# Chapter 12
# Appeals


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## 12.1 Scope of Chapter

This Chapter addresses general characteristics of appeals in abuse, neglect, dependency, and termination of parental rights (TPR) cases and issues that trial attorneys and trial court judges encounter in connection with these appeals. This Chapter does not comprehensively discuss appellate procedure.

The Juvenile Code addresses certain aspects of appeals, including who can appeal, which orders can be appealed, and notice of appeal. However, appeals in abuse, neglect, dependency, and TPR proceedings are governed primarily by the North Carolina Rules of Appellate Procedure (Rules of Appellate Procedure or Appellate Rules). Appellate Rule 3.1 applies to appeals of juvenile orders designated by G.S. 7B-1001.

**Resources:**
The "Appellate Reporter" page of the North Carolina Judicial Branch (NC Judicial Branch) website includes the following links:

- "Court Rules," which includes the current codification of the NORTH CAROLINA RULES OF APPELLATE PROCEDURE and recent orders of the North Carolina Supreme Court amending those Rules.
- "Opinions" decided by the North Carolina Supreme Court and Court of Appeals.

The "Supreme Court" page of the NC Judicial Branch website includes the following links:

- "Calendars of Arguments" and "Dockets."
- Under "Additional Resources," THE GUIDEBOOK: CITATION, STYLE, AND USAGE AT THE SUPREME COURT OF NORTH CAROLINA (3rd Edition) (June 14, 2023).

The "Court of Appeals" page of the NC Judicial Branch website includes the following links:

- "Calendar of Oral Arguments" and "Dockets."
- The North Carolina Court of Appeals "Legal Standards Database" (last revised July 26, 2016), with sections on "Appellate Process," "Evidentiary Matters," and "Juvenile Proceedings").

The North Carolina Bar Association maintains a page on its website addressing Appellate Rules and includes a "Useful Resources and Links" section.

## 12.2 Parties and Representation

### A. Who Can Appeal

**1. Parties on appeal.** G.S. 7B-1002 limits who has standing to appeal an order designated in G.S. 7B-1001 to

- the juvenile, acting through a guardian ad litem (if one has not been appointed under G.S. 7B-601, the court must appoint a Rule 17 GAL for purposes of the appeal);
- a county department of social services (DSS);

- a parent, guardian, or custodian who is not a prevailing party (for a discussion of parent, guardian, and custodian, see Chapters 2.4.A and 2.5.A); and
- any party who sought but failed to obtain a termination of parental rights.

*See In re M.N.*, 260 N.C. App. 203 (2018); *In re J.C.B.*, 233 N.C. App. 641 (2014). See also section 12.4, below, for a discussion of appealable orders under G.S. 7B-1001.

**Note,** for purposes of this Manual, a "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.

Standing is jurisdictional, and a party invoking the jurisdiction of the appellate court has the burden of proving that they have standing to file an appeal. *In re L.C.*, 293 N.C. App. 380 (2024), *rev'd on other grounds*, 387 N.C. 475 (2025); *In re J.L.*, 264 N.C. App. 408 (2019); *In re T.B.*, 200 N.C. App. 739 (2009). A motion to dismiss an appeal must be made by motion under Appellate Rule 37 and should not be raised for the first time in a brief to the appellate court; this includes a motion to dismiss based on a lack of standing. *In re J.L.*, 264 N.C. App. 408 (deciding the issue of standing because it is jurisdictional despite it being raised for first time in a brief). The appellate court may raise the issue sua sponte. *In re Z.A.N.L.W.C.*, 297 N.C. App. 698 (2025).

Whether an appellant has standing to appeal arises most commonly when a party in the abuse, neglect, or dependency proceeding fails to prove their standing pursuant to G.S. 7B-1002(4) as a parent, guardian, or custodian who is a nonprevailing party. That failure to prove standing results in the dismissal of the appeal. *See In re T.H.,* 232 N.C. App. 16 (2014); *In re J.C.B.*, 233 N.C. App. 641; *In re T.B.*, 200 N.C. App. 739; *In re A.P.*, 165 N.C. App. 841 (2004). The court of appeals has held that a Rule 17 guardian ad litem (GAL) for a respondent parent is not a "proper party" under G.S. 7B-1002 who can give written notice of appeal under G.S. 7B-1001(c). *In re Z.A.N.L.W.C.*, 297 N.C. App. 698 (relying on *In re L.B.*, 187 N.C. App. 326 (2007)).

A party that is designated by G.S. 7B-1002 as a "proper party" for appeal has standing to appeal even when they have not been served with the initiating petition and have not appeared at the hearing resulting in the order being appealed. *See In re E.J.*, 225 N.C. App. 333 (2013) (holding the respondent mother who was not served with the neglect and dependency petition and did not appear at the hearing had standing to appeal the adjudication and initial dispositional order because G.S. 7B-1002(4) makes it clear that a parent is a proper party to appeal).

**(a) Parent.** The Juvenile Code does not define "parent" and does not address the status of a putative father. Yet, a child's parents should be identified and named as respondent parties in an abuse, neglect, or dependency proceeding, unless a statutory exception applies. *See* G.S. 7B-401.1(b); 7B-506(h)(1); 7B-800.1(a)(3); 7B-901(b). When discussing who must sign a notice of appeal when a respondent parent has a Rule 17 GAL appointed to them, the court of appeals dismissed an appeal of a TPR order for lack of jurisdiction when the mother did not sign the notice of appeal but her appointed Rule 17 GAL and attorney both did. One basis for its decision was that a respondent parent's GAL is not identified as a proper party with standing to appeal under G.S. 7B-1002. *In re Z.A.N.L.W.C.*, 297 N.C. App. 698 (2025). See Section 12.5.A.4. below discussing signatures and Chapter 2.4.G (discussing GALs for respondent parents).The legal relationship and rights of a biological

parent to their child are severed by the child's adoption. G.S. 48-1-106(c). *But see* G.S. 48-1-106(c), as amended by S.L. 2025-16, sec. 1.18(d), effective October 1, 2025 (recognizing a former parent's rights under a post-adoption contact agreement and order), and (d) (exception in a "stepparent adoption" for the child's biological parent who is the spouse or former spouse of the stepparent adoption petitioner). Except for a stepparent adoption, a biological (or adoptive) parent of a child who has been adopted by another person has no parental rights and therefore no standing to appeal as a parent an order entered in a juvenile proceeding. *In re T.H.*, 232 N.C. App. 16.

The court of appeals addressed the issue of a parentage for a same-sex couple who were never married in *In re L.C.*, 293 N.C. App. 380, *rev'd on other grounds*, 387 N.C. 475. Although listed on the child's birth certificate as "father," the unmarried mother's same-sex partner was not a parent. The court of appeals explained that North Carolina law does not provide a method for the unmarried mother's partner to be recognized as a parent, even if they are acting as a parent, except for an adoption that would have required the termination of mother's parental rights. The trial court should not have accepted without question the unmarried same-sex partner's legal status as "father." The partner was not a parent legally or biologically; instead, she was a caretaker.

**(b) Stepparent.** In *In re M.S.*, 247 N.C. App. 89 (2016), the court of appeals held that a stepparent who had not adopted the child was not a parent after it examined the Juvenile Code and applicable adoption statute. The Juvenile Code distinguishes between a parent and stepparent by including stepparent in the definition of "caretaker" in G.S. 7B-101(3). *See In re A.J.L.H.*, 275 N.C. App. 11 (2020) (citing *In re M.S.*, 247 N.C. App. 89), *rev'd on other grounds*, 384 N.C. 45 (2023). By definition, a caretaker is a person who is not the child's parent. G.S. 7B-101(3). Further supporting the distinction between parent and stepparent, the adoption statute defines stepparent as an individual who is the spouse of a child's parent but who is not the child's legal parent. G.S. 48-1-101(18).

A stepparent may become a parent, with standing to appeal, upon the stepparent's adoption of the child. *See* G.S. Chapter 48, Article 4. A stepparent who has a court order awarding them guardianship or legal custody of the child becomes the child's guardian or custodian with standing to appeal as a guardian or custodian. *See* G.S. Chapter 35A (guardian); 7B-600 (guardian); 7B-101(8) (definition of "custodian"). Absent an adoption or court order for legal custody or guardianship, a stepparent is a caretaker and lacks standing to appeal.

**(c) Caretaker**. A "caretaker" is defined at G.S. 7B-101(3) and is any person who is not the child's parent, guardian, or custodian but has responsibility for the child's health and welfare in a residential setting. A caretaker does not have standing to appeal a juvenile order, and an appeal taken by a caretaker will be dismissed. *See* G.S. 7B-1002; *In re L.C.*, 293 N.C. App. 380, *rev'd on other grounds*, 387 N.C. 475 (dismissing appeal by caretaker for lack of standing; although unmarried mother's live-in, same-sex partner was listed on the child's birth certificate as "father" and acted as a parent, she was not legally or biologically the child's parent, nor was she the child's guardian or custodian); *In re A.J.L.H.*, 275 N.C. App. 11 (appeal involved three juveniles; appeals as to two juveniles were dismissed for lack of standing by stepfather who was a caretaker; standing established for same man appealing order involving his biological daughter), *rev'd on*

*other grounds*, 384 N.C. 45; *In re M.S.*, 247 N.C. App. 89, *rev'd on other grounds*, 384 N.C. 45 (dismissing appeal; holding the caretaker stepfather lacked standing to appeal adjudication and disposition order). See Chapter 2.5.A.3 (discussing caretaker).

**(d) Nonprevailing or aggrieved party.** G.S. 7B-1002(4) requires that a parent, guardian, or custodian be a nonprevailing party in the order that is being appealed. A prevailing party is one in whose favor the judgment was entered. *In re J.L.*, 264 N.C. App. 408; *In re T.B.*, 200 N.C. App. 739. When the trial court grants the party's request, that party is a prevailing party and as such lacks standing to appeal. *See In re T.B.*, 200 N.C. App. 739 (dismissed respondent's appeal of an order that granted the relief requested by the respondent, which was to not award permanent custody to the paternal grandparents and to order visitation with her).

In some cases, the court of appeals has looked to G.S. 1-271, which refers to an "aggrieved" party, when determining if the appellant is a nonprevailing party. In those cases, the court of appeals has held that only an "aggrieved party" may appeal from an order, and an aggrieved party is one whose rights have been directly and injuriously affected by the trial court's action. *In re Q.J.P.*, 296 N.C. App. 175 (2024); *In re C.A.D.*, 247 N.C. App. 552 (2016). A party authorized by G.S. 7B-1002 to appeal a final juvenile order does not have standing if they are not an aggrieved party. *See In re C.A.D.,* 247 N.C. App. 552 (holding respondent mother lacked standing to appeal the permanency planning order designating adoption as the plan and placing the children in the custody of DSS instead of relatives, as mother could not claim injury on behalf of the relatives who neither claimed they were injuriously affected by the order nor appealed); *In re B.D.*, 174 N.C. App. 234 (2005) (respondent parents in a termination of parental rights (TPR) action were not aggrieved parties that were directly and injuriously affected by the alleged failure of the court to properly serve the child who was the subject of the TPR action; decided under previous statutory language requiring the child to be served).

Whether a party is aggrieved appears to depend upon whose interests or grievances are being asserted – the interests of the party appealing or the interests of someone other than the party appealing. The appealing party must assert their own interests versus the interests of someone else. *See In re J.L.*, 264 N.C. App. 408; *In re D.S.*, 260 N.C. App. 194 (2018); *In re C.A.D.*, 247 N.C. App. 552. Three court of appeals opinions examined standing based on nonprevailing or aggrieved party status when in each case, a parent appealed the order that placed the children with someone other than who the appellant parent supported. The court of appeals looked to whether the parent's preferred proposed placement provider was a party with the ability to independently appeal the order but did not do so. In the first case, *In re C.A.D.*, 247 N.C. App. 552, the court of appeals held that the respondent mother was not an aggrieved party and did not have standing to appeal the trial court's order designating adoption as a permanent plan and placing the child in DSS custody instead of with the maternal grandparents because the grandparents, who could have appealed that order, did not do so and did not allege they were injured by the court order.

In two other opinions, the court of appeals distinguished the facts of *In re C.A.D.* and held that each respective appellant parent was an aggrieved party with standing to appeal when the potential placement providers who were not selected by the trial court were not parties

in the action and could not have independently appealed the order. In *In re J.L.*, 264 N.C. App. 408, the court of appeals held that the appellant mother had standing as a nonprevailing party when the order granted guardianship to the current foster parents instead of where mother preferred – the home where the child's half-siblings resided and had been adopted. The mother was asserting her interest in having her child placed with his half siblings when that prospective placement provider was not a party and could not have independently appealed the order. In *In re D.S.*, 260 N.C. App. 194, the court of appeals held that the appellant father was an aggrieved party and had standing to appeal. The father was asserting his own interests that were affected by the order that granted guardianship to a nonrelative without first considering a viable placement with the child's paternal grandmother. Paternal grandmother was not a party who could have independently appealed the order.

In the most recent opinion, the court of appeals addressed nonprevailing party status in an appeal of a permanency planning order that eliminated reunification with one parent but ordered reunification with the other parent as a secondary permanent plan. The court of appeals held that the parent for whom reunification was eliminated was an aggrieved party. *In re Q.J.P.*, 296 N.C. App. 175.

**2. Joinder of parties.** Any two or more parties whose interests are the same may pursue or respond to an appeal jointly. Parties who are appealing may join initially or after taking separate appeals. After joinder, the parties proceed as a single appellant or appellee. N.C. R. APP. P. 5.

**3. Relationship of DHHS and county DSS as parties.** Even though the North Carolina Department of Health and Human Services (DHHS) is not routinely involved in appeals of abuse, neglect, dependency, or termination of parental rights proceedings, in two related cases the court of appeals granted DHHS's motions to dismiss the appeals by the counties' DSS. DHHS was an intervening party in the underlying actions that resulted in the orders on appeal, one of which was an appeal of the order allowing DHHS to intervene. In granting DHHS's motions to dismiss, the court of appeals held that "there is an agency relationship between DHHS and the counties' DSS . . . . It is axiomatic that the principal controls the agent . . . . DHHS is the principal to both DSS divisions. Each county's DSS must act as instructed by its principal." *In re Z.D.H.*, 184 N.C. App. 183, 186 (2007); *In re J.L.H.*, 184 N.C. App. 180, 183 (2007).

**4. Nonparticipating party.** When one party to an abuse, neglect, dependency, or termination of parental rights proceeding appeals, another party may choose not to participate in the appeal. For example, where both parents participate in the proceeding at the trial level and only one appeals a judgment, the other parent may or may not elect to participate in the appeal. *See, e.g., In re A.R.A.*, 373 N.C. 190 (2019); *In re B.C.T.*, 265 N.C. App. 176 (2019). Rule 26(b) of the Appellate Rules requires that copies of all items filed by a party must be served on all other "parties to the appeal," which would seem to indicate that nonparticipating parties need not be served. However, because a party's decision not to participate in an appeal is typically not marked by a specific declaration or the filing of a specific document to make it clear that they are not a "party to the appeal," failure to serve nonparticipating parties in some circumstances could be problematic. Attorneys may view service on nonparticipating parties as the best approach. Attorneys who represent nonparticipating parties in the underlying trial

sometimes are allowed to withdraw, in which case service would be made directly on the party. If a party is unrepresented, they should be served at their last known address.

## B. Appellate Representation in Juvenile Proceedings

**1. Appellant representation for DSS.** Appellate representation for the county DSS is the responsibility of the individual county. An appeal may be handled by the attorney who represented DSS at trial, another DSS attorney, or an attorney retained or contracted by DSS specifically to represent it in the appeal. Unlike the Office of the Parent Defender at the Office of Indigent Defense Services or the North Carolina Guardian ad Litem Program, there is no state agency or program that provides or coordinates appellate representation to the counties' DSS. The North Carolina Department of Health and Human Services assumes no responsibility for county DSS representation.

**2. Appellate representation for parents.** The statutory entitlement to counsel for indigent parents continues through any stage of the proceeding, including appeals. *See* G.S. 7B-602(a); 7B-1101.1(a); 7A-451(b) (entitlement to services of counsel continues through any "critical stage"). When notice of appeal is given, a respondent is not required to execute and serve a new affidavit of indigency, and the trial court is not required to make a new determination of eligibility for appointed counsel. *See In re D.Q.W.*, 167 N.C. App. 38 (2004); *see also* G.S. 7A-450(c) (allowing but not requiring question of indigency to be redetermined at any stage of the action or proceeding). However, if the trial court determines it is appropriate, the trial court may review a party's financial status and eligibility for appointed counsel at any time. *See* G.S. 7B-602(a); 7B-1101.1(a); *In re D.Q.W.,* 167 N.C. App. 38. Respondents who are not indigent must bear the cost of their own appellate representation.

For parents who are indigent, appellate representation is coordinated by the Office of Indigent Defense Services (IDS) and handled by the Office of the Parent Defender. The appeal is assigned to an assistant appellate defender or a private attorney who has completed mandatory training and been accepted for placement on the "7B appellate roster." Once appellate entries are completed and signed by the trial judge, the Office of the Parent Defender completes a Notice of Appointment that contains the name and contact information of the assigned appellate attorney. This notice is mailed to the juvenile clerk for filing in the district court file and copies are sent to the parties' attorneys and the transcriptionist.

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**Resource:** The Office of the Parent Defender of the N.C. Office of Indigent Defense Services website maintains information on appealing juvenile matters, including sample as well as interactive fillable appellate forms and a brief bank.

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**3. Appellate representation for children.** When children participate in appeals through their guardians ad litem, representation is handled by the Guardian ad Litem Services Division (the GAL Program) of the North Carolina Administrative Office of the Courts (AOC). When the GAL Program is notified by the AOC of an appeal, the case is either assigned "in house" to the GAL Appellate Counsel or Associate Counsel or assigned to an attorney in the GAL pro bono attorney program coordinated by the GAL Program. Occasionally, the trial attorney advocate handles the appeal. When the case is assigned, an Order of Appointment of Appellate Counsel is forwarded to the local GAL program in the judicial district where the

appeal originated, for signature by the trial judge. This appointment order is filed in the juvenile court file and served on the parties' attorneys and the transcriptionist.

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**Resource:** The Guardian ad Litem Services Division of the N.C. Administrative Office of the Courts maintains on the North Carolina Judicial Branch website, resources for attorneys.

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**4. Appellate representation for guardians or custodians.** Indigent respondents who are not parents do not have a statutory right to court-appointed counsel. *See* G.S. 7B-602(a); 7B-1101.1(a); *In re L.C.*, 293 N.C. App. 380 (2024), *rev'd on other grounds*, 387 N.C. 475 (2025) (addressing only an indigent parent's right to appointed counsel). North Carolina appellate courts have not addressed the question of whether there is any circumstance in which an indigent respondent who is not a parent would be entitled to court-appointed counsel. IDS, which is responsible for providing representation for indigent parent respondents, defers to the courts on that question and provides by policy that IDS will pay for representation "[i]f a judge concludes that due process requires appointment of counsel for a particular indigent non-parent respondent in an abuse, neglect, or dependency proceeding." N.C. OFFICE OF INDIGENT DEFENSE SERVICES, "Appointment of Counsel for Non-Parent Respondents in Abuse, Neglect, and Dependency Proceedings" (July 2, 2008).

### C. Role of Trial Counsel

The Rules of Appellate Procedure specifically address the role of trial counsel when a different attorney will be handling the appeal in an abuse, neglect, dependency, or termination of parental rights case. Appellate Rule 3.1(h) states that trial counsel for an appealing party has a duty to assist appellate counsel in preparing and serving a proposed record on appeal.

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**Practice Note:** The role and division of responsibilities between trial counsel and appellate counsel in the early stage of an appeal depend on the arrangements made between the attorneys themselves as well as the policies of their respective agencies. Trial counsel should advise the client about appeal rights, timelines, required actions to perfect an appeal, and the effect of the appeal; file the notice of appeal and any appropriate motions before appellate counsel becomes involved; and respond to requests for information from appellate counsel.

**Resources:**
For information related to the responsibilities of respondents' trial counsel in relation to appeals, see "Performance Guidelines for Attorneys Representing Indigent Parent Respondents in Abuse, Neglect, Dependency and Termination of Parental Rights Proceedings at the Trial Level" (2007) and "Division of Responsibility between Trial and Appellate Counsel Who Are Proceeding Under Appellate Rule 3.1" (2009) on the Office of the Parent Defender of the N.C. Office of Indigent Defense Services website.

Note, both documents predate amendments to the Rules of Appellate Procedure and amendments made to the Juvenile Code since their respective publications.

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### D. Role of Appellant

An appellant may proceed with an appeal without attorney representation. An unrepresented appellant must file and serve the notice of appeal in the time and manner required. N.C. R. APP. P. 3.1(b) (referring to G.S. 7B-1001(b) and (c)). The appellant, regardless of whether they are represented, must sign the notice of appeal. G.S. 7B-1001(c); N.C. R. APP. P. 3.1(b) (referring to G.S. 7B-1001(b) and (c)). For a further discussion of notice of appeal, see section 12.5, below.

## 12.3 Identifying Issues for Appeal

### A. Preserving Issues for Appeal

**1. Objection, grounds, and ruling required.** To preserve an issue for appellate review, in the trial court a party must

- make a timely request, objection, or motion;
- state specific grounds for the desired ruling (unless the specific grounds are apparent); and
- obtain a ruling on the request, objection, or motion.

N.C. R. APP. P. 10(a). *See also In re T.C.,* 919 S.E.2d 513 (N.C. Ct. App. 2025) (holding mother preserved for appeal trial court's reliance on stipulations about mother that were made by father when mother objected to those stipulations and requested and was denied an adjudicatory hearing); *In re K.B.C.,* 295 N.C. App. 619 (2024) (holding father waived appellate review of evidentiary issues when he failed to object to admission of the evidence at the TPR hearing); *In re L.N.H.,* 382 N.C. 536 (2022) (holding mother's failure to object at adjudication hearing of court taking judicial notice of medical records that had been introduced at hearing on the need for continued nonsecure custody waived appellate review); *In re M.J.M.,* 378 N.C. 477 (2021) (holding the issue of whether the court misapprehended the law in not appointing a guardian ad litem (GAL) for the juveniles in a TPR proceeding was not preserved for appeal when mother did not file an answer and there was no motion for a GAL or objection to a lack of a GAL made in district court); *In re B.E.,* 375 N.C. 730 (2020) (holding the issue of whether the juvenile had a right to be noticed, appear, and testify at the dispositional hearing in the TPR proceeding was not raised at trial and was, therefore, not preserved for appellate review); *In re A.P.,* 281 N.C. App. 347 (2022) (holding issue of whether the services provided by DSS were adequate under the Americans with Disabilities Act was waived for appellate review when not raised before the trial court); *In re A.B*., 272 N.C. App. 13 (2020) (mother failed to properly preserve for appeal a challenge to the competency of evidence supporting a finding that mother lacked an appropriate child care arrangement when trial court took judicial notice of nonsecure custody orders at the adjudication hearing; mother did not object to requests for judicial notice or make an argument that judicial notice should be limited so that hearsay evidence from prior hearings would not be considered); *In re E.P.-L.M.,* 272 N.C. App. 585 (2020) (holding that mother did not preserve for appeal the trial court's consideration of stipulations by other parties as competent evidence for adjudication; mother did not object to admission or use of stipulations; preservation required for evidentiary arguments); *In re J.T.S.,* 268 N.C. App. 61

(2019) (holding that respondent mother failed to preserve for appellate review issues regarding visitation terms and a guardianship appointment when she consented to those terms at the hearing); *In re E.M*, 249 N.C. App. 44 (2016) (holding that respondent failed to preserve the issue for appellate review as no timely objection or motion to strike was made to challenge reports and documentary exhibits that were never formally offered into evidence but were repeatedly referred to during trial); *In re K.A.,* 233 N.C. App. 119 (2014) (holding that the issue of the trial court's misapplication of the doctrine of collateral estoppel was properly objected to and therefore preserved for appeal).

