus a correction of a clerical mistake). Note that "[a] clerical error is an error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination." *In re A.S.*, 275 N.C. App. 506, 511 (2020) (quoting *In re R.S.M.*, 257 N.C. App. 21, 23 (2017); inclusion of word "not" is more than a clerical error as it changes the entire meaning). A clerical error cannot make a substantial modification to an order or alter the effect of the original order. *In re A.R.B.*, 289 N.C. App. 119 (2023) (holding amended order was more than correcting clerical mistake; adding clear, cogent, and convincing evidence standard to TPR order altered the effects of the order).

- **Rule 60(b).** *In re E.H.*, 227 N.C. App. 525 (holding that a Rule 60(b) motion was an appropriate means of addressing whether a voluntary dismissal was permissible and looking to G.S. 7B-1001(a) when determining that the order denying the Rule 60 motion was a final order subject to appeal); *In re Saunders*, 77 N.C. App. 462 (1985) (applying Rule 60(b) to reject a motion for relief from a TPR judgment where the respondent did not comply with the time requirements of the rule). Note that a Rule 60(b) motion for relief may only be made with respect to a final order and is not appropriate when an order has been rendered but not entered. *See In re A.B.*, 239 N.C. App. 157 (2015) (where a trial court had granted a Rule 60 motion, the court of appeals noted that it could not analyze the motion in the context of Rule 60 because there had not been an order entered pursuant to Rule 58; the court of appeals treated the motion as a motion to reopen the evidence). Note that Rule 60 does not apply if the court has terminated its jurisdiction as the court lacks subject matter jurisdiction to hear the motion. *In re K.C.,* 292 N.C. App. 231 (vacating adjudication and dispositional orders as being void; court granted a Rule 60 motion after dismissing petition with prejudice and lacked jurisdiction to grant the motion).
- **Rule 61.** *In re T.M.*, 187 N.C. App. 694 (2007) (applying the rule to find harmless error and reject the argument made by respondent because no prejudice was shown).
- **Rule 63.** *In re E.D.H.,* 381 N.C. 395 (2022) (affirming TPR; mother did not overcome presumption of regularity when chief district court judge signed order after retired judge had made findings of fact and conclusions of law as allowed for under Rule 63; chief district court judge performed ministerial and administrative action); *In re R.P.,* 276 N.C. App. 195 (2021) (vacating and remanding adjudication orders; holding Rule 63 applied when judge at hearing resigned prior to orders being signed, but chief district court judge who signed orders exceeded authority by finding facts and making conclusions, which is more than a ministerial duty allowed for by the Rule); *In re J.M.*, 275 N.C. App. 517 (2020) (holding Rule 63 applied when appellate remand was for reconsideration of the adjudication within the proper statutory framework; the first judge was not available due to the expiration of his term; a substitute judge was authorized to perform the limited and specific mandated duties); *In re Whisnant*, 71 N.C. App. 439 (1984) (holding although the rule allows a judge other than the one who presided at the hearing to sign an order, the circumstances under Rule 63 for a substitute judge to sign the TPR order did not apply to this case). See section 4.9.A.4., below, discussing substitute judges.

4. Rules may not be used to confer rights. Application of a Rule of Civil Procedure where the Juvenile Code is silent may not be appropriate where it would have the effect of conferring

a new procedural right. *See In re B.L.H.*, 190 N.C. App. 142, *aff'd per curiam*, 362 N.C. 674 (2008). Rules that have been held to be inapplicable in juvenile proceedings include the following:

- **Rule 12(c)**. *In re I.D.*, 239 N.C. App. 172 (2015) (originally unpublished Feb. 3, 2015, but subsequently published) (holding that adjudication order entered solely upon allegations in a verified petition amounted to a judgment on the pleadings, which required reversal even though respondent had failed to object); *In re Shaw*, 152 N.C. App. 126 (2002) (holding that default judgment or judgment on the pleadings is inappropriate in an adjudication of neglect); *In re Thrift*, 137 N.C. App. 559 (2000) (holding that judgment on the pleadings is not available in abuse, neglect, or dependency matters because the Juvenile Code requires a hearing).
- **Rule 13**. *In re E.H.*, 227 N.C. App. 525 (2013) (recognizing DSS has burden of proof at adjudicatory hearing for abuse, neglect, or dependency, and respondent parent or child's GAL has no right to seek affirmative relief like that available in a counterclaim); *In re S.D.W.,* 187 N.C. App. 416 (2007) (holding that Rule 13 does not apply to allow a claim for a TPR to be asserted as a counterclaim in a civil custody or visitation action); *In re Peirce*, 53 N.C. App. 373 (1981) (holding that a parent does not have a right to file a counterclaim in a TPR action).
- **Rule 15**. *In re G.B.R.*, 220 N.C. App. 309 (2012) and *In re B.L.H.*, 190 N.C. App. 142, *aff'd per curiam*, 362 N.C. 674 (both holding in TPR cases that the trial court erred in applying Rule 15(b) to allow amendment of the petitions to conform to the evidence, but holding in *In re G.B.R.* that the error was harmless); *In re M.M.*, 200 N.C. App. 248 (2009) (explains an amendment to a TPR petition that names a previously unknown father is not required and is instead governed by G.S. 7B-1105 and not Rule 15). See section 4.2.C, below (discussing amendments to pleadings).
- **Rule 41(a)(1).** *In re L.O.K.*, 174 N.C. App. 426 (2005) (holding DSS's voluntary dismissal of its TPR petition after it rested its case and without first obtaining a court order is not a dismissal with prejudice that would preclude DSS from filing a second TPR petition).
- **Rule 55**. *In re I.D.*, 239 N.C. App. 172 (originally unpublished Feb. 3, 2015, but subsequently published) (reversing abuse and neglect adjudication order; default judgment is inappropriate); *In re Quevedo,* 106 N.C. App. 574 (1992) (Greene, J., concurring) (applying language of TPR statute requiring a hearing to implicitly prohibit default judgment).
- **Rule 56**. *In re J.N.S.*, 165 N.C. App. 536 (2004) (holding that summary judgment as to a ground for TPR is contrary to the procedural mandate of the Juvenile Code requiring the court to hear evidence and make findings); *Curtis v. Curtis*, 104 N.C. App. 625 (1991) (holding that summary judgment procedures are not available in TPR proceedings).

B. Rule Application Analysis

The language of the Juvenile Code and appellate court decisions that reference or consider specific Rules of Civil Procedure provide the following guidance for determining whether a rule (or part of a rule) applies in a particular circumstance.

Yes, the rule applies if

1. the Juvenile Code provides specifically that the rule applies or
2. the Juvenile Code is silent with respect to the procedure the rule covers and applying the rule fills a procedural gap in a way that is consistent with the purposes of the Juvenile Code.

No, the rule does not apply if

1. the Juvenile Code provides a different procedure or
2. the rule confers a procedural right that is not contemplated by the Juvenile Code.

But, there may still be lack of clarity in the application of some rules. When the Juvenile Code is silent about a procedure and case law provides no guidance, it simply may not be clear whether application of a Rule of Civil Procedure in a juvenile proceeding would fill a procedural gap or confer a new procedural right.

When applicability of a particular rule is unclear, the purpose statements in the Juvenile Code (G.S. 7B-100 and 7B-1100) may provide guidance, since appellate cases have stated that the Rules of Civil Procedure apply to the extent they advance the purposes of the Juvenile Code. *See, e.g., In re A.M.*, 192 N.C. App. 538 (2008) (applying Rule 43(a) to require that some testimony be taken orally in open court because the rule furthered the Juvenile Code's purposes of assuring fairness and equity and developing a disposition that reflects consideration of the facts).

The reasoning by the court of appeals regarding the applicability of part of Rule 41(a)(1), which allows a plaintiff to voluntarily dismiss an action before resting the case, to one proceeding, and the inapplicability of another part of Rule 41(a)(1), which would bar the filing of a second TPR petition, to another proceeding further demonstrates the importance of the purposes of the Juvenile Code. In the case *In re E.H.*, 227 N.C. App. 525 (2013), the court of appeals reasoned that application of Rule 41(a)(1)(i) to allow a department of social services (DSS) to voluntarily dismiss a juvenile petition prior to the adjudicatory hearing advanced the purposes of the Juvenile Code because the legislature entrusted DSS with the duty to determine whether allegations of abuse, neglect, or dependency are credible and what action to take. The court said that requiring the child's guardian ad litem or parent to consent to a dismissal would impermissibly shift this responsibility away from DSS. In addition, allowing DSS to dismiss its own petition after finding that evidence underlying the allegations is too weak to merit proceeding advances the Juvenile Code purpose of avoiding unnecessary periods of family separation and unnecessary burdens on juveniles and their families, while allowing DSS to conserve its limited resources for other juveniles.

Note, for purposes of this Manual, "department of social services" or "DSS" refers to a department as defined by G.S. 7B-101(8a) regardless of how it is titled or structured.

Yet in the case *In re L.O.K.*, 174 N.C. App. 426 (2005), the court of appeals held Rule 41(a)(1) was not applicable to bar DSS from filing a subsequent petition to terminate parental rights (TPR) even though DSS had voluntarily dismissed an earlier TPR petition, without obtaining a court order, after presenting evidence and resting its case. The court reasoned that applying Rule 41(a)(1) to preclude a subsequent TPR petition could not be reconciled with a court's continuing jurisdiction over a juvenile under G.S. 7B-201; would be contrary to a child's best interests, which are of paramount consideration under G.S. 7B-100(5); and is

antithetical to those best interests because it would result in children being stranded indefinitely in foster care without a permanent plan when they cannot be returned to their parents.

4.2 Procedures Regarding the Petition

Abuse, neglect, or dependency actions are initiated by the filing of a verified petition. Termination of parental rights (TPR) actions may be initiated either by verified petition or if there is a pending abuse, neglect, or dependency case, by verified motion in that proceeding.

A. Contents of Petition

General requirements for the contents of a petition alleging abuse, neglect, or dependency are addressed in Chapter 5.3.A. General requirements for the contents of a TPR petition or motion are addressed in Chapter 9.5. The relationship between petition requirements and jurisdiction is addressed in Chapter 3.2.

Even though the Juvenile Code specifically addresses the required contents of juvenile petitions (and TPR motions), the applicable Rules of Civil Procedure may impose additional requirements. For example, in the case of *In re McKinney*, 158 N.C. App. 441 (2003), an attempt was made to initiate a TPR proceeding by filing a motion in the cause. However, the motion did not include a statement specifically asking that the court terminate parental rights. Because the motion failed to comply with the requirement in Rule 7(b)(1) that the motion set forth the relief or order sought, the court found the motion insufficient to initiate a TPR action.

B. Signature of Attorney or Party

Rule 11(a) of the Rules of Civil Procedure requires that the petition (as well as all pleadings, motions, and other papers) be signed by (1) at least one attorney of record and state the attorney's address or (2) the party if not represented by counsel. The attorney's signature constitutes certification by the attorney that they have read the petition, that to the best of their knowledge, information, and belief it is well grounded in fact and is warranted by law or a good faith argument, and that it is not being used for an improper purpose. A petition that is not signed must be "stricken unless it is signed promptly after the omission is brought to the attention" of the attorney or party. N.C. R. CIV. P. 11(a). *See In re L.B.*, 181 N.C. App. 174 (2007) (relying on language in *In re T.R.P.,* 173 N.C. App. 541 (2005), *aff'd* 360 N.C. 588 (2006)), of the possibility that DSS could take remedial action to provide the trial court with subject matter jurisdiction it had been lacking and holding that the trial court gained subject matter jurisdiction to move forward in the action when a DSS representative signed and verified the petition two days after a nonsecure custody order was filed and one day after the summons was issued); *see also In re D.D.F.*, 187 N.C. App. 388, 395–96 (2007) (discussing in Footnote 1 that Rule 11(a) contemplates correcting an omission of a signature and noting "[t]he juvenile code would not prevent this type of minor amendment to a petition").

Separate from Rule 11, the Juvenile Code addresses a DSS attorney's review of and signature on a petition. For petitions filed on or after April 1, 2026, the petition must be reviewed by the "legal counsel for the department." G.S. 7B-302(c), (d) as amended by S.L. 2025-16, secs.

1.10(c), (d); 7B-403(a), as amended by S.L. 2025-16, sec. 1.10(f); *see* G.S. 7B-303(a), as amended by S.L. 2025-16, sec. 1.10(e) (applying to interference or obstruction petition); *see also* G.S. 7B-101(14a) (definition of "legal counsel for the department"), enacted by S.L. 2025-16, sec. 1.10(a). The "legal counsel for the department" must also sign the petition along with the DSS director, or the DSS director must attest that the "legal counsel for the department" reviewed the petition. G.S. 7B-302(c), (d); 7B-403(a); *see* 7B-303(a).

Practice Note: AOC forms may not include space for the attorney's signature, so when AOC forms are used, attorneys must ensure that a signature page is included.

C. Amended and Supplemental Pleadings

1. Amendments in abuse, neglect, or dependency proceedings. The Juvenile Code provides for the amendment of an abuse, neglect, or dependency petition. As a result, the applicable procedure is found at G.S. 7B-800 and not Rule 15 of the Rules of Civil Procedure. The court in its discretion may permit the amendment of a petition. G.S. 7B-800. When allowing an amendment, the court must direct the manner in which the amended petition must be served and specify the time allowed for a party to prepare after the amendment. G.S. 7B-800.

Practice Note: Prior appellate decisions prohibiting an amendment from changing the nature of the conditions alleged in the petition (e.g., abuse, neglect, or dependency) are based on the former language of G.S. 7B-800, which contained a limiting provision. That limitation was removed by S.L. 2010-90, sec. 11 and is no longer current law.

2. Amendments in termination of parental rights proceedings. The Juvenile Code is silent with respect to amendments to petitions or motions for termination of parental rights (TPR). However, factual summaries of appellate opinions have referred to the amendment of a TPR petition. *See, e.g., In re W.I.M.*, 374 N.C. 922 (2020) (motion to amend was allowed by trial court); *In re J.C.L.*, 374 N.C. 772 (2020) (DSS filed amended petition to add factual allegations to support alleged grounds).

The court of appeals has held that application of Rule 15(b) of the Rules of Civil Procedure to allow amendments to conform to the evidence is improper in a TPR case because it would superimpose a new right where none was intended by the Juvenile Code. *In re B.L.H.*, 190 N.C. App. 142 (looking to G.S. 7B-800 and applying it to a TPR petition), *aff'd per curiam*, 362 N.C. 674 (2008). This holding differs from several earlier court of appeals decisions upholding the application of Rule 15(b) in TPR cases. *See, e.g.*, *In re L.T.R.*, 181 N.C. App. 376, 390 (2007) (citing Rule 15(b) in holding that (1) respondent, by not objecting to the evidence, "impliedly consented to the adjudication" of an issue that was not raised by the pleadings, and (2) the trial court did not err in making findings of fact and conclusions of law based on that evidence); *In re Smith*, 56 N.C. App. 142, 147 (1982) (finding no error in the trial court's application of Rule 15(b) to allow a motion to amend the TPR complaint to conform to the evidence).

What these cases have in common is a concern about notice and fairness. The court in *In re B.L.H.*, 190 N.C. App. 142, *aff'd per curiam*, 362 N.C. 674, emphasized (1) that the ground the petition was amended to allege did not exist and could not have been alleged when the

petition was filed; and (2) that the original petition did not allege that ground by statutory reference or facts sufficient to put respondents on notice that the ground would be an issue. In *In re Smith*, 56 N.C. App. 142, the court of appeals noted the trial court's finding that the allegations in the pleading had put respondent on notice that the grounds added by the amendment could provide bases for the TPR. The amendment in *In re L.T.R.,* 181 N.C. App. 376, added factual allegations to conform to the evidence, not a different ground, and probably was not even necessary. The court quoted an earlier case in which it said, "[A] party attempting to limit the trial of issues by implied consent must object specifically to evidence outside the scope of the original pleadings; otherwise, allowing an amendment to conform the pleadings to the evidence will not be error, and, in fact, is not even technically necessary." *In re L.T.R.,* 181 N.C. App. at 390 (citations omitted).

In the case *In re G.B.R*., 220 N.C. App. 309 (2012), the court of appeals relied on *In re B.L.H*., 190 N.C. App. 142, *aff'd per curiam*, 362 N.C. 674, in holding that the trial court erred by allowing amendment of the TPR petition to conform to the evidence. The court went on, however, to determine that the respondent had sufficient notice, the erroneous granting of the motion to amend had no effect on the court's ultimate determination, and the error was harmless.

Appellate court decisions addressing amendments to conform to the evidence in TPR proceedings have focused on whether there was sufficient (even if not formal) notice of the allegations in the amended pleading and whether allowing the amendment resulted in prejudice.

3. Supplemental pleadings. The Juvenile Code does not address supplemental pleadings in abuse, neglect, dependency, or TPR proceedings, and appellate cases have not directly addressed the applicability in juvenile cases of Rule 15(d) of the Rules of Civil Procedure. *See In re A.H.F.S.,* 375 N.C. 503 (2020) (referencing in facts that supplemental petitions were filed). Rule 15(d) refers to a supplemental pleading as "setting forth transactions or occurrences or events which may have happened since the date of the pleading" and gives the court discretion to allow a supplemental pleading where there is reasonable notice and on terms that are "just."

Amendments and supplemental pleadings differ primarily with regard to the nature of the additional allegations the party seeks to assert. The facts in a supplemental pleading did not exist when the original pleading was filed. An amended pleading relates to information that existed but was not alleged in the original pleading. Both require a motion and permission of the court. In the case of *Foy v. Foy*, 57 N.C. App. 128 (1982), the court of appeals stated that a plaintiff's motion to amend her complaint was in substance a motion to file a supplemental pleading, which was governed by Rule 15(d). The court acknowledged that whether to allow a party to file a supplemental pleading was within the trial judge's discretion and that such pleadings should be allowed unless they would impose a substantial injustice on the opposing party.

D. Responsive Pleadings

The Juvenile Code does not address responsive pleadings in abuse, neglect, or dependency proceedings, and the filing of answers in those cases is not required and is rare.

The only provisions in the Juvenile Code for responsive pleadings are in the context of termination of parental rights (TPR) proceedings, where the summons directs the respondent to file an answer to a TPR petition and the notice that accompanies a TPR motion directs the respondent to file a response. G.S. 7B-1106; 7B-1106.1; *see* G.S. 7B-1108(a). See also Chapter 9.8 (discussing details relating to TPR answers and responses). The failure to file an answer or response, however, does not constitute an admission of the allegations and cannot result in a default judgment or judgment on the pleadings. *In re Tyner*, 106 N.C. App. 480 (1992). Filing a responsive pleading in a TPR action that denies any material allegation of the petition or motion does, however, require the court to appoint a guardian ad litem (GAL) for the juvenile unless one has already been appointed under G.S. 7B-601. G.S. 7B-1108.

Appellate cases have rejected attempts to utilize other responsive pleadings, such as counterclaims, in TPR cases, stating that because the Juvenile Code provides procedures that include an answer or response but do not address other types of pleadings, these are the exclusive procedures. *See In re S.D.W.*, 187 N.C. App. 416 (2007); *In re Peirce*, 53 N.C. App. 373 (1981). The court of appeals has also rejected the argument that a counterclaim or cross-claim could be filed by the parent or GAL in an abuse, neglect, or dependency case, reasoning that all authority of the trial court arises out of the juvenile petition, which can be filed only by DSS, and that although the parents and the GAL may present evidence and argument, they have no right to seek affirmative relief. *In re E.H.*, 227 N.C. App. 525 (2013).

4.3 Summons

Problems with issuance or service of a summons implicate personal jurisdiction, not subject matter jurisdiction. *In re K.J.L.,* 363 N.C. 343 (2009) (*cited in In re M.L.C.*, 289 N.C. App. 313 (2023)). For a discussion of the relationship between the summons and subject matter jurisdiction, see Chapter 3.2.C.1.

A. Content and Issuance of Summons

The Juvenile Code sets out the required contents for the summons in abuse, neglect, or dependency proceedings in G.S. 7B-406 and for termination of parental rights (TPR) proceedings in G.S. 7B-1106. For TPR cases initiated by motion, G.S. 7B-1106.1 sets out similar requirements for the contents of the required notice. For details relating to summonses in abuse, neglect, or dependency proceedings, see Chapter 5.3.B, and summonses and notices for TPR proceedings, see Chapter 9.7.

AOC Forms:

- AOC-J-142, Juvenile Summons and Notice of Hearing (Abuse/Neglect/Dependency)
- AOC-J-208, Summons in Proceeding for Termination of Parental Rights

1. Signature of clerk. Although the Juvenile Code is very specific with respect to the content of summonses in juvenile proceedings, Rule 4(a) and (b) of the Rules of Civil Procedure, relating to the issuance and content of a summons, has been applied to juvenile proceedings as well. In a TPR case, *In re K.J.L.*, 363 N.C. 343 (2009), the North Carolina Supreme Court

stated that to be properly "issued," the summons must contain the signature of the clerk, assistant clerk, or deputy clerk as required by Rule 4(b).

2. Timing. The Juvenile Code states that the summons must be issued by the clerk immediately after an abuse, neglect, or dependency petition is filed. G.S. 7B-406(a). This is different from the requirement in Rule 4(a) of the Rules of Civil Procedure that a summons be issued within five days of the filing of the complaint. In most situations, the petition is filed with the clerk, who issues the summons at that time. However, a juvenile petition must be accepted for filing by a magistrate in emergency situations when the clerk's office is closed and a petition must be filed to obtain a nonsecure custody order or an order to cease obstruction of or interference with a DSS assessment. G.S. 7B-404. The magistrate's acceptance of the petition constitutes the "filing" of the petition. G.S. 7B-405. A magistrate is not authorized to issue the summons. A petition that is filed with a magistrate must be delivered to the clerk's office for processing as soon as the clerk's office opens. G.S. 7B-404(b). The immediacy requirement for the issuance of a summons applies when the clerk's office opens and processes the petition.

3. Who receives summons. When a petition alleges abuse, neglect, or dependency, the summons is issued to each party named in the petition except the juvenile. G.S. 7B-406(a). For a TPR petition, a summons is issued to the respondent parents, except a parent who has irrevocably relinquished the child for adoption or consented to adoption by the petitioner. G.S. 7B-1106(a)(1). A summons is also not required for a respondent parent in a TPR whose identity is unknown and is served by publication under G.S. 7B-1105 or for a parent of a infant who was safely surrendered on or after October 1, 2023 and who is served by publication under G.S. 7B-1105.1.

For a TPR petition, a summons also must be issued to any court-appointed guardian of the person of the child, legal custodian, a DSS or licensed child-placing agency to whom the child has been relinquished for adoption, and/or any DSS with court-ordered placement responsibility for the child. G.S. 7B-1106(a)(2)–(4). If provisional counsel is appointed in an abuse, neglect, dependency, or TPR action, the clerk must provide that attorney with a copy of the petition and summons or notice. G.S. 7B-602(a); 7B-1101.1(a); *In re C.T.T.*, 288 N.C. App. 136 (2023) (affirming TPR; examining requirement that notice be provided to provisional counsel).

4. Service requirements when summons is not required. Although a summons need not be served on the juvenile or the juvenile's guardian ad litem (GAL), immediately after a petition alleging abuse or neglect is filed, the clerk is required to provide a copy of the petition and any notices of hearings to the local GAL office. G.S. 7B-408. If a child has a GAL when a TPR petition or motion is filed, or if a GAL is appointed for the child during the TPR proceeding, a copy of all pleadings and other papers required to be served (but not a summons) must be served on the GAL or attorney advocate pursuant to Rule 5 of the Rules of Civil Procedure. G.S. 7B-1106(a1).

In a TPR proceeding, if an attorney was appointed for a respondent parent in the underlying abuse, neglect, or dependency proceeding and the attorney has not been relieved of responsibility, a copy of all pleadings and other papers (but not a summons) must be served on the attorney pursuant to Rule 5 of the Rules of Civil Procedure. G.S. 7B-1106(a2).

Practice Note: The attorney appointed to represent a respondent parent in an abuse, neglect, or dependency action is not relieved from their appointment without leave from the court based upon justifiable cause and notice of the intent to withdraw being provided to the parent client. The attorney's representation continues in the TPR action; that attorney is not provisional counsel in the TPR. *See In re D.E.G.*, 228 N.C. App. 381 (2013). See Chapter 2.4.E.2 (discussing appointment of counsel).

B. Expiration of Summons

The provisions of Rule 4 of the Rules of Civil Procedure determine the life of a juvenile summons. Rule 4(c) requires that a summons be served within sixty days after the date of issuance but provides that failure to serve the summons within sixty days does not invalidate the summons. When the sixty-day time limit is not met, Rule 4(d) allows an extension of the time for service by obtaining either

- an endorsement on the original summons for an extension of time, obtained within ninety days of issuance of the summons; or
- an alias or pluries summons (a summons subsequent to the first), obtained within ninety days of issuance of the summons.

Failure to obtain an extension may result in lack of personal jurisdiction over the party to whom the summons is directed. However, like other defects in or even the absence of a summons, the expiration of a summons can be waived if the party makes a general appearance or files a responsive pleading and does not timely raise the issue of personal jurisdiction. *See In re W.I.M.*, 374 N.C. 922 (2020); *In re K.J.L.*, 363 N.C. 343 (2009); *In re J.D.L.*, 199 N.C. App. 182 (2009).

Under Rule 4(e), failure to secure an endorsement or an alias or pluries summons within ninety days results in discontinuance of the action with respect to a party who was not served within the sixty-day period. Even after a discontinuance of the action, the petitioner may obtain an extension, an endorsement, or even a new summons, reviving the action. However, the action will be deemed to have commenced when the endorsement, alias or pluries summons, or new summons was obtained. N.C. R. CIV. P. 4(e); *In re W.I.M.*, 374 N.C. 922 (affirming TPR; trial court had personal jurisdiction over respondent parent because new summons was issued with amended TPR petition that had the effect of initiating a new TPR proceeding). At least in juvenile cases, discontinuance of an action under Rule 4(e) does not operate to deprive the court of subject matter jurisdiction, and the court may proceed to exercise personal jurisdiction in the action over a party who makes a voluntary appearance and does not object to insufficiency of service or process. *See In re W.I.M.*, 374 N.C. 922 (respondent parent waived objection when answer to TPR did not include personal jurisdiction objection and respondent made a general appearance without objection to personal jurisdiction; respondent parent raised subject matter jurisdiction); *see also In re N.E.L.*, 202 N.C. App. 576, 578 (2010), *citing In re J.D.L.*, 199 N.C. App. at 187 (court of appeals stated that the supreme court, in *In re J.T.*, 363 N.C. 1 (2009) and *In re K.J.L.*, 363 N.C. 343, "appear[s] to have rejected the application of Rule 4(e) of the North Carolina Rules of Civil Procedure in all cases under the Juvenile Code.").

4.4 Service

A. The Impact of Service

Service of process, unless waived, is necessary for the court to obtain personal jurisdiction over a respondent. Service affects the notice to a respondent party. Notice and a meaningful opportunity to be heard are fundamental requirements for due process under the U.S. and North Carolina Constitutions. *See Armstrong v. Manzo,* 380 U.S. 545 (1965); *Harris v. Harris,* 104 N.C. App. 574 (1991) and cases cited therein. The Juvenile Code specifically directs the court to "protect the rights of the juvenile and the juvenile's parent to assure due process of law." G.S. 7B-802. One of the purposes of the Juvenile Code is to provide procedures that assure fairness and protect the constitutional rights of parents and juveniles. G.S. 7B-100(1).

Although the issuance and service of a summons do not affect the court's subject matter jurisdiction because subject matter jurisdiction is established by statute, defenses implicating personal jurisdiction and challenges on due process grounds may be raised by a respondent. *See In re K.J.L*, 363 N.C. 343 (2009). For further discussion, see Chapter 3.2 (subject matter jurisdiction) and 3.4 (personal jurisdiction). To determine whether a lack of notice unreasonably deprived a parent who was not served of due process, the court has balanced the parent's right to custody with the state's interest in the welfare of children and the child's right to be protected by the state from abuse or neglect. *In re Poole*, 357 N.C. 151 (2003), (affirming child's adjudication as dependent when service had not been made on respondent father even though father was entitled to notice of the proceeding; service had been made on respondent mother), *rev'g per curiam for reasons stated in the dissent,* 151 N.C. App. 472 (2002).

Appellate cases have discussed the importance of fundamentally fair service procedures when the liberty interests of parents are at stake. *In re K.N.*, 181 N.C. App. 736 (2007), was a case in which service was questionable because although there were signed receipts showing acceptance of service by someone residing at the address on the summons, there was no evidence that the address was where the respondent mother actually lived. The mother arrived in the courtroom after the TPR hearing had concluded, but the court of appeals was not swayed by an argument that her arrival proved she had notice. The court of appeals cited *Santosky v. Kramer*, 455 U.S. 745 (1982), in support of its conclusion that the order should be vacated for lack of fair procedure due to issues of valid service and a twenty-minute hearing with no counsel present for the respondent. Similarly, in the case *In re H.D.F.*, 197 N.C. App. 480 (2009), failure to serve a father whose counsel had withdrawn with notices of hearings and numerous other documents filed in the neglect case was error and required reversal of an adjudication that occurred at a hearing of which the father had not been notified.

B. Summons

Proper service in a juvenile case is generally the same as proper service in any civil case. The Juvenile Code specifically applies Rule 4 of the Rules of Civil Procedure, which sets out the "[m]anner of service to exercise personal jurisdiction," to service of the summons in abuse, neglect, dependency, and termination of parental rights (TPR) proceedings. G.S. 7B-407; 7B-1106(a). Service must be completed at least five days prior to the scheduled hearing in an

abuse, neglect, or dependency action unless the court waives that time requirement. G.S. 7B-407.

1. Service by delivery. Service of the summons on a respondent whose whereabouts are known or can be determined is pursuant to Rule 4(j)(1), which provides for the following types of service:

(a) Personal delivery. Service can be made by an authorized person's delivery of a copy of the summons and petition to the person or leaving copies at the person's house or usual place of abode with a person "of suitable age and discretion" who lives there. N.C. R. CIV. P. 4(j)(1)a. If DSS knows that a respondent is disabled and under a guardianship of any kind, service must be made on the respondent and guardian. N.C. R. CIV. P. 4(j)(2)b. A minor respondent parent is not considered to be under a disability requiring service also be made on the minor's parent, guardian, person having care or control of the minor, or an appointed Rule 17 guardian ad litem. G.S. 7B-406(a); 7B-1106(a); *see* N.C. R. CIV. P. 4(j)(2)a.

(b) Delivery by mail or delivery service. Service can be made by mailing a copy of the summons and petition addressed to the party to be served via registered or certified mail, return receipt requested, or by signature confirmation via the U.S. Postal Service. N.C. R. CIV. P. 4(j)(1)c. and e. In addition to the U.S. Postal Service, mail may be via an approved delivery service (authorized by 26 U.S.C. 7502(f)(2)) with a delivery receipt. N.C. R. CIV. P. 4(j)(1)d. *See In re K.N.*, 181 N.C. App. 736 (2007) (holding that service of TPR summons by certified mail, return receipt requested, was not proper where there was no evidence that respondent lived at the address where the summons was delivered and the return receipt was signed by someone else).

2. Service by publication. When service cannot be made by the means described above or the respondent is unknown or missing, service by publication may be permissible. Publication must be once a week for three consecutive weeks. *See* N.C. R. CIV. P. 4(j1) (explaining details of service by publication; the discussion below does not comprehensively cover the requirements of the rule). Service by publication must strictly comply with the statutory requirements under Rule 4(j1) because "[a] defect in service of process by publication is jurisdictional, rendering any judgment or order obtained thereby void" for lack of personal jurisdiction. *In re S.E.T.*, 375 N.C. 665, 669 (2020) (*quoting Fountain v. Patrick*, 44 N.C. App. 584, 586 (1980)) (vacating TPR for lack of personal jurisdiction over respondent; petitioner did not file affidavit showing "the circumstances warranting the use of service [by] publication, and information, if any regarding the location of the party served" as required by Rule 4(j1), 375 N.C. at 668).