A constitutional issue not raised at the trial level will not be considered for the first time on appeal. *See, e.g., In re K.C.,* 386 N.C. 690 (2024), *In re J.M.,* 384 N.C. 584 (2023), and *In re J.O.*, 293 N.C. App. 556 (2024) (all holding parents did not preserve issue of whether trial court erred in not addressing their paramount constitutional right to care, custody, and control of their children when ordering permanent plans other than reunification; parents did not raise the constitutional issue at the permanency planning hearings and instead opposed a plan other than reunification); *In re R.D.,* 376 N.C. 244 (2020) (petitioner did not make constitutional due process argument regarding right to cross-examination at TPR dispositional hearing and thus did not preserve issue for appeal); *In re S.M*., 375 N.C. 673 (2020) (holding father waived the argument that a continuance was necessary to protect a constitutional right by not raising it at trial); *In re C.M.P*., 254 N.C. App. 647 (2017) (holding respondent mother failed to preserve the issue of whether the trial court's denial of her motion to continue violated her constitutional right to effective assistance of counsel). See Chapter 7.10.B.5 (discussing opinions on when a parent waives the right to the court determination of their paramount constitutional rights).

The supreme court in *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co*., 362 N.C. 191, 195 (2008), explained that this appellate rule requirement to make an objection in the trial court "plays an integral role in preserving the efficacy and integrity of the appellate process" because it allows a trial court to correct an error that is timely brought to its attention, thereby preventing unnecessary appellate review and new trials caused by errors.

See Chapter 11.13.B and D for an additional discussion relating to preservation of evidentiary issues for appeal (including motions in limine; specific, continuing, and timely objections; and offers of proof).

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**Resource:** For a discussion on the issue of whether a parent preserved their right to a determination about their constitutional rights, see Timothy Heinle, *N.C. Supreme Court Clarifies When and How to Preserve Parents' Constitutionally Protected Rights for an A/N/D Appeal*, UNC SCHOOL OF GOV'T: ON THE CIVIL SIDE BLOG (Jan. 13, 2025).

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**2. Issues automatically preserved for appeal.** Certain issues are preserved as a matter of law even if no objection was made in the trial court, including but not limited to

- lack of subject matter jurisdiction (N.C. R. APP. P. 10(a)),
- whether the judgment is supported by the findings of fact and conclusions of law (N.C. R. APP. P. 10(a)), and
- questions directed to a witness by the trial court (N.C. R. CIV. P. 46(a)(3)).

Constitutional issues, including a parent's paramount constitutional right to care, custody, and control of their child, are not automatically preserved for appeal and are waived when not properly preserved at the trial level. *In re K.C.*, 386 N.C. 690 (2024), *overruling preservation holding in In re B.R.W.*, 278 N.C. App. 382 (2021) *and all dependent cases*; *In re J.N.*, 381 N.C. 131 (2022).

The court of appeals addressed the issue of whether a parent waived their right to appellate review when the parent did not object to a finding that was made when the court orally rendered its judgment after the hearing. In *In re L.G.A.*, 277 N.C. App. 46 (2021), the mother argued that the court took improper judicial notice in a finding of fact; the child's guardian ad litem (GAL) argued the mother was required to object to the finding when it was announced in court to preserve the issue for appeal. In rejecting the GAL's argument, the court of appeals cited Appellate Rule 10(a)(1) and stated the issue is preserved for appeal when the challenge is about whether the judgment is supported by the findings of fact and conclusions of law. The court of appeals further noted that an order is not final until it is entered under Rule 58 of the Rules of Civil Procedure, which requires the judgment be reduced to writing, signed by the judge, and filed with the clerk. The court of appeals determined "there is no legal basis for an 'objection' " in the context of a court rendering its ruling and findings in open court. *In re L.G.A.*, 277 N.C. App. at 54.

Case law has preserved in some cases the right to appeal a decision when the trial court failed to follow a clear statutory mandate that resulted in prejudice to a party, even though an objection was not made at trial. *See In re K.N.*, 381 N.C. 823 (2022) (addressing Rules 52 and 63 of the Rules of Civil Procedure and determining substitute judge acted contrary to those statutes; respondent father was prejudiced and issue was preserved for appeal despite the lack of objection before the trial court); *In re B.E.*, 375 N.C. 730 (2020) (addressing G.S. 7B-1110(a) in TPR dispositional phase; determining the statute does not explicitly grant procedural rights to the juvenile that would, if violated, automatically preserve the matter for appellate review; when the juvenile's procedural rights were not raised at trial, the procedural issue was not preserved for appeal); *State v. Hernandez*, 188 N.C. App. 193, 204 (2008) (quoting *State v. Golphin*, 352 N.C. 364, 411 (2000)) (allowing consideration of an issue on appeal although not objected to at trial, because "[w]hen a trial court acts contrary to a statutory mandate, no objection is necessary to preserve the error").

The court of appeals recently explained "[t]his exception to the preservation requirement of Rule 10(a) is limited to [statutory] mandates directed to the trial court either: '(1) by requiring a specific act by the trial judge; or (2) by requiring specific courtroom proceedings that the trial judge has the authority to direct[.]' " *In re M.G.B.*, 293 N.C. App. 568, 590 (2024) (citation omitted). For the second prong to apply, there must be "no doubt that the legislature intended to place the responsibility on the judge presiding at the trial." *In re M.G.B.*, 293 N.C. App. at 590 (citation omitted). The investigative duties of the child's GAL are specified in G.S. 7B-601(a) and are a directive to the GAL rather than a mandate for the trial court to take a specific act or direct a courtroom proceeding. The court is, however, directed to appoint a GAL when certain conditions exist. Following *In re M.G.B.*, the court of appeals decided *In re S.D.H.*, 296 N.C. App. 392 (2024). *In re S.D.H.* also involves the duties of the child's GAL by examining the requirement that a GAL present evidence to the court, either through written testimony, a court report, or both, when the court is addressing the child's best interests. The court of appeals held that the district court has an implicit duty to ensure the GAL performs

their statutory duties by receiving information or evidence from the GAL at the hearing so that the court has necessary input from the GAL to make an informed decision about the child's best interests. Without such evidence from the GAL, prejudice is presumed, and the court abuses its discretion in making a best interests of the child determination. The difference between these two opinions involving the duties of the child's GAL and an automatic preservation of appeal involve the GAL's duties to the court to present evidence versus how the GAL conducts their outside investigation of what is in the child's best interests.

However, even when an appellate issue involves a statutory mandate, appellate courts will not necessarily consider the issue on appeal when it is not objected to at trial. For example, appellate cases have recognized the statutory mandate to appoint a GAL for the child in certain circumstances but have not always been willing to consider the issue of failing to appoint a GAL when no objection was made at trial. *See In re A.N.B.*, 290 N.C. App. 151 (2023) (citing *In re A.D.N.*, 231 N.C. App. 43 (2013); violation of G.S. 7B-1108 regarding GAL appointment for juvenile is not automatically preserved for appellate review); *In re A.D.N.*, 231 N.C. App. 54 (refusing to rule on the issue of the failure to appoint a GAL for the child in a termination of parental rights case when an answer denying a material allegation was filed since there was no objection at trial). Yet, the court of appeals has also stated, "[t]he GAL's representation of the juvenile's interests is integral to the process such that the failure to appoint a GAL creates a presumption of prejudice requiring reversal." *In re M.G.B.*, 293 N.C. App. at 591 (applying to abuse and neglect action; citing *In re R.A.H.*, 171 N.C. App. 427 (2005)).

**3. Intermediate orders under G.S. 1-278.** Under G.S. 1-278, when a judgment is appealed, the court may review any intermediate order that involves the merits and affects the judgment being appealed. In *In re R.G.L.*, 379 N.C. 452 (2021), the father appealed a TPR order and included a collateral attack on a prior permanency planning order that was not subject to appeal under G.S. 7B-1001(a), citing G.S. 1-278. See Section 12.4.A, below (discussing appealable orders). That prior permanency planning order identified the primary permanent plan of adoption, which is considered at the dispositional stage of a TPR proceeding when the court addresses whether the TPR would aid in the achievement of the permanent plan. *See* G.S. 7B-1110(a)(3). That permanency planning order included a finding that guardianship would be an appropriate plan but there were no relatives available. The father challenged that finding as a misapprehension of the law since guardianship may be granted to a nonrelative. The supreme court declined to consider the father's collateral attack on the prior permanency planning order, relying on case law that requires a timely objection when review of an intermediate order is sought under G.S. 1-278. There was nothing in the record to show the father made a timely objection to that finding, which was made months before the TPR hearing and subsequent permanency planning orders with similar findings were entered after the order being collaterally attacked in the TPR appeal was entered.

**4. Prior appeal.** When a party makes more than one appeal, they cannot at the later appeal revisit an issue they failed to raise in the first appeal. In *In re H.G.,* 297 N.C. App. 41 (2024), the court of appeals held that father waived his right to appeal the issue of whether the trial court abused its discretion when it relieved DSS of reunification efforts with father, thereby excluding reunification as a permanent plan, and doing so without notice prior to the initial dispositional hearing. Father had previously appealed the adjudication order but did not raise the dispositional issues in that appeal. In his earlier appeal, father chose not to raise the issue

he is now raising in the second appeal despite having the opportunity to do so. He could not raise the issue for the first time in the second appeal.

## B. Scope of Appellate Review

With few exceptions only those issues properly preserved at trial may be presented as issues on appeal. The issue of subject matter jurisdiction can be raised for the first time on appeal and may be raised by the appellate court sua sponte. *See, e.g.*, *Rodriguez v. Rodriguez*, 211 N.C. App. 267 (2011) (the court of appeals on its own motion raised the issue of the juvenile court's exclusive jurisdiction).

**1. Issues identified in briefs.** Appellate courts will only review issues properly preserved at trial if presented and discussed in briefs. An appellate court may not address an issue that is not raised and thereby create an appeal for the appellant. *In re E.H.*, 388 N.C. 100 (2025) (reversing court of appeals who provided a flawed legal analysis to unpreserved issues that did not have the benefit of a full adversarial briefing); *In re A.J.L.H.*, 386 N.C. 305 (2024) (reversing court of appeals based on the court sua sponte raising constitutional issue not preserved at trial or briefed or argued by the parties); *In re R.A.F.*, 384 N.C. 505 (2023) (reversing court of appeals opinion based on an issue that was not raised).

A brief must contain an argument with the contentions as to each issue presented. Issues not presented and discussed in a party's brief are deemed abandoned. N.C. R. APP. P. 28(a), (b)(6). *See In re E.S.,* 378 N.C. 8 (2021) (citing Appellate Rule 28(a); although mother appealed TPR order for two children, she abandoned all arguments on best interests determination regarding one child when she did not present or discuss any issues related to that child in her brief); *In re J.S.,* 374 N.C. 811 (2020) (referring to Appellate Rule 28(b)(6) when issues in the respondent's brief addressed only the TPR order and not the permanency planning order that was also appealed, stating there was no basis to find error in the permanency planning order); *In re M.A.*, 374 N.C. 865 (2020) (citing Appellate Rule 28(b)(6); parents' challenge to a permanency planning order that eliminated reunification as a permanent plan, made with notice to preserve appeal of that order, was abandoned when issues in appellate brief focused exclusively on appeal of the TPR order that was subsequently entered); *In re Ivey,* 257 N.C. App. 622, 623 n.2 (2018) (referring to Appellate Rule 28(a) when noting the appeal of second order identified in the notice of appeal was abandoned when there was no argument in the brief addressing that second order); *In re A.H.*, 250 N.C. App. 546 (2016) (respondent mother appealed the trial court's quashing of her subpoena for her son's testimony at the TPR hearing; in the trial court, respondent did not specify whether her son's testimony was to be presented at the adjudication or disposition phase of the hearing but in her appeal, respondent did not challenge the adjudication; as a result, the court of appeals limited its analysis to the dispositional phase).

Appendixes may not be used by a party to make arguments as to the issues presented for the purpose of extending their brief. *See* N.C. R. APP. PRO. 28(d); *Harney v. Harney*, 295 N.C. App. 456, 465 (2024) ("the appendix has a purpose, as Rule 28(d) describes, and that purpose is not to extend the body of the brief").

Issues are also presented in the record on appeal, but failure to present an issue in the record will not prevent a party from arguing the issue if it is presented and discussed in a brief. N.C. R. APP. P. 10(b).

Cases citing Appellate Rule 28(b)(6) have required a party to an appeal to assert, in their brief, specific (as opposed to general) determinations of the trial court as issues to be reviewed by the appellate court. For example, one cannot assert that there is insufficient evidence for the trial court's findings generally, or errors in the trial court's conclusions generally. Rather, a brief must assert a particular finding of fact for which there is insufficient evidence or a particular conclusion of law for which there are insufficient findings to properly present an issue for review by the appellate court. *See, e.g., In re N.P.*, 374 N.C. 61, 65 (2020) ("[B]roadside exceptions" to evidentiary findings are ineffectual because any findings "not specifically challenged . . . are presumed to be supported by competent evidence and [are] binding on appeal").

The brief itself is not a source of evidence, meaning representations made in a brief that do not relate to matters in the record cannot be considered by the court. *See In re A.B.*, 239 N.C. App. 157 (2015) (counsel's representations in a brief that attempted to explain an error in drafting a court order could not be considered evidence on appeal).

**2. The contents of the record.** The scope of the court's review also depends on the contents of the record on appeal. The contents, format, and requirements for the record on appeal are addressed in Appellate Rule 9.

The record must demonstrate that the trial court had subject matter jurisdiction. In *In re J.C.M.J.C.*, 268 N.C. App. 47 (2019), the court of appeals dismissed the respondents' appeal when the record did not contain copies of the underlying juvenile petitions; the petitions commence the action to establish subject matter jurisdiction with the trial court. (Note that the court of appeals reviewed the respondent's arguments by granting a writ of certiorari (discussed in section 12.10.A., below)).

The record must also contain anything necessary for the appellate court to review all issues presented on appeal, without including unnecessary documents from the court file. *See In re A.K.,* 295 N.C. App. 115 (2024) (court of appeals could not address appointment of Rule 17 guardian ad litem to mother because of the absence of a transcript of the hearing, evidence, or findings of fact); *In re B.C.T.*, 265 N.C. App. 176 (2019) (court of appeals could not address appellant's argument about the applicability of a G.S. 7B-910 hearing to review a voluntary placement agreement when the record did not include documentation about the agreement and its terms). In the absence of a transcript from the hearing resulting in the order that is being appealed, the appellate court is obligated to treat the trial court's findings as supported by competent evidence. *In re A.L.L.*, 254 N.C. App. 252 (2017); *see In re A.P.W.*, 378 N.C. 405 (2021) (presuming findings were supported by competent evidence when record did not include a narration of the evidence or a transcript of the hearing). However, when the hearing transcript and remainder of the record are insufficient for the appellate court to address an ineffective assistance of counsel claim, the appropriate remedy is a remand to the trial court to determine the adequacy of the attorney representation. *In re A.R.C.*, 265 N.C. App. 603 (2019); *In re C.D.H.*, 265 N.C. App. 609 (2019).

The court of appeals has stated, "[i]t is the appellant's duty to include any information necessary for review of the issues raised on appeal." *In re B.C.T.*, 265 N.C. App. at 185. Appellate Rule 9(b)(5)(a) allows a responding party to "supplement the record on appeal with any items that could otherwise have been included pursuant to this Rule 9" when "the record on appeal as settled is insufficient to respond to the issues presented in an appellant's brief or the issues presented in an appellee's brief pursuant to Rule 10(c) . . . ." These supplemental materials, however, cannot contain documents or issues that were not before the trial court in the case being considered. *See In re M.G.*, 239 N.C. App. 77 (2015) (admonishing counsel for filing supplemental materials containing documents from another case not before the trial court in the present case and raising issues never considered by the trial court); *see also In re D.J.,* 378 N.C. 565 (2021) (in appeal of TPR order, DSS supplemented the record on appeal with notices required by the Indian Child Welfare Act that were sent after the TPR was ordered and were filed with the district court at the post-TPR hearing). However, Appellate Rule 9(c)(1) "provides an express avenue to include off-the-record evidence in the record on appeal." *In re E.D.H.*, 381 N.C. 395, 400 (2022).

Appellate Rule 9(b)(5)b. authorizes a party to motion, or the court on its own initiative, to order additional portions of the trial court record or transcript to be added to the record on appeal. *See In re S.C.L.R.*, 378 N.C. 484 (2021) (in TPR appeal, supreme court ordered the complaint, acceptances of service, and custody order be added to the record).

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**Practice Note:** In an unpublished opinion, the court of appeals admonished all counsel about the unnecessarily large volume of the record on appeal. The court of appeals devoted part of its opinion to discussing the waste of time and resources, pointing out that the record was 770 pages, consisting of what appeared to be copies of everything in the trial record. *In re J.J.*, 199 N.C. App. 755 (2009) (unpublished).

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### C. Appellate Rule 2: Prevent Manifest Injustice

The appellate court, pursuant to Appellate Rule 2, may suspend or vary the requirements or provisions of the Appellate Rules and consider issues that are not properly preserved or presented for review, either to "prevent manifest injustice to a party" or to "expedite decision in the public interest." Rule 2 may be invoked upon application of a party or sua sponte. However, the supreme court has recognized that Appellate Rule 2 is an "extraordinary step" that should be "invoked 'cautiously' " in "exceptional circumstances." *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co*., 362 N.C. 191, 196 (2008) (citation omitted), *quoted in In re A.N.B*., 290 N.C. App. 151, 163 (2023).

Rule 2 has been applied in appeals of orders entered in abuse, neglect, dependency, and termination of parental rights (TPR) actions. *See, e.g*., *In re A.T*., 923 S.E.2d 841 (N.C. Ct. App. 2025) (electing sue sponte to invoke Rule 2 to address trial court's sua sponte appointment of Rule 17 GAL to father in an order of continuance; father had no opportunity to object and preserve issue); *In re Z.V.A*., 373 N.C. 207 (2019) (electing sua sponte to invoke Rule 2 to address respondent-parents' arguments that the trial judge should have recused himself from hearing the TPR when the issue was not preserved at trial); *In re Z.R.,* 378 N.C. 92 (2021) (invoking Rule 2 to respondent parent's appeal to expedite a decision in the public interest; suspending the mandatory service requirement of Rule 3.1 when all efforts by the

appellant's attorney to serve client were unsuccessful); *In re K.W.*, 272 N.C. App. 487 (2020) (invoking Rule 2 to respondent mother's appeal as she was indigent and proceeded *pro se* (with standby counsel) at the trial court); *In re S.B.*, 166 N.C. App. 488 (2004) (invoking rule sua sponte after determining potential for manifest injustice to respondent father in a TPR proceeding when he was not appointed a guardian ad litem); *In re O.W.*, 164 N.C. App. 699 (2004) (invoking the rule to decide issue of consolidation of neglect and abuse adjudicatory hearing and disposition hearing).

The court of appeals has also declined to invoke Rule 2 in juvenile proceedings. *See, e.g., In re A.N.B.*, 290 N.C. App. 151 (declining to invoke rule when no exceptional circumstance existed when father did not preserve issue by objecting at TPR trial that the juvenile's GAL acted as the investigative GAL only and did not exercise the attorney role); *In re P.T.W.,* 250 N.C. App. 589 (2016) (determining application of rule was not necessary to prevent manifest injustice to respondent mother or child on the issue of the trial court abusing its discretion in failing to appoint a GAL for the child in a TPR proceeding where respondent mother willfully failed to make progress on her case plan); *In re E.T.S*, 175 N.C. App. 32 (2005) (declining to invoke rule upon request of respondent mother in a TPR proceeding on evidentiary issue she failed to object to at trial).

The North Carolina Supreme Court has made clear that application of Appellate Rule 2 by an appellate court should not be automatic, even when there is precedent for its application. In *State v. Campbell*, 369 N.C. 599 (2017), the supreme court reviewed a decision allowing review pursuant to Rule 2 of a fatal variance issue not raised at trial. After citing an earlier appellate decision that invoked Rule 2 to review a similar fatal variance argument, the court of appeals, without further discussion or analysis of Rule 2, addressed the merits of defendant's argument and reversed his conviction. The supreme court reversed and remanded as the process by which an appellate court determines whether a case is one of the "rare 'instances' " appropriate for application of Rule 2 that requires an individual analysis "made in light of the *specific circumstances of individual cases and parties*, such as whether 'substantial rights of an appellant are affected.' " *Campbell*, 369 N.C. at 602 (citation omitted) (emphasis in original). Moreover, "precedent cannot create an automatic right to review via Rule 2" because the decision to suspend a rule of appellate procedure is "always a discretionary determination to be made on a case-by-case basis." *Campbell*, 369 N.C. at 603.

The individual analysis required by the appellate court that may result in seemingly conflicting decisions when determining whether to apply Appellate Rule 2 is demonstrated in three court of appeals decisions addressing the trial court's failure to appoint a GAL for the child who was the subject of a TPR action, when that issue was not objected to in the trial court. In two cases the court of appeals invoked Appellate Rule 2 to reach the merits of the issue, and in both cases found prejudicial error in the trial court's failure to appoint a GAL for the child when the respondents filed an answer denying a material allegation, triggering the statutory mandate that a GAL be appointed. *See In re Fuller,* 144 N.C. App. 620 (2001) (determining child who is intended beneficiary of statute requiring appointment of GAL to represent his best interests was unrepresented and the 9-year-old child was not present at the hearing to object to the trial court's failure to appoint him a GAL); *In re Barnes*, 97 N.C. App. 325 (1990) (unrepresented 22-month-old child, who is a party to the proceeding, was unable to make objection to trial court's failure to appoint statutorily mandated GAL; fundamental fairness required the child be represented by counsel when the respondent was represented by

counsel). In contrast, the court of appeals did not invoke Appellate Rule 2 to decide the merits of the same issue, finding the rule was inapplicable to the case as there was no manifest injustice to the respondent mother or the child who was not appointed a GAL. *In re A.D.N.*, 231 N.C. App. 54 (2013) (determining respondent mother repeatedly chose substance use over her 2-year-old child during his lifetime and almost entirely abdicated responsibility for him to petitioner, the child's paternal grandmother).

## D. Invited Error

A party is not entitled to appellate relief when they invite the trial court to make an error they are now complaining of – this is the doctrine of "invited error." This doctrine "applies to 'a legal error that is not a cause for complaint because the error occurred through the fault of the party now complaining.' " *In re R.L.G.*, 260 N.C. App. 70, 77–78 (2018) (citations omitted). The invited error doctrine requires that the appellant take an affirmative action that directly causes the error. *State v. Freeman*, 295 N.C. App. 209 (2024). The court of appeals has examined the invited error doctrine in juvenile appeals.

In one case, the court of appeals determined invited error applied such that the respondent mother was not entitled to relief on appeal. In *In re K.C.*, 199 N.C. App. 557 (2009), respondent mother was not entitled to review of a disposition order that did not include a visitation plan as required by the Juvenile Code. Respondent mother invited the error when the trial court did what she essentially asked it to do, which was to not order visitation. The disposition order included findings that the mother had cancelled visits, had no plans to see her children, stated she did not wish to see or work with the children, and was not interested in working with DSS toward her reunification with the children until the children's problems were resolved.

In another case, *In re R.L.G.*, 260 N.C. App. 70, the court of appeals determined there was no invited error. At the adjudicatory hearing, respondent mother's stipulation to facts about her child's school attendance and performance and missed medical appointments was not an invitation for the trial court to adjudicate her child neglected. There was no indication in the record that respondent mother requested that the trial court adjudicate or remove her daughter.

In a more recent decision, *In re K.B.C.*, 295 N.C. App. 619 (2024), the court of appeals determined respondent father was not entitled to relief on appeal addressing the court's consideration of evidence presented by the guardian ad litem (GAL). At the termination of parental rights (TPR) hearing, respondent father called the children's GAL to testify and affirmatively elicited testimony showing father signed a statement that he would not oppose an order allowing for the children's adoption. Even if, as argued by respondent father, admission of this evidence was in error, respondent father invited the error.

## E. No Swapping Horses

The North Carolina appellate courts have stated that parties are not allowed to "swap horses between courts in order to get a better mount," meaning parties cannot take different positions or make different arguments at trial and on appeal. *In re K.J.M.,* 288 N.C. App. 332, 343 (2023); *In re B.C.T.,* 265 N.C. App. 176, 193 (2019); *In re I.K.*, 227 N.C. App. 264, 266 (2013) (quoting *Weil v. Herring,* 207 N.C. 6, 10 (1934)); *see In re R.A.F.*, 384 N.C. 505

(2023) (noting appellant raised issue before supreme court that was not raised before court of appeals).

A party who changes its position has a responsibility to notify the affected courts and explain a change in position to justify its actions. *In re B.C.T.,* 265 N.C. App. 176 (DSS did not acknowledge that its position at trial was the child's return to his mother and release of DSS from the case when arguing on appeal that the disposition order continuing the child in DSS custody should be affirmed); *In re I.K.*, 227 N.C. App. 264 (DSS did not acknowledge its position regarding the continuation of reasonable efforts changed – requesting the continuation of those efforts with respondent father at trial and seeking affirmation of the order ceasing those efforts on appeal).

The court of appeals has noted that a change in position by DSS is particularly concerning because the primary goal of the Juvenile Code, which includes the duties of a DSS, is to protect an abused, neglected, or dependent child's best interests. *In re B.C.T.,* 265 N.C. App. 176; *In re I.K.*, 227 N.C. App. 264. The court of appeals has stated, "DSS is not obligated to adopt a different position on appeal just to oppose the appealing parent if it has previously determined that a parent has a safe and appropriate home and the child should be returned to the parent." *In re B.C.T.,* 265 N.C. App. at 193.

### F. Cumulative Error

The North Carolina Supreme Court discussed the doctrine of "cumulative error" in *In re J.D.O.*, 381 N.C. 799 (2022). Cumulative error exists when taken as a whole, the cumulative errors require reversal because those errors deprived a defendant of their due process right to a fair trial that is free from prejudicial error. The supreme court recognized that this doctrine is rarely applied, and when it has been applied, it is in the context of reviewing a criminal conviction. In *In re J.D.O.*, the supreme court declined to expand and apply the doctrine of cumulative error to a termination of parental rights (a civil) matter.

## 12.4 Which Orders Can Be Appealed

### A. Appealable Orders

The Juvenile Code specifies the types of final orders in abuse, neglect, dependency, and termination of parental rights cases that may be appealed by an aggrieved party who has standing to appeal. *See* G.S. 7B-1001(a).

**1. No jurisdiction.** Any order finding a lack of jurisdiction may be appealed. G.S. 7B-1001(a)(1); *see In re A.J.B.*, 298 N.C. App. 143 (2025) (court of appeals reviewed trial court's order dismissing a termination of parental rights petition for lack of subject matter jurisdiction and cited to G.S. 7B-1001(a)(1)). A party may not appeal an order under G.S. 7B-1001(a)(1) by claiming a jurisdictional defect, the trial court must have found that it lacked jurisdiction to decide the matter before it. *See In re A.T.*, 191 N.C. App. 372 (2008) (rejecting the appellant's assertion that an order denying a motion to modify a payment provision in a nonsecure custody order was related to a lack of jurisdiction and therefore appealable).

**2. Order determining the action.** Any order that in effect determines the action and prevents a judgment from which appeal might be taken, including the involuntary dismissal of a petition, may be appealed. G.S. 7B-1001(a)(2); *see In re A.J.B.*, 298 N.C. App. 143 (2025) (court of appeals reviewed trial court's order dismissing a termination of parental rights petition for lack of subject matter jurisdiction and cited to G.S. 7B-1001(a)(2)). In the case *In re E.H.*, 227 N.C. App. 525 (2013), the trial court denied the guardian ad litem's (GAL) Rule 60 (of the Rules of Civil Procedure) motion for relief from DSS's voluntary dismissal of its petition, and the GAL appealed. The court of appeals held that the trial court's order denying the Rule 60 motion was appealable because it (1) terminated jurisdiction by refusing to set aside the voluntary dismissal and (2) determined the action and prevented a final judgment on the merits. However, if the trial court has terminated its jurisdiction in the juvenile action, the court lacks subject matter jurisdiction to hear motions and instead, an appeal of an involuntary dismissal should be made. *In re K.C.,* 292 N.C. App. 231 (2024) (holding trial court lacked subject matter jurisdiction to hear a Rule 59-60 motion after court dismissed petition; Rules 59 and 60 are not a substitute for an appeal).

Orders made during the pendency of an action that do not dispose of the case are interlocutory. Interlocutory orders are not immediately appealable unless the failure to grant an immediate review would affect a substantial right. *See* G.S. 1-277(a). The burden is on the appellant to establish that a substantial right will be affected, with the test being whether the right itself is substantial and the deprivation of that right would cause injury if not corrected before appeal from the final judgment. *See In re J.G.*, 186 N.C. App. 496 (2007) (and cases cited therein) (holding that the trial court's order affecting DSS's right to choose how to dispose of funds it received as a representative payee for Social Security benefits affected a substantial right and was immediately appealable). *See also In re A.R.G.*, 361 N.C. 392 (2007) (analyzing a previous version of G.S. 7B-1001 and holding that respondent's appeal was properly dismissed because the order was interlocutory and did not affect a substantial right).

**3. Initial disposition and underlying adjudication order.** An initial disposition order and the adjudication order upon which it is based may be appealed. G.S. 7B-1001(a)(3). An appeal of the adjudication order cannot be made prior to the entry of the initial dispositional order. *See In re P.S.,* 242 N.C. App. 430 (2015). An adjudication order and any temporary dispositional order entered after the adjudication but before the initial dispositional hearing are not final orders and, therefore, are not appealable. *In re G.B.G.*, 297 N.C. App. 772 (2025) (dismissing without prejudice appeal of Adjudication and Interim Disposition Order as final initial dispositional hearing was scheduled for a later date); *In re P.S.,* 242 N.C. App. 430 (dismissing appeal of adjudication order that included a temporary disposition pending the initial dispositional hearing); *In re C.M.*, 183 N.C. App. 207 (2007) (dismissing respondent father's appeal of a temporary dispositional order).

Although the orders are appealed together, an appellant may choose to only raise challenges to one of those orders. *See, e.g., In re B.C.T.*, 265 N.C. App. 176 (2019) (respondent mother's notice of appeal included both the adjudication and disposition orders, but her brief did not include any arguments challenging the adjudication order). When the orders are appealed, if the adjudication order is challenged and reversed or vacated, the disposition order must also be reversed or vacated. *In re M.N.*, 260 N.C. App. 203 (2018) (orders reversed); *In re R.L.G.*, 260 N.C. App. 70 (2018) (orders vacated). Further, when an adjudication order is reversed or vacated and issues with the dispositional order are raised, the appellate court is not required to

address those issues since the dispositional order must also be reversed or vacated; however, the appellate court may choose to proceed with a review. *In re S.C.R.*, 217 N.C. App. 166 (2011) (choosing to briefly address two issues respondent raised with the dispositional order so as to prevent repetition on remand).

In *In re R.G.*, 292 N.C. App. 572 (2024), the court of appeals addressed which order is the proper order to appeal under G.S. 7B-1001 when reunification efforts with a parent have been ceased at initial disposition based on a finding of a G.S. 7B-901(c) factor and reunification with that parent is not included at the first permanency planning hearing because of the initial dispositional order ceasing reunification efforts. The initial dispositional order is the proper order to appeal because that order relieves DSS of reunification efforts, which omits and excludes reunification as a permanent plan. Since reunification is excluded as a permanent plan, the first permanency planning order that does not identify reunification with that parent does not eliminate reunification. The permanency planning order is not appealable as an order that eliminates reunification such that the court of appeals dismissed the appeal of the permanency planning order. The parent should have appealed the initial dispositional order that relieved DSS of making reunification efforts.

**4. Order changing legal custody.** Any final order, other than a nonsecure custody order, that changes the legal custody of a juvenile may be appealed. G.S. 7B-1001(a)(4). The appellate courts have examined what constitutes a change in legal custody when considering whether the order is an appealable order.

Legal custody involves "the right and responsibility to make decisions with important and long-term implications for a child's best interest and welfare" and includes the "right to control [one's] children's associations." *In re M.M.*, 249 N.C. App. 58, 61, 62 (2016) (citations omitted). An order that changes the decision-making responsibilities or imposes a new restriction on who a child may have contact with is a change in legal custody and is an appealable order. *In re M.M.*, 249 N.C. App. 58 (holding a permanency planning order that continued joint legal custody between respondent parents but added a provision that prohibited contact between the child and the maternal grandfather was an order that changed legal custody and was subject to appeal).

A temporary dispositional order entered prior to the initial dispositional hearing is analogous to a nonsecure custody order and is not an appealable order based on a change in legal custody. *In re P.S.,* 242 N.C. App. 430 (2015).

In analyzing an earlier version of this statutory provision, which included in the list of appealable orders "any order modifying custodial rights" (and did not include a provision addressing the appeal of an order ceasing reunification efforts, discussed immediately below as the appeal of an order eliminating reunification as a permanent plan), the supreme court considered a father's argument that the trial court's determination that it was in the child's best interest to pursue a termination of parental rights (TPR) cut him off as a possible placement and therefore modified custodial rights. *In re A.R.G.*, 361 N.C. 392 (2007). The supreme court rejected this argument, after looking at the definition of "custody" and "legal custody" in BLACK'S LAW DICTIONARY (8th ed. 2004) as " 'the care, control, and maintenance of a child awarded by a court to a responsible adult' or awarded 'to the state for placing the child in foster care if no responsible relative or family friend is willing and able to care for the child.' " *In re A.R.G.*, 361 N.C. at 396. The supreme court held there was no modification of

the father's custodial rights after finding that throughout the case the trial court had ordered that legal custody of the child remain with DSS, the father had never been awarded custody, and there had not yet been an order terminating parental rights.

**5. Order eliminating reunification as a permanent plan.** An order entered under G.S. 7B-906.2(b) that eliminates reunification as a permanent plan may be appealed by a parent, guardian, or custodian with whom reunification is not the permanent plan. G.S. 7B-1001(a)(5), (a)(8); *see* G.S. 7B-101(18c) (definition of "return home or reunification"); *In re M.G.B.*, 293 N.C. App. 568 (2024) (appeal by custodian of order eliminating reunification). In *In re Q.J.P.*, 296 N.C. App. 175 (2024), the court of appeals examined the language of G.S. 7B-1001(a)(5) and the definition of "return home or reunification" and held that a parent from whom the child was removed and for whom reunification was eliminated as a permanent plan may appeal that order even when reunification with the other parent is ordered as a secondary permanent plan. The court of appeals reasoned that to hold otherwise would be an unreasonable statutory interpretation given that a guardian or custodian could appeal in an identical circumstance. The holding balances the purpose of the Juvenile Code to protect the constitutional rights of a parent and the child's best interests. The court of appeals did not address whether G.S. 7B-1001(a)(5) applies to a parent who did not have physical custody of their child when the child was removed from the home of the other parent, a guardian, or a custodian.

The procedure for and timing of an appeal of a G.S. 7B-906.2(b) order depends upon whether the appellant is a parent, guardian, or custodian with whom reunification was eliminated as a permanent plan. The procedure for an appeal by a parent is unusual – it requires a delay in timing and the proper preservation of the right to appeal. *See* G.S. 7B-1001(a)(5), (a)(8); *In re A.P.W.*, 378 N.C. 405 (2021) (noting each parent through counsel preserved their right to appeal but did not file written notice to preserve appeal of order eliminating reunification from permanent plan; joint writ of certiorari to hear appeal granted). See also section 12.5.A, below (discussing the timing and manner of an appeal of an order eliminating reunification as a permanent plan).

The G.S. 7B-906.2(b) order is relatively new, as this statute was enacted in 2015 and replaced G.S. 7B-507(c) regarding reunification and reunification efforts. *See* S.L. 2015-136, sec. 7, 14 (effective for all actions pending or filed on or after October 1, 2015). The differences in these two statutes are significant and impact which orders may be appealed under G.S. 7B-1001(a)(5) and (a)(8).

Pursuant to G.S. 7B-906.2(b), the trial court must order concurrent permanent plans when reunification is a permanent plan; identify the primary and secondary plan; and unless certain findings were made, designate reunification as a primary or secondary plan. When the court has relieved DSS of reunification efforts at initial disposition based on a finding of a G.S. 7B-901(c) factor, reunification with that parent as a permanent plan is omitted and excluded at initial disposition, such that the following permanency planning order does not eliminate reunification as a permanent plan and is not appealable under G.S. 7B-1001(a)(5) and (a)(8). *In re R.G.*, 292 N.C. App. 572 (2024) (dismissing appeal of permanency planning order; identifying initial dispositional order that ceased reunification as the proper order for appeal). The court is not required to order concurrent planning when reunification is not designated as a permanent plan or once a permanent plan is or has been achieved. G.S. 7B-906.2(a1), (b), as

amended by S.L. 2025-16, sec.1.13(b), effective October 1, 2025; *see* G.S. 7B-906.2(a) (referring to one or more permanent plans).

The court eliminates reunification as a permanent plan by entering an order pursuant to G.S. 7B-906.2(b) that either (a) does not designate reunification as a primary or secondary plan so long as reunification efforts were not ceased at initial disposition (*see In re R.G.*, 292 N.C. App. 572) or (b) achieves a permanent plan other than reunification and either chooses to stop concurrent planning or identifies a secondary plan that is not reunification. Regardless of how reunification is eliminated as a permanent plan, the G.S. 7B-906.2(b) order may be appealed under G.S. 7B-1001(a)(5) or (a)(8). Only the first permanency planning order that eliminates reunification under G.S. 7B-906.2(b) may be appealed; a later permanency planning order that merely continues the permanent plans that did not include reunification is not an order that eliminates reunification as a permanent plan and is not an appealable order under G.S. 7B-1001. *In re J.A.K.*, 258 N.C. App. 262 (2018) (dismissing respondent father's appeal of an October permanency planning order that merely continued the concurrent permanent plans of adoption and guardianship ordered in April).

G.S. 7B-1001(a)(5) and (a)(8) focus on the elimination of reunification as a permanent plan under G.S. 7B-906.2(b) and not the cessation of reunification efforts. *See A.P.W.*, 378 N.C. at 410 n.3 (noting the right to appeal a permanency planning order that ceased reunification efforts was replaced in 2019 amendments to G.S. 7B-1001 by an order that eliminates reunification as permanent plan).

A permanency planning order that includes reunification as a secondary plan but directs DSS to commence a termination of parental rights (TPR) action to achieve the primary permanent plan of adoption does not implicitly or explicitly eliminate reunification as a permanent plan and is not an appealable order under G.S. 7B-1001(a)(5) or (a)(8). *In re A.A.S.*, 258 N.C. App. 422, 428 (2018) (recognizing new statutory framework "clearly contemplates the use of multiple, concurrent plans including reunification and adoption" and noting prior cases holding an implicit cessation of reunification efforts were decided under the former statutory scheme).

See Chapter 7.8.C.8 (discussing reasonable efforts findings); 7.8.D. (discussing the initiation of a TPR under certain circumstances); 7.9.D (discussing ceasing reasonable efforts); and 7.10.A (discussing permanent plans and reunification).

The former statute, G.S. 7B-507(c), which was replaced by G.S. 7B-906.2, authorized the trial court to order the cessation of reunification efforts in any order that awarded custody or placement responsibility of the child to DSS (e.g., nonsecure custody, disposition, review, permanency planning). The order ceasing reunification efforts under G.S. 7B-507(c) was an appealable order under the prior statutory language of G.S. 7B-1001(a)(5) at any stage in the abuse, neglect, or dependency proceeding and did not address or require the elimination of reunification as a permanent plan.

Beware that older case law addresses the cessation of reasonable efforts under G.S. 7B-507(c) and does not address an appeal of an order eliminating reunification as a concurrent permanent plan under G.S. 7B-906.2(b). The court of appeals has acknowledged the differences in the statutory framework for permanency planning when deciding issues addressing reunification as a permanent plan and reunification efforts and distinguishing

earlier cases that were decided under the former statutes. *See In re A.A.S.*, 258 N.C. App. at 427 (stating "*In re A.E.C.*[, 239 N.C. App. 36 (2015),] and the other cases cited by Respondent-Mother were decided prior to 1 October 2015, when N.C. Gen. Stat. § 7B-906.2 was enacted"); *see also In re C.S.L.B.*, 254 N.C. App. 395 (2017) (reunification remained a permanent plan such that findings about reunification efforts were not required; differs from *In re N.B.*, 240 N.C. App. 353 (2015), which involved an order that awarded guardianship as the permanent plan, effectively ceasing reunification efforts and thus requiring statutory findings regarding reunification efforts).

**6. Order granting or denying termination of parental rights.** Any final order terminating parental rights (TPR) or denying a TPR petition or motion may be appealed. G.S. 7B-1001(a)(7). In *In re A.B.C.*, 374 N.C. 752 (2020), the North Carolina Supreme Court discussed when a TPR order may be appealed and explained that a TPR involves a two-stage process: an adjudication stage followed by a disposition stage. If the trial court determines at the adjudication stage that the petitioner or movant did not prove the grounds by clear and convincing evidence, the court must enter an order denying the TPR petition or motion. The order denying the TPR is appealable under G.S. 7B-1001(a)(7). When the trial court adjudicates a ground during the adjudication stage, the court must proceed to the disposition stage. The adjudication order, by itself, is not a final order that is appealable under G.S. 7B-1001. The order granting the TPR is not final and cannot be appealed until after the adjudication and disposition orders have been entered pursuant to G.S. 1A-1, Rule 58.

**7. Order deciding placement on or expungement from the Responsible Individuals List.** An appeal of a district court order deciding whether an individual is placed on the Responsible Individuals List (RIL) is appealed under G.S. 7A-27(b)(2), not G.S. 7B-1001. G.S. 7B-323(f). Effective October 1, 2025, a responsible individual may seek the expungement of their name from the RIL. *See* G.S. 7B-325, enacted by S.L. 2025-16, sec. 1.19(b). The district court's decision in the expungement proceeding may be appealed under G.S. 7A-27(b)(2). Because neither type of RIL order is designated in G.S. 7B-1001, Appellate Rule 3.1 does not apply. Appellate Rule 42, which protects the minor's identity, applies when the alleged responsible individual committed a sexual offense against the juvenile, or a motion to seal the entire matter or just the juvenile's identity is made and granted by the appellate court. See Chapter 5.2.B for a discussion of the Responsible Individuals List.

## B. When an Appeal Is Moot

As a general rule, courts will not answer moot questions, and a case or issue "is 'moot' when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." *In re A.K.G.*, 270 N.C. App. 409, 411 (2020); *In re D.S.,* 260 N.C. App. 194, 199 (2018); *In re M.B.,* 253 N.C. App. 437, 439 (2017). The appellate court will decide a case only if the controversy giving rise to the appeal continues at the time of appeal. *In re A.K.*, 360 N.C. 449 (2006); *see In re D.S.*, 260 N.C. App. 194. Matters outside of the appellate record may be considered where it would moot the issue that is presented on appeal. *See In re E.J.B.*, 375 N.C. 95, 102 n.8 (2020) (supreme court took judicial notice of actions taken at the post-TPR hearing, after the appeal of the TPR order was made). An appeal will be

dismissed when a development occurs that makes the questions raised in the appeal academic. *State ex rel. Util. Comm'n v. S. Bell Tel. & Tel. Co*., 289 N.C. 286 (1976).

In the following cases, the court of appeals declined to address certain issues that were raised in appeals of orders entered in abuse, neglect, or dependency cases after concluding that the challenged issues had been rendered moot.

- Appeal of permanency planning order was dismissed as moot when the juvenile reached the age of 18 while the appeal was pending. Under G.S. 7B-201, the trial court's jurisdiction terminates when the juvenile turns 18. *In re A.K.G.,* 270 N.C. App. 409; *In re B.G*., 207 N.C. App. 745 (2010). The court of appeals noted that "our State's appellate system goes to rather extraordinary lengths to expedite these juvenile cases and it is, and should be, rare for a juvenile case to be rendered moot in this way." *In re A.K.G.,* 270 N.C. App. at 410.
- Mother's appeal of a permanency planning order that eliminated reunification and ceased reunification efforts was rendered moot when the trial court subsequently terminated mother's parental rights (TPR), and the TPR order was affirmed. In the TPR order, the trial court, after a hearing, made independent findings of fact and conclusions of law that did not rely on the permanency planning order appealed from, contained extensive findings of fact and conclusions of law that were not in the permanency planning order, and included findings of then-current conditions. *In re H.N.D.,* 265 N.C. App. 10 (2019) (relying on *In re V.L.B.*, 164 N.C. App. 743 (2004)). The North Carolina Supreme Court has stated the language of G.S. 7B-1001(a2) requiring the TPR order be vacated when an order eliminating reunification is vacated or reversed does not authorize the appellate court to render an appeal of a permanency planning order eliminating reunification moot when that order contains a harmful error. *In re L.R.L.B*. 377 N.C. 311 (2021) (remanding permanency planning order for entry of finding under G.S. 7B-906.2(d); see further discussion in section 12.5.A.3.(b), below).
- The argument that the permanency planning order that awarded guardianship to an out-of-state resident without first complying with the Interstate Compact on the Placement of Children was rendered moot when the guardian moved back to North Carolina. Respondent did not argue any exception to the mootness doctrine. *In re M.B.,* 253 N.C. App. 437 (2017).
- Respondent mother's appeal of the permanency planning order only was moot when she did not also appeal the accompanying G.S. Chapter 7B order that terminated the court's jurisdiction in the neglect proceeding and the resulting Chapter 50 civil custody order that was entered pursuant to G.S. 7B-911. Those two orders (the G.S. Chapter 50 and Chapter 7B termination of jurisdiction orders) would remain in effect. The respondent mother did not raise an exception to the mootness doctrine. *In re J.S.,* 250 N.C. App. 370 (2016).
- Respondent's appeal was moot because the order being appealed had been subsequently modified in a review hearing. Any determination of the issues on appeal would have no practical effect. No exceptions to the mootness doctrine applied. *In re A.S.*, *III*., 229 N.C. App. 198 (2013).
- The part of the mother's appeal challenging the trial court's finding that returning custody of the child to her was not in the child's best interest was moot when the trial court apparently had entered a subsequent order returning custody to the mother. *In re H.D.F*., 197 N.C. App. 480 (2009).