(a) Applicability. With respect to abuse, neglect, or dependency proceedings, the Juvenile Code states that if service by publication pursuant to Rule 4(j1) of the Rules of Civil Procedure is required, the cost may be charged as court costs. G.S. 7B-407. Note that before October 1, 2013, service by publication in an abuse, neglect, or dependency proceeding required prior court authorization. *See* S.L. 2013-129, sec. 12.

With respect to TPR proceedings, the Juvenile Code deals with unknown parents in G.S. 7B-1105, requiring a special hearing to attempt to ascertain the parent's identity and permitting service by publication when the parent's identity cannot be ascertained. See

Chapter 9.6.A and B (discussing details related to a hearing to determine the identity of an unknown parent and special requirements for service by publication). The Juvenile Code also deals with parents of an infant who was safely surrendered on or after October 1, 2023 by requiring a special hearing to address service and permitting service by publication under the provisions of G.S. 7B-1105.1. See Chapter 9.6 (discussing details related to hearing for parents of a safely surrendered infant).

Where the parent's identity can be ascertained but service on the parent cannot be accomplished by other means, service by publication is appropriate but must comply with both the Juvenile Code (G.S. 7B-1106; 7B-1106.1) and Rule 4(j1). *In re S.E.T.,* 375 N.C. at 670 (vacating TPR for lack of personal jurisdiction over respondent; although court approved service by publication under G.S. 7B-1106, petitioner did not file affidavit showing "the circumstances warranting the use of service [by] publication, and information, if any regarding the location of the party served" as required by Rule 4(j1); motion for publication under G.S. 7B-1106 that was signed by attorney is not the equivalent of the Rule 4(j1) affidavit). Effective October 1, 2017, before service by publication in a TPR proceeding may be made, the court must (1) make findings of fact that the respondent cannot otherwise be served despite diligent efforts made by the petitioner for personal service and (2) approve the form of the notice before it is published. G.S. 7B-1106(a).

(b) Diligent efforts. Diligent efforts, or due diligence, to serve a party by other means is always a prerequisite for serving a party by publication under Rule 4.

The rule requires an affidavit showing "the circumstances warranting the use of service by publication," any information about the party's location, and that after due diligence the party cannot be served personally or by registered or certified mail or designated delivery service. In a neglect case, *In re Shaw,* 152 N.C. App. 126 (2002) (decided under prior law), DSS had attempted service unsuccessfully at the father's last known address. DSS was found to have satisfied requirements for service by publication where it submitted an affidavit stating that the father's address, whereabouts, dwelling house, or usual place of abode was unknown and could not with due diligence be ascertained, and that the father was a transient person with no permanent residence.

A failure to file the required affidavit is reversible error. *In re S.E.T.,* 375 N.C. at 670 (vacating TPR for lack of personal jurisdiction over respondent; petitioner did not file affidavit showing "the circumstances warranting the use of service [by] publication, and information, if any regarding the location of the party served" as required by Rule 4(j1)); *In re A.J.C.*, 259 N.C. App. 804 (2018) (vacating TPR for lack of personal jurisdiction over respondent; service under Rule 4(j1) was invalid when affidavit filed by DSS only stated that the notice ran for three consecutive weeks (with dates listed) in a specified newspaper and the DSS attorney was the affiant for the affidavit; respondent did not make a general appearance to waive proper service; note this opinion does not address the statutory requirement effective October 1, 2017 that approval from the court must first be obtained prior to service by publication of a TPR on a known parent as set forth in G.S. 7B-1106(a)).

What constitutes "diligent efforts" is not specifically defined by statute or case law. North Carolina cases have rejected having a "restrictive mandatory checklist" for what

constitutes due diligence and have said that this issue is fact-specific and must be examined on a case-by-case basis. *See Henry v. Morgan*, 264 N.C. App. 363, 366 (2019); *Jones v. Wallis*, 211 N.C. App. 353, 358 (2011); *Emanuel v. Fellows*, 47 N.C. App. 340, 347 (1980). Some cases have stated that to exercise due diligence a party must use all "resources reasonably available" to accomplish service. *See Henry*, 264 N.C. App. at 365, 367; *Jones,* 211 N.C. App. at 357; *Fountain*, 44 N.C. App. at 587. Nevertheless, the court of appeals has rejected the notion that due diligence requires that a party "explore every possible means of ascertaining the location of a defendant." *Jones*, 211 N.C. App. at 359 (holding that due diligence was exercised where service was attempted at defendant's last known address and another address, public records were searched, the internet was searched, counsel for plaintiff went personally to last known address to speak with current residents, determination was made that last known address had been foreclosed, and a copy of the complaint was sent to defendant's attorney to ask that he accept service). When determining whether due diligence was exercised, a court may look at the efforts the petitioner actually made rather than methods the petitioner did not make. *Henry*, 264 N.C. App. 363 (holding a single failed attempt to serve defendant at an address where he did not reside and a general internet search was not due diligence).

In several cases, the court found the diligent efforts requirement was not met where the petitioner failed to check public records to determine the location of the person to be served. *See, e.g., Henry*, 264 N.C. App. 363. In the case of *In re Clark*, 76 N.C. App. 83 (1985) (decided under prior law), it was error for the court to conclude that the father should be served by publication in a TPR proceeding where the petitioning adoption agency did not check public records and the facts indicated that the father would have been easy to locate had the agency made diligent efforts to find him.

Updated information regarding a party's whereabouts must also be considered when making diligent efforts. In *Dowd v. Johnson*, 235 N.C. App. 6 (2014), diligent efforts were not made when a new address for the defendant was specifically provided to the plaintiff's attorney in an email from the defendant's attorney but service was only attempted at the defendant's old address.

Practice Note: When the location of a parent is unknown after a diligent search has been completed and service is made by publication, the court in an abuse, neglect, or dependency case should continue to inquire into and enter orders with findings about the efforts to locate and serve the missing parent. This inquiry occurs through the initial dispositional hearing. G.S. 7B-506(h)(1); 7B-800.1(a)(3); 7B-901(b).

Resource: For information on due diligence, see Emily Turner, *Rule 4(j1), service by publication, and the "due diligence" requirement: What's email got to do with service of process?*, UNC SCHOOL OF GOV'T: ON THE CIVIL SIDE BLOG (March 18, 2022).

(c) Contents of published notice. Rule 4(j1) is very specific with respect to the contents of the published notice. In addition, the contents of the notice must comply with Juvenile Code requirements related to summons content. In the case *In re C.A.C.*, 222 N.C. App. 687 (2012), the court of appeals held that service by publication in a TPR case was deficient because it did not include notice of the respondent's right to counsel, required by G.S. 7B-1106(b)(4). Respondent did not appear at the hearing and although provisional

counsel did appear, the court of appeals held that provisional counsel's appearance could not be considered a "general appearance" that would waive the deficiency in service. *See also In re Joseph Children*, 122 N.C. App. 468 (1996) (finding error where service by publication did not comply with the Juvenile Code requirement that summons contain information about requesting counsel but further finding the error was not prejudicial) (decided under prior law).

When a parent is served by publication in an abuse, neglect, or dependency case and subsequently a TPR motion is filed, the TPR motion and notice may be served pursuant to Rule 5 (instead of Rule 4) of the Rules of Civil Procedure only if

- the published notice informed the parent that upon proper notice and hearing and a finding based on the criteria set out in G.S. 7B-1111, the court could terminate the respondent parent's parental rights;
- the underlying action was initiated less than two years ago; and
- the court does not order that service be pursuant to Rule 4.

G.S. 7B-1102(b); *see* G.S. 7B-406(b)(4)e.

For TPR cases in which the parent's identity is unknown, G.S. 7B-1105(d) sets out specific requirements for the published notice and directs the court to "specifically order . . . the contents of the notice which the court concludes is most likely to identify the juvenile to such unknown parent." When an unknown parent is served by publication pursuant to G.S. 7B-1105, a summons is not required. G.S. 7B-1105(g).

Practice Notes: Where the name of the parent being served is known, the published notice should contain any known aliases as well as the parent's name. Whether the full name of the other parent (the one not being served by publication) should be included in the notice is not specifically addressed in the Rules of Civil Procedure or the Juvenile Code, but presumably it should be included so that the parent being served by publication can identify the child who is the subject of the action. *See* G.S. 7B-1105(d).

G.S. 7B-1105(d)(3) states that when serving a parent whose identity is unknown, the words "In re Doe" may be substituted for the title of the case. A similar provision exists for TPR cases involving an infant who was safely surrendered on or after October 1, 2023 and where service by publication under G.S. 7B-1105.1 is ordered; the case title is "In re Baby Doe." There are no similar provisions for other TPR cases. While Rule 42 of the Rules of Appellate Procedure protects the child's identity in an appeal of a juvenile order specified in G.S. 7B-1001, nothing in the statutes or in case law addresses protection of the child's identity in a publication notice. G.S. 7B-2901(a) requires the clerk of court to withhold from public inspection records of juvenile cases that are filed in the office and allege abuse, neglect, or dependency.

The hearing on an unknown parent required by G.S. 7B-1105 will be expedited if the attorney has prepared a proposed publication notice that contains facts (such as the place of conception, range of possible dates of conception, and description or nickname of the unknown parent and the known parent) that would help the unknown parent recognize themself. If the court orders service by publication at the conclusion of the hearing, the court can either approve or modify the proposed notice.

(d) Where to publish. Publication of notice must be made in a newspaper that is qualified for legal advertising and circulated in the area where the person to be served is believed to be located. If there is no reliable information as to the person's location, publication may be made in a newspaper that is circulated where the action is pending. N.C. R. CIV. P. 4(j1).

When the parent in a TPR proceeding is unknown such that a G.S. 7B-1105 hearing is required, the court order specifies the place or places where the publication is made. G.S. 7B-1105(d). The court may also specify the place or places where the publication is made at a hearing under G.S. 7B-1105.1, which involves a TPR for the parents of an infant who was safely surrendered on or after October 1, 2023.

(e) Mailing requirement. If the post office address of the person served by publication is known, or can be ascertained with reasonable diligence, a copy of the notice of service of process by publication must be mailed to the party at or immediately before the first publication. If the post office address cannot be ascertained with reasonable diligence, the mailing may be omitted. N.C. R. CIV. P. 4(j1).

(f) Affidavit related to service by publication. Rule 4(j1) requires that once service by publication is completed, an affidavit must be filed with the court showing

- that the publication and mailing (if the party's post office address is known) were done in accordance with the requirements of G.S. 1-75.10(a)(2), which requires an affidavit of the publisher or printer specifying the date of the first and last publication, and an affidavit of the person who mailed a copy of the complaint or notice if mailing was required;
- circumstances warranting the use of service by publication and efforts that were made to serve by other means (*see In re S.E.T.,* 375 N.C. 665 (vacating TPR for lack of personal jurisdiction over respondent when affidavit was not filed by petitioner); *In re Shaw*, 152 N.C. App. 126 (reaffirming the necessity of including this information on the affidavit and finding this requirement satisfied when the affidavit stated that the respondent's address, whereabouts, dwelling house, or usual place of abode were unknown and could not with due diligence be ascertained because the respondent was a transient person with no permanent residence)); and
- information, if any, regarding the location of the party served.

N.C. R. CIV. P. 4(j1).

3. Service in a foreign country. Service in a foreign country is governed by Rule 4(j3) of the Rules of Civil Procedure, which allows service by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents (Hague Convention) or the Inter-American Service Convention when the particular convention applies. N.C. R. CIV. P. 4(j3)(1). Service in a foreign country is a complex issue that this Manual does not attempt to address fully.

Proper service methods vary from country to country and the appropriate method depends on whether a particular country is a party to a particular convention dealing with service. A country may be a signatory to one convention but not another. For example, El Salvador is not a signatory to the Hague Convention but is a signatory to the Inter-American Service

Convention. See U.S. Department of State Bureau of Consular Affairs website for El Salvador. Even when a country is a signatory to a convention, it is critical to know whether the country has filed objections or exceptions. Mexico, for example, is a signatory to the Hague Convention, but has filed an objection to alternative service methods, so that service by publication in Mexico is not an option.

Where there is no internationally agreed upon means of service, or applicable agreements allow other means of service, Rule 4(j3)(2) and (3) state that as long as service is reasonably calculated to give notice, it may be

- in the manner prescribed by the law of the foreign country;
- as directed by foreign authority in response to a letter rogatory or letter of request;
- by delivering a copy of the summons and petition to the individual personally (unless prohibited by law of the foreign country);
- through any form of mail requiring a signed receipt, addressed to the party to be served and dispatched by the clerk (unless prohibited by law of the foreign country); or
- by other means not prohibited by international agreement as may be directed by the court.

Resources:
For information related to service in a foreign country, see the online resources listed below, many of which include links to more detailed information:

- search "service of process abroad" on the Bureau of Consular Affairs, U.S. Department of State website (or access country-specific information on the "Judicial Assistance Country Information" page under "Legal Resources").
- "Foreign Process" on the U.S. Marshals Service, U.S. Department of Justice website.
- Hague Conference on Private International Law website.

For information from the UNC School of Government on this topic, see

- Cheryl Howell, *Service by Publication When Defendant is in Another Country*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Feb. 10, 2017).
- W. Mark C. Weidemaier, *International Service of Process Under the Hague Convention*, ADMINISTRATION OF JUSTICE BULLETIN No. 2004/07 (UNC School of Government, Dec. 2004).
- W. Mark C. Weidemaier, *Service of Process and the Military*, ADMINISTRATION OF JUSTICE BULLETIN No. 2004/08 (UNC School of Government, Dec. 2004).

C. Notice and Motions

The Juvenile Code addresses the service of only some notices, motions, and orders. G.S. 7B-700(c) requires that discovery motions in juvenile proceedings be served pursuant to Rule 5 of the Rules of Civil Procedure. Rule 5(b) relates to service of "pleadings and other papers," and has been used to fill a "procedural gap" in the Juvenile Code where the Juvenile Code is silent as to service. *See In re D.L.*, 166 N.C. App. 574 (2004). When a motion for termination of parental rights (TPR) is filed in a pending abuse, neglect, or dependency proceeding, while service of the motion and notice generally is pursuant to Rule 5(b), G.S. 7B-1102(b) specifies

four circumstances in which service must be pursuant to Rule 4. See section 4.4.B.2(c), above; Chapter 9.7.C.4 (discussing details related to serving motions and notice to initiate TPR).

Generally, Rule 5 permits service of all pleadings subsequent to the original petition and all other papers to be made on the party's attorney and, if ordered by the court, on the party as well. If the party does not have an attorney of record, service is made on the party. The methods of service are

- pursuant to Rule 4, upon either the party or the party's attorney of record;
- by delivering a copy to the party's attorney of record, but if there is no attorney or if the court so orders, to the party;
- by mailing it to the party's attorney of record at the mailing address of record with the court, but if there is no attorney or if the court so orders, to the party at the party's last known address or if the address is unknown, by filing it with the clerk of court; or
- by fax or by email to the party's attorney if the party's attorney has an email address of record with the court in the case, but if there is no attorney of record, on the party if the party has consented to receive email service in the case at a specified email address and the consent is filed with the court by any party (note that a fax or email sent after 5:00 p.m. is considered sent on the next business day).

N.C. R. CIV. P. 5(b).

If the action is filed through the court's electronic filing system, service is made on the attorney through that electronic or case management system at an email address of record with the court. Service is made on a party through the court's electronic filing or case management system at an email address of record with the court if the party has consented to such service and a copy of the consent is filed with the court by any party. An email sent after 5:00 p.m. is considered sent on the next business day. N.C. R. CIV. P. 5(b).

Although service of the summons on the child is not required, where the child is required to receive notice, acceptance of service by an attorney advocate constitutes proper service on a guardian ad litem (GAL), which constitutes proper service on a child represented by the GAL. *See In re J.A.P.*, 189 N.C. App. 683 (2008) (decided under former law). However, the Juvenile Code requires that the juvenile who is at least 12 years old be served with certain notices and orders, in addition to service on the juvenile's GAL. *See* G.S. 7B-906.1(b)(ii) and (vi) (notice of review and permanency planning hearings); 7B-908(b)(1) (notice of post-TPR review hearing); 7B-1110(d) (service of TPR order); 7B-1114(d)(1) and (2), (e) (service of motion and notice of hearing to reinstate parental rights).