Despite arguments by one of the parties, the appellate courts have also determined that challenged issues were not moot and were properly before the court for appellate review. In *In re E.J.B.*, 375 N.C. 95, the supreme court rejected DSS's argument that the father's challenge to a TPR order, based on DSS's failure to send the mandatory notices under the Indian Child Welfare Act (ICWA) to the applicable tribes, was moot. The supreme court took judicial notice of the subsequent sending of the notices required by ICWA but concluded the notices did not cure the challenged error because those notices were legally insufficient due to their failure to comply with ICWA requirements. *In re E.J.B.*, 375 N.C. at 102 n.8. In *In re D.S.*, 260 N.C. App. 194, the court of appeals rejected the arguments of DSS and the child's GAL that respondent father's challenge to the permanency planning order, which granted guardianship of the child to a nonrelative without first addressing the statutory placement preference with a relative, the child's grandmother, was moot due to a subsequent order that ceased all contact between the child and grandmother. Although the trial court ceased contact between the child and grandmother, it never addressed the statutory requirement to consider priority placement with a relative over a nonrelative. The reasoning behind the decision to cease contact with the grandmother may be relevant to the priority placement preference with a relative, but it is an evidentiary matter that does not render the issue moot. Because there may be a practical effect on the case when the trial court addresses the statutory placement priority, the issue is not moot.

In other cases, if the continued existence of the judgment itself may result in adverse collateral legal consequences for the appellant, the validity of the judgment continues to be a live controversy and an appeal from that judgment is not moot. *In re A.K.*, 360 N.C. 449.

**1. Exception based on collateral legal consequences of abuse, neglect, dependency adjudication.** A parent's regaining custody during a pending appeal challenging an abuse, neglect, or dependency adjudication does not render the case moot because there are collateral legal consequences for the parent. *In re A.K.*, 360 N.C. 449 (2006) (reversing and remanding court of appeals dismissal of respondent father's appeal as moot). Possible collateral legal consequences include (1) the use of an abuse or neglect adjudication to support a determination that another child with whom the parent resides is neglected (*see* G.S. 7B-101(15) definition of "neglected juvenile") and (2) the admissibility of the adjudication in any future termination of parental rights proceeding involving the same child that alleges abuse or neglect as the ground (*see* G.S. 7B-1111(a)(1)). *In re A.K.*, 360 N.C. 449.

**2. Exception based on collateral legal consequences of termination of parental rights.** The termination of a parent's rights to one child may be a ground for termination of that parent's rights to another child if that parent lacks the ability or willingness to establish a safe home for the other child. G.S. 7B-1111(a)(9) (note an exception for prior TPR of an infant who was safely surrendered on or after October 1, 2023). The court of appeals has held that the collateral consequence arising from a possible future application of G.S. 7B-1111(a)(9) makes an appeal of a TPR order not moot. *See In re Baby Boy*, 238 N.C. App. 316, 319 (2014) (appeal of an order terminating respondent mother's parental rights was not moot when the order was entered while an appeal of the child's adoption based on the validity of mother's relinquishment was pending (*see In re Adoption of Baby Boy*, 233 N.C. App. 493 (2014)) and subsequently held valid after the TPR was granted, thus finalizing the adoption; even though the appeal of the TPR order would have no practical effect on the child's parentage, the TPR order "may have an effect on respondent's parental rights in the future as to any other children

she has or may have"); *In re C.C.*, 173 N.C. App. 375 (2005) (refusing to dismiss as moot a mother's appeal from a TPR order, when the child took his own life after notice of appeal was given, because a TPR may form the basis of a subsequent proceeding to terminate the parent's rights in relation to another child); *In re J.S.L.*, 218 N.C. App. 610 (2012) (trial court erred when it denied respondent putative father's motion for paternity testing and terminated respondent's parental rights; that respondent's parental rights had been terminated did not render moot his appeal of the denial of the motion for paternity testing because of the collateral legal consequences of a TPR order; if testing did not establish paternity, the trial court would be required to dismiss the TPR petition).

Although not addressed in these appellate decisions, another collateral consequence of a TPR order is the cessation of reunification efforts with that parent if another child of the parent is adjudicated abused, neglected, or dependent. Under G.S. 7B-901(c)(2), the court is authorized at the initial dispositional hearing to relieve DSS of providing reunification efforts to a parent if the trial court finds that a court of competent jurisdiction has involuntarily terminated that parent's rights to another child. *See In re M.S.*, 289 N.C. App. 127 (2023) (affirming cessation of reasonable efforts at initial disposition based on prior TPR).

**3. No collateral legal consequences from findings of fact in a permanency planning order.** The court of appeals addressed appellant's argument that unfavorable findings of fact in a permanency planning order had collateral legal consequences in *In re A.K.G.,* 270 N.C. App. 409 (2020). In this case, the father argued findings of fact related to his failure to address domestic violence issues could have collateral legal consequences in a future proceeding, such as a custody proceeding, regarding a child that he may father in the future. The court of appeals stated that "[f]indings of fact in a court order from an unrelated legal proceeding are not proper subjects of judicial notice." *In re A.K.G,* 270 N.C. App. at 412. In response to the father's argument that non-mutual collateral estoppel would bar him from challenging those findings, the court of appeals noted that not only was the application of non-mutual collateral estoppel "an exceedingly remote possibility" but that there were substantially similar findings in prior orders that would be available for another party to use. *In re A.K.G,* 270 N.C. App. at 412. Finally, the court of appeals held that the exceptions to the mootness doctrine based on public interest and the capability of repetition, yet evading review did not apply to an appeal of order that challenged particularized facts and were specific to that case.

## C. Consolidation of Appeals

Under Appellate Rule 40, the appellate court, on its own motion or the motion of a party, may consolidate two or more actions that involve common issues of law. When those actions are consolidated, they are calendared and heard as a single case. *See In re G.G.M.*, 377 N.C. 29 (2021) (granting respondent father's motion to consolidate appeals of two TPR orders – one for each juvenile); *In re A.W.*, 377 N.C. 238 (2021) (supreme court granted motion to consolidate appeal of neglect and dependency adjudication and dispositional orders brought in the court of appeals with appeal of TPR order brought in the supreme court (under previous statute requiring direct appeal of TPR to the supreme court)); *In re C.B.C.B.*, 379 N.C. 392 (2021) (after granting a petition for discretionary review to hear the appeal of a neglect adjudication and initial dispositional order that had been pending in the court of appeals because a TPR order for the same juvenile was directly appealed to the supreme court (under previous statute requiring direct appeal of TPR to supreme court), supreme court on its own

motion consolidated the two appeals); *In re R.G.*, 292 N.C. App. 572 (2024) (court of appeals granted mother's motion to consolidate appeal of two different permanency planning orders).

## 12.5 Notice of Appeal

### A. Timing, Manner, and Content of Notice

**1. Electronic filing.** The Appellate Rules require counsel to file documents electronically. N.C. R. APP. P. 26(a). An item is filed when it is received by the electronic filing site. A party who is not represented by an attorney, although encouraged to file items electronically, may file items by hand delivery or mail. N.C. R. APP. P. 26(a). Exceptions allowing for hand or mail delivery are addressed in N.C. R. APP. P. 26(a).

**2. Timing and manner generally.** A notice of appeal is filed with the clerk of superior court and must be given in writing within thirty days after entry and service of the order pursuant to Rule 58 of the Rules of Civil Procedure. G.S. 7B-1001(b); N.C. R. APP. P. 3.1(b); *see In re K.W.*, 272 N.C. App. 487 (2020) (granting motion to dismiss when mother filed notice of appeal after disposition hearing but before court entered its order; mother's petition for certiorari was granted). When the end of the thirty-day period falls on a weekend or legal holiday that the courthouse is closed, Appellate Rule 27 extends the deadline until the next business day. N.C. R. APP. P. 27; *In re N.N.*, 296 N.C. App. 159 (2024) (holding father timely filed notice of appeal of adjudication and disposition orders; where the thirtieth day following entry of the order fell on a Sunday, the deadline was extended to the thirty-first day following entry – the date notice was filed). A judgment is not entered until it is reduced to writing, signed by the judge, and filed with the clerk of court. N.C. R. CIV. P. 58. The judge who presided over the hearing is the judge who must sign the order; otherwise, the order does not comply with Rule 58 and is not entered. *In re C.M.C.*, 373 N.C. 24, 28 (2019) (holding termination of parental rights (TPR) order signed by a judge who did not preside over the TPR hearing was a nullity; stating, "[i]n view of the fact that no viable adjudication and termination orders were actually entered . . . . "). An order that fails to indicate it was filed with the clerk (e.g., a file stamp or other mark to indicate a filing date) is not entered. *McKinney v. Duncan*, 256 N.C. App. 717 (2017) (dismissing appeal for lack of subject matter jurisdiction in the appellate court when the underlying orders were never entered as they were devoid of any proof of filing with the clerk). *Cf.* N.C. R. CIV. P. 5(e)(3) (addressing failure to affix a date or file stamp on an order). See Chapter 4.9.C (discussing entry and service of orders and Rule 58).

The purposes of Rule 58 are "to make the time of the entry of judgment easily identifiable, and to give fair notice to all parties that a judgment has been entered." *Thiagarajan v. Jaganathan*, 289 N.C. App. 105, 107 (2023) (citation omitted). Rule 58 of the Rules of Civil Procedure requires that the parties be served within three days of the entry of the judgment. If the party has been served as required, within three days of the entry of the judgement, the thirty-day time period to appeal starts from the date of the entry of the judgment. N.C. R. APP. P. 3(c)(1). The three-day period does not include weekends and legal holidays when the courthouse is closed. N.C. R. CIV. P. 6(a). As a result, the three-day time period for service is three business days. *Thiagarajan*, 289 N.C. App. 105 (dismissing appeal as untimely; order

entered on Friday was served by mail three business days later, Wednesday; notice of appeal required to be filed within thirty days of date of entry of judgment and not of service). If service is not made within three business days of the judgment's entry, the thirty-day time period starts with the date of service; additional time is not added for service by mail. N.C. R. APP. P. 3(c). *See In re K.B.C.*, 295 N.C. App. 619 (2024) (notice was timely filed where father was served fourteen days after entry of the TPR order, at which time the thirty-day period began, and father filed his appeal within thirty days of the date of service).

The court of appeals has held that actual notice that an order has been entered substitutes for proper service under Appellate Rule 3(c), making the service requirements inapplicable. *See Brown v. Swarn*, 257 N.C. App. 417 (2018) and cases discussed therein. Actual notice to a party occurs by an email of the order to that party even though email is not a valid method of service under Rule 4 of the Rules of Civil Procedure. *Magazian v. Creagh*, 234 N.C. App. 511 (2014) (dismissing appeal as untimely after holding plaintiff received actual notice of the order by email within three days of the entry of the judgment, thus requiring the notice of appeal to be filed within thirty days of entry of the judgment and not thirty days from the date the email was received).

The court of appeals has further held that when seeking a dismissal of an appeal based on untimeliness when there is not a certificate of service of the judgment in the record, the *appellee* has the burden to show that the appellant (the party appealing) received actual notice of the judgment's entry more than thirty days before the appeal was taken. *Brown*, 257 N.C. App. at 422 (emphasis in original).

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**Resource:** For a discussion of the thirty-day time period to appeal a civil judgment, see Ann Anderson, *Appeal Deadlines and Tolling Under Rule 3(c)(2): Don't Be So Sure!,* UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (April 6, 2016).

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Notice of appeal given within thirty days after the oral rendering of judgment in open court, but before entry of judgment, is timely. *See In re J.L.,* 184 N.C. App. 750 (2007) (holding that the trial court erred in dismissing the respondent's appeal for failure to timely give notice of appeal, when the respondent filed a written notice of appeal after the court rendered its judgment but before the court entered its written judgment); *In re S.F.*, 198 N.C. App. 611 (2009) (holding that notice of appeal was timely where respondent filed the notice nine days after the court orally announced the decision to terminate parental rights, even though the court's written order was not entered until more than a month later). A notice of an appeal from an orally rendered judgment in open court does not vest jurisdiction in the appellate court until that judgment is entered pursuant to the requirements of Rule 58. *In re O.D.S.*, 247 N.C. App. 711 (2016). When a notice of appeal has been filed from an orally rendered judgment made in open court, a second notice of appeal must be filed if the judgment that is written and entered does not generally conform to the judgment that was orally rendered. *In re O.D.S.*, 247 N.C. App. 711.

Any necessary amendment to the notice of appeal must also be filed within the thirty-day time limit. *See In re K.C.*, 199 N.C. App. 557 (2009) (dismissing appeal by right of the adjudication and disposition orders when the amended notice of appeal, the only notice that referenced the

disposition order, was filed more than thirty days after the order was entered; granting writ of certiorari to hear appeal).

**3. Timing and manner of appeal of order eliminating reunification as a permanent plan.** Reunification is one of six possible permanent plans for a child who is the subject of an abuse, neglect, or dependency action. G.S. 7B-906.2(a). The Juvenile Code defines "reunification" as the child's placement in the home of either parent or in the home of a guardian or custodian from whose home the child was removed by court order. G.S. 7B-101(18c). Under G.S. 7B-906.2(b), when a court orders concurrent permanent plans, reunification must be designated as a primary or secondary permanent plan unless certain findings are made or the court relieved DSS of making reasonable efforts for reunification in the initial dispositional order. See Chapter 7.8.A.2, 7.8.C.8, and 7.10.A (relating to types of dispositional hearings addressing findings at initial dispositional hearing under G.S. 7B-901(c) and permanency planning hearings under G.S. 7B-906.2). An order entered under G.S. 7B-906.2(b) that eliminates reunification as a permanent plan is an appealable order (as discussed in section 12.4.A.5, above), but the requirements for an appeal vary depending on the circumstances.

**(a) Immediate appeal for custodian or guardian.** A custodian or guardian who is a party may appeal a G.S. 7B-906.2(b) order that eliminates reunification with the custodian or guardian as a permanent plan. G.S. 7B-1001(a)(5)b; *see In re M.G.B*., 293 N.C. App. 568 (2024) (appeal by custodian of order eliminating reunification). The notice of appeal must be given within thirty days after entry and service of the order as set forth in Rule 58 of the Rules of Civil Procedure. G.S. 7B-1001(b).

**(b) Delayed appeal for parent.** Instead of an immediate appeal of an order eliminating reunification with a parent as a permanent plan entered under G.S. 7B-906.2(b), a parent must wait a minimum of sixty-five days from the entry and service of that order before filing a notice of appeal. *See* G.S. 7B-1001(a)(5)a.2., (a)(8)b. The purpose of the delay is to allow for the commencement and resolution of a termination of parental rights (TPR) action (if such an action is necessary) and when a TPR is ordered, to combine the appeals of the G.S. 7B-906.2(b) order with the appeal of the TPR order.

**Written notice to preserve right to appeal required.** The parent must preserve the right to appeal the G.S. 7B-906.2(b) order in writing within thirty days of the order being entered and served. G.S. 7B-1001(a)(5)a.1., (a)(8)a. After a designated period of time passes, the parent must then file a notice of appeal of the G.S. 7B-906.2(b) order. G.S. 7B-1001(a)(5)a.3., (a)(8)c. The timing of the filing of the notice of appeal depends on whether a subsequent TPR motion or petition is filed with the district court within sixty-five days of the entry and service of the G.S. 7B-906.2(b) order.

Note that a G.S. 7B-906.2(b) order may meet the criteria of another type of order designated in G.S. 7B-1001, such that an immediate appeal is made under that other provision of G.S. 7B-1001. The court of appeals determined that an appeal of an order that changed legal custody of the child and ceased reasonable efforts under a former statute (G.S. 7B-507) was immediately appealable under G.S. 7B-1001(a)(4), allowing appeal of any order, other than a nonsecure custody order, that changes legal custody of the child. *In re E.G.M.*, 230 N.C. App. 196 (2013) (order appealed from changed custody from respondent mother to DSS in addition to ceasing reasonable efforts; distinguished from *In*

*re D.K.H.*, 184 N.C. App. 289 (2007), which dismissed appeal without prejudice as order did not change custody of child and did not meet criteria under former G.S. 7B-1001(a)(5)a.−c., noting father could refile at later time as permitted by G.S 7B-1001(a)(5); decided under former statutes).

**A TPR petition or motion is not filed within sixty-five-day time period.** If a TPR petition or motion is not filed within sixty-five days of entry and service of the G.S. 7B-906.2(b) order eliminating reunification as a permanent plan, a parent who has given written notice preserving the right to appeal that order may appeal at that time. G.S. 7B-1001(a)(5)a. A parent must wait the designated time period before filing the notice of appeal when a TPR petition or motion has not been filed. G.S. 7B-1001(a)(5)a.2. *See In re D.K.H.*, 184 N.C. App. 289 (decided under former statutes; dismissing father's appeal of order ceasing reunification efforts where the father filed notice of appeal before the required number of days had passed; dismissal was without prejudice since father had given proper notice of his intent to appeal). Once the sixty-five days have elapsed, the thirty-day time period to file the notice of appeal under G.S. 7B-1001(b) starts to run. G.S. 7B-1001(a)(5)a.3. The notice of appeal must be filed within those thirty days, making the time period between sixty-six and ninety-five days after entry and service of the G.S. 7B-906.2(b) order. G.S. 7B-1001(a)(5)a.3; *see In re Q.J.P.,* 296 N.C. App. 175 (2024) (mother timely filed notice to preserve appeal and notice of appeal of permanency planning order); *In re A.R.*, 238 N.C. App. 302 (2014) (dismissing respondent's appeal for being untimely as the notice of appeal was filed more than 210 days after entry of the order ceasing reunification efforts; decided under the former applicable statutes); *see also In re M.T.*, 285 N.C. App. 305 (2022) (granting writ of certiorari to order eliminating reunification with appeal of a TPR order when an untimely notice to preserve appeal of the order eliminating reunification was filed).

**TPR petition or motion is filed within sixty-five days; combined with appeal of TPR order.** When a TPR action is filed within sixty-five days of entry and service of the G.S. 7B-906.2(b) order eliminating reunification as a permanent plan and there is a subsequent appeal of the order granting the TPR, the appeal of the G.S. 7B-906.2(b) order may be made together with the appeal of the TPR order. G.S. 7B-1001(a)(8), (a2); *see In re A.P.W.,* 378 N.C. 405 (2021) (noting appellate court reviews order eliminating reunification as a permanent plan with a TPR order). All of the following conditions must have occurred:

- the right to appeal the G.S. 7B-906.2(b) order was timely preserved in writing;
- the TPR motion or petition has been heard and granted;
- the TPR order is appealed in a proper and timely manner; and
- a separate notice of appeal of the G.S. 7B-906.2(b) order is filed within thirty days of entry and service of the TPR order.

G.S. 7B-1001(a)(8).

In the case, *In re L.M.T.*, 367 N.C. 165 (2013), the North Carolina Supreme Court interpreted the former language in G.S. 7B-1001(a)(5)a. (when it referred to an appeal of an order ceasing reunification efforts under former G.S. 7B-507(c)) that stated the G.S. 7B-507 order shall be reviewed "together with an appeal of the termination of parental

rights [TPR] order." The supreme court held that "together" means that the two orders are considered as a whole and are not reviewed separately. This supreme court holding reversed the court of appeals holding that the permanency planning order ceasing reunification efforts when reviewed alone was insufficient and, therefore, was reversed and remanded. The supreme court held that both the permanency planning order and the TPR order when read together were sufficient and stated that even if the permanency planning order was deficient, it should have been reviewed in conjunction with the TPR order to determine whether the statutory requirements were met. Insufficient findings of fact in the cease reunification order may be cured by the findings of fact in the TPR order. The supreme court reasoned that this interpretation of "together" advances one of the purposes of the Juvenile Code – to provide for the child's best interests within a reasonable amount of time. *See* G.S. 7B-100(5); 7B-1100(2).

More recently, the supreme court examined the holding of *In re L.M.T.*, 367 N.C. 165, and the 2017 amended language of G.S. 7B-1001(a2) which stated, "the Supreme Court shall review the order eliminating reunification together with an appeal of the order terminating parental rights. *If the order eliminating reunification is vacated or reversed, the order terminating parental rights shall be vacated*." (emphasis added) (note, effective July 1, 2021, the language of G.S. 7B-1001(a2) refers to the Court of Appeals rather than the Supreme Court; *see* S.L. 2021-18, sec. 2). In *In re L.R.L.B.*, 377 N.C. 311 (2021), the supreme court rejected the mother's argument that the second sentence in G.S. 7B-1001(a2) (emphasized above) abrogated the holding of *In re L.M.T.* The supreme court distinguished between the effect of a fatally defective permanency planning order that eliminated reunification from a permanent plan, which cannot be cured by findings in a TPR order, with an incomplete order that contained insufficient findings, which may be cured by findings in the TPR order. In *In re L.R.L.B.,* the permanency planning order contained the required ultimate finding under G.S. 7B-906.2(b) and three of the four required findings for G.S. 7B-906.2(d). The supreme court determined it was appropriate to remand the matter so that the trial court could correct the deficiency, the failure to include the G.S. 7B-906.2(d)(3) finding, in the permanency planning order. In its interpretation of G.S. 7B-1001(a2), the supreme court reasoned that in enacting G.S. 7B-1001(a2), the Legislature did not intend to disregard the TPR process because of an omission of a single finding under G.S. 7B-906.2(d) since none of those findings are required to support the court's decision to eliminate reunification as a permanent plan. Further, the supreme court noted that mother did not show that the error arising from the omitted finding was material and prejudicial to her. The trial court's substantial compliance with G.S. 7B-906.2 and the precedent established in *In re L.M.T.* supports the remedy of a remand for additional findings, rather than the more drastic reversal or vacation of the permanency planning order. Because of the remand of the permanency planning order, the supreme court did not consider the TPR order. The supreme court relied on *In re L.R.L.B*. when determining the failure to include all G.S. 7B-906.2(d) findings warranted a remand of the permanency planning order to make sufficient findings and did not require the TPR to be vacated. *In re C.H.*, 381 N.C. 745 (2022). *But see In re L.L.*, 386 N.C. 706 (2024) (holding only the factors in G.S. 7B-906.2(d) that demonstrate the degree of success or failure for reunification are required; further holding the findings in G.S. 7B-906.2(b) and (d)(4) are synonymous).