4.5 Continuances

A. Continuances Disfavored

The Juvenile Code includes specific timelines within which certain hearings must be held, and it speaks directly about the circumstances in which continuances should be permitted. The Juvenile Code provisions are more restrictive than those in Rule 40(b) of the Rules of Civil Procedure and, to the extent they are inconsistent with Rule 40, the Juvenile Code provisions control. Appellate cases related to juvenile proceedings have noted that continuances are

generally disfavored, and the burden of demonstrating sufficient grounds for a continuance is on the party seeking the continuance. *See In re J.E.,* 377 N.C. 285 (2021) (*cited in In re B.E.*, 381 N.C. 726 (2022)); *In re S.M.*, 375 N.C. 673 (2020).

The North Carolina Supreme Court has addressed the standard of review for a motion to continue. A trial court's ruling on a motion to continue is reviewed for an abuse of discretion, unless the motion is based on a constitutional right that presents a question of law, which is fully reviewable by the appellate court. *In re D.J.*, 378 N.C. 565 (2021); *In re J.E.*, 377 N.C. 285; *In re A.L.S.,* 374 N.C. 515 (2020). Failing to raise the constitutional right before the trial court waives a de novo appellate review of the denial of the motion to continue and results in an abuse of discretion standard of review. *See In re B.E.*, 381 N.C. 726 (father waived appellate argument that denial of motion violated his constitutional rights).

A denial of motion to continue is grounds for a new trial when the party shows (1) the denial was erroneous and (2) the party was prejudiced as the result of the error. This standard applies regardless of whether the motion raises a constitutional issue or not. *In re D.J.*, 378 N.C. 565; *In re J.E.*, 377 N.C. 285*; In re A.L.S.*, 374 N.C. 515. A "harmless error" standard applies when a motion to continue is denied and violated a parent's due process rights, "and DSS bears the 'burden' of proving that the error was harmless" beyond a reasonable doubt. *In re C.A.B.*, 381 N.C. 105, 120 (2022) (vacating and remanding TPR). The North Carolina appellate courts have determined that the absence of a parent at the hearing is not, by itself, a due process violation. *In re J.E.,* 377 N.C. 285 (and cases cited therein) (applying to TPR) (*cited in In re B.E.*, 381 N.C. 726); *In re L.G.*, 274 N.C. App. 292 (2020) (applying to permanency planning hearing). A parent should indicate what their "expected testimony" will address and "demonstrate its significance" to the court or provide an "affidavit or other offer of proof" to show prejudice will result from denying the motion to continue. *In re C.A.B.*, 381 N.C. at 120 (citation omitted).

B. Abuse, Neglect, Dependency Proceedings

In abuse, neglect, or dependency proceedings, G.S. 7B-803 authorizes the court to continue a hearing, for good cause, for as long as reasonably necessary to

- receive additional evidence, reports, or assessments the court has requested;
- receive other information needed in the child's best interests; or
- allow for a reasonable time for the parties to conduct expeditious discovery.

Otherwise, the court may grant a continuance "only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile." G.S. 7B-803. *See In re R.L.*, 186 N.C. App. 529 (2007) (finding that neither a systemic problem of over-scheduling nor the absence of a respondent or a respondent's attorney at an earlier hearing constituted extraordinary circumstances warranting multiple continuances), *abrogated in part on other grounds by In re T.H.T.*, 362 N.C. 446 (2008). The court of appeals has looked to Black's Law Dictionary and stated "[e]xtraordinary circumstances are '[a] highly unusual set of facts that are not commonly associated with a particular thing or event.' " *In re L.M.*, 924 S.E.2d 545, 548 (N.C. Ct. App. 2025) (citation omitted) (affirming court's denial of motion to continue permanency planning hearing due to mother not having transportation to appear at the hearing). The party seeking the continuance has the burden of proving

extraordinary circumstances are necessary for the proper administration of justice or in the child's best interests. *In re L.G.A.*, 277 N.C. App. 46 (2021).

Resolution of a pending criminal charge against a respondent arising out of the same circumstances as the juvenile petition cannot be the sole extraordinary circumstance for granting a continuance. G.S. 7B-803. *See In re L.G.A.,* 277 N.C. App. 46 (rejecting mother's argument that criminal charges related to her threatening a DSS social worker and the district attorney were an extraordinary circumstance; her charges were not related to the same transaction or occurrence; even if the charges were related, mother would have to demonstrate *other* extraordinary circumstances under G.S. 7B-803; noting trial court imposed protections to prevent potential harm to mother in criminal case; no violation of mother's constitutional rights); *In re Patron*, 250 N.C. App. 375 (2016) (looking to the limitation in G.S. 7B-803 against granting a continuance on the sole basis of a pending criminal charge arising from the same incident in the juvenile matter when determining there was no abuse of discretion in a denial of a motion to stay a judicial review of a placement on the Responsible Individuals List pending resolution of the related criminal charges).

While G.S. 7B-803 does not specify that it applies to dispositional as well as adjudication hearings, appellate cases have generally applied it to any type of hearing in an abuse, neglect, or dependency case. *See, e.g., In re L.M.*, 924 S.E.2d 545 and *In re E.K.*, 202 N.C. App. 309 (2010) (both analyzing the appropriateness of continuances of a permanency planning hearing according to G.S. 7B-803); *In re C.M.*, 183 N.C. App. 207 (2007) (discussing the continuance of a dispositional hearing in the context of G.S. 7B-803).

C. Termination of Parental Rights Proceedings

G.S. 7B-1109(d) authorizes the court to continue an adjudication hearing in a termination of parental rights (TPR) proceeding for up to ninety days from the date of the initial petition to

- receive additional evidence,
- allow the parties to conduct expeditious discovery, or
- receive any other information needed in the best interests of the child.

The burden of showing there are sufficient grounds for a continuance rests on the party requesting the continuance. *In re D.J.*, 378 N.C. 565 (2021); *In re A.L.S.,* 374 N.C. 515 (2020). A continuance beyond ninety days may be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court must enter a written order stating the grounds for granting the continuance. G.S. 7B-1109(d); *In re C.A.B.*, 381 N.C. 105 (2022) (vacating and remanding TPR; father showed extraordinary circumstances existed due to COVID-19 restrictions in the prison that prevented him from working with his attorney and participating in the TPR hearing; denial of motion to continue prejudiced father and violated his due process rights; father was fact witness about his conduct while incarcerated, which was the basis for the grounds to TPR); *In re B.E.*, 381 N.C. 726 (2022) (holding no abuse of discretion in denying father's fourth motion to continue; although attorney unsuccessfully made extensive efforts to contact father's prison to secure father's remote participation, there was no indication another continuance would have a different result; father did not meet burden of showing fourth continuance would further substantial justice); *In re D.J.*, 378 N.C. 565 (holding no abuse of discretion in denying mother's motion to continue for a witness's testimony; offer of proof was vague and did not demonstrate the

significance of the potential testimony and any prejudice from the denial); *In re A.L.S.,* 374 N.C. 515 (holding no abuse of discretion in denying mother's continuance when she failed to show extraordinary circumstances); *In re A.J.P.,* 375 N.C. 516 (2020) (holding father did not meet burden of showing extraordinary circumstances existed to continue hearing a second time, which would have moved the hearing beyond the 90-day period in G.S. 7B-1109(d)); *In re S.M*., 375 N.C. 673 (2020) (holding father waived the constitutional grounds for the continuance by not raising it at trial; court did not abuse its discretion in denying continuance; father did not meet his burden of showing extraordinary circumstances existed to warrant a continuance beyond the 90-day time period).

Although G.S. 7B-1109(d) explicitly addresses continuances for a TPR hearing, the appellate courts have also looked to G.S. 7B-803 when determining whether a court acted properly in continuing (or denying a motion to continue) a TPR hearing. *See, e.g., In re A.J.P.,* 375 N.C. 516 (reviewing G.S. 7B-803 and applying G.S. 7B-1109(d) when holding the court did not abuse its discretion in denying father's motion to continue); *In re C.J.H*., 240 N.C. App. 489 (2015) (applying G.S. 7B-803 and 7B-1109 when holding it was not error for the trial court to deny a motion to continue requested by respondent's attorney at the hearing when the respondent chose to start a new job rather than appear at a hearing that he had notice of). *See In re C.M.P*., 254 N.C. App. 647 (2017) (applying the standard in G.S. 7B-803 to deny respondent's motion to continue a TPR hearing and holding, based on prior case law, that respondent's due process rights were not violated by termination of parental rights at a hearing at which she was not present and there was no abuse of discretion when trial court conducted a full hearing on the petition and allowed respondent's counsel to cross-examine each witness and fully participate); *In re Mitchell*, 148 N.C. App. 483 (applying G.S. 7B-803 to determine that denial of a continuance in a TPR case was proper where nothing in the record indicated that the court requested or needed additional information in the best interests of the children, that more time was needed for expeditious discovery, or that extraordinary circumstances necessitated a continuance, and where it was apparent that mother's absence was voluntary or a result of her own negligence), *rev'd per curiam on other grounds for reasons stated in the dissent,* 356 N.C. 288 (2002).

D. Considerations

The main consideration for a court when deciding whether to grant or deny a continuance is whether substantial justice will be furthered. *In re D.J.,* 378 N.C. 565 (2021); *In re J.E.,* 377 N.C. 285 (2021).

1. Party's own actions. Appellate cases have said that lack of preparation for trial that is due to the party's own actions is not sufficient reason for a continuance. *See In re S.M.*, 375 N.C. 673 (2020) (holding no abuse of discretion in denying continuance of TPR; short time period for parties to access father's court-ordered evaluation was directly caused by father's procrastination in completing that evaluation); *In re C.J.H*., 240 N.C. App. 489 (2015) (finding denial of continuance appropriate when father chose to start new job rather than appear at hearing where his attorney requested a continuance based on father's absence); *In re J.B*., 172 N.C. App. 1 (2005) (holding that respondent's request for third continuance in TPR case was properly denied where court found that any lack of time to prepare for the hearing related to recent incarceration and was due to respondent's own actions in being arrested for kidnapping the juvenile); *In re Bishop*, 92 N.C. App. 662 (1989) (finding denial of

continuance appropriate where respondent had ample time for trial preparation but simply failed to cooperate with her counsel).

2. Absence of parent, notice of hearing concerns. When a parent was absent from the TPR hearing, the appellate courts have been concerned with whether a parent received notice of the hearing when determining whether the motion to continue was erroneously denied. In the case *In re D.W.*, 202 N.C. App. 624 (2010), the court of appeals reversed an order terminating parental rights, holding that the trial court abused its discretion in denying the mother's motion for a continuance of the adjudication hearing. The appellate court said that "the circumstances of [the] case indicate[d] that justice was impaired by the denial of the continuance." *In re D.W.*, 202 N.C. App. at 625. The court of appeals pointed to uncertainty as to whether the mother had notice of the hearing; the mother's diminished capacity, which could have made her absence involuntary; her attendance at all prior hearings; external time constraints that negatively affected the hearing; and the trial court's failure to ascertain the nature of the proceeding before ruling on the motion for a continuance. In contrast, the North Carolina Supreme Court has held that a denial of a continuance when the parent was not present for the TPR hearing was not an abuse of discretion when there was no explanation for the respondent's absence and when the parent has received notice of the hearing. *See In re L.A.J.*, 381 N.C. 147 (2022); *In re J.E.*, 377 N.C. 285 (2021).

3. Absence of witness. When a motion to continue is based on the absence of a witness, the motion should be supported by an affidavit containing the facts to be proved by the witness. *In re Lail*, 55 N.C. App. 238 (1981) (decided under prior law); *see In re D.J.*, 378 N.C. 565 (2021) (holding no abuse of discretion in denying mother's motion to continue for a witness's testimony; offer of proof was vague and did not demonstrate the significance of the potential testimony and any prejudice from the denial).

4. Heavy dockets. Avoidance of continuances requires careful attention to scheduling and calendaring in juvenile cases. In a case in which seven of fourteen continuances were attributed to heavy dockets, the court of appeals said: "Given the overall scheme of the juvenile code, which consistently requires speedy resolution of juvenile cases, it is clear that the General Assembly did not contemplate a crowded docket as a circumstance sufficient to warrant delay." *In re R.L.,* 186 N.C. App. 529, 535 (2007), *abrogated in part on other grounds by In re T.H.T.*, 362 N.C. 446 (2008).

5. Time to prepare. Although continuances are disfavored, the court's failure to grant a continuance may be reversible error if good cause for the continuance exists and the party is prejudiced by the denial. The burden is on the party seeking a continuance to show good cause. *See In re D.Q.W.*, 167 N.C. App. 38 (2004) (holding that respondent was not prejudiced where he did not explain why his attorney had insufficient time to prepare, what his attorney hoped to accomplish during a continuance, or how preparation would have been more complete if a continuance had been granted).

The Juvenile Code specifies two situations where a continuance must be granted. At a TPR adjudication hearing, the court must inquire as to whether the respondent parent is present and represented by counsel. If the parent is not represented, is indigent, and desires counsel, the court must appoint counsel and grant a reasonable extension of time for the attorney to prepare a defense. G.S. 7B-1109(b). At an initial post-TPR review hearing, when the court is

authorized to appoint a guardian ad litem for the juvenile, "[t]he court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case." G.S. 7B-908(b)(2).

6. Delay, prejudice, and the remedy of mandamus. The appellate courts have held that where continuances result in the court's failure to meet statutory timelines for conducting hearings, the appropriate remedy is to seek a writ of mandamus. *In re C.R.L.,* 377 N.C. 24 (2021) (applying to a TPR); *In re E.K.*, 202 N.C. App. 309 (2010) (acknowledging that delays in the case were "deplorable," the appellate court nevertheless refused to find reversible error and held that the proper remedy for excessive delays in holding hearings is to file a petition for a writ of mandamus during the delay, rather than raise the issue on appeal). These opinions relied on the supreme court's earlier holding in *In re T.H.T.*, 362 N.C. 446 (2008), that mandamus is the proper remedy for delay in entering orders in juvenile cases. See section 4.9.D.3, below (discussing the elements for seeking mandamus specified in the *In re T.H.T.* case).

Practice Note: Most of the cases decided before the holding in *In re T.H.T.,* 362 N.C. 446, that mandamus is the appropriate remedy for delay, analyzed delay issues according to whether prejudice resulted from the delay. These cases were abrogated by *In re T.H.T.*

Resource: For a discussion of continuances and due process, see Timothy Heinle, *COVID and the Due Process Rights of Incarcerated Parents*, UNC SCHOOL OF GOV'T: ON THE CIVIL SIDE BLOG (June 16, 2022).

4.6 Discovery

A. Discovery Generally

G.S. 7B-700 addresses information sharing and discovery in abuse, neglect, dependency, and termination of parental rights proceedings and supersedes the discovery provisions in the Rules of Civil Procedure. *In re M.M.*, 272 N.C. App. 55 (2020). Because G.S. 7B-700 applies to all actions under Subchapter I of the Juvenile Code, it also applies when petitions are filed relating to alleged interference with or obstruction of a DSS assessment or for judicial review of a responsible individual determination or expungement from the responsible individuals list (all of which are discussed in Chapter 5).

The Juvenile Code encourages a process in which parties access information by means of permissible voluntary information sharing before resorting to discovery motions to obtain information. Parties are permitted to utilize discovery motions pursuant to G.S. 7B-700.

Practice Note: The Juvenile Code addresses confidentiality and information sharing in juvenile cases in more than one place (not just in the discovery statute). *See, e.g.,* G.S. 7B-302(a1); 7B-311; 7B-601(c); 7B-700; 7B-2901; 7B-3100. For a discussion of confidentiality and information sharing, see Chapter 14.

B. The Juvenile Code and Discovery

1. DSS sharing of information. The Juvenile Code permits DSS to share with any other party information that is relevant to a pending juvenile action, with these exceptions:

- DSS may not share information that would reveal the identity of a reporter or lead to discovery of the reporter's identity.
- DSS may not share any uniquely identifying information that would lead to the discovery of any other person's identity if DSS determines that disclosure of the information would be likely to endanger that person's life or safety.

G.S. 7B-700(a).

The provisions of G.S. 7B-700 apply to information sharing and discovery requests made by parties in the juvenile proceeding and do not apply to requests for information or discovery made on a DSS by a person or agency who is not a party to the juvenile proceeding, such as a litigant in another action or a government agency investigating a party in the juvenile proceeding. For a discussion about when DSS is authorized to share information to non-parties, see Chapter 14.1.

2. GAL sharing of information. The child's guardian ad litem (GAL) is not free to voluntarily share information with other parties but can share information pursuant to either a court order or local rules. G.S. 7B-700(f); 7B-601(c). However, any reports and records the GAL submits to the court must first be shared with the parties in the juvenile proceeding. G.S. 7B-700(f). In addition, the GAL must share information requested by other designated agencies (including DSS) under G.S. 7B-3100 to the extent that information falls within the parameters of that statute. See Chapter 14.1.D and E for further discussion.

3. Local rules. The chief district court judge may adopt local rules or enter an administrative order addressing the sharing of information among parties and the use of discovery. G.S. 7B-700(b). Local rules, however, may not contradict statutory requirements. *See In re J.S.*, 182 N.C. App. 79 (2007); *In re T.M.*, 187 N.C. App. 694 (2007). There may also be a local rule or administrative order that addresses the sharing of predisposition reports among the parties. *See* G.S. 7B-808(c).

Note that local rules or administrative orders issued pursuant to G.S. 7B-700 and 7B-808(c) apply to the parties in a juvenile proceeding and may not be directed to agencies or entities that are not parties. Information sharing among agencies is covered by G.S. 7B-3100, and rules issued by the Division of Juvenile Justice of the Department of Public Safety authorize a chief district court judge to issue an administrative order designating local agencies that are required to share information pursuant to that statute. *See* 14B N.C.A.C. 11A.0301 and .0302. See Chapter 14.1.E for further discussion of information sharing.

4. Discovery procedure and methods. G.S. 7B-700 makes no reference to the discovery methods or procedures in the Rules of Civil Procedure.

In *In re M.M.*, 272 N.C. App. 55 (2020), the court of appeals examined G.S. 7B-700 and the required procedure. The attorney for respondent father noticed the DSS social worker under Rule 30 of the Rules of Civil Procedure for a deposition and served the social worker with a subpoena to appear at the scheduled deposition. The father's attorney also filed a motion for

discovery under G.S. 7B-700 but did not include the request for deposition. At a pre-trial hearing, the trial court agreed with DSS that before the father's attorney could depose the social worker, the attorney should first seek information from the information sharing provision of G.S. 7B-700(a), and if more information was sought, file a motion for discovery under G.S. 7B-700(c) to request the deposition. The court of appeals concluded there was no error by the trial court. The court of appeals stated, "[t]he Juvenile Code provides for discovery, specifically including depositions, and thus the Rules of Civil Procedure do not apply here." *In re M.M.*, 272 N.C. App. at 63–64.

Regarding discovery methods (as opposed to the procedure), the appellate courts have discussed the use in juvenile proceedings of certain discovery methods that are set forth in the Rules of Civil Procedure. (Note that these opinions were decided before *In re M.M.* addressed the procedure for discovery under G.S. 7B-700.) Discovery methods include depositions, interrogatories, requests for production of documents, and physical/mental examinations. See section 4.1.A, above; *see also In re J.D.*, 234 N.C. App. 342 (2014) (referring to use of request for production of documents in factual summary of the case). A party may also subpoena a witness's attendance at a deposition or command the production, inspection, and copying of designated documents, including electronic records, and tangible things in the possession or control of the person specified in the subpoena. N.C. R. CIV. P. 45; *see In re A.H.*, 250 N.C. App. 546 (2016) (applying Rule 45 when addressing motion to quash subpoena for testimony at hearing). Additionally, a chief district court judge might reference or incorporate certain discovery rules in the judicial district's local rules or in an administrative order issued pursuant to G.S. 7B-700(b). The court of appeals has also referred to Rule 26(b)(1) of the Rules of Civil Procedure, which allows for discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action. *In re J.B.*, 172 N.C. App. 1 (2005).

5. Discovery motions. The Juvenile Code requires a motion for discovery and authorizes a motion for protective order. G.S. 7B-700(c), (d); *see In re M.M.*, 272 N.C. App. 55 (2020) (motion for discovery required when information not received through information sharing). As a general rule, discovery orders are reviewed for an abuse of discretion. *In re M.M.*, 272 N.C. App. 55; *In re J.B.,* 172 N.C. App. 1 (2005); *Ritter v. Kimball*, 67 N.C. App. 333 (1984).

(a) Motion for discovery. Any party may file a "motion for discovery." G.S. 7B-700(c). A motion for discovery must contain

- a specific description of the information sought and
- a statement that the requesting party has made reasonable efforts to obtain or cannot obtain the information by means of information sharing permitted by statute, local rules, or an administrative order.

G.S. 7B-700(c).

A motion for discovery must be served on all parties pursuant to Rule 5 of the Rules of Civil Procedure. The court must conduct a hearing and rule on the motion within ten business days of the date the motion is filed. G.S. 7B-700(c). The court is authorized to "grant, restrict, defer, or deny the relief requested" in the motion. G.S. 7B-700(c).

(b) Motion for protective order. Any party who has been served with a motion for discovery may seek a protective order to deny, restrict, or defer the discovery. G.S. 7B-700(d). *See In re J.B.*, 172 N.C. App. 1 (holding, in a case decided under prior language of discovery statute, that the trial court did not err in using its authority to "deny or restrict" discovery where it denied a request to interview the child due to the disruption it would cause to the child's therapeutic progress). A protective order should be made pursuant to the requirements of G.S. 7B-700(d) as the Juvenile Code prescribes a procedure that differs from Rule 26(c) of the Rules of Civil Procedure. The court of appeals has consistently held the Rules of Civil Procedure only apply when they do not conflict with the Juvenile Code and the application of a rule advances the purpose of the Juvenile Code. *In re M.M.*, 272 N.C. App. 55; *In re E.H.*, 227 N.C. App. 525 (2013); *In re L.O.K.*, 174 N.C. App. 426 (2005). *But see In re J.D.,* 234 N.C. App. 342 (2014) (referencing in the factual summary a motion for protective order made pursuant to Rule 26(c), without mentioning G.S. 7B-700(d)).

Pursuant to G.S. 7B-700(d), a party requesting that the discovery be denied, restricted, or deferred must submit the information the party seeks to protect for in camera review by the court. If the court denies or restricts discovery, copies of materials submitted for in camera review must be preserved for potential appellate review. G.S. 7B-700(d).

6. Continuances related to discovery. The court may grant continuances in an abuse, neglect, dependency, or termination of parental rights proceeding for a reasonable time to allow for expeditious discovery. G.S. 7B-803; 7B-1109(d). However, any order related to discovery must avoid unnecessary delay and establish expedited deadlines for completion. G.S. 7B-700(c). *See In re J.S.*, 182 N.C. App. 79 (2007) (holding, in a case decided under prior law, that the trial court did not abuse its discretion in denying a continuance where the attorneys failed to make time to examine the records within the time frame set out by the administrative order).

7. Redisclosure. Information obtained through discovery or permissible sharing of information may not be redisclosed if the redisclosure is prohibited by state or federal law. G.S. 7B-700(e). *See also* G.S. 108A-80; 7B-3100.

Resource: For a discussion on information sharing with a criminal-defense attorney, see Timothy Heinle, *When and How Criminal Defense Attorneys Can Obtain Access to Confidential Child Welfare and Juvenile Abuse, Neglect, and Dependency Records*, ADMINISTRATION OF JUSTICE BULLETIN NO. 2021/02 (UNC School of Government, Oct. 2021).

4.7 Intervention and Removal

A. Abuse, Neglect, Dependency Proceedings

1. Intervention. The Juvenile Code defines precisely who the parties are in an abuse, neglect, or dependency proceeding. *See* G.S. 7B-401.1; 7B-601(a). Someone who is not a party but is providing care for the child, such as a relative or foster parent, is entitled to notice of and an opportunity to be heard at review and permanency planning hearings. G.S. 7B-906.1(b), (c);

see In re J.L., 264 N.C. App. 408, 415 (2019) (a case where foster parents were not permitted to intervene but court heard their testimony, "which was information the court was required to hear under section 7B-906.1(c)"). The court may also require that notice be given to other persons or agencies. G.S. 7B-906.1(b). At dispositional hearings (initial, review, and permanency planning), the court may consider information from any person or agency that the court finds is relevant, reliable, and necessary to determine the juvenile's needs and the most appropriate disposition. G.S. 7B-901(a); 7B-906.1(c). The court must also provide any person who the child is placed with the opportunity to address the court at a review or permanency planning hearing. G.S. 7B-906.1(c). However, the right to notice and to be heard does not confer party status. G.S. 7B-906.1(b). *See* G.S. 7B-401.1(e1).

Only the following persons or agencies may intervene in an abuse, neglect, or dependency proceeding

- the juvenile's parent, guardian, or custodian (note, caretaker is not included);
- another DSS that has an interest in the proceeding;
- a person with standing to initiate a termination of parental rights (TPR) proceeding who seeks to intervene for the sole purpose of filing a TPR motion;
- the juvenile's current caretaker or current foster parent only if they have authority (or standing) to file a TPR petition; or
- a grandparent only if both of the child's parents are deceased or one of the child's parents is deceased and the other parent is unknown or had their parental rights terminated.

G.S. 7B-401.1(e2), enacted by S.L. 2024-33, sec. 25(a), and (h), as amended by S.L. 2025-16 sec. 1.5, effective October 1, 2025; 7B-1103(b); *see* G.S. 7B-1103(a) (standing to file TPR), as amended by S.L. 2024-33, sec. 25(b).

Although not addressed in the Juvenile Code, when the Indian Child Welfare Act (ICWA) applies to the abuse, neglect, or dependency proceeding, the child's Indian tribe and (if applicable) Indian custodian have a right to intervene at any point in the action. 25 U.S.C. 1911(c); *see* 25 C.F.R. 23.111(d)(6)(ii) and (iii). For a discussion of ICWA, see Chapter 13.2.

Practice Note: The intervention statute, G.S. 7B-401.1(h), applies to all actions filed or pending on or after October 1, 2013. Prior to its enactment, the Juvenile Code did not specifically address intervention in abuse, neglect, or dependency proceedings other than to allow a party with standing to initiate a TPR action to intervene for the purpose of filing a TPR motion in an underlying abuse, neglect, or dependency action. G.S. 7B-1103(b). It was not unusual, however, for relatives or foster parents to make motions to intervene in abuse, neglect, or dependency cases to seek custody of or visitation with a child. The few appellate court decisions that addressed intervention applied Rule 24 of the Rules of Civil Procedure to assess the propriety of the trial court's ruling. *See, e.g., In re T.H.,* 232 N.C. App. 16 (2014). However, since those cases were decided, G.S. 7B-401.1 was enacted, specifically addressing intervention in abuse, neglect, or dependency proceedings. Parties and the court should look to the Juvenile Code (G.S. 7B-401.1) and not Rule 24 when determining whether someone has a right to intervene in an abuse, neglect, or dependency proceeding.

While opportunities for intervention in an abuse, neglect, or dependency action are limited, the Juvenile Code makes clear that the restrictions on intervention do not prohibit the court

hearing the abuse, neglect, or dependency proceeding from consolidating its case with a civil action that has a claim for custody or visitation. *See* G.S. 7B-200(c)(1), (d); 7B-401.1(h). See also Chapter 3.6.A and D (discussing two types of overlapping civil actions, civil custody proceedings and domestic violence protection proceedings, in which claims for custody are or may be asserted). The Juvenile Code does not address the procedure for how any request to consolidate the two actions would be heard. The court hearing the abuse, neglect, or dependency action makes the decision on consolidation, but a party in the civil action may not be a party or satisfy the criteria to have standing to intervene in the abuse, neglect, or dependency proceeding. In that case, the person would not have standing to file in the abuse, neglect, or dependency action a motion to consolidate the two actions.

2. Removal. The Juvenile Code explicitly addresses the removal of certain parties from the abuse, neglect, or dependency proceeding in G.S. 7B-401.1(g). The court may remove a guardian, custodian, or caretaker as a party from the proceeding when the court finds both that (i) the person's continuation as a party is not necessary to meet the child's needs and (ii) the party's removal is in the child's best interests. G.S. 7B-401.1(g), as amended by S.L. 2025-16, sec. 1.5, effective October 1, 2025. The failure to make both findings before removing a guardian, custodian, or caretaker who was a party from the proceeding is reversible error. *In re J.R.S.*, 258 N.C. App. 612 (2018) (reversing and remanding the order removing grandparents who were custodians when the neglect and dependency action was initiated for failing to make both required findings; decided under prior statutory language); *see In re E.E.*, 294 N.C. App. 133 (2024) (affirming order removing former custodian who had been awarded custody in a previous juvenile action when that person was no longer a custodian and was not a guardian or a caretaker; in the pending abuse and neglect case, juvenile was placed in DSS custody at disposition and was not in the same home as the former custodian; required findings that former custodian's legal rights were not impacted by his removal as a party and, based on his sexual abuse of one of the juveniles, his continuation as a party was not necessary to meet the juvenile's needs were made and were supported by evidence; decided under prior statutory language).

The removal statute does not address parents. However, other provisions of the Juvenile Code contemplate the removal of a parent as a party when certain circumstances exist. A parent should be removed from an abuse, neglect, or dependency action if their parental rights have been terminated so long as there is not a pending appeal and stay of the order terminating their parental rights. G.S. 7B-401.1(b)(1); 7B-908(b)(1). If a parent has executed a relinquishment for the adoption of their child and the revocation period has expired, that parent is not a party unless the court orders that they be a party. G.S. 7B-401.1(b)(2); *see* 7B-908(b)(1). Although not addressed in the Juvenile Code, if a named parent has been judicially determined to not be a parent, e.g., an order of non-paternity for a putative or legal father, the court should remove that person as a party in the role of parent. The court should consider whether that person is a guardian, custodian, or caretaker. If they are not a parent, guardian, custodian, or caretaker, they should be removed from the case. *See* G.S. 7B-401.1 (identifying parties to an abuse, neglect, or dependency action). For a discussion of paternity, see Chapter 5.4.B.7.

The removal statute also does not address a county DSS. However, the post-adjudication change of venue statute authorizes the court to substitute the county DSS who initiated the action (the petitioner) with the county DSS where the action is being transferred. G.S. 7B-900.1(c). When there is a pre-adjudication change of venue, the county DSS who filed the

petition remains a party and is not substituted with the other county DSS unless there is a conflict of interest that requires a substitution of the parties. G.S. 7B-400(c), as amended by S.L. 2025-16, sec. 1.4(b), effective October 1, 2025. *See* G.S. 7B-302.1 (conflict of interest), enacted by S.L. 2025-15, sec. 1.4(a), effective October 1, 2025. In all abuse, neglect, and dependency actions, even when permanency is achieved and further permanency planning hearings are waived, DSS continues to be a party until the court's jurisdiction terminates. *See* G.S. 7B-401.1(a). For a discussion of conflict of interest, see Chapter 2.2.C.

B. Termination of Parental Rights Proceedings

The statutory limitations on intervention apply only to intervention in abuse, neglect, or dependency proceedings. The Juvenile Code is silent with respect to intervention in termination of parental rights (TPR) proceedings. Where the Juvenile Code is silent, appellate decisions have applied Rule 24 to analyze whether intervention is permissible. *See, e.g., In re T.H.*, 232 N.C. App. 16 (2014) (holding that intervention pursuant to Rule 24 was permissible in a dependency case as the rule did not conflict with the Juvenile Code and advances its purpose (note that this case was decided before the enactment of G.S. 7B-401.1, which address intervention in an abuse, neglect, or dependency action)); *In re Baby Boy Scearce*, 81 N.C. App. 531 (1986) (upholding the application of Rule 24 to allow permissive intervention by foster parents, emphasizing the child's best interest).

Assuming that Rule 24 applies in TPR actions, it is important to distinguish between the provisions for intervention of right and those for permissive intervention.