G.S. 7B-1001 is silent as to a parent's right to appeal a G.S. 7B-906.2(b) order eliminating reunification when a TPR is initiated within the sixty-five-day period and is denied. The lack of designation in G.S. 7B-1001 appears to mean that the order eliminating reunification is not an appealable order. A party wishing to appeal that G.S. 7B-906.2(b) order may need to petition for a writ of certiorari (discussed in section 12.10.A., below). *See In re Doe*, 126 N.C. App. 401 (1997) (holding a minor may petition the appellate court for a writ of certiorari to review a superior court order denying a judicial waiver of parental consent for abortion when the statute does not provide an appeal of right to the appellate courts).

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**Resource:** For a discussion of the effect on the district court's authority when the TPR is not filed within the designated time period and an appeal of the G.S. 7B-906.2(b) order is pending, see Sara DePasquale, *What Can the District Court Do in an A/N/D or TPR Action when an Appeal is Pending?*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Aug. 2, 2019).

**Practice Note:** Beware. The court of appeals has interpreted former versions of G.S. 7B-1001 when challenges have been made about the manner of the notice and/or lack of written notice for either the preservation of or notice to appeal the order ceasing reunification efforts. *See, e.g., In re A.E.C.*, 239 N.C. App. 36 (2015) (dismissing writ of certiorari as moot; holding father, who did not preserve the right to appeal the orders that ceased reunification efforts by giving a timely notice of appeal of those orders, did properly preserve his right to challenge those orders when he raised them as an issue in his appeal of the TPR order). Given the different statutory language currently in effect, it is likely the court of appeals would distinguish those prior holdings as having been interpreted under the former statutory language. *See In re A.A.S.*, 258 N.C. App. 422, 427 (2018) (stating "*In re A.E.C.*[, 239 N.C. App. 36 (2015),] and the other cases cited by Respondent-Mother were decided prior to 1 October 2015, when N.C. Gen. Stat. § 7B-906.2 was enacted").

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**4. Signatures.** The Juvenile Code requires that the notice of appeal be signed by both the appealing party and counsel for the appealing party, if any. G.S. 7B-1001(c); N.C. R. APP. P. 3.1(b) (incorporating G.S. 7B-1001(c)). *See In re Z.A.N.L.W.C.*, 297 N.C. App. 698 (2025) (dismissing the appeal for failure of mother to sign the notice of appeal; notice was signed by mother's counsel and Rule 17 GAL only); *In re A.S.*, 190 N.C. App. 679 (2008) (dismissing the appeal for failure of the mother to sign the notice of appeal but granting her writ of certiorari), *aff'd per curiam*, 363 N.C. 254 (2009).

For an appeal by a juvenile, the notice of appeal must be signed by the guardian ad litem (GAL) attorney advocate. G.S. 7B-1001(c); N.C. R. APP. P. 3.1(b) (incorporating G.S. 7B-1001(c)). The appeal statute, G.S. 7B-1001, does not contemplate an appeal by a juvenile who is not represented by a GAL attorney advocate. However, G.S. 7B-1002(2), which designates proper parties for an appeal, requires that the court appoint a Rule 17 GAL to a juvenile who makes an appeal and has not had a G.S. 7B-601 GAL appointed. Neither statute addresses who signs the notice of appeal for the juvenile who does not have a G.S. 7B-601 GAL. See Chapters 2.3.D and 9.4.C (discussing the child's GAL).

An appeal by DSS must be signed by the director, which includes the director's authorized representative. *See* G.S. 7B-101(10) (definition of "director"). Under G.S. 108A-14(b), "[t]he director may delegate to one or more members of his staff the authority to act as his representative." When a notice of appeal is signed by a DSS social worker as the director's authorized representative, the notice of appeal is properly signed and sufficient to confer jurisdiction with the appellate court. *In re G.B.G.*, 297 N.C. App. 772 (2025). See Chapter 2.2.B.1 (discussing DSS director).

The Juvenile Code also does not specify who must sign the written notice to preserve the right to appeal a G.S. 7B-906.2(b) order that eliminates reunification as a permanent plan. The sole instruction is found in G.S. 7B-1001(b), which states "notice to preserve the right to appeal shall be given in writing by a proper party as defined in G.S. 7B-1002." *See* N.C. R. APP. P. 3.1(b) (incorporating G.S. 7B-1001(b)). Whether "given" means the signature of that party is unclear. The safest approach is to follow the same signature requirements for a notice of appeal. *See* G.S. 7B-1001(c); N.C. R. APP. P. 3.1(b) (incorporating G.S. 7B-1001(c)).

For both the notice of appeal and the notice to preserve the right to appeal, when a Rule 17 guardian ad litem (GAL) is appointed to a respondent parent, the question of who must sign – the Rule 17 GAL of substitution, the parent as the party, or both – is unanswered.

Most recently, in *In re Z.A.N.L.W.C.*, 297 N.C. App. 698, the mother, who had a Rule 17 GAL appointed to her, appealed the order terminating her parental rights. The mother did not sign the notice of appeal, but her Rule 17 GAL and attorney did. The court of appeals sua sponte raised the issue of its jurisdiction based on the lack of signature by the mother and determined the notice was defective without mother's signature and dismissed the appeal. In its opinion, the court of appeals reasoned that the GAL was not a designated party under G.S. 7B-1002 who had standing to appeal an order. It further distinguished this case from a prior opinion, *In re J.L.F.*, 378 N.C. 445 (2021), where the father did not sign the notice of appeal but his attorney attached to the notice of appeal a letter from the father indicating the father's desire to appeal the TPR order. The court of appeals determined the inclusion of that letter from the father substantially complied with the signature requirements of G.S. 7B-1001(c), particularly considering there was not a motion to dismiss the appeal made by DSS or the juvenile's GAL. Although at first blush, it appears *In re Z.A.N.L.W.C.* answered the question, the court of appeals raised the basis for the Rule 17 GAL's appointment. Without addressing that a Rule 17 GAL can only be appointed when the court determines the respondent is incompetent (or an unemancipated minor of a certain age), the court of appeals stated the reason for the GAL appointment was not explained in the record and "the information in our record indicates Mother was not incompetent as defined by [G.S. 35A-1107(7)]. . . ." *In re Z.A.N.L.W.C.*, 297 N.C. App. at 703. *See* G.S. 7B-602(b), (c), as amended by S.L. 2025-16, sec. 1.9, effective October 1, 2025; 7B-1101.1(c), (d). For a discussion of GALs for respondent parents, see Chapter 2.4.G. *In re Z.A.N.L.W.C.* follows the holding in *In re E.B.*, 285 N.C. App. 246 (2022) (unpublished), where the court of appeals held that a notice of appeal signed by respondent mother's GAL and attorney but not mother was defective and did not confer subject matter jurisdiction on the appellate court as mother was required to sign the notice of appeal.

In *In re V.S.*, 380 N.C. 819 (2022), the supreme court did not address whether a notice of appeal that is signed by the respondent parent and her attorney but not the parent's Rule 17

GAL was defective because the supreme court granted a petition for writ of certiorari to hear the appeal. The trial court dismissed the notice of appeal for being defective because although mother and her attorney signed the notice of appeal, mother's Rule 17 GAL did not. The trial court's dismissal prompted mother to file the petition for writ of certiorari.

In *In re Q.M., Jr.,* 275 N.C. App. 34, 37 (2020), the court of appeals recognized the parent's first notice of appeal was defective because it was signed by her attorney only and "was not signed by Respondent-mother, a violation of N.C. Gen. Stat. § 7B-1001(c), nor was it signed by Respondent-Mother's Guardian ad litem." Mother's second notice of appeal corrected the defect when it was signed by both the attorney and Rule 17 GAL.

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**Practice Note:** The safest practice is for the Rule 17 GAL, the respondent parent, and the attorney to sign the notice of appeal. See Chapter 2.4.G (discussing GALs for respondent parents).

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**5. Contents.** The notice of appeal must specify the party or parties taking the appeal and must designate the judgment or order from which the appeal is taken and the court to which the appeal is taken. N.C. R. APP. P. 3(d). *See In re D.W.C.*, 205 N.C. App. 266 (2010) (dismissing argument on appeal related to the underlying neglect case where respondent mother alleged error with the GAL appointment in both the TPR and underlying neglect cases but only referenced the TPR order in her notice of appeal). However, the supreme court has noted that "a mistake in designating the judgment, or in designating the part appealed from if only a part is designated, should not result in loss of the appeal as long as the intent to appeal from a specific judgment can be *fairly inferred* from the notice and the appellee is not misled by the mistake." *In re A.E.*, 379 N.C. 177, 183 n.4 (2021) and *In re W.K.*, 376 N.C. 269, 272 n.4 (2020) (both quoting *Evans v. Evans*, 169 N.C. App. 358, 363 (2005)) (allowing respondents' appeal of TPR orders that listed date of order appealed from as the date of the TPR hearing and not the date the order was entered). The court of appeals has applied this principle when examining other defects in the notice. *See In re H.R.P.*, 297 N.C. App. 339 (2024) (allowing respondents' appeal of TPR orders where each notice cited incorrect statutory authority for the appeal; respondents properly appealed to the court of appeals and correctly indicated the orders from which they intended to appeal; holding even if the notices were jurisdictionally defective, the intent of respondents' appeal could be fairly inferred and the petitioner was not misled by any defect, as evidenced by the petitioner's full participation in the appeal).

Some defects in the notice are nonjurisdictional, such that the appellate court will proceed with hearing the appeal. In *In re K.B.C.*, 295 N.C. App. 619 (2024), there were two nonjurisdictional defects, neither of which deprived the appellate court of jurisdiction. The first defect was the incorrect designation of the court to which the appeal was made – the supreme court instead of the court of appeals. The court of appeals determined that dismissal is not warranted when the court of appeals is the only court with jurisdiction to hear the appeal and the opposing party has not suggested it was misled by the error. The second defect involved the failure to include the correct statute authorizing the appeal, which is also a nonjurisdictional defect. Appellate Rule 3.1 does not require notices contain a citation to statutory authority for the appeal. *In re H.R.P.*, 297 N.C. App. 339.

Special rules related to the protection of the child's identity apply to the notice of appeal and are explained in section 12.6, below.

### B. Service and Proof of Service

Appellate Rule 3.1(b) requires that copies of the notice of appeal be served on all other parties. Appellate Rule 26(c) addresses the manner of service of the notice of appeal, which may be made in a variety of ways. Service may be made pursuant to Rule 4 of the Rules of Civil Procedure on a party or the party's attorney of record. Service also may be made by delivering a copy of the notice to the party or the attorney. Delivery of a copy means handing it to the attorney or to the party or leaving it at the attorney's office with a partner or employee. Service also may be made by mailing a copy to the recipient's last known address, or, if no address is known, by filing it with the clerk. Service by mail is complete upon deposit of a properly addressed, postage paid envelope or package in a post office or official depository of the United States Postal Service or, for those having access to such services, upon deposit with "the State Courier Service or Inter-Office Mail." When an item relating to an appeal is filed electronically to the electronic filing site, service also may be accomplished electronically to the other counsel's of record correct and current email address or by any other manner described in this section. If *Enterprise Justice (Odyssey)* is used to file the item, service may be made using the service feature of *Enterprise Justice (Odyssey)*.

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**Resources:**
For more information on service by mail, see "Mail Service Center" under "Divisions" on the North Carolina Department of Administration website, which provides information about the state Mail Service Center, including explanations of state courier mail and inter-office mail.

For more information on efiling and *Enterprise Justice (Odyssey)*, see "eCourts" on the North Carolina Judicial Branch website.

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The notice of appeal filed with the court must contain an acknowledgment of service signed by the person who was served or a certificate of service from the person who made the service. If *Enterprise Justice (Odyssey)* is used for filing and service, the Notification of Service that is generated by *Enterprise Justice (Odyssey)* is sufficient. N.C. R. APP. P. 26(d). Failure to file proof of service with the notice of appeal, when not waived by the party entitled to be served, is grounds for dismissal of the appeal. *See In re K.D.C.,* 375 N.C. 784 (2020) (lack of proof in appellate record that notice of appeal was served on the other parties was not raised by DSS or GAL, thus waiving any issue about deficiency of service); *Blevins v. Town of West Jefferson*, 361 N.C. 578 (failure to include certificate of service was waived when the appellee did not raise the issue and participated without objection in the appeal), *rev'g per curiam for the reasons stated in the dissent,* 182 N.C. App. 675 (2007); *In re A.C.*, 182 N.C. App. 759 (2007) (dismissing appeal; by filing a motion to dismiss before participating in the appeal without objection, DSS did not waive the defect); *In re C.T.*, 182 N.C. App. 166 (dismissing appeal when DSS and GAL did not waive the proof of service requirement), *aff'd per curiam*, 361 N.C. 581 (2007).

However, the failure to serve the notice or show proof of service affects personal jurisdiction, not subject matter jurisdiction. *In re A.N.B.*, 290 N.C. App. 151 (2023) (holding failure to

serve notice of appeal on all parties is a nonjurisdictional defect); *In re S.F.*, 198 N.C. App. 611 (2009) (exercising discretion to grant appellant's petition for writ of certiorari and hear the appeal when the appellant did not include a certificate of service in his timely notice of appeal; finding the appellate court had subject matter jurisdiction over appeal and DSS and GAL had actual notice of the appeal). The appellate court will assess whether the failure to serve the notice of appeal is a "substantial or gross violation of the appellate rules." *In re A.N.B.*, 290 N.C. App. at 162 (citation omitted) (denying appellant's petition for writ of certiorari as superfluous; no substantial or gross violation of Appellate Rule 3.1(b) when GAL was not served; GAL had actual notice of appeal and did not raise the issue); *In re L.M.*, 291 N.C. App. 519 (2023) (unpublished) (dismissing appeal; permanent guardian automatically became a party to the action; guardian was not served and did not waive lack of service; failure to serve frustrated adversarial process and impaired appellate review).

When parties are joined in an appeal, service on any one of the joined parties is sufficient. N.C. R. APP. P. 26(e).

### C. Appellate Entry Forms

Appellate entry forms are North Carolina Administrative Office of the Courts (AOC) forms typically filled out by the clerk of court when notice of appeal has been given. The form is signed by the judge and orders the clerk to furnish copies of the file to the parties, orders assignment of a transcriptionist, and orders appointment of Indigent Defense Services (IDS) appellate counsel when appropriate. The forms also include contact information for persons involved in the appeal and address costs, any need for a translator or interpreter, and the dates of the hearings for which recordings should be sent to the transcriptionist.

**AOC Forms:**

- AOC-J-160, Appellate Entries in Abuse, Neglect, Dependency, or Termination of Parental Rights Proceeding (for use by respondents)
- AOC-J-161, Appellate Entries for DSS/GAL in Abuse, Neglect, Dependency, or Termination of Parental Rights Proceeding (for use by TPR petitioners, DSS, or child's GAL)

## 12.6 Protection of the Child's Identity – Appellate Rule 42

Appellate Rule 42 protects the identities of children in certain appeals and keeps items that were sealed in the trial court under seal in the appellate court. *See Frazier v. Frazier*, 286 N.C. App. 565 (2022) (cautioning about protecting children's confidentiality). Appellate Rule 42 became effective January 1, 2019; before that, the protection of a juvenile's identity was addressed throughout the Appellate Rules.

Through Appellate Rule 42(b)(1), items filed with the appellate courts in an appeal under G.S. 7B-1001 (designated juvenile orders) are under seal. Appellate Rule 42(b)(3) also seals items filed with the appellate courts for appeals involving a sexual offense that was committed against a minor. This includes appeals of orders involving placement on or expungement from the Responsible Individuals List (RIL) when the abuse or serious neglect of the juvenile

consists of a sexual offense. *See* G.S. 7B-101(1) (definition of "abused juveniles"), (18b) (definition of "responsible individual"), (19b) (definition of "serious neglect"); 7B-323(f) (referring to appeal under G.S. 7A-27(b)(2)); 7B-325(h) (referring to appeal under G.S. 7A-27(b)(2)), enacted by S.L. 2025-16, sec. 1.19(b), effective October 1, 2025); *see also Frazier*, 286 N.C. App. 565 (discussing how Rule 42 would have applied to child's medical and DSS investigatory records in appeal of a G.S. Chapter 50 custody order if sexual abuse had been substantiated). Appellate Rule 42 also applies to extraordinary writs filed in these designated cases when the right to appeal has been lost. N.C. R. APP. P. 42(b)(4). For appeals of orders not designed in Appellate Rule 42(b) (e.g., an appeal of an RIL placement that does not involve a sexual offense), counsel may motion the appellate court to seal the item. N.C. R. APP. P.42(c).

Pursuant to Appellate Rule 42(d), documents filed with the appellate courts that are under seal must state at the top of the first page

> UNDER SEAL AND SUBJECT TO PUBLIC INSPECTION ONLY BY ORDER OF A COURT OF THE APPELLATE DIVISION.

Appellate Rule 42 requires that the juvenile's name not be used in any brief, motion, or petition. Instead, counsel must use initials or a pseudonym that each counsel has agreed on, and a stipulation of the agreement must be included in the record on appeal. N.C. R. APP. P. 42(b). At oral argument, counsel must use the minor's initials or pseudonym. N.C. R. APP. P. 30(a)(2).

## 12.7 Expedited Appeals Process under Appellate Rule 3.1

Appellate Rule 3.1 sets out an expedited process for appeals of abuse, neglect, dependency, and termination of parental rights (TPR) orders designated in G.S. 7B-1001, with explicit priority given to these appeals over other cases being decided by the North Carolina Court of Appeals. N.C. R. APP. P. 3.1(j); *see In re A.K.G.*, 270 N.C. App. 409, 410 (2020) (stating "our State's appellate system goes to rather extraordinary lengths to expedite these juvenile cases. . . ."). The timelines and the process move the case through the appellate system much quicker than the average appellate case. The appeals are decided on the record and briefs, unless oral argument is ordered by the appellate court reviewing the challenged order. N.C. R. APP. P. 3.1(j); 9(a); 30(f).

### A. Transcript

The Appellate Rules require the clerk of superior court to complete the Expedited Juvenile Appeals Form within one business day of the filing of the notice of appeal. The court reporting manager at the North Carolina Administrative Office of the Courts (AOC) must assign a transcriptionist within five business days after the clerk completes the form. The transcriptionist must deliver the transcript electronically to each party to the appeal within forty days of receiving the assignment. If there is an order that the appellant is indigent, the cost is at the State's expense. If there is no such order, the appellant has ten days from when the transcriptionist is assigned to contract for the transcript of the proceedings. N.C. R. APP. P. 3.1(c). The record on appeal must include a verbatim transcript if one is available. *See In re*

*X.M.*, 293 N.C. App. 98 (2024) (noting the unavailability of a verbatim transcript does not automatically constitute error; where portions of the transcript for the TPR hearing were unavailable, appellate review was not precluded when the record on appeal included a narration of the TPR proceeding agreed upon by the parties); *In re J.A.K.*, 258 N.C. App. 262 (2018) (noting neither the transcript from the permanency planning hearing nor a narrative of the hearing was included in the record on appeal; requiring appellate court to deem findings as conclusive).

Motions for extensions of time to prepare and deliver transcripts are "disfavored and will be allowed by the appellate courts only in extraordinary circumstances." N.C. R. APP. P. 3.1(g).

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**Practice Note:** The printing and distribution of transcripts and copies of transcripts (electronic and hardcopy) is handled exclusively by the AOC. It is against AOC policy for parties to share a copy of the transcript or for one party to make a copy for another party, as this creates problems with billing transcription costs.

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## B. Record on Appeal

Regarding time limits discussed below, three days shall be added to time limits when service is by mail or email (if permitted by appellate rule). N.C. R. APP. P. 27(b).

**1. Appellant's proposed record.** The appellant must prepare a proposed record on appeal and serve it on all other parties to the appeal within fifteen days after delivery of the transcript. N.C. R. APP. P. 3.1(d). The contents and requirements for the record on appeal are contained in Appellate Rule 9.

The appellate courts have stated that "[a]n appellant bears the burden to 'commence settlement of the record on appeal. . . . .' " *In re X.M.*, 293 N.C. App. 98, 106 (2024) (where portions of the transcript for the TPR hearing were unavailable, the record on appeal included a narration of the TPR proceeding developed by the appellant and agreed upon by the parties) and *In re J.A.K.*, 258 N.C. App. 262, 267 (2018) (both quoting *Sen Li v. Zhou*, 252 N.C. App. 22, 27 (2017)).

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**Practice Notes:** Appellate counsel prepares the record on appeal based on information contained in the Appellate Entries Form, which is prepared by the clerk of superior court when notice of appeal is given. See AOC Forms in section 12.5.C, above.

If two or more appellate counsel are working jointly (e.g., different counsel for each parent), the ten-day period for service of the proposed record on appeal begins after the last attorney receives the transcript.

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**2. Appellee's response or lack thereof.** An appellee has ten days after being served with the proposed record to respond by serving on all other parties to the appeal one of the following:

- notice of approval of the proposed record (this settles the record on appeal);
- specific objections or amendments to the proposed record, which triggers Appellate Rule 11(c) (Settling the Record on Appeal); or

- a proposed alternative record, which triggers Appellate Rule 11(c) (Settling the Record on Appeal).

N.C. R. APP. P. 3.1(d).

If all appellees do not respond to the proposed record on appeal within the ten-day time limit, the proposed record becomes the settled record on appeal. The appellant then has five business days from the last date on which the appellees could have responded to file the settled record. N.C. R. APP. P. 3.1(d). Note that a party could still file a motion to amend the record pursuant to Appellate Rule 9(b)(5).

**3. Settling the record when there is disagreement.** The parties to the appeal must follow the procedures of Appellate Rule 11(c) to settle the record when specific objections or amendments to the proposed record or a proposed alternative record is made by an appellee. N.C. R. APP. P. 3.1(d). The procedures of Appellate Rule 11(c) include an agreement, a supplement to the printed record, or a court order after a judicial settlement has been requested and held with the judge from whose order the appeal was taken. Within fifteen days of the record being settled through an Appellate Rule 11(c) procedure, the appellant must file the settled record. N.C. R. APP. P. 12(a).

**4. Problem with recording.** The unavailability of a verbatim transcript does not automatically constitute error. *In re X.M.*, 293 N.C. App. 98 (2024). When a verbatim transcript is not available, parties may stipulate to summaries of the proceeding in a narrative form under Appellate Rule 9(c)(1). *See In re X.M.*, 293 N.C. App. 98 (where portions of the transcript for the TPR hearing were unavailable, the record on appeal included a narration of the proceeding agreed upon by the parties); *In re A.R.B.*, 289 N.C. App. 119 (2023). The fact that the recording is incomplete or of poor quality will require a new hearing in the trial court only if specific error during the missing or unintelligible portion of the recording is alleged or prejudice to the appellant as a result of the recording problems is shown. *See*, *e.g., In re Bradshaw*, 160 N.C. App. 677 (2003); *In re Howell*, 161 N.C. App. 650 (2003). The appellant must show that the missing recorded evidence resulted in prejudice. *In re X.M.*, 293 N.C. App. 98 (where portions of the transcript for the TPR hearing were unavailable, appellant failed to demonstrate that the agreed narration of the TPR proceeding, supplemented by prior juvenile orders and reports from previous permanency planning hearings judicially noticed by the trial court, were inaccurate or inadequate or that the missing recorded evidence resulted in prejudice and required a new hearing).

## C. Briefs

**1. Time limits for briefs.** The appellant's brief must be filed within thirty days after the record on appeal has been filed with the appellate court, and the appellee's brief must be filed within thirty days after appellee is served with appellant's brief. Copies of briefs must be served on all other parties of record. N.C. R. APP. P. 13(a)(1). Three days may be added to time limits when service is by mail or email (if permitted). N.C. R. APP. P. 27(b).

Motions for extensions of time to file briefs are disfavored and are allowed only in extraordinary circumstances. N.C. R. APP. P. 3.1(g).

**2. No-merit briefs.** Appellate Rule 3.1(e) allows counsel for an appellant to file a "no-merit" brief in appeals taken pursuant to G.S. 7B-1001. An appeal of an order designated in G.S. 7B-1001 that is based on a no-merit brief was first permitted in 2009 with the adoption of Appellate Rule 3.1(d) (now Appellate Rule 3.1(e)) by the North Carolina Supreme Court and is similar to an *Anders* review, a rule adopted by the U.S. Supreme Court that applies to criminal appeals. *See In re L.E.M.*, 372 N.C. 396 (2019); *see also Anders v. California*, 386 U.S. 738 (1967).

The North Carolina Supreme Court noted, "[w]hile the language addressing no-merit briefs as set out in Rule 3.1(e) differs in certain respects from that formerly contained in Rule 3.1(d), the two provisions are substantially similar." *In re L.E.M.*, 372 N.C. at 400 n.1.

**(a) When a no-merit brief may be filed.** A no-merit brief is permitted when appellate counsel concludes that there is no issue of merit on which to base an argument for relief. N.C. R. APP. P. 3.1(e).

**(b) Contents of no-merit brief.** A no-merit brief must identify any issues in the record on appeal that arguably support the appeal and state why those issues lack merit or would not alter the ultimate result. N.C. R. APP. P. 3.1(e).

**(c) Duty to appellant and appellant's *pro se* brief.** When the appellant's counsel files a no-merit brief, they must provide the appellant with a copy of the brief, the transcript, the printed record, and copies of exhibits and other items that are part of the record on appeal, and any Appellate Rule 11(c) supplement or exhibits that have been filed with the appellate court. The appellant's counsel also must advise the appellant in writing that the appellant has the option of filing a *pro se* brief and that it is due within thirty days of when the no-merit brief was filed. Counsel must attach to the no-merit brief evidence of this required communication with their client. N.C. R. APP. P. 3.1(e). When appellant counsel has made diligent efforts to comply with the service requirement of Appellate Rule 3.1 but has been unsuccessful, the appellate courts have exercised their discretion to apply Rule 2 and waive this requirement so as to proceed with the appeal. *See In re Z.R.*, 378 N.C. 92 (2021). See section 12.3.C, above (discussing Appellate Rule 2).

As advised by their appellate counsel, the appellant may file a *pro se* brief. However, the appeal may not be dismissed on the basis that the appellant failed to file a *pro se* brief. *See In re L.E.M.*, 372 N.C. 396 (vacating dismissal of appeal by court of appeals; holding appellate court must conduct an independent review of the issues identified in the no-merit brief; overturning *In re L.V.*, 260 N.C. App. 201 (2018), which dismissed the appeal after concluding no issues were argued or preserved for review when the appellant did not file a *pro se* brief).

**(d) Mandatory appellate court review.** In *In re L.E.M.*, 372 N.C. 396, the North Carolina Supreme Court addressed, as a case of first impression, whether Appellate Rule 3.1(d) (now (e)) requires appellate courts to conduct an independent review of the no-merit brief when the appellant does not file a *pro se* brief. The supreme court held that the rule mandates an independent review of the issues raised in the no-merit brief. The supreme

court reasoned its holding was consistent with both the language and purpose of Appellate Rule 3.1(d) and "furthers the significant interest of ensuring that orders depriving parents of their fundamental right to parenthood are given meaningful appellate review." *In re L.E.M.*, 372 N.C. at 402. In its decision, the supreme court overruled the holding of the court of appeals in *In re L.V.*, 260 N.C. App. 201 (dismissing appeal when appellant did not file a *pro se* brief on the basis that no issues were argued or preserved for review) and abrogated the court of appeals' decisions in *In re I.B.*, 262 N.C. App. 402 (2018); *In re I.P.*, 261 N.C. App. 638 (2018); and *In re A.S.*, 261 N.C. App. 308 (2018) (unpublished), all of which relied upon *In re L.V.* The effect of the holding of *In re L.E.M.* also abrogates the additional following court of appeals decisions: *In re T.H.*, 266 N.C. App. 41 (2019) and *In re D.A.*, 262 N.C. App. 71 (2018).

**Practice Note:** The Office of Indigent Defense Services and the Guardian ad Litem Services Division of the North Carolina Administrative Office of the Courts may have policies related to no-merit briefs that should be consulted by appellate counsel prior to filing a no-merit brief.

## 12.8 Issues on Appeal and Standards of Review

### A. Introduction

Specific issues on appeal from abuse, neglect, dependency, and termination of parental rights proceedings are addressed in the appellate cases discussed throughout this Manual. This section is not a comprehensive presentation of issues on appeal but addresses some general categories of issues in which the appeals in these cases tend to fall and discusses standards of review used for various issues.

### B. Standards of Review

Different standards of review apply to different issues that are raised in appeals of abuse, neglect, dependency, and termination of parental rights orders. Given the number of stages in these proceedings and the number of issues that may be raised on appeal, it is imperative to know the proper standard that is applied by the appellate courts.

**1. De novo review.** A de novo review is when the appellate court "considers the matter anew and freely substitutes its own judgment for that of the [trial court]." *In re T.M.L.*, 377 N.C. 369, 375 (2021) (citations omitted). When applying a de novo review, "the appellate court uses the trial court's record but reviews the evidence and law without deference to the trial court's rulings." *In re K.S.*, 380 N.C. 60, 64 (2022) (citing BLACK'S LAW DICTIONARY (11th ed. 2019)). In a de novo review, an appellate court is "not limited to the trial court's determination . . . [but may] consider the totality of the trial court's findings in determining whether its conclusion was supported." *In re D.L.A.D.*, 375 N.C. 565, 572 (2020).

The following issues are subject to a de novo review:

- subject matter jurisdiction (*In re A.L.L.*, 376 N.C. 99 (2020));
- statutory interpretation (*In re J.E.B.*, 376 N.C. 629 (2021));
- statutory compliance (*In re N.K.*, 274 N.C. App. 5 (2020));
- waiver or forfeiture of the statutory right to counsel (prejudice is not required) (*In re K.M.W.*, 376 N.C. 195 (2020));
- compliance with an appellate mandate (*In re D.C.*, 378 N.C. 556 (2021));
- motion to continue based on a constitutional right, which is a question of law (prejudice is required) (*In re A.L.S.*, 374 N.C. 515 (2020)); and
- conclusions of law, which includes addressing (*In re I.K.*, 377 N.C. 417 (2021))
    - whether the findings of fact support the conclusions of law and
    - whether the findings of fact are supported by competent evidence.

**2. Review for abuse of discretion.** Under an abuse of discretion standard, an appellate court reviews a trial court's ruling to determine whether the ruling "is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re T.L.H.*, 368 N.C. 101 (2015) (citation omitted). The appellate court inquiry is "whether the ruling is unreachable by a reasoned decision, *see White v. White*, 312 N.C. 770, 777 (1985), which necessarily requires appellate courts to consider broadly the circumstances which may render the ruling justifiable." *In re T.A.M.*, 378 N.C. 64, 71 (2021). An abuse of discretion also results when the trial court "misapprehends the applicable law. . . or fails to comply with a statutory mandate." *In re B.E.*, 375 N.C. 730, 745 (2020) (citation omitted).

Issues subject to an abuse of discretion review on appeal include the following:

- Motion to continue (unless it is based on a constitutional right, which presents a question of law that is reviewed de novo) (prejudice required) (*In re A.L.S.*, 374 N.C. 515 (2020));
- Attorney motion to withdraw (*In re T.A.M.*, 378 N.C. 64);
- Discovery matter (*In re M.M.*, 272 N.C. App. 55 (2020));
- Best interests of the child determination at TPR (*In re C.V.D.C.*, 374 N.C 525 (2020));
- Dispositional order in abuse, neglect, dependency action (*In re A.P.W.*, 378 N.C. 405 (2021));
- Visitation orders (*In re L.E.W.*, 375 N.C. 124 (2020));
- Dispositional alternatives including eliminating reunification as a permanent plan (*In re A.P.W.*, 378 N.C. 405);
- Whether there is a substantial question as to parent's incompetency requiring a hearing and whether a Rule 17 guardian ad litem is necessary due to incompetency (*In re M.S.E.*, 378 N.C. 40 (2021));
- Whether a court declines jurisdiction under the UCCJEA in favor of another state that is a convenient forum (*Harter v. Eggleston*, 272 N.C. App. 579 (2020)); and
- Change in venue (*In re S.W.*, 298 N.C. App. 39 (2025)).

**3. Clear and convincing evidence standard.** The clear and convincing evidence standard is "greater than the preponderance of the evidence standard required in most civil cases, but not as stringent as the requirement of proof beyond a reasonable doubt required in criminal cases." *In re W.K.*, 376 N.C. 269, 277 (2020) (citation omitted). Clear and convincing evidence "should fully convince . . . such that a factfinder applying that evidentiary standard

could reasonably find the fact in question." *In re J.C.-B.*, 276 N.C. App. 180, 184(2021) (quoting *In re A.C.*, 247 N.C. App. 528, 533 (2016)).

The following issues are subject to the clear and convincing evidence standard:

- Adjudication of abused, neglected, or dependent juvenile (G.S. 7B-805, 7B-807(a); *In re J.A.M.,* 372 N.C. 1 (2019));
- Adjudication of TPR ground (G.S. 7B-1109(f), as amended by S.L. 2025-16, sec.1.14(b), effective October 1, 2025; 7B-1111(b); *In re D.L.A.D.*, 375 N.C. 565 (2020));
- Parent acting inconsistently with constitutionally protected rights, being unfit, or neglecting their child (*In re I.K.*, 377 N.C. 417 (2021));
- Waiving further permanency planning hearings (G.S. 7B-906.1(n); *In re E.M.*, 249 N.C. App. 44 (2016)); and

The clear and convincing evidence standard does not apply to dispositional orders (*In re A.J.L.H.*, 386 N.C. 305 (2024)).

**4. Competent evidence standard.** Under the competent evidence standard, an appellate court reviews whether there is competent evidence to support the trial court's findings of fact. "Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding." *In re J.M.*, 384 N.C. 584, 591 (2023) (citation omitted). "In some contexts, competent evidence means admissible evidence pursuant to the rules of evidence[;]" however, dispositional statutes in the Juvenile Code are "clear that the evidence that the trial court receives and considers . . . need not be admissible under the North Carolina Rules of Evidence. . . . Accordingly, for clarity, [the supreme court is] avoiding the phrase 'competent evidence' in the context of [dispositional orders] in favor of using the language the statute itself employs: 'evidence.' " *In re C.C.G.*, 380 N.C. 23, 33 n.4 (2022).

Issues subject to the competence evidence standard include the following:

- Dispositional order in abuse, neglect, dependency action (*In re A.P.W.*, 378 N.C. 405 (2021));
- Dispositional order in TPR (*In re C.B.*, 375 N.C. 556 (2020));
- Dispositional findings in TPR action (*In re A.J.T.*, 374 N.C. 504 (2020));
- Eliminating reunification as a permanent plan (*In re H.A.J.*, 377 N.C. 43 (2021)); and
- Verification of custodian or guardian (*In re J.R.*, 279 N.C. App. 352 (2021)).

## C. Sufficiency of Evidence and Findings

**1. Generally.** Issues dealt with frequently in appeals of abuse, neglect, dependency, and termination of parental rights (TPR) cases are whether the evidence is sufficient to support the findings of fact and whether the findings of fact are sufficient to support the trial court's conclusions of law. *See, e.g., In re I.G.C.,* 373 N.C. 201 (2019); *In re B.O.A.*, 372 N.C. 372 (2019); *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 (2023).

The trial judge has the duty to determine witness credibility, the weight to give to the evidence, and the reasonable inferences to draw from the evidence, none of which are subject to appellate review. *In re D.W.P.*, 373 N.C. 327 (2020); *see In re R.H.,* 295 N.C. App. 494, 501 (2024) (trial court determined mother's explanation was not credible and drew reasonable

inference from the evidence as "the trial court alone determines which inferences to draw and which to reject") (citation omitted); *In re E.H.*, 294 N.C. App. 139, 148 (2024), *rev'd in part*, 388 N.C. 100 (2025) (trial court weighed conflicting expert testimony regarding infant's unexplained serious physical injuries, finding DSS expert testimony that the injuries were nonaccidental more credible; trial court found parents' expert witnesses "were not based on 'sound scientific principles and methods' and lacked 'credibility.' "); *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 . . . ."); *In re A.J.T.*, 374 N.C. 504 (2020) (trial court is uniquely situated to determine credibility and demeanor).

The appellate court will not reweigh the evidence and substitute its judgment for the trier of fact. *See, e.g., In re N.P.*, 374 N.C. 61 (2020); *In re S.D.*, 374 N.C. 67; *In re A.J.T.*, 374 N.C. 504. 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) (citation omitted). The trial court must also resolve disputed factual issues arising from conflicting evidence, as that is not the role of the appellate court. *In re D.T.H.*, 378 N.C. 576 (2021) (reversing and remanding TPR; findings were insufficient, some did not resolve material conflict).

"[A]ny determination requiring the exercise of judgment or the application of legal principles is more properly classified a conclusion of law." *In re S.R.F.,* 376 N.C. 647, 655 (2021) and *In re Adoption of C.H.M.*, 371 N.C. 22, 28 (2018) (both quoting *State v. Sparks*, 362 N.C. 181, 185 (2008)). Facts consist of two types: evidentiary and ultimate facts; "an ultimate fact is the final resulting effect which is reached by processes of logical reasoning from the evidentiary [which are subsidiary] facts." *In re G.C.*, 384 N.C. 62, 65 n.3 (2023) (quoting *Woodard v. Mordecai*, 234 N.C. 463, 470, 472 (1951)). However, appellate courts have repeatedly found a trial court's misclassification of conclusions of law and findings of fact to be inconsequential, stating that if a contested finding of fact is more accurately characterized as a conclusion of law, it is treated as a conclusion of law on appeal and vice versa. *See In re S.C.L.R.,* 378 N.C. 484 (2021) (finding of willfulness mislabeled as conclusion of law); *In re A.S.T.,* 375 N.C. 547 (2020) (finding as to neglect mislabeled as conclusion); *In re J.O.D.*, 374 N.C. 797 (2020) (conclusions of law labeled as findings of fact).

Where a finding is properly supported by competent evidence, the finding is binding on appeal, even if there is evidence that would support a finding to the contrary. *See In re B.O.A.,* 372 N.C. 372; *In re J.A.M.*, 370 N.C. 464 (2018). The appellate court "cannot make the findings of fact, as only the trial court has the discretion to make findings." *In re S.M.L.*, 272 N.C. App. 499, 517 (2020). "Unchallenged findings of fact 'are deemed supported by competent evidence and are binding on appeal.' " *In re S.R.F.*, 376 N.C. at 651 (quoting *In re J.S.*, 374 N.C. App. 811, 814 (2020)). The appellate court may not review challenged findings if unchallenged findings support the conclusion at issue in the appeal. *In re K.Q.,* 381 N.C. 137 (2022) (affirming TPR; although father challenged some findings, those challenged findings were not reviewed; unchallenged findings were sufficient to support the determination that there was a likelihood of neglect). "[B]roadside exceptions" to evidentiary

findings are ineffectual because any findings "not specifically challenged . . . are presumed to be supported by competent evidence and [are] binding on appeal." *In re N.P.*, 374 N.C. at 65.

When facts are challenged as unsupported and the appellate record does not contain a verbatim transcript when one is available or a narrative of the hearing, the appellate court must deem the findings of fact as conclusive. *In re J.A.K.*, 258 N.C. App. 262 (2018). The appellate court does not review challenged findings that are unnecessary to support the trial court's determination. *See In re S.R.F.*, 376 N.C. 647; *In re C.J.,* 373 N.C. 260 (2020) (affirming TPR; declining to review four challenged findings that were unnecessary to support the adjudicated ground under G.S. 7B-1111(a)(2)). Findings that are not supported by the evidence will be disregarded, and the appellate court will review the proper findings when determining whether the findings of fact support the conclusions of law. *See, e.g., In re A.J.L.H.,* 384 N.C. 45 (2023) (reversing court of appeals; explaining role of appellate court in conducting a review); *In re S.R.F.*, 376 N.C. 647 (affirming TPR; disregarding some findings for insufficient evidence; determining those improper findings were harmless as other proper findings supported conclusion of neglect); *In re Z.J.W.,* 376 N.C. 760 (2021) (reversing in part; vacating and remanding in part; disregarding several findings of fact that were not supported by the evidence); *In re A.B.C.*, 374 N.C. 752 (2020) (affirming TPR; disregarding portion of challenged finding of fact that was not supported by the evidence). If the remaining findings do not support the conclusions of law, the appellate court must examine whether there is sufficient evidence in the record that could support necessary findings that would support the conclusion of law. *In re A.J.*, 386 N.C. 409 (2024).

**2. Review of findings of fact and conclusions of law at adjudication.** The standard of review for adjudications in abuse, neglect, or dependency cases is whether the findings of fact are supported by clear and convincing evidence. *In re J.A.M.,* 372 N.C. 1 (2019); *In re R.S.*, 254 N.C. App. 678 (2017). *See* G.S. 7B-805. The standard of review in a TPR proceeding is the same. *See* G.S. 7B-1109(f), as amended by S.L. 2025-16, sec. 1.14(b), effective October 1, 2025 (requiring that adjudicatory findings be based on clear and convincing evidence); 7B-1111(b) (requiring that facts justifying termination be proved by clear and convincing evidence); *In re C.B.C.*, 373 N.C. 16 (2019) (citing G.S. 7B-1109 when addressing standard of review of TPR adjudication). There is no distinction between "clear, cogent, and convincing" and "clear and convincing" evidence. *See In re Belk*, 364 N.C. 114 (2010); *In re Montgomery*, 311 N.C. 101 (1984). When reviewing whether a finding is supported by clear and convincing evidence, the appellate court considers properly preserved evidentiary objections. *In re A.J.*, 386 N.C. 409 (2024).

The appellate court then reviews whether the conclusions of law are supported by adequate findings of fact. *See In re In re C.B.C.*, 373 N.C. 16 (TPR); *In re R.S.*, 254 N.C. App. 678 (abuse, neglect, dependency). Whether the adjudicatory findings of fact support the conclusions of law are reviewed de novo. *In re M.R.F.*, 378 N.C. 638, 641 (2021) (quoting *In re T.M.L.*, 377 N.C. 369, 375 (2021)).

The appellate court will not consider evidence from the dispositional hearing or findings of fact in the dispositional portion of an order in an appeal of an adjudication order, given the different evidentiary standard and burden of proof at the dispositional stage. *In re K.J.E.*, 378 N.C. 620 (2021) (remanding and vacating TPR order; adjudicatory findings were insufficient; evidence was presented at adjudication stage of TPR hearing that could be the basis for

additional findings in support of the conclusion of abandonment, but findings as to that evidence were included in the dispositional order and not in the adjudicatory portion of the order); *In re D.T.H.*, 378 N.C. 576 (2021) (reversing and remanding TPR; evidence taken at dispositional hearing is not considered at adjudication).

The trial court's duty to make findings of fact and conclusions of law is required by the applicable statutes in the Juvenile Code and allows for the appellate court to review the order. *See In re C.L.H.,* 376 N.C. 614, 623 (2021) (emphasis in original) ("it is our role to review the trial court's *factual findings* to determine whether they support the trial court's conclusions of law."); *In re K.R.C.*, 374 N.C. 849 (2020) (vacating and remanding dismissal of a TPR; insufficient findings and conclusions did not comply with G.S. 7B-1109(e) and 7B-1110(c) and hindered appellate review). The supreme court has stated that an appellate review

> . . . is largely dependent upon the specificity by which the order's rationale is articulated. Evidence must support the findings; findings must support conclusions; conclusions must support the judgment. Each step of the progression must be taken by the trial judge, in logical sequence; each link in the chain of reasoning must appear in the order itself. Where there is a gap, it cannot be determined on appeal whether the trial court correctly exercised its function to find the facts and apply the law thereto.

*In re K.R.C.*, 374 N.C. at 858 (quoting *Quick v. Quick*, 305 N.C. 446, 458 (1982)), *quoted in In re B.F.N*, 381 N.C. 372, 376 (2022) (vacating and remanding TPR denial for insufficient findings).

In discussing the role of the trial court and appellate courts regarding findings of fact and conclusions of law, the supreme court further stated

> [t]he requirement for appropriately detailed findings is thus not a mere formality or a rule of empty ritual; it is designed instead "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 C.L.H.,* 376 N.C. at 624 (quoting *Coble v. Coble*, 300 N.C. 708, 712 (1980)).

In *In re A.J.*, 386 N.C. 409, the supreme court discussed the role of an appellate court that is reviewing whether the findings of fact are supported by sufficient evidence. There is a two-step process. First, the appellate court must disregard findings that are unsupported by sufficient evidence and examine the remaining supported findings to determine whether those findings support the conclusion of law. If the supported findings support the conclusion of law, the order is affirmed. Second, if the conclusion of law is not supported by the remaining findings, the appellate court "must examine whether there is sufficient evidence in the record that *could* support the necessary findings." *In re A.J.*, 386 N.C at 410 (emphasis in original). If there is sufficient evidence, the appellate remedy is to vacate the order and remand for a new order where the trial court can "decide whether to enter a new order with sufficient findings based on the record or to change the court's conclusions because the court cannot make the necessary findings." *In re A.J.*, 386 N.C at 410. A remand for entry of dismissal is made if

both the findings are insufficient and the evidentiary record cannot support any appropriate findings of fact.

**3. Review of dispositional findings.** The standard of review that applies to findings of fact in disposition, review, permanency planning, and TPR disposition orders is whether the findings are supported by "competent" or "credible" evidence. *See In re A.J.L.H.*, 386 N.C. 305 (2024) (initial dispositional order of no visitation; rejecting court of appeals applying a clear, cogent, and convincing standard that deviates from established precedent); *In re J.H.*, 373 N.C. 264 (2020) (permanency planning order); *In re R.D.,* 376 N.C. 244 (2020) (TPR disposition). Appellate courts will review dispositional (or best interest) conclusions of law according to an abuse of discretion standard (described in section 12.8.D, below). *See In re A.J.L.H.*, 386 N.C. 305; *In re J.H.*, 373 N.C. 264; *In re E.H.P.*, 372 N.C. 388 (2019); *In re D.L.W.*, 368 N.C. 835 (2016). Nevertheless, the trial court must consider and make findings about relevant statutory factors. *See, e.g.*, G.S. 7B-906.1(d).