1. Intervention of right. Under Rule 24(a), in the absence of an unconditional statutory right to intervene, a person is entitled to intervene by right when

- that person claims an interest in the subject of the action;
- as a practical matter, disposition of the action may impair the person's ability to protect that interest; and
- the person's interest is not adequately represented by existing parties.

The court of appeals applied Rule 24(a) to hold that a child support enforcement agency was entitled to intervene by right in a mother's action to terminate the father's rights. *Hill v. Hill*, 121 N.C. App. 510 (1996) (reversing the trial court's denial of DSS's motion to intervene, because termination of the father's rights would also terminate DSS's ability to seek reimbursement from the father for public assistance the mother would continue to receive). Intervention of right, the court said, "is an absolute right and denial of that right is reversible error." *Hill,* 121 N.C. App. at 511.

When the Indian Child Welfare Act (ICWA) applies to the TPR proceeding, the child's Indian tribe and (if applicable) Indian custodian have a right to intervene at any point in the action. 25 U.C.S. 1911(c); *see* 25 C.F.R. 23.111(d)(6)(ii) and (iii). For a discussion of ICWA, see Chapter 13.2.

2. Permissive intervention. Under Rule 24(b) the court may grant a motion for permissive intervention by someone whose claim or defense has a question of law or fact in common with the main action. N.C. R. CIV. P. 24(b). However, because the courts have held that a respondent parent cannot file a counterclaim for custody in a TPR action (*see, e.g.*, *In re*

Peirce, 53 N.C. App. 373 (1981)), it seems unlikely that a third party could intervene in a TPR proceeding to pursue a custody claim. *See In re E.Q.B.*, 290 N.C. App. 51 (2023) (holding court lacks statutory authority to enter no contact order in TPR). Either a party or a nonparty can file a civil action for custody or a motion in a pending civil custody action and seek to have that action consolidated with the TPR action. *See Smith v. Alleghany Cnty. Dep't of Soc. Servs.*, 114 N.C. App. 727 (1994) (the facts identify a consolidated TPR and G.S. Chapter 50 custody action).

Should a court find that Rule 24 does apply to allow permissive intervention, in addition to showing a common issue of law or fact, the person seeking to intervene must establish that they have standing to assert the claim or defense put forward. *See, e.g., Perdue v. Fuqua*, 195 N.C. App. 583 (2009) (affirming denial of grandmother's motion to intervene in a G.S. Chapter 50 custody proceeding on basis that allegations in her motions to intervene and for custody were insufficient to establish that she had standing to seek custody). In deciding whether to grant a motion for permissive intervention, the court must consider whether allowing intervention will unduly delay or prejudice the adjudication of the rights of the original parties. N.C. R. CIV. P. 24(b). The standard for reviewing an order granting or denying a motion for permissive intervention is abuse of discretion. *In re T.H.,* 232 N.C. App. 16 (2014).

3. Procedure for intervening. Intervention, whether permissive or by right, requires a timely application and service on all parties of a motion stating the grounds for intervention. The motion must be accompanied by a pleading that asserts the claim or defense for which the applicant seeks to intervene. N.C. R. CIV. P. 24(c).

4.8 Motions in Juvenile Proceedings

Unless specified in the Juvenile Code, motions are made according to Rule 7(b) of the Rules of Civil Procedure, Rule 6 of the General Rules of Practice for the Superior and District Courts, applicable Juvenile Code provisions (e.g., G.S. 7B-1102, related to a motion to terminate parental rights), and any pertinent local rules.

Under Rule 7(b) of the Rules of Civil Procedure, a motion may be made orally if it is made during a hearing or at a session for which the case is calendared. Otherwise, motions must be in writing. The motion must state with particularity the grounds for the motion and the relief the moving party is seeking. N.C. R. CIV. P. 7(b)(1). Motions must be signed by at least one attorney of record if the party is represented by counsel, stating the attorney's office address, or by the party themself if not represented, stating their address. N.C. R. CIV. P. 7(b)(2) (certain rules applicable to pleadings apply to all motions provided for by the Rules of Civil Procedure); *see* N.C. R. CIV. P. 11(a) (governing motion signature requirements). The format of motions is governed by Rule 10 of the Rules of Civil Procedure. *See* N.C. R. CIV. P. 7(b)(2).

Unless the Juvenile Code states otherwise, the filing and service of motions is pursuant to Rule 5 of the Rules of Civil Procedure. The time frame for service of a motion is according to Rule 6 of the Rules of Civil Procedure, which generally requires service no later than five days prior to the hearing. When a motion is based on facts that are not in the record, the court

may determine the motion based on affidavits presented by the parties, or the court may require that the matter be heard wholly or partly on oral testimony or depositions. N.C. R. CIV. P. 43(e).

4.9 Judgments and Orders

There are provisions contained throughout the Juvenile Code that specifically address orders, including

- the timing for entry of an order,
- required findings of fact and conclusions of law,
- types of available relief that may be ordered (note that the type of relief available is addressed throughout this Manual when discussing specific statutes and topics), and
- service of an order.

Some practices related to orders are addressed by the appellate courts rather than the Juvenile Code.

A. Drafting Orders

1. Who drafts the order. Judges may draft their own orders, but nothing prevents the trial judge from directing the prevailing party to draft an order on the court's behalf. *In re J.B.*, 172 N.C. App. 1 (2005); *see also In re S.N.H.*, 177 N.C. App. 82 (2006) (holding that the trial court did not err in directing the petitioner's attorney to draft an order after enumerating in court specific findings of fact to be included in the order); *In re H.T.*, 180 N.C. App. 611 (2006). Rule 52 of the Rules of Civil Procedure, addressing findings by the court, has not been interpreted to require the judge to manually draft or orally dictate a judgment. *See Johnson v. Johnson,* 67 N.C. App. 250 (1984) (finding no error where the court directed an attorney to prepare proposed findings and conclusions and draft the judgment and adopted the judgment as its own when tendered and signed); *Walker v. Tucker*, 69 N.C. App. 607 (1984).

2. Responsibility of the court. The court of appeals has recognized that district court judges have little or no support staff to assist with preparing orders, which has resulted in judges relying on the attorneys for the parties to assist in preparing the court's order. *In re A.B.*, 239 N.C. App. 157 (2015); *In re J.W.,* 241 N.C. App. 44 (2015). Regardless of who drafts an order, the trial court is ultimately responsible for the order. *In re A.B.*, 239 N.C. App. at 167 (stating "the order is the responsibility of the trial court, no matter who physically drafts the order"); *see Heatzig v. MacLean*, 191 N.C. App. 451 (2008) (orders are orders of the court, not the parties).

3. Circulating draft orders. While it is common practice for attorneys to draft court orders, it is important that draft orders be circulated to all parties before being submitted to the judge. Another party may identify discrepancies between the draft order and that party's understanding of the judge's oral rendition, and a party may elect to submit their own proposed findings of fact or amendments to those in the draft order. *See also* North Carolina State Bar, 2019 Formal Ethics Opinion 4 (2021) (relating to communications with judicial officials). In some judicial districts local rules may address the circulation of draft orders.

Resource: For more information, see Timothy Heinle, *Circulating Draft Orders in Juvenile Abuse, Neglect, Dependency Proceedings*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (July 15, 2025).

4. Presiding judge must sign order; substitute judge. In almost all instances only the judge who presides at a hearing should sign an order resulting from the hearing. Rule 52 of the Rules of Civil Procedure requires the judge in a non-jury proceeding to find facts, make conclusions of law, and enter judgment accordingly. In the case of *In re Whisnant*, 71 N.C. App. 439 (1984), it was reversible error for a judge other than the one who presided at the hearing to sign the order terminating parental rights. In *In re C.M.C.*, 373 N.C. 24 (2019), the North Carolina Supreme Court found the reasoning of the court of appeals was sound when vacating TPR orders and holding those orders were a nullity when they were signed by a judge who did not preside over the TPR hearings. The supreme court in *In re C.M.C.* further explained that because *the* judge did not sign the order, resulting in it being a nullity, the order was never entered under Rule 58 of the Rules of Civil Procedure.

Under Rule 63 of the Rules of Civil Procedure, if after the hearing is concluded the judge who presided at a hearing is not able to sign the order – whether by reason of disability, death, resignation, retirement, or any other reason – the chief district court judge can sign the order, but only if the judge who is not available made findings of fact and conclusions of law. *See* Comment to N.C. R. CIV. P. 63; *In re E.D.H.,* 381 N.C. 395 (2022) (under Rule 63, chief district court judge signed order for retired judge who had made findings of fact and conclusions of law); *In re L.M.B.,* 284 N.C. App. 41 (2022) (Rule 63 applied when judge was unavailable for "other reason"); *In re R.P.*, 276 N.C. App. 195 (2021) (Rule 63 applied when judge resigned prior to signing orders); *In re J.M.*, 275 N.C. App. 517 (2020) (Rule 63 applied when first judge's term expired prior to remand from appellate court); *In re Savage*, 163 N.C. App. 195 (2004). If the chief judge of the district is disabled, the order can be signed by any district court judge in the judicial district designated by the director of the Administrative Office of the Courts. N.C. R. CIV. P. 63(2).

Rule 63 does not apply when a judge has recused themselves from a hearing. *Hudson v. Hudson*, 293 N.C. App. 87 (2024). In that circumstance, the substitute judge must conduct a new hearing rather than enter an order on behalf of the recused judge. *Hudson*, 293 N.C. App. 87 (vacating order signed by recused judge; remanding for new hearing).

Under Rule 63, the substitute judge's action in signing the order is a ministerial, not judicial act, and does not involve decision making. *In re Savage*, 163 N.C. App. 195. Signing an order on behalf of the judge who presided over the hearing is a ministerial act when the order is consistent with the oral rendition of the judgment and does not include substantive determinations made by the substitute judge. *In re L.M.B.*, 284 N.C. App. 41 (affirming TPR; order signed by chief district court judge for presiding judge was valid); *see In re E.D.H.,* 381 N.C. 395 (affirming TPR; order signed by chief district court judge for retired judge). A presumption of regularity applies to a chief district court judge signing and entering an order made by a judge who is unavailable and who made findings of fact and conclusions of law; the burden of overcoming the presumption by competent and substantial evidence is on the challenger. *In re E.D.H.,* 381 N.C. 395 (respondent did not meet burden of proving chief district court judge violated Rule 63 by signing the order without knowing whether the retired

judge had made the findings of fact and conclusions of law that appeared in the order; unchallenged finding was that retired judge did make the findings and conclusions).

Rendering and entering a judgment is more than a ministerial act, which exceeds the authority permitted under Rule 63. *In re R.P.*, 276 N.C. App. 195 (vacating and remanding adjudication orders; chief district court judge who signed orders after judge in hearing resigned exceeded Rule 63 authority by finding facts and making conclusions of law that were not reflected in the parties' stipulations or the oral statements of the judge taking the stipulations). "[A] substitute judge who did not preside over the matter lacks the power to find facts or state conclusions of law." *In re K.N.*, 381 N.C. 823, 829 (2022). Instead, the substitute judge must hold a new hearing. *In re K.N.*, 381 N.C. 823 (TPR vacated and remanded for new hearing; on remand from first appeal, substitute judge reviewed record, trial transcripts, and proposed findings of fact from the parties without taking new evidence; substitute judge made new detailed findings of fact and conclusions of law, contrary to Rules 52 and 63).

A substitute judge may perform limited and specific duties of an appellate mandate when the first judge is no longer available under the criteria of Rule 63. *In re J.M.*, 275 N.C. App. 517 (affirming adjudication; determining substitute judge did not exceed her authority when entering an adjudication order that followed the appellate remand for reconsideration of the adjudication within the proper statutory framework given a misapprehension of law in the adjudication of "serious neglect" versus "neglected juvenile;" substitute judge was bound by unchallenged findings, made findings consistent with first judge, did not resolve evidentiary conflicts, and concluded the juvenile was neglected).

If the substitute judge concludes that they are not able to sign the order for any reason, the judge may grant a new hearing. N.C. R. CIV. P. 63.

Resources:
For more information about Rule 63, see

- Cheryl Howell, *When can a judge sign an order or judgment for another judge?*, UNC SCHOOL OF GOV'T: ON THE CIVIL SIDE BLOG (Oct. 12, 2022).
- Ann Anderson, *"To Effectuate a Decision Already Made": The Role of a Substitute Judge Under Rule 63*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Dec. 13, 2017).

B. Findings of Fact and Conclusions of Law[1]

The Juvenile Code includes a number of specific requirements for the court's findings and conclusions in orders, and these requirements vary depending on the type and stage of the proceeding. In addition, Rule 52 of the Rules of Civil Procedure applies. *See, e.g., In re R.G.L.,* 379 N.C. 452 (2021); *In re K.R.C.,* 374 N.C. 849 (2020); *In re C.M.C.*, 373 N.C. 24 (2019). Findings of fact must be based on competent evidence in the record, and conclusions of law must be based on sufficient findings of fact. *In re J.A.M.*, 372 N.C. 1 (2019); *In re Patron*, 250 N.C. App. 375 (2016); *In re T.H.T.*, 185 N.C. App. 337 (2007), *aff'd as modified*, 362 N.C. 446 (2008). The North Carolina appellate courts have stated that "[t]he trial court is

[1] Some content in this section was sourced or adapted from Janet Mason, *Drafting Good Court Orders in Juvenile Cases*, JUVENILE LAW BULLETIN No. 2013/02 (UNC School of Government, Sept. 2013).

not, however, required to make findings of fact on all the evidence presented, nor state every option it considered." *In re I.E.M.*, 379 N.C. 221, 225 (2021) (quoting *In re E.S.*, 378 N.C. 8, 15 (2021)). *See also In re R.D.H., III*, 256 N.C. App. 467, 474 (2017) (originally unpublished Nov. 21, 2017, but subsequently published) (stating "the trial court is not required to make a finding of fact on every single piece of evidence [that] the trial court does not need to resolve material issues.").

1. Separation of findings of fact and conclusions of law. Rule 52(a) of the Rules of Civil Procedure governs court orders in bench trials and has been applied to juvenile proceedings. *See In re R.G.L,* 379 N.C. 452 (2021); *In re C.M.C.,* 373 N.C. 24 (2019); *In re D.E.M.*, 257 N.C. App. 618 (2018). Rule 52(a)(1) specifically requires that findings of fact and conclusions of law be stated separately. Appellate courts have noted that the failure to separate findings from conclusions can hinder appellate review and, in some cases, may prevent the appellate court from determining whether the order is supported by clear and convincing evidence, prompting a remand. *See In re T.M.M.*, 167 N.C. App. 801 (2005). See also Chapter 12.8 (explaining the standards of review for findings and conclusions). However, a mislabeled finding of fact or conclusion of law may be reviewed on appeal according to what it actually is rather that what it is incorrectly labelled. *In re J.A.M.,* 251 N.C. App. 114 (2016), *rev'd on other grounds*, 370 N.C. 464 (2018); *In re M.M.*, 230 N.C. App. 225 (2013); *see In re W.K.*, 379 N.C. 331, 334 (2021) (affirming TPR; trial court's classification of findings or conclusions "does not alter the fact that the trial court's determination concerning the extent to which a parent's parental rights in a child are subject to termination on the basis of a particular ground must have sufficient support in the trial court's factual findings" (quoting *In re N.D.A.*, 373 N.C. 71, 77 (2019), *abrogated in part on other grounds in In re G.C.*, 373 N.C. 1 (2023)); inclusion of ground of neglect at fact 88 and not in the conclusions of law section was not prejudicial error; findings support prior neglect and likelihood of future neglect); *In re J.K.F.,* 379 N.C. 247, 254 (2021) (affirming TPR; location of the court's willfulness finding in the conclusion of law, rather than the findings section, "has no bearing on its efficacy.").

2. Findings of fact. Facts have been described as "things in space and time that can be objectively ascertained by one or more of the five senses . . . [which] in turn, provide the bases for conclusions." *In re M.N.C.*, 176 N.C. App. 114, 121 (2006) (citation omitted); *see In re H.P.*, 278 N.C. App. 195, 205 (2021) (citation omitted). Detailed findings of fact are more than a mere formality or ritual, but instead are designed "to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system." *In re A.C.*, 378 N.C. 377, 391 (2021) (quoting *Coble v. Coble*, 300 N.C. 708, 712 (1980)).

In *In re G.C.*, 384 N.C. 62 (2023), the supreme court recently addressed the two types of facts: ultimate facts and evidentiary facts. Relying on past precedent, the supreme court explained the difference between ultimate and evidentiary facts: "[u]ltimate facts are the final facts required to establish a plaintiff's cause of action or the defendant's defense; and evidentiary facts are those subsidiary facts required to prove the ultimate facts." *In re G.C.*, 384 N.C. at 65 n. 3 (citation omitted). An ultimate finding is not a conclusion of law or a mixed question of law and fact, and to the extent any prior caselaw refers to an ultimate fact that way, those opinions are overruled by *In re G.C*. *See In re X.I.F.*, 297 N.C. App. 799 (2025) (discussing ultimate findings of fact and supreme court's overturning prior case law in *In re G.C.*); *In re N.R.R.N.*, 297 N.C. App. 673 (2025) (discussing supreme court's distinction between ultimate

findings and conclusions of law). Ultimate findings of facts are "*reached by natural reasoning* from the evidentiary findings of fact[,]" and "[t]he phrase 'reached by natural reasoning' means reached logically – in other words, the conclusion at which a reasonable person would arrive after considering all of the trial court's evidentiary findings." *In re L.C.*, 387 N.C. 475, 480–81 (2025) (emphasis in original) (citation omitted).

Certain issues related to findings of fact arise repeatedly in appellate cases:

- **Trial court's authority as fact finder.** The trial court has the authority to evaluate the credibility of evidence, determine the weight of the evidence, and make reasonable inferences from the evidence. *See, e.g., In re E.H.*, 294 N.C. App. 139 (2024), *rev'd in part on other grounds*, 388 N.C. 100 (2025) (affirming abuse adjudication; trial court weighed conflicting expert testimony regarding infant's serious physical injuries and found evidence presented by DSS expert testimony that the injuries were nonaccidental more credible than parents' expert witnesses which the court found lacked credibility); *In re B.J.H.*, 378 N.C. 524 (2021) (affirming TPR; court believed social worker's testimony over that of father's; court made reasonable inference regarding mother's refusal to submit to drug screens); *see In re S.D.*, 374 N.C. 67, 85 (2020) (trial court determined father's testimony was not credible, "which is a determination that it is entitled to make without fear of appellate court reversal. . . ."). The appellate court will not reweigh the evidence. *See, e.g., In re B.C.*, 298 N.C. App. 153, 164 (2025) (affirming abuse and neglect adjudications; vacating dependency adjudication; stating mother's challenges to the findings "appear to be requests that this Court reweigh the evidence or second-guess the district court's credibility determinations, which is not our role"); *In re L.H.*, 378 N.C. 625 (2021) (affirming TPR; findings were supported by the evidence); *In re N.P.*, 374 N.C. 61 (2020); *In re S.D.*, 374 N.C. 67. When "a different inference may be drawn from the evidence, the trial court alone determines which inferences to draw and which to reject." *In re M.M.*, 272 N.C. App. 55, 69 (2020) (quoting *In re T.H.T.*, 185 N.C. App. 337, 343 (2007)); *see In re G.B.G.*, 297 N.C. App. 772 (2025) (affirming dismissal of neglect and dependency petition; trial court was free to draw inferences from the evidence).

  For further discussion, see Chapter 12.8.C.

- **Recitation of allegations**. A number of appellate decisions have held that findings of fact must consist of more than mere recitations of the allegations in the petition. *See, e.g., In re O.W.,* 164 N.C. App. 699 (2004) (remanding the case where findings were a mere recitation of the allegations and were not sufficiently specific); *In re Harton*, 156 N.C. App. 655 (2003) and *In re Anderson*, 151 N.C. App. 94 (2002) (both citing Rule 52 and discussing the disfavor of mere recitation in context of a permanency planning order).

  However, in the case *In re J.W.*, 241 N.C. App. 44 (2015), the court of appeals sought to clarify such decisions and held that it is not *per se* reversible error for findings of fact to mirror the wording of a party's pleading. Instead, the determination of whether findings of fact are sufficient depends on an examination of the record of the proceedings and whether they "demonstrate that the trial court, through process of logical reasoning, based on the evidentiary facts before it, found the ultimate facts necessary to dispose of the case." *In re J.W.*, 241 N.C. App. at 48 (citations omitted) (quoted in *In re N.R.R.N.*, 297 N.C. App. at 678 and *In re R.B.*, 280 N.C. App. 424, 431 (2021)). In its reasoning, the court of appeals

acknowledged that trial judges often rely on counsel to assist in drafting orders and stated the need to avoid imposing on counsel the obligation "to eliminate unoriginal prose." *In re J.W.*, 241 N.C. App. at 45. *See also In re A.B.*, 253 N.C. App. 29 (2017) (the ultimate finding as to a parent's reasonable progress must be the result of a process of logical reasoning based on the evidentiary facts found by the court).

The trial court must make the ultimate findings of fact to dispose of the case, which allows "for the appellate court to determine that the judgment is adequately supported by competent evidence." *In re R.B.*, 280 N.C. App. at 431 (quoting *In re Anderson*, 151 N.C. App. at 97). "Ultimate facts are the final resulting effect reached by processes of logical reasoning from the evidentiary facts." *In re H.P.*, 278 N.C. App. at 202 (quoting *In re Anderson*, 151 N.C. App. at 97); *see In re G.C.,* 384 N.C. at 66 n. 3. Rule 52 does not require a recitation of the evidentiary and subsidiary facts to prove the ultimate facts but does require specific findings of the ultimate facts that are established by the evidence (including admissions and stipulations) that are determinative of the questions involved in the action and are essential to support the conclusion of law. *In re R.G.L.*, 379 N.C. 452 (2021).

Recent cases considering orders containing verbatim recitations of allegations are consistent with *In re J. W.,* 241 N.C. App. 44. *See In re N.R.R.N.*, 297 N.C. App. 673 (affirming neglect adjudication and vacating abuse adjudication; review of the findings, some of which were verbatim recitations of the allegations in the petition, show the court independently made the ultimate findings of fact using logical reasoning based on the evidence before it, including the limited testimony of the social worker, the petition, and prior orders of the sibling); *In re R.G.L.,* 379 N.C. 452 (affirming TPR; differences between the court's findings and the allegations in the TPR motion show the trial court independently reviewed and judged the evidence and show the court's reasoning for its conclusion regarding the grounds of neglect and failure to make reasonable progress to correct the conditions that led to the child's adjudication as father failed to engage in services and continued to use substances); *In re H.P.*, 278 N.C. App. at 205 (reversing and remanding for dismissal of the adjudication of neglect for required findings; trial court recited allegations in exhibit attached to petition and did not make ultimate findings of fact; four of the allegations recited showed there was insufficient evidence to support other allegations that were accepted as fact; finding that refrigerator was broken without any findings addressing nutrition "exemplifies the difference between a finding that recites the evidence and a finding that resolves a material issue of ultimate fact"); *In re R.B.,* 280 N.C. App. 424 (reversing and remanding adjudication of neglect for findings; trial court did not make its own ultimate findings of fact; order merely recites allegations in the petition); *In re L.C.,* 253 N.C. App. 67 (2017) (considering only those findings that are supported by evidence in the record regardless of whether those findings mirror the allegations in the petition); *In re L.Z.A.,* 249 N.C. App. 628 (2016) (while "several" findings were verbatim recitations of allegations, other substantive findings made after several days of witness testimony did not mirror language in the petition and supported the order's conclusions; moreover, the trial court's discussion of a proposed order with the parties and subsequent modification of a proposed finding demonstrated an independent decision-making process); *In re A.B.,* 245 N.C. App. 35, 44 (2016) (trial court thoughtfully considered the evidence and independently determined the facts even though

one of seventy findings contained "unoriginal prose"); *In re M.K.,* 241 N.C. App. 467 (2015) (trial court applied a process of logical reasoning and supported its adjudication of neglect with six substantive findings, even though twelve findings were disregarded as verbatim recitations of allegations).

Allegations from the petition that are included in the order must be supported by record evidence; otherwise, the finding will be disregarded. In *In re T.R.W*., 294 N.C. App. 57 (2024), four of the challenged findings of fact appeared to be recitations of the allegations that were unsupported by the evidence. Those disregarded findings along with other challenged findings that were unsupported by the evidence resulted in the reversal of a TPR against the father.

In *In re A.B*., 253 N.C. App. 29 (2017), respondent claimed that a TPR order included findings that were copied from prior orders in the case. The findings at issue were viewed as specific findings regarding respondent's progress at each prior hearing, with the court noting that whether the findings were copied from prior orders was "irrelevant" when respondent had not claimed that the findings were not supported by the evidence.

- **Recitation of testimony and sufficient specificity**. A recitation of testimony is not a finding of fact. *In re D.T.H*., 378 N.C. 576 (2021); *In re A.C.,* 378 N.C. 377. Findings must consist of more than mere recitation of the testimony of witnesses, and they must be sufficiently specific to allow an appellate court to review the decision and test the correctness of the judgment. A finding of fact by the court reflects a determination that evidence is credible and sufficiently clear and convincing to permit the court to say that something is a fact. For example, the statement "Dr. Lee testified that the child's injuries could not have been caused accidentally" is a recitation of testimony, whereas the statement "the child's injuries could not have been caused accidentally" is a finding of fact based on the court's determination that the doctor's testimony was credible, clear, and convincing. *See, e.g., In re D.T.H*., 378 N.C. 576 (TPR reversed and remanded; findings of fact that recited testimony were disregarded by supreme court); *In re N.D.A.,* 373 N.C. 71 (2019) (a recitation of testimony does not constitute a finding of fact; appellate court compelled to disregard that sentence in the challenged finding); *In re M.M.,* 230 N.C. App. 225 (holding that many of the trial court's findings were actually recitations of assertions made by parties and witnesses or even arguments by attorneys); *In re H.J.A.,* 223 N.C. App. 413 (2012) (holding that the trial court's findings of fact were insufficient, although it had recited testimony that might support the required findings).

  In a recent opinion, the supreme court recognized a limited circumstance for when a recitation of testimony is a finding of fact. The supreme court stated while the best practice "is to err on the side of too much detail when making creditability determinations and written findings of fact[,]" when a finding of fact recites evidence that is "a statement against interest . . . [the reviewing court] may assume that the trial court found it credible without the trial court expressly characterizing it as such." *In re L.C.*, 387 N.C. 475, 482, 483 n.10 (reversing the court of appeals' vacating and remanding trial court's neglect adjudication order based on insufficient findings; holding the trial court did not err in reciting mother's testimony admitting to her use of controlled substances during her pregnancy in its findings of fact without stating whether it found the evidence credible). The supreme court likened the recitation of testimonial statements against interest without

an explicit credibility determination to Rule 804(b)(3) of the Rules of Evidence providing that declarant statements against interest are exceptions to the rule against hearsay, reasoning that a reasonable person would not make an admission against their interest unless the statement was credible. Citing to *In re L.C.*, the supreme court later emphasized the narrow scope of this exception, stating "[a]n argument made in support of a party's requested relief is not a statement against interest[,]" and as such, the exception has no bearing. *In re A.D.H.*, 388 N.C. 578, 588 n.5 (2025) (holding the trial court erred in dismissing the juvenile petition based on the doctrine of collateral estoppel; concluding the trial court failed to make findings of fact regarding father's abuse of the child in the prior interference petition order where the order's findings recited father's counsel's arguments surrounding the abuse allegations with no determinations made as to evidence presented to the court on the issue).

The supreme court has also stated, "there is nothing impermissible about describing testimony, so long as the court ultimately makes its own findings, resolving any material disputes." *In re A.E.*, 379 N.C. 177, 185 (2021) (quoting *In re T.N.H.*, 372 N.C. 403, 408 (2019)). If the court determines the relevant portions of the described testimony is credible, that is a finding of fact. *See In re A.E.*, 379 N.C. 177. Findings that consist merely of recitation of witness testimony, demonstrated by the witness "testified" or "stated," are not findings and are disregarded, but other findings that resolve the material dispute in the evidence are considered on appeal. *In re A.E.*, 379 N.C. 177; *see In re R.H.*, 295 N.C. App. 494, 499 (2024), (disregarding five findings of fact reciting testimony of mother, a social worker, and a law enforcement officer; quoting *In re A.E.* and stating "the trial court recited testimony without any indication that it evaluated the credibility of the relevant witness"); *In re A.C.,* 378 N.C. at 384 (recitation of witness testimony, shown by the words "testified," "contends," or "indicated," is not a finding of fact and will be disregarded on appellate review).

Although not testimony, the court of appeals has stated that a "trial court's findings may not be 'mere recitations of statements made to DSS.' " *In re H.P.*, 278 N.C. App. at 204 (reversing and remanding for dismissal of the adjudication of neglect; trial court findings recited statements made by the children and by respondent mother to the DSS social worker, a statement by the DSS social worker, and a statement by the neighbor; none of the individuals testified; there are no findings about whether the statements are true).

- **Findings based on reports, documents, and prior orders.** Juvenile proceedings typically involve multiple reports and documents. Depending on the respondent's past history with DSS or the stage of the specific abuse, neglect, or dependency action, the juvenile proceeding may involve prior court orders. A court may consider a prior order but should not merely incorporate the prior order. *In re N.R.R.N.*, 297 N.C. App. 673 (in making findings of fact in neglect adjudication, trial court properly considered sibling's prior adjudication and disposition orders relating to unexplained injuries sustained at a similar age to the child alleged neglected); *In re B.P.*, 257 N.C. App. 424 (2018) (in neglect adjudication, trial court properly considered prior orders when making independent findings of fact). In *In re T.N.H.,* 372 N.C. 403, the supreme court adopted the court of appeals precedent that a trial court may take judicial notice of findings in a prior court order but may not rely solely on prior court orders and reports. *See In re A.E.*, 379 N.C. 177 and *In re A.C.,* 378 N.C. 377 (both discussing judicial notice of prior court orders at

TPR adjudication hearing). The trial court must take some oral testimony and make an independent determination based on the evidence that is presented at the hearing. *In re A.E.*, 379 N.C. 177; *In re A.C.,* 378 N.C. 377; *In re T.N.H.,* 372 N.C. 403; *see In re J.C.M.J.C.*, 268 N.C. App. 47 (2019) (trial court could not rely solely on findings from nonsecure custody order when making adjudicatory findings). *But see In re K.W.*, 272 N.C. App. 487 (2020) (exception for initial dispositional hearing when no new evidence is presented; initial disposition is second step of two-step adjudication and initial dispositional procedure).

A report or other document simply attached to an order does not by itself constitute findings of fact. When reports and documents are evidence that the court considered at the hearing, they do not need to be attached to an order. When they (or portions of them) are being incorporated by reference as findings of fact, or the court is finding as a fact that the document exists, they should be attached to the order and the order should specify what the attachment is and why it is being attached. However, the court should incorporate by reference sparingly, and then only if accompanied by the court's own specific findings related to what is incorporated. *See In re B.C.*, 298 N.C. App. 153 (finding no error where the trial court's order adopted the findings of the expert witness's report after determining credibility and resolving disputed material facts from the evidence presented); *In re R.L.G.,* 260 N.C. App. 70, 80 (2018) (incorporation of pre-adjudication order was insufficient for findings of fact and could not support adjudication of neglect; stating "the trial court may not delegate its fact finding duty by relying wholly on DSS reports and prior court orders" (quoting *In re Z.J.T.B.*, 183 N.C. App. 380, 386–87 (2007))); *In re K.L.*, 254 N.C. App. 269, 280 (2017) (incorporated documents "may support a finding of fact; however, merely incorporating the documents by reference is not a sufficient finding of fact"; incorporating by reference findings from previous orders in the case did not result in findings sufficient to support a permanency planning order); *In re H.J.A.*, 223 N.C. App. 413 (2012) (the trial court's order referencing the GAL and DSS reports without making specific findings about those reports was insufficient); *In re C.M.*, 183 N.C. App. 207 (2007) (finding no error in incorporating reports where the trial court did not simply adopt reports but made separate findings based upon them).