In a TPR case, the court must consider the dispositional factors set out in G.S. 7B-1110(a) and make written findings about those that are relevant. *See In re A.R.A.,* 373 N.C. 190 (2019); *In re A.U.D.,* 373 N.C. 3 (2019). The appellate courts have recognized that the trial court is responsible for weighing the relevant statutory criteria and will not reweigh the evidence on appeal. *See, e.g., In re I.N.C*, 374 N.C. 542 (2020) (affirming TPR disposition; declining to accept respondent's invitation to reweigh the evidence and make an independent dispositional determination).

## D. Abuse of Discretion

The appellate court will disturb certain rulings by the trial court only if it finds that the trial court abused its discretion. An "[a]buse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re A.U.D.*, 373 N.C. 3, 6–7 (2019) (quoting *In re T.L.H.*, 368 N.C. 101, 107 (2015)). An abuse of discretion also occurs when the trial court "misapprehends the applicable law . . . or fails to comply with a statutory mandate." *In re B.E.*, 375 N.C. 730, 745 (2020) (citations omitted). A trial court may abuse its discretion not only by making a decision that is arbitrary or unreasoned, but also by failing to exercise its discretion at all. *See, e.g., In re B.S.O.,* 225 N.C. App. 541 (2013) (holding court's refusal to exercise discretion based on a misapprehension of the law requires reversal and remand).

Abuse of discretion as a standard of review is most commonly applied to errors alleged in the dispositional phase of the case when the court is making discretionary determinations related to the child's best interest. *See, e.g.*, *In re A.J.L.H.*, 386 N.C. 305 (2024) (reviewing whether trial court abused its discretion when ordering no visitation); *In re Z.L.W.*, 372 N.C. 432 (2019) (reviewing whether TPR was in child's best interest); *In re C.P.,* 252 N.C. App. 118 (2017) (affirming guardianship order); *In re J.W.*, 241 N.C. App. 44 (2015) (affirming disposition order that did not return the child to respondent mother's custody). In the rare situations where the appellate court determines the trial court abused its discretion, "the proper remedy is to vacate and remand for the trial court to exercise its discretion. The reviewing court should not substitute its own discretion for that of the trial court." *In re A.J.L.H.*, 384 N.C. 45, 48 (2023), *quoted in In re A.J.L.H.*, 386 N.C. at 307 and *In re J.M.*, 384 N.C. 584, 591 (2023); *In re B.L.M.-S.*, 294 N.C. App. 44, 48 (2024). The appellate court should "express

no opinion as to the ultimate result of the best interests determination on remand, as that decision must be made by the trial court." *In re A.J.L.H.*, 384 N.C. at 57 (quoting *In re R.D.*, 376 N.C. 244, 264 (2020)).

Abuse of discretion is also the standard applied in the review of other discretionary determinations, such as whether to grant a continuance or appoint a guardian ad litem for a parent. *See, e.g.*, *In re Z.V.A.*, 373 N.C. 207 (2019) and *In re T.L.H.*, 368 N.C. 101 (both holding that trial court did not abuse its discretion when determining there was not a substantial question about a respondent parent's incompetency requiring the court to conduct an inquiry); *In re C.D.A.W.*, 175 N.C. App. 680 (2006) (holding that trial court did not abuse its discretion by denying mother's motion for a continuance so that she could enter a drug treatment facility), *aff'd per curiam*, 361 N.C. 232 (2007).

Evidentiary rulings are also reviewed for an abuse of discretion. *See In re M.T.,* 285 N.C. App. 305 (2022) (no abuse of discretion when excluding mother's expert witness based on determination after voir dire that testimony was irrelevant for TPR disposition); *In re W.H.,* 261 N.C. App. 24 (2018) and *In re M.A.E.*, 242 N.C. App. 312 (2015) (both stating admission of evidence under the residual hearsay exception, Rule 803(24) of the Rules of Evidence, is within the discretion of the trial court); *In re A.H.*, 250 N.C. App. 546 (2016) (reviewing decision to quash subpoena for child's testimony as unduly burdensome for an abuse of discretion); *In re Faircloth*, 137 N.C. App. 311 (2000) (a trial court's decision that a witness has the requisite knowledge or training to testify as an expert is within the exclusive province of the trial court and is reviewed for an abuse of discretion).

## E. Subject Matter Jurisdiction

A lack of subject matter jurisdiction can be raised at any time, including for the first time on appeal; parties cannot waive or consent to subject matter jurisdiction. *In re A.L.L.*, 376 N.C. 99 (2020); *In re K.J.L.*, 363 N.C. 343 (2009); *In re T.R.P.*, 360 N.C. 588 (2006). Whether a court has subject matter jurisdiction is a question of law reviewable de novo on appeal. *In re A.L.L.*, 376 N.C. 99. Orders entered by a court that lacks subject matter jurisdiction are void. *See In re E.B.,* 375 N.C. 310 (2020) (in termination of parental rights (TPR) proceeding, disregarding as void six permanency planning orders imposing certain requirements on father; trial court lacked subject matter jurisdiction to enter such orders when no petition for abuse, neglect, or dependency had ever been filed); *In re T.R.P.,* 360 N.C. 588 (concluding that because trial court lacked subject matter jurisdiction, review hearing order was void ab initio); *In re A.G.M.*, 241 N.C. App. 426 (2015) (noting that all orders entered in trial court before it had subject matter jurisdiction under the UCCJEA were void ab initio). The proper appellate remedy for an order that is entered without subject matter jurisdiction is to vacate the order as it is void. *In re K.C.,* 292 N.C. App. 231 (2024) (vacating adjudication and dispositional orders entered after the court dismissed the petition with prejudice).

Common issues that impact subject matter jurisdiction in abuse, neglect, dependency, and TPR actions include standing, proper verification of the initiating pleading, the Uniform Child-Custody Jurisdiction Enforcement Act, and compliance with certain jurisdictional provisions in the Juvenile Code. Note that deficiencies in the issuance and service of a

summons relate to personal jurisdiction and do not affect the court's subject matter jurisdiction. *In re K.J.L.*, 363 N.C. 343.

For a discussion of subject matter jurisdiction and personal jurisdiction in abuse, neglect, dependency, and TPR proceedings, see Chapter 3.

## F. Failure to Follow Statutory Mandates and Procedures

Often appeals assert error based on the trial court's failure to comply with mandates or procedures set out in the Juvenile Code or, when applicable, the Rules of Civil Procedure.

For example, the Juvenile Code sets out specific criteria the court must address in its findings in orders resulting from review and permanency planning hearings, and a common issue on appeal is whether the court made all of the required findings. *See, e.g., In re J.L.*, 264 N.C. App. 408 (2019) and *In re J.D.M.-J.*, 260 N.C. App. 56 (2018) (both reversing visitation portion of dispositional orders for noncompliance with G.S. 7B-905.1); *In re J.R.S.*, 258 N.C. App. 612 (2018) (reversing order removing custodians as parties when findings under G.S. 7B-401.1(g) were not made; decided under former version of statute); *In re J.K.*, 253 N.C. App. 57 (2017) (reversing and remanding "custody order" that did not make required findings under G.S. 7B-911); *In re P.A.,* 241 N.C. App. 53 (2015) (holding that when waiving further permanency planning hearings, the failure to make written findings of fact satisfying each of the enumerated criteria in G.S. 7B-906.1(n) is reversible error). Note that earlier cases refer to findings required by G.S. 7B-906 and 7B-907, which have been replaced by G.S. 7B-906.1.

When making required statutory findings of fact, the trial court need not quote the exact statutory language; instead, the findings must embrace the substance of the statutory requirements. *In re J.M.*, 384 N.C. 584 (2023); *In re J.H.*, 373 N.C. 264 (2020) (quoting *In re L.M.T.*, 367 N.C. 165, 168 (2013), *superseded in part by statute as stated in In re J.M.*, 384 N.C. at 594 n.5); *In re L.M.T.,* 367 N.C. 165; *In re M.T.-L.Y.*, 265 N.C. App. 454 (2019); *In re H.D.*, 239 N.C. App. 318 (2015). The appellate courts have noted that the best practice, however, is to use the actual statutory language. *In re L.M.T.,* 367 N.C. at 167 ("trial courts are advised that use of the actual statutory language would be the best practice").

Even if the appellate court finds error in failing to follow statutory mandates, it may decline to disturb the lower court's ruling unless there is a showing that the error was prejudicial. *See In re H.T.*, 180 N.C. App. 611, 613 (2006) ("[I]n general, technical errors and violations of the Juvenile Code will be found to be reversible error only upon a showing of prejudice").

The Juvenile Code prescribes timelines for conducting hearings and for the entry of orders. After numerous appellate court decisions analyzing whether a trial court's delay in holding a hearing or entering an order was prejudicial, the North Carolina Supreme Court held that the proper remedy for a court's failure to follow the timelines is a petition for a writ of mandamus, rather than an assertion of error on appeal. *In re T.H.T.*, 362 N.C. 446 (2008); *see also In re E.K.*, 202 N.C. App. 309 (2010). For a discussion on the time requirements for

orders, including the remedy, see Chapter 4.9.D. See also section 12.10.D, below (discussing writ of mandamus).

## G. Statutory Interpretation

Appeals of juvenile orders have also focused on the interpretation of statutory language. Some of these appeals focus on language that has been in effect for several years but is now being raised for the first time on appeal, while other appeals focus on the meaning of recent statutory amendments made to the Juvenile Code. The North Carolina Supreme Court has discussed how courts should construe statutory language.

A statute's meaning is controlled by legislative intent, which is first determined by the statute's plain language, and then from legislative history and "the spirit of the act and what the act seeks to accomplish." *In re J.E.B.*, 376 N.C. 629, 633 (2021) (citation omitted); *In re B.L.H.*, 376 N.C. 118, 122 (2020) (citation omitted); *In re B.O.A.*, 372 N.C. 372, 380 (2019) (citations omitted). Courts have the "duty to give effect to the words actually used in a statute and not to delete words used or to insert words not used." *In re B.O.A.*, 372 N.C. at 380 (citations omitted). Additionally, "[w]hen the language of a statute is clear and without ambiguity, it is the duty of this Court to give effect to the plain meaning of the statute." *In re B.O.A.*, 372 N.C. at 380 (citation omitted); *see In re T.R.P.*, 360 N.C. 588 (2006) (holding that a verified petition is required for subject matter jurisdiction as statute's reference to verification of the petition is unambiguous). A judicial interpretation of legislative intent is not required when the meaning of the plain language of the statute is clear. *In re J.E.B.*, 376 N.C. 629.

A whole-text view of the statutes should be employed rather than an interpretation that focuses on isolated provisions of a statute. *See In re J.E.B.*, 376 N.C. 629 (segments of a statute are not read in isolation). When considering the whole statute, the provisions should be construed so that none are "rendered useless or redundant" since "[i]t is presumed that the legislature… did not intend any provision to be mere surplusage." *In re B.L.H.*, 376 N.C. at 122 (citation omitted). The North Carolina Supreme Court has stated, "[p]erhaps no interpretive fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts." *In re A.P.*, 371 N.C. 14, 18 (2018) (citations omitted).

Determining legislative intent requires whole-text examination so that the statute is viewed "contextually, in a manner which harmonizes with other provisions of the statute and which gives effect to the reason and purpose of the statute." *In re J.E.B.*, 376 N.C. at 634 (citation omitted). When different statutes address the same subject matter, they should be "construed *in pari materia* and reconciled, if possible, so that effect may be given to each." *In re B.L.H.*, 376 N.C. at 123 (citations omitted). By not employing a holistic interpretation, the result of the interpretation may be more limiting or narrow than what the legislature intended. *See In re B.O.A.*, 372 N.C. 372 (reversing court of appeals opinion that gave more restrictive rather than expansive interpretation of statutory phrase "conditions of removal"); *In re A.P.*, 371 N.C. 14 (reversing court of appeals opinion that county director lacked standing to file a petition when focus was on one term in a statute, rather than the whole of the Juvenile Code).

In abuse, neglect, dependency, and termination of parental rights (TPR) cases, the appellate courts have also considered the purposes of the Juvenile Code, which are set forth at G.S. 7B-

100. Through various opinions, the appellate courts have repeatedly recognized that "the fundamental principle underlying North Carolina's approach to controversies involving child neglect and custody [is] that the best interest of the child is the polar star." *In re A.P.*, 371 N.C. at 21 (quoting *In re M.A.W.*, 370 N.C. 149, 152 (2017)). *See* G.S. 7B-100(5). When applying the whole-text canon, courts consider this principle when interpreting a statute in the Juvenile Code. *See, e.g.*, *In re A.P.*, 371 N.C. 14. The North Carolina Supreme Court has also considered other provisions of G.S. 7B-100 when construing the meaning of a statute. *See, e.g., In re R.R.N.*, 368 N.C. 167 (2015) (recognizing the dual purposes of the Juvenile Code in promoting a child's best interests and safeguarding the parent-child relationship from needless state interference when interpreting the statutory definition of "caretaker"). In appeals of TPR orders, the supreme court has also looked to the purpose of the TPR statutes set forth at G.S. 7B-1100. *See In re B.L.H.*, 376 N.C. 118 (examining 7B-1100(1) and (2) when interpreting the language of G.S. 7B-1109(f)).

## 12.9 Motions to Dismiss and Failure to Comply with Appellate Rules

A motion to dismiss an appeal may be made under Appellate Rule 25 if a party fails to comply with the Rules of Appellate Procedure. If a party gives notice of appeal but then fails to take actions required by the Appellate Rules to move forward with the appeal, another party may move to dismiss the appeal. Motions to dismiss must be supported by affidavits or certified copies of docket entries that show the failure to take timely action or otherwise perfect the appeal. Before the appeal is filed in an appellate court, motions to dismiss for failure to take timely action are made to the trial court, and the Rules of Civil Procedure relating to motions practice apply. After an appeal is filed in the appellate court, motions to dismiss are made to that court, and Appellate Rule 37 sets out the procedure for the motion. N.C. R. APP. P. 25(a). A motion to dismiss should not be raised for the first time in a brief to the appellate court; this includes a motion to dismiss based on a lack of standing. *In re J.L.*, 264 N.C. App. 408 (2019) (deciding the issue of standing because it is jurisdictional despite it being raised for first time in a brief).

The motion to dismiss must be granted unless

1. compliance or waiver of compliance is shown on the record;
2. the appellee consents to the untimely action; or
3. the court for good cause permits the action to be taken out of time.

N.C. R. APP. P. 25(a).

In determining whether failure to comply with the Appellate Rules warrants dismissal, the appellate court will engage in an analysis of the appropriate remedy for noncompliance, looking at whether the noncompliance is substantial or gross; which, if any sanction should be imposed; and if dismissal is the appropriate sanction, whether the circumstances of the case justify suspension of the rules under Appellate Rule 2 to reach the merits of the appeal. *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191 (2008). See section 12.3.C, above (discussing Appellate Rule 2). The supreme court "stress[ed] that a party's

failure to comply with nonjurisdictional [appellate] rule requirements normally should not lead to dismissal of the appeal." *Dogwood,* 362 N.C. at 198.

The appellate court may also issue sanctions for failure to comply with the Appellate Rules. N.C. R. APP. P. 25(b); 34(a)(3). *See also, e.g., Harney v. Harney*, 295 N.C. App. 456 (2024) (holding mother's appendix constituted a substantial violation of Appellate Rules 28 and 26 by improperly extending the body of her appellate brief; sanctioning mother by not addressing or considering arguments made in the improper appendix); *State v. Springs*, 292 N.C. App. 207, 213 (2024) (taxing the State the costs of the appeal as a sanction for "substantial and gross" violations of Appellate Rules 4 and 28 that raised appellate jurisdictional questions; the State failed to properly notice the appeal by misstating the ruling from which the State appealed, and in its brief, omitted required statutory support for the interlocutory appeal and failed to include a statement of the grounds for appellate review); *In re T.M.*, 180 N.C. App. 539 (2006) (sanctioning appellate counsel and requiring him to personally pay the costs of the appeal because he submitted a brief in which the one-page statement of facts was almost entirely naked argument and contained no citations to the record, in contravention of the Appellate Rules, and counsel had previously been admonished by the court for Appellate Rules violations).

An appellate court will look at the gravity of the violation when determining what, if any, sanction is appropriate, from the most extreme sanction of dismissal to less drastic sanctions such as not addressing the argument. *Harney*, 295 N.C. App. 456. *See* N.C. R. APP. P. 34(b) (sanctions include dismissal; monetary damages; reasonable expenses, including attorneys' fees; and "any other sanction deemed just and proper").

## 12.10 Extraordinary Writs, Discretionary Review, and Appeal of Right

The supreme court and the court of appeals have jurisdiction to issue prerogative writs, including mandamus, prohibition, certiorari, and supersedeas. G.S. 7A-32.

### A. Writ of Certiorari

A petition for a writ of certiorari, filed in the appellate courts, is a means by which a party may seek appellate review when other means do not exist and is allowed for by Appellate Rule 21. Although Appellate Rule 21 governs the procedure for a writ of certiorari, the appellate court's "decision to issue a writ is governed solely by statute and by common law." *In re K.C.,* 292 N.C. App. 231, 239 (2024) (quoting *Cryan v. Nat'l Council of YMCAs of U.S.*, 384 N.C. 569, 572 (2023)). The appellate courts have jurisdiction to issue a writ of certiorari in any case to aid its own jurisdiction by operation of law with or without a request by a party so long as there is no statute that limits the appellate court's authority to do so. *See* G.S. 7A-32(c); *In re R.A.F.*, 384 N.C. 505 (2023) (affirming court of appeals' exercise of discretion in issuing a writ of certiorari on its own motion in a TPR that was incorrectly filed with the supreme court); *In re K.C.,* 292 N.C. App. 231 (applying common law to grant parties'

petition for writ of certiorari to hear appeal of orders that were entered without subject matter jurisdiction).

The supreme court in *Cryan v. Nat'l Council of YMCAs of U.S.*, 384 N.C. 569 discussed the granting of a writ of certiorari. The supreme court stated that a writ certiorari "is intended as an extraordinary remedial writ to correct errors of law." *Cryan*, 384 N.C. at 572 (citation omitted). A two-factor test is applied by the appellate court: (1) the likelihood that the case has merit or there was an error and (2) whether there are extraordinary circumstances justifying the writ. The second factor requiring extraordinary circumstances addresses the intent of the writ, which is that the writ is not a substitute for a notice of appeal, and "generally requires a showing of substantial harm, considerable waste of judicial resources, or 'wide-reaching issues of justice and liberty at stake.' " *Cryan*, 384 N.C. at 573 (citation omitted). The court of appeals recognized that the granting of a writ of certiorari to hear an appeal that was not timely filed is less common in appeals of civil, as opposed to criminal, judgments and is based on whether "there are wide-reaching issues of justice and liberty at stake" and whether the appealed issues are meritorious. *LouEve, LLC v. Ramey*, 286 N.C. App. 263, 268 (2022) (citation omitted).

**1. Review of trial court order.** In civil cases a writ of certiorari may be issued by either the court of appeals or the North Carolina Supreme Court to permit review of a decision of the trial court when

- the right to appeal has been lost for failure to take timely action or
- no right of appeal from an interlocutory order exists.

N.C. R. APP. P. 21(a)(1); G.S. 7A-32(c). *See, e.g., In re A.P.W.,* 378 N.C. 405 (2021) (in appeal of a termination of parental rights (TPR) order, supreme court granting joint petition for writ of certiorari to review permanency planning order that eliminated reunification as a permanent plan); *In re S.D.,* 374 N.C. 67, 71 n.5 (2020) and *In re C.M.C.,* 373 N.C. 24, 26 n.2 (2019) (both involving grant of writ of certiorari to review TPR order when notice of appeal was filed with court of appeals rather than supreme court, decided under former statutory appeal process of TPRs); *In re K.D.C.*, 375 N.C. 784 (2020) (granting writ of certiorari for notice of appeal on one juvenile that was untimely filed; notice of appeal of sibling was timely filed; addressing appeal of both orders involving both juveniles); *In re Q.M., Jr.,* 275 N.C. App. 34 (2020) (granting writ of certiorari to allow appeal of juvenile adjudication when amended notice of appeal was untimely filed); *In re K.W.*, 272 N.C. App. 487 (2020) (granting writ of certiorari to allow appeal that was filed after initial dispositional hearing but before entry of the court order); *In re B.C.T.,* 265 N.C. App. 176 (2019) (granting writ of certiorari to allow mother to appeal civil custody order regarding one child entered under G.S. 7B-911 when notice of appeal only referenced disposition order regarding different child); *In re K.C.*, 199 N.C. App. 557 (2009) (granting respondent mother's petition for writ of certiorari to hear appeal of initial disposition order that was dismissed for untimeliness when appeal was untimely due to no fault of mother; amended notice of appeal was filed as soon as trial counsel realized the mistake in failing to include disposition order in notice of appeal of adjudication, and given the importance of issues that involve the relationship between parents and children).

The appellate court exercises its discretion when deciding whether to grant a petition for writ of certiorari. *Cryan v. Nat'l Council of YMCAs of U.S.*, 384 N.C. 569; *State v. Coleman,* 271 N.C. App. 91 (2020). When considering a petition for a writ of certiorari in juvenile cases, a factor the appellate court considers is the importance of issues involving the relationship between parents and their children. *In re M.B.*, 288 N.C. App. 351 (2023).

**2. Review of court of appeals opinion.** A writ of certiorari may be issued by the North Carolina Supreme Court to permit review of a decision of the court of appeals when

- the right to appeal or petition for discretionary review has been lost by failure to take timely action or
- no right of appeal exists.

N.C. R. APP. P. 21(a)(2).

Requirements for filing, content, service, and responses are contained in Appellate Rule 21.

## B. Petition for Discretionary Review

Under Appellate Rule 15, a party may petition the supreme court in writing to certify a cause for discretionary review by the supreme court, either prior to or after the court of appeals rules on a matter, upon any grounds specified in G.S. 7A-31. Under G.S. 7A-31(a), discretionary review may also be initiated by the supreme court on its own motion.

The grounds for granting a petition for discretionary review are as follows:

- Where the court of appeals has not yet made a determination and in the opinion of the supreme court
    - the subject matter of the appeal has significant public interest or is important in overseeing the jurisdiction and integrity of the court system;
    - the cause involves legal principles of major significance to the jurisprudence of the State;
    - delay in final adjudication is likely to result from failure to certify and thereby cause substantial harm; or
    - the work load of the courts of the appellate division is such that the expeditious administration of justice requires certification.

G.S. 7A-31(b).

- Where the court of appeals has already made a determination and in the opinion of the supreme court
    - the subject matter of the appeal has significant public interest;
    - the cause involves legal principles of major significance to the jurisprudence of the State; or
    - the decision of the court of appeals appears likely to be in conflict with a decision of the Supreme Court.

G.S. 7A-31(c). *See, e.g., In re K.C.,* 386 N.C. 690 (2024) (granting discretionary review when court of appeals' decision appears likely to be in conflict with a decision of the supreme court on issue of when a parent preserves for appeal a determination addressing their paramount constitutional rights to care, custody, and control of their child), *rev'g,* 288 N.C. App. 543 (2023); *In re A.P.,* 371 N.C. 14 (2018) (granting discretionary review of court of appeals opinion that applied a restrictive interpretation of "director," based on which the court of appeals held that standing and subject matter jurisdiction in a neglect and dependency action were lacking).