Similar to recitations of witness testimony, "it is not error for a court to include verbatim portions of reports as findings of fact, so long as the findings demonstrate the court's logical reasoning in making the necessary ultimate factual determinations." *In re B.C.*, 298 N.C. App. 153 (trial court used logical reasoning when making findings that used the wording of evidentiary materials as well as its own independent findings of fact;), *citing In re J.W.*, 241 N.C. App. 44. It is also not error if resources the expert consulted when making their opinion are not admitted as evidence. *In re B.C.*, 298 N.C. App. 153 (holding no error when the trial court included a list of resources consulted by the forensic examiner in forming their opinion, which included court orders, interviews with family members, photos, medical records, and affidavits).

- **Findings based on evidence.** Findings of fact must be based on evidence that is actually presented and admitted by the court. *See In re C.W.*, 182 N.C. App. 214 (2007) (finding that the trial court's order and its findings of fact contained information that was neither introduced nor admitted at trial); *In re A.W.*, 164 N.C. App. 593 (2004) (finding error where the trial court based findings of fact for adjudication on a report that was not

introduced at adjudication). The issue of what constitutes competent evidence is discussed in Chapter 11, but note that statements by counsel are not evidence and do not support findings of fact. *In re D.L.*, 166 N.C. App. 574 (2004); *In re J.T.*, 252 N.C. App. 19 (2017). Findings of fact based solely on reports without any testimony are not based on competent evidence. *In re S.P.,* 267 N.C. App. 533 (2019) (vacating and remanding permanency planning order; holding DSS and GAL reports without testimony were insufficient to support findings; attorney arguments are not testimony); *see also In re A.E.*, 379 N.C. 177 (agreeing with court of appeals; there must be some oral testimony at the hearing and not a sole reliance on prior orders and reports); *In re C.M.B.,* 266 N.C. App. 448 (2019) (holding no evidentiary hearing was ever held when court heard only arguments, no sworn testimony, and motions were unverified). When a case is appealed, the issue of whether there is sufficient evidence to support the findings may be raised regardless of whether that issue was raised in the trial court. *But see In re K.W.*, 272 N.C. App. 487 (exception for initial dispositional hearing when no new evidence is presented; initial disposition is second step of two-step adjudication and initial dispositional procedure).

- **Specific findings required by the Juvenile Code.** Many provisions in the Juvenile Code require the court to make very specific findings to support specific types of orders and/or to reflect appropriate consideration of statutory criteria in various stages of the proceedings. When determining what findings must be included in an order, it is important to look at the language of the statute and whether it requires written findings on all/each enumerated factor or only relevant factors. *Compare* G.S. 7B-906.1(n) ("each") *with* G.S. 7B-906.1(d) ("those that are relevant"). In many appellate cases, failure of the trial court to make findings required by the Juvenile Code has led the appellate court to reverse, vacate, and/or remand the trial court's order. *See, e.g.*, *In re D.S.*, 260 N.C. App. 194 (2018) (failure to make required finding under G.S. 7B-903(a1))

  The North Carolina Supreme Court in the case *In re L.M.T.*, 367 N.C. 165 (2013) (*superseded in part by statute as stated in In re J.M.*, 384 N.C. 584, 594 n.5 (2023)), rejected the argument that findings must include the exact statutory wording, emphasizing practical application of the law so that the best interests of the child are the paramount concern. Examining a permanency planning order for compliance with statutory requirements (then, G.S. 7B-507), the supreme court held that findings of fact do not need to quote the precise language of the statute but must "address the substance of the statutory requirements," noting also that "use of the precise statutory language will not remedy a lack of supporting evidence for the trial court's order." *In re L.M.T.*, 367 N.C. at 165, 168. Other opinions have applied the holding of *In re L.M.T.* when determining whether challenged findings satisfy the substance of the statutory language when the exact wording was not used. *See, e.g., In re L.L.*, 386 N.C. 706 (2024); *In re J.M.*, 384 N.C 584.

3. Conclusions of law. The distinction between findings of fact and conclusions of law can be difficult to make. "As a general rule, . . . any determination requiring the exercise of judgment or the application of legal principles" is a conclusion of law, and a "determination reached through 'logical reasoning from the evidentiary facts' " is a finding of fact. *In re A.B.*, 179 N.C. App. 605, 612 (2006) (quoting *In re Helms*, 127 N.C. App. 505, 510 (1997)); *see In re H.P.*, 278 N.C. App. 195 (2021).

The determination at an adjudicatory hearing of whether the child is an abused, neglected, or dependent juvenile is a conclusion of law because it requires the exercise of judgment and application of legal principles. *See, e.g.*, *In re H.P.*, 278 N.C. App. 195; *In re A.B.*, 179 N.C. App. 605; *In re Helms*, 127 N.C. App. 505. In dispositional orders, determinations of reasonable efforts and best interests are conclusions of law because they require an exercise of judgment. *See In re H.P.*, 278 N.C. App. 195; *In re J.R.S.*, 258 N.C. App. 612 (2018) (speaking to best interest determination); *In re Helms*, 127 N.C. App. 505 (speaking to reasonable efforts and best interest determinations). However, the trial court's failure to properly characterize a statement as a finding of fact or conclusion of law is not fatal if the necessary findings and conclusions are present in an order. *In re Helms*, 127 N.C. App. 505.

Conclusions of law must be supported by findings of fact. Where specific findings required by a particular statute are not made or are not specific or strong enough to support the conclusions, appellate courts will not affirm the trial court's order. *See In re V.M.,* 273 N.C. App. 294 (2020) (reversing and remanding adjudication of neglect when cursory findings of fact did not support conclusion); *In re B.P.,* 257 N.C. App. 424 (2018) (reversing neglect and dependency adjudications when findings of fact did not support conclusions); *In re E.B.*, 256 N.C. App. 27, 33 (2017) (concluding "the trial court's vague findings regarding domestic violence lack the required specificity necessary to 'enable an appellate court to review the decision and test the correctness of the judgment' "); *In re I.K.*, 227 N.C. App. 264 (2013) (reversing a permanency planning order where there were inconsistent findings and evidence, including findings that there was a risk of sexual abuse by the father and that the father should have unsupervised visitation); *In re H.J.A.*, 223 N.C. App. 413 (2012) (holding that the trial court erred where findings did not specify which parent particular findings referred to and specific findings required by 7B-907(b), now found in G.S. 7B-906.1, were not made).

For findings of fact to support conclusions of law, they must not be inconsistent with those conclusions. In the case *In re A.B.*, 239 N.C. App. 157 (2015), the court of appeals reversed the trial court's order terminating a mother's parental rights where the court's conclusions contradicted its findings and some of its findings contradicted other findings.

Practice Note: While parties may stipulate to facts, they may not stipulate to conclusions of law. *See In re A.K.D.*, 227 N.C. App. 58 (2013). See also Chapter 6.3.D.1 related to stipulations.

Resource: Janet Mason, *Drafting Good Court Orders in Juvenile Cases*, JUVENILE LAW BULLETIN No. 2013/02 (UNC School of Government, Sept. 2013).

C. Entry and Service of the Order

1. What constitutes entry. The Juvenile Code provides for orders to be entered and served in accordance with Rule 58 of the Rules of Civil Procedure. *See* G.S. 7B-1001(b). The purpose of Rule 58 is "to make the time of the entry of judgment easily identifiable, and to give fair notice to all the parties that a judgment has been entered." *Thiagarajan v. Jaganathan*, 289 N.C. App. 105, 107 (2023) (citation omitted).

An order is not entered until it is reduced to writing, signed by the judge, and filed with the clerk pursuant to Rule 5. N.C. R. CIV. P. 58. *See In re A.U.D.*, 373 N.C. 3 (2019); *In re J.T.C.*,

273 N.C. App. 66, 66 n. 1 (2020) (noting there were two orders in the record that were file-stamped on the same date, one signed earlier by the assistant clerk on behalf of the judge and one signed at a later date by the judge; determining the later order that satisfied all three requirements of Rule 58 was the entered order); *In re O.D.S.,* 247 N.C. App. 711 (2016) (extensively discussing pre- and post-1994 amendments to Rule 58 of the Rules of Civil Procedure, with applicable case law, and the impact of those amendments on when an order is entered versus orally rendered); *In re Pittman*, 151 N.C. App. 112 (2002). This means that when the judge makes an oral announcement (or rendition) of their order in open court, the order does not become enforceable until it is reduced to writing, signed by the judge, and filed with the clerk of court. *See McKinney v. Duncan*, 256 N.C. App. 717 (2017); *Carland v. Branch,* 164 N.C. App. 403 (2004); *see also In re O.D.S.,* 247 N.C. App. at 722 (stating "no order or judgment had been entered at that time, and therefore, no party was bound by the judgment").

Because an oral rendition is not an entry of a judgment, it is subject to change, meaning the trial court is not required to adhere to the rendition when making and entering its written order. *In re S.D.C.*, 381 N.C. 152 (2022) (holding no error when difference between the rendered findings and the findings in the entered written order existed); *In re A.U.D.,* 373 N.C. 3 (oral findings made by a trial court are subject to change prior to the entry of the final written order) (*quoted in In re M.A.*, 378 N.C. 462 (2021)); *In re O.D.S.,* 247 N.C. App. 711 (holding the court was not bound by the oral rendition to terminate parental rights based on neglect when it included both neglect and dependency as grounds to TPR in the written entered order; reasoning it is not bound by the holding in *In re J.C.*, 236 N.C. App. 558 (2014) to the extent *In re J.C* conflicts with prior holdings of the court of appeals or supreme court and can be distinguished from the current case before it).

A court may also consider evidence presented after its oral rendition but before it enters a written judgment. *In re O.D.S.,* 247 N.C. App. 711, and cases cited therein. A trial court's misapprehension of when an order terminating parental rights was entered led to a reversal in the case *In re B.S.O.*, 225 N.C. App. 541 (2013). The trial court has broad discretion to re-open a case and admit additional testimony after the conclusion of the evidence, after argument of counsel, even weeks after the original hearing, or when the "ends of justice require." *In re B.S.O.*, 225 N.C. App. at 543. In *In re B.S.O.,* which cites cases on this principle, the trial court refused to exercise its discretion to take additional evidence because it thought a valid order terminating parental rights had been entered, when in fact the order was not final because it had not been reduced to writing.

Resource: For more information about entering an order versus oral renditions, see Cheryl Howell, *Rule 58 and Entry of Civil Judgments: Statements from the bench are not court orders*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (May 3, 2017).

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2. Serving the order. Rule 58 of the Rules of Civil Procedure requires that the party designated by the judge or the party who prepares the judgment serve a copy of the order on all other parties within three days after the judgment is entered. Service is pursuant to Rule 5 of the Rules of Civil Procedure. Statutory provisions for termination of parental rights (TPR) actions specifically require counsel for the petitioner or movant to serve a copy of the TPR

order on the guardian ad litem for the child (if there is one) and on the child if the child is 12 or older. G.S. 7B-1110(d).

Service of the order by mail adds three days to the time within which a party may

- file a motion to amend the findings or the judgment, under Rule 52(b), or
- file a motion for a new trial, under Rule 59.

In addition, the time period for filing these motions is tolled for any period of noncompliance with the service provisions, but not longer than ninety days. N.C. R. CIV. P. 58.

G.S. 7B-1001(b) requires that notice of appeal be given "within thirty days after entry and service of the order in accordance with . . . Rule 58." Thus, the time within which notice of appeal must be given does not begin to run until both entry and service have occurred. For details related to notice of appeal, see Chapter 12.5.

D. Time Requirements for Orders

When an order is entered impacts the progression of the juvenile proceeding. There are strict time requirements for the entry of orders in the Juvenile Code, which have the purpose of expediting outcomes for children and are consistent with the purpose of the Juvenile Code to achieve safe, permanent homes for children within a reasonable period of time. *In re T.H.T.*, 362 N.C. 446 (2008); *see* G.S. 7B-100(5). Delays in entering orders are directly contrary to the best interests of the children involved. *In re T.H.T.*, 362 N.C. 446; *In re S.Z.H.*, 247 N.C. App. 254 (2016). Additionally, "Canon 3B(1) of the North Carolina Code of Judicial Conduct requires a judge to 'diligently discharge the judge's administrative responsibilities[.]' " *Sternola v. Aljian*, 293 N.C. App. 166, 173 (2024) (instructing trial judge on remand to make findings of fact to explain the twenty-one-month delay in entering the child support order).

1. Entry of order within thirty days. Orders for all of the following hearings must be in writing, include appropriate findings of fact, and be entered (signed by judge and filed with clerk) within thirty days of completion of the hearing:

- continued nonsecure custody, G.S. 7B-506(d);
- adjudication of abuse, neglect, or dependency, G.S. 7B-807(b);
- disposition in abuse, neglect, or dependency case, G.S. 7B-905(a);
- review, G.S. 7B-906.1(h);
- permanency planning, G.S. 7B-906.1(h);
- placement on the Responsible Individuals List, G.S. 7B-323(d);
- expungement from the Responsible Individuals List, G.S. 7B-325(g), enacted by S.L. 2025-16, sec.1.19(b), effective October 1, 2025;
- hearing on unknown parent in a TPR action, G.S. 7B-1105(e);
- TPR adjudication and disposition, G.S. 7B-1109(e); 7B-1110(a);
- post-TPR review hearing, G.S. 7B-908(e1); and
- reinstatement of parental rights, G.S. 7B-1114(*l*).

2. Clerk's duty to reschedule when entry is late. For certain orders, the Juvenile Code requires that the clerk schedule a special hearing when the order is not entered within the thirty-day time requirement and requires that an order be entered with ten days after the special hearing:

- adjudication of abuse, neglect, or dependency, G.S. 7B-807(b);
- dispositional order in abuse, neglect, or dependency case, G.S. 7B-905(a);
- review, G.S. 7B-906.1(h);
- permanency planning, G.S. 7B-906.1(h);
- TPR adjudication and disposition, G.S. 7B-1109(e); 7B-1110(a);
- post-TPR review hearing, G.S. 7B-908(e1); and
- reinstatement of parental rights, G.S. 7B-1114(*l*).

The hearings required by these statutes must be scheduled by the clerk at the first session of court scheduled for the hearing of juvenile matters after the thirty-day period expires. The purpose of the hearing is to determine and explain the reason for the delay and to obtain any needed clarification about the contents of the order. If the order is not entered within thirty days after the applicable substantive hearing and the clerk has not scheduled a subsequent hearing to address the delay, a party should file a request for such a hearing with the clerk. *See In re T.H.T.*, 362 N.C. 446 (2008).

3. Remedy for untimely orders is mandamus. The appropriate remedy for a trial court's failure to enter a timely order is not a new hearing or an appeal. It is a petition to the appellate court for which an appeal of right lies for a writ of mandamus to require the trial court to proceed to judgment. *In re T.H.T.*, 362 N.C. 446 (2008); *State v. Diaz-Tomas,* 271 N.C. App. 97 (2020); *In re S.Z.H.,* 247 N.C. App. 254 (2016) (setting out the remedy of mandamus when a termination order was entered nearly six months after the adjudicatory and dispositional hearing in violation of G.S. 7B-1109(e) and 7B-1110(a)). Application for a writ of mandamus is made pursuant to Rule 22 of the North Carolina Appellate Rules. In describing the remedy of mandamus, the North Carolina Supreme Court specified these required elements:

- the petitioner seeking relief must show a clear legal right to the act requested;
- the respondent must have a clear legal duty to perform the act;
- the duty must relate to a ministerial act, not an act requiring the exercise of discretion (mandamus may be used to compel an official to exercise their discretion, but not to direct what the result should be);
- the respondent must have neglected or refused to perform the act and the time to act expired; and
- there must not be an alternative legally adequate remedy.

In re T.H.T., 362 N.C. 446.

When a court fails to enter an order within thirty days of completion of the applicable hearing, schedule a hearing to address the delay, and/or enter an order within ten days following that hearing, a party may petition the court of appeals for a writ of mandamus. *In re T.H.T.*, 362 N.C. 446.

Resource: For a further discussion see Sara DePasquale, *Tick Tock: Mandatory Time Requirements to Enter A/N/D and TPR Orders*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (May 10, 2017).