Interlocutory determinations by the court of appeals, including orders remanding the cause for a new trial or for other proceedings, will be certified for review by the supreme court only upon a determination by the supreme court that failure to certify would cause a delay in final adjudication that would probably result in substantial harm. G.S. 7A-31(c); N.C. R. APP. P. 15(h).

Requirements for filing, content, service, and responses for the motion and briefs are set out in Appellate Rule 15.

### C. Appeal of Right

A party has a right to appeal a court of appeals decision to the North Carolina Supreme Court when the case directly involves a substantial question under the United States or North Carolina Constitutions. G.S. 7A-30 (note that an appeal by right when there is a dissent in the opinion of the court of appeals was removed by S.L. 2023-134, sec. 16.21.(d), effective for appeals filed with the court of appeals on or after October 3, 2023).

Requirements for filing, content, service, the record and briefs are set out in Appellate Rule 14.

### D. Writ of Mandamus or Prohibition

A writ of mandamus is used to compel a trial court or any governmental official to perform a required ministerial act or a mandatory duty – "[t]he writ of mandamus is an order from a court of competent jurisdiction to a board, corporation, inferior court, officer or person commanding the performance of a specified official duty imposed by law." *Inscoe v. Ishee*, 298 N.C. App. 358, 369 (2025) (citation omitted). The remedy itself is limited and extraordinary and allows a party with established legal rights to provide for the swift enforcement of those rights. *Inscoe*, 298 N.C. App. 358.

A petition for a writ of mandamus must be filed with the clerk of the court where the appeal of right lies. N.C. R. APP. P. 22(a); *State v. Diaz-Tomas,* 271 N.C. App. 97 (2020), *aff'd as modified*, 382 N.C. 640 (2022). However, a writ of mandamus is not a substitute for an appeal. *Diaz-Tomas,* 271 N.C. App. at 99-100, *aff'd as modified*, 382 N.C. 640 (quoting *Snow v. N.C. Bd. of Architecture*, 273 N.C. 559, 570 (1968)).

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 has expired; and
- there must not be an alternative legally adequate remedy.

*In re T.H.T.*, 362 N.C. 446, (2008).

The North Carolina Supreme Court has held that a writ of mandamus is the appropriate remedy for the trial court's failure to act within statutory timelines set out in the Juvenile Code. *In re C.R.L.,* 377 N.C. 24 (2021) (a writ of mandamus and not an appeal is the appropriate remedy to enforce the statutory time limit for holding a termination of parental rights (TPR) hearing, which in this case was held thirty-three months after TPR petition was filed in violation of G.S. 7B-1109); *In re T.H.T.,* 362 N.C. 446 (a writ of mandamus, and not a new hearing, is appropriate means to address delay in entry of adjudication and dispositional order after hearing that violated time line in G.S. 7B-807 and 7B-905(a)). The court of appeals has followed this precedent. *See, e.g., In re L.Q.*, 298 N.C. App. 540 (father missed his opportunity to correct the violation of the 90-day statutory period for when a TPR must be completed when the TPR was filed in August 2020, hearings did not start until March 2022, and an order was not entered until October 2023; father failed to file a writ of mandamus while the TPR was pending). See Chapter 4.9 for an explanation of the statutory time requirements related to entering certain orders in abuse, neglect, dependency, and TPR proceedings, including the remedy of mandamus.

A writ of prohibition is the converse of mandamus and is used to preclude a court from exceeding its jurisdiction in matters it does not have the power to hear or determine.

Requirements for filing, content, service, and response for mandamus and prohibition are set out in Appellate Rule 22.

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**Resource:** For more on writs of mandamus and of prohibition, see JULIE RAMSEUR LEWIS & JOHN RUBIN, NORTH CAROLINA DEFENDER MANUAL, Vol. 2, Trial (UNC School of Government, 2020 ed.). In particular, see Chapter 35 "Appeals, Post-Conviction Litigation, and Writs."

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## E. Writ of Supersedeas

A writ of supersedeas may be sought to stay the execution or enforcement of any judgment, order, or other determination of a trial court when the judgment is not automatically stayed by the taking of the appeal or when a petition for mandamus, prohibition, or certiorari has been filed and

- a stay order has been sought and denied in the trial court or
- extraordinary circumstances make it impracticable to obtain a stay from the trial court.

N.C. R. APP. P. 23(a)(1).

Requirements for filing, content, service, and response for supersedeas are set out in Appellate Rule 23.

## 12.11 Trial Court's Role during and after Appeal

### A. Trial Court's Role during Appeal

The Juvenile Code specifically addresses the trial court's ability to enforce orders and exercise jurisdiction in an abuse, neglect, dependency, or termination of parental rights (TPR) proceeding when there is a pending appeal. The specific statute, G.S. 7B-1003, controls over G.S. 1-294, the general statute addressing jurisdiction of a trial court upon perfection of an appeal. *In re M.I.W.*, 365 N.C. 374 (2012), *quoted in In re B.B.*, 381 N.C. 343 (2022).

**1. Enforcement of or motion to stay order.** During an appeal of an order entered in an abuse, neglect, dependency, or TPR proceeding, the trial court may enforce the order unless a stay is ordered by the trial court or the appellate court. G.S. 7B-1003(a).

A motion in the trial court for a stay when an appeal is taken is governed by Rule 62(d) of the Rules of Civil Procedure. If the trial court denies or vacates a stay, a motion may be made to the appropriate appellate court for a temporary stay and a writ of supersedeas in accordance with Appellate Rule 23. N.C. R. APP. P. 8(a). See section 12.10.E, above (writ of supersedeas). When extraordinary circumstances make it impracticable to move for a stay in the trial court, an application for a temporary stay and writ of supersedeas may be made to the appellate court. N.C. R. APP. P. 8(a).

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**Resource:** For more information about a stay, see Timothy Heinle, *Staycation All I Ever Wanted: Why Parent Attorneys Should Consider Requesting Stays of TPR Orders*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Sept. 15, 2021).

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**2. Continued court involvement in non-TPR appeals.** Unless the appellate court orders otherwise, when an appeal is pending in an abuse, neglect, or dependency case, the trial court must continue to exercise jurisdiction, conduct hearings (except TPR proceedings, discussed in subsection 3, immediately below), and enter orders related to custody and placement that it finds to be in the child's best interests. G.S. 7B-1003(b).

**3. Cannot exercise jurisdiction in TPR action during appeal of the underlying matter.** G.S. 7B-1003(b)(1) prevents the trial court from exercising jurisdiction and conducting hearings in a TPR action when an appeal from an underlying abuse, neglect, or dependency action is pending. The North Carolina Supreme Court has held that G.S. 7B-1003(b)(1) prohibits the trial court from exercising jurisdiction over a TPR proceeding until after the issuance of a mandate by the appellate court in the underlying appeal; however, once the appeal has been resolved, the trial court may act on a TPR motion that was filed during the pendency of the appeal. *In re B.B.*, 381 N.C. 343 (2022) (quoting *In re J.M.*, 377 N.C. 298 (2021) and *In re M.I.W.*, 365 N.C. 374 (2012)) (holding amended TPR order was void; trial court did not have jurisdiction to amend TPR order by adding findings of fact that resulted in substantive changes after notice of appeal was filed); *In re J.M.*, 377 N.C. 298 (holding TPR order is void; after guardian ad litem filed TPR motion, father appealed underlying neglect adjudication and

dispositional orders that were entered after remand of a previous appeal; trial court violated G.S. 7B-1003(b)(1) by proceeding with TPR hearing while appeal of remand orders was pending); *In re M.I.W.*, 365 N.C. 374 (TPR motion was filed while appeals of disposition order were pending, but trial court did not act on TPR motion until after the appellate mandate affirming the order had issued and after the time within which a petition for discretionary review could have been filed). The supreme court reasoned in both *In re J.M.*, 377 N.C. 298, and *In re M.I.W.*, 365 N.C. 374, that G.S. 7B-1003 did not divest the trial court of jurisdiction altogether, but rather prohibited the exercise of jurisdiction before the appellate mandate resolving the appeal has issued, and that issuance of the mandate returned the power to exercise jurisdiction to the trial court. *But see In re P.P.,* 183 N.C. App. 423 (2007) (vacating TPR order; TPR petition was filed during an appeal of a permanency planning order that resulted in that order being vacated and remanded but trial court proceeded with the TPR hearing after the appeal was resolved and before complying with the mandate remanding the case; even though the TPR hearing and entry of the TPR order occurred after resolution of the appeal and G.S. 7B-1003(b)(1) prohibits proceeding with TPR hearings "pending disposition of an appeal," the legislature could not have intended the language in G.S. 7B-1003(b)(1) to allow a result that avoids the effects of the appeal).

The prohibition in G.S. 7B-1003(b)(1) against proceeding in a TPR case during the pendency of an appeal applies to appeals from orders designated in G.S. 7B-1001 and does not apply to appeals of orders entered in related cases arising outside of the Juvenile Code. *In re Baby Boy*, 238 N.C. App. 316 (2014) (holding district court had jurisdiction to hear the TPR petition during an appeal of an adoption order that found the mother's relinquishment was void because G.S. 7B-1003 does not apply to orders outside of G.S. Chapter 7B, and the adoption order was entered pursuant to G.S. Chapter 48).

**4. Continued court involvement in appeal of TPR order.** While an appeal is pending in a TPR case, the court may enter temporary orders related to custody and placement that it finds to be in the child's best interest. G.S. 7B-1003(b), (c). However, "the trial court has no authority—even in the underlying abuse, neglect, and dependency action—to enter any orders other than ones affecting the custody and/or placement of the juvenile." *In re K.L.*, 196 N.C. App. 272, 273 (2009). The court of appeals in *In re K.L.* stated that TPR proceedings initiated by motion in the abuse, neglect, or dependency action are governed by G.S. 7B-1003(b), and TPR proceedings that are initiated by petition and commence a new action are governed by G.S. 7B-1003(c), but both provisions only allow the court to enter temporary orders affecting the custody and placement of the child that it finds to be in the child's best interest when the TPR appeal is pending.

**5. Order requirements pending appeal disposition.** Pending disposition of the appeal, orders must meet certain requirements:

- Any order entered during an appeal that places or continues placement of a child in foster care must comply with G.S. 7B-903.1, which addresses decision-making authority of a county DSS, participation in normal childhood activities, DSS notice to the child's guardian ad litem when a change in the juvenile's placement is required, DSS responsibilities before a child may have unsupervised visitation or be returned to the home of the parent, guardian, custodian, or caretaker from whom the child was removed, and consent for the child's medical treatment. G.S. 7B-1003(e).

- When the court has found that the child has suffered physical abuse by someone with a history of violent behavior, the court must consider the opinion of the mental health professional who performed the required evaluation on the person before returning the child to the custody of that person pending resolution of the appeal. G.S. 7B-1003(d); *see* G.S. 7B-503(b) (evaluation).

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**Resource:** For a further discussion of the district court's role when an appeal is pending, see Sara DePasquale, *What Can the District Court Do in an A/N/D or TPR Action when an Appeal is Pending?,* UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Aug. 2, 2019).

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**6. Rule 60 of the Rules of Civil Procedure.** Rule 60(a) of the Rules of Civil Procedure permits the trial court to correct clerical mistakes and errors in its order arising from oversight or omission up to the time an appeal is docketed in the court of appeals, but the court may not make substantive changes to the order. *In re C.N.C.B.*, 197 N.C. App. 553 (2009) (holding that the trial court could not add a finding that was essential to adjudication of a ground for termination); *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 the AOC form, pursuant to Rule 60(a) so long as the correction occurs before an appeal is docketed).

Rule 60(b) of the Rules of Civil Procedure permits the trial court to relieve a party from a final judgment, order, or proceeding for the six reasons set out in the statute. When a Rule 60(b) motion is made while an appeal is pending, a request may be made of the trial court to indicate how it would rule on the motion if an appeal were not pending, along with a request to the appellate court to delay consideration of the appeal until the trial court has considered the Rule 60(b) motion. *See In re L.H.*, 210 N.C. App. 355 (2011) (discussing this procedure pursuant to *Bell v. Martin*, 43 N.C. App 134 (1979), *rev'd on other grounds*, 299 N.C. 715 (1980)).

## B. Trial Court's Role after Appeal

**1. Modification of order.** On affirmation of an order by the appellate court, the trial court may modify its original order as the court finds to be in the child's best interest to reflect the child's adjustment or changed circumstances while the case was on appeal. If modification is ex parte, the court must notify interested parties within ten days to show cause why the modifying order should be vacated or altered. G.S. 7B-1003(c); 7B-1004.

These statutes do not create a right to another review proceeding; they give the trial court discretion to modify or vacate the original order due to changed circumstances. When a party moves to modify or vacate the order, the trial court has discretion to hear or decline to hear evidence. *In re Montgomery*, 77 N.C. App. 709 (1985).

**2. Carrying out appellate mandate.** The trial court is bound by the mandate of the appellate court but may not act until the mandate issues. The mandate of the court, which consists of certified copies of its judgment and opinion and any direction as to costs, is issued by transmittal from the clerk of the appellate court to the clerk of the trial court. Unless otherwise ordered, mandates are issued twenty days after the written opinion of the court has been filed with the clerk. N.C. R. APP. P. 32*; see In re J.C.-B,* 276 N.C. App. 180, 194 (2021) (in second appeal reversing and remanding a permanency planning order, court of appeals directed

"[t]his mandate shall be effective upon filing"). The mandate issues on the date that the appellate court transmits the mandate to the trial court, not on the day the trial court receives it. *State v. Singletary*, 257 N.C. App. 881 (2018).

The trial court must strictly follow the mandate "without variation or departure[, and n]o judgment other than that directed or permitted by the appellate court may be entered." *In re S.M.M.*, 374 N.C. 911, 914 (2020) (citations omitted); *see In re K.S.*, 274 N.C. App. 358 (2020) (trial court must adhere to mandate of appellate court). The failure to follow an appellate mandate on remand is error. *See In re K.S.*, 274 N.C. App. at 365 ("[t]he trial court erred by disregarding the unequivocal mandate of this Court"); *In re S.R.G.*, 200 N.C. App. 594 (2009). Whether a trial court complied with an appellate court's mandate is reviewed de novo. *In re D.C.*, 289 N.C. App. 30 (2023).

Cases where the trial court erred by not following the appellate mandate include

- The trial court erred when it disregarded the mandate of the court of appeals in a 2018 opinion that considered an appeal of 2017 adjudication and dispositional orders; the 2018 appellate opinion remanded the case for "further proceedings 'not inconsistent with the opinion' " to address findings of fact on harm or risk of harm related to the 2017 neglect adjudication. *In re K.S.*, 274 N.C. App. at 365. Instead, the trial court on remand held a permanency planning hearing in the 2007 action for the same juvenile where the court had retained jurisdiction but waived further hearings. In that newly scheduled permanency planning hearing, the trial court dismissed the 2016 neglect petition and modified the permanency planning order in the 2007 action. The court erred by not holding a new adjudicatory hearing on remand from the 2018 appellate opinion addressing the 2016 petition before holding a permanency planning hearing in the 2007 action. Matter remanded for compliance with the 2018 mandate. *In re K.S.*, 274 N.C. App. 358.
- The trial court erred when it failed to carry out the mandate of the court of appeals to make findings according to G.S. 7B-907(b). *In re J.M.D.*, 210 N.C. App. 420 (2011) (decided under previous statute).
- The trial court erred when it ignored the mandate of the court of appeals to hold a new termination of parental rights (TPR) hearing, but the error was not prejudicial when the court, instead, held a permanency planning hearing. *In re R.A.H.*, 182 N.C. App. 52 (2007).
- The trial court committed reversible error when it failed to carry out the mandate of the court of appeals by holding a TPR hearing instead of a permanency planning hearing after remand of the permanency planning order. *In re P.P.,* 183 N.C. App. 423 (2007).

A trial court on remand should also be aware of "the law of the case doctrine" that applies when a question before an appellate court has previously been answered in an earlier appeal in the same case, constituting the law of the case both in subsequent proceedings in the trial court and on a subsequent appeal. *See In re S.R.G.*, 200 N.C. App. 594 (court of appeals reversed a TPR order based on abandonment, one of three grounds alleged by DSS, and remanded for further consideration consistent with its opinion; the law of the case doctrine precluded the trial court on remand from finding one of the other grounds alleged in the petition based on the trial court's previous failure to find that ground). The law of the case doctrine does not apply to a second TPR proceeding that alleges the same ground but is based on different facts because the doctrine "does not apply when the evidence presented at a

subsequent proceeding is different from that presented on a former appeal." *In re K.C.*, 258 N.C. App. 273, 274 (2018) (citations omitted) (holding law of case doctrine did not apply when fifteen months had passed between the first TPR hearing (the order of which was reversed on appeal) and the filing of the second TPR petition that contained allegations of events that occurred after the first TPR was filed). See Chapter 9.10.C (discussing events that occur after a TPR has been denied or reversed on appeal).

When applying the mandate, "the plain language of the mandate controls." *In re D.C.,* 289 N.C. App. at 38 (citation omitted). When an appellate court remands a case to the trial court, the opinion may give the court specific directions or it may say "for further action consistent with this opinion," or "for additional findings*." See, e.g., In re S.R.G.*, 195 N.C. App. at 88 (remanding "for further action consistent with this opinion"); *In re L.C.*, 253 N.C. App. 67, 81 (2017) (remanding "for additional findings on these issues"). The mandate may also state the trial court should "conduct further hearings as necessary." *See In re D.C.*, 289 N.C. App. at 38 (citation omitted).

Within the parameters of the appellate court's mandate, the trial court often has discretion as to how to proceed once the mandate issues. A mandate that directs the trial court to conduct hearings as necessary gives the trial court discretion as to whether to hold a new hearing. *In re D.C.*, 289 N.C. App. at 39 (emphasis in original) (citation omitted) (holding trial court complied with supreme court mandate when a new dispositional hearing was not held pursuant to mandate that trial court "review and reconsider the *record before it* by applying the clear, cogent, and convincing standard to make findings of fact"). When an appellate court remands a case for additional findings, unless the opinion says otherwise, the trial court has discretion as to whether to conduct a further hearing and hear additional evidence. *See In re S.M.M.,* 374 N.C. 911 (rejecting respondent's argument that the trial court could not comply with the mandate to make findings under G.S. 7B-1110(a)(2) without reopening the evidence to consider current circumstances regarding the juvenile's best interests on remand; court had discretion to determine whether to take new evidence since mandate was silent on that issue; no abuse of discretion when court denied respondent's motion to reopen the evidence as respondent did not provide forecast of relevant evidence that would bear on court's determination of best interests); *In re R.L.O.*, 375 N.C. 655 (2020) (remand for court to consider evidence of likelihood of repetition of neglect that allowed court to receive additional evidence it deems appropriate; parties stipulated court could make findings without receiving new evidence; respondent is bound by stipulation; respondent did not forecast any evidence showing current circumstances would have effect on court's best interests determination; no abuse of discretion when court did not take additional evidence); *In re K.J.E.*, 288 N.C. App. 325 (2023) (determining trial court abused its discretion in denying father's offer of proof regarding new evidence on remand for dispositional hearing; court has broad discretion to determine what evidence is relevant, reliable, and necessary but it would seem like an abuse of discretion if on this remand court relied on information from three years earlier when it has access to newer information); *In re J.M.D.*, 210 N.C. App. 420 (2011) (rejecting respondent's argument that the trial court erred in refusing to allow her to present evidence on remand, stating that whether to receive new evidence on remand is within the discretion of the court, and in this case there was no abuse of discretion). When a remand allows for a trial court to exercise discretion in determining whether to receive additional evidence, the trial court is not obligated to hear new evidence. *In re A.B.*, 245 N.C. App. 35 (2016) (holding no abuse of

discretion when trial court did not hear additional evidence regarding the child's best interests).

When the trial court hears from parties on remand, either because it is exercising its discretion or was directed to do so, the court must hear from all the parties. Including some parties while excluding another party results in an ex parte communication in a pending proceeding that is prohibited by Canon 3(A)(4) of the North Carolina Code of Judicial Conduct. *In re Z.J.W.*, 287 N.C. App. 577 (2023). In a remand of a TPR order, the respondent parent is still a party to the action and to act otherwise and exclude them from the remand mandate is a misapprehension of law and a violation of the respondent parent's due process rights. *In re Z.J.W.*, 287 N.C. App. 577.

On remand, the new order should not be entered *nunc pro tunc*. In *In re K.J.E.*, 288 N.C. App. 325, the trial court on remand entered its new TPR order *nunc pro tunc* to the first order's date. A *nunc pro tunc* order cannot be used "to accomplish something which ought to have been done but was not done." *In re K.J.E.*, 288 N.C. App. at 328 (citation omitted). The use of *nunc pro tunc* was improper as the court was not trying to correct findings it had made in 2020 but rather add findings it failed to make at the earlier hearing as mandated by the supreme court.

If, on remand, the district court judge who entered the order is no longer available because of conditions listed in Rule 63 of the Rules of Civil Procedure, the court of appeals has held that Rule 63 " 'statutorily authorize[s] a substitute judge to reconsider [on remand] an order entered by a judge who has since' left the bench." *In re J.M.*, 275 N.C. App. 517, 523 (2020) (citations omitted) (affirming order entered on remand by substitute judge after original judge's term expired). However, if the order on appeal is vacated, it is a nullity, and a substitute judge must hold a new hearing on remand of a vacated order. *See In re K.N.*, 381 N.C. 823 (2022).

An order resulting from a mandate that reverses and remands the order that was appealed must be an entirely new and complete order. *In re A.R.P.*, 218 N.C. App. 185 (2012). In *In re A.R.P.*, the court of appeals explained that a reversal is " 'an appellate court's overturning of a lower court's decision[,]' and '[i]n the legal context, 'overturn' means to invalidate.' " 218 N.C. App. at 188 (citations omitted). Because the appealed order is invalidated, the order after remand cannot supplement findings of fact and conclusions of law in the order that has been reversed, and doing so results in an incomplete order. *In re A.R.P.* 218 N.C. App. 185.

When an entire order is vacated and remanded, the entire order is void and of no effect and the posture of the case returns to what was provided for in the order that was entered before the vacated order. *In re D.S.*, 260 N.C. App. 194 (2018); *see In re K.N.*, 381 N.C. 823. Similarly, when a portion of the order is vacated, those portions of the order become void and have no effect. *In re J.M.*, 275 N.C. App. 517; *In re D.S.*, 260 N.C. App. 194. Whether an order is vacated and remanded in part or in full will determine what the court must consider and include in the order entered after remand. When there is sufficient evidence in the record to support a conclusion of law that is unsupported by the findings in the order, a remand "permits the trial court, as fact finder, to decide whether to enter a new order with sufficient findings based on the record or to change the court's conclusions because the court cannot make the necessary findings." *In re A.J.*, 386 N.C. 409, 410 (2024). If there is insufficient evidence in the record, the remedy will be to reverse *without remand. In re M.R.F.,* 378 N.C.

638 (2021) (emphasis in original) (reversing TPR), *cited in In re J.C.*, 380 N.C. 738 (2022) (reversing and remanding TPR for consideration of any alleged TPR ground under the clear, cogent, and convincing evidence standard; sufficient evidence existed in the record).