

Introduction to Findings of Fact and Conclusions of Law

Joseph Laizure, Assistant Professor of Public Law and Government
October 1, 2025

1

This hat makes decisions!

Most orders of the clerk after hearing are final acts of a superior court judicial officer.

If the party wants the order to be reviewed, the party must appeal.



UNC SCHOOL OF GOVERNMENT

16

Appellate Review

In Estates, Trusts, and Guardianship matters:

Review is by the Superior Court,
and it is “on the record”

UNC SCHOOL OF GOVERNMENT

17

Appellate Review

In Estates, Trusts, and Guardianships:

§ 1-301.3(d)

Upon appeal, the judge of the superior court shall review the order or judgment of the clerk for the purpose of determining **the following**:

- (1) Whether the findings of fact are supported by the evidence.
- (2) Whether the conclusions of law are supported by the findings of facts.
- (3) Whether the order or judgment is consistent with the conclusions of law and applicable law.

UNC SCHOOL OF GOVERNMENT

18

The Law

• In estates, trusts, and guardianships:

- "In matters covered by this section, the clerk shall determine all issues of fact and law. The clerk shall enter an order or judgment, as appropriate, containing findings of fact and conclusions of law supporting the order or judgment." G.S. § 1-301.3 (emphasis added).

UNC SCHOOL OF GOVERNMENT

19

Components of an Order

- INTRODUCTORY PARAGRAPH
 - Nature of Matter and Hearing; Jurisdiction
- FINDINGS OF FACT
- CONCLUSIONS OF LAW
- ORDER/DECREE

UNC SCHOOL OF GOVERNMENT

20

Components of an Order

- **INTRODUCTORY PARAGRAPH**

- Nature of Matter and Hearing; Jurisdiction

- FINDINGS OF FACT

- CONCLUSIONS OF LAW

- ORDER/DECREE



UNC SCHOOL OF GOVERNMENT

21

22

Introductory Paragraph

- Subject matter jurisdiction (what kind of case is it?)
 - Examples: a power of sale foreclosure, a partition, an estate proceeding
- Where and when was the hearing?
- What did the court hear today? What did the court NOT hear?
 - Examples: the petition, a motion for continuance, a motion for summary judgment, a motion for default judgment
- Who is present?
- Service or notice issues?

UNC SCHOOL OF GOVERNMENT

22

23

Subject matter jurisdiction

- Given to the court by the petition or complaint
- May be challenged at any time

UNC SCHOOL OF GOVERNMENT

23

Personal jurisdiction

- Given to the court by service of petition (or complaint) and summons
- May only be challenged as the first act of the respondent or defendant
- Waived otherwise
- Any party who attends a hearing and does not challenge personal jurisdiction consents to personal jurisdiction
- But be careful: if a respondent or defendant is not in attendance at a hearing, look for proof of service of the petition (or complaint) and summons in the file

UNC SCHOOL OF GOVERNMENT

24

Components of an Order

- INTRODUCTORY PARAGRAPH
 - Nature of Matter and Hearing; Jurisdiction
- **FINDINGS OF FACT**
- CONCLUSIONS OF LAW
- ORDER/DECREE

UNC SCHOOL OF GOVERNMENT

25

Why?

- Provides a basis for review by Superior Court and Court of Appeals.
- Gives parties better understanding of your decision.
- Encourages you to make a careful review of the evidence.
- Helps ensure you address all relevant issues.

UNC SCHOOL OF GOVERNMENT

26

What is “finding fact”?

Determining what the facts are
from the disputed evidence.

(There is no jury, so this is the *clerk's* job.).



UNC SCHOOL OF GOVERNMENT

27

What is “finding fact”?

Steps:

- Take all the admissible evidence on both sides.
- Decide (“find”) what the “facts” are among the disputed evidence.
- Write in your order the findings that determine the issues in the case.
 - The “controlling” or “ultimate” facts.

UNC SCHOOL OF GOVERNMENT

28

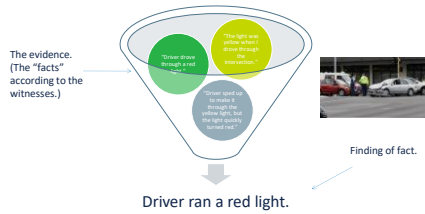
What is “finding fact”?

GATHER THE EVIDENCE
FIND THE FACTS
WRITE DOWN YOUR FINDINGS

UNC SCHOOL OF GOVERNMENT

29

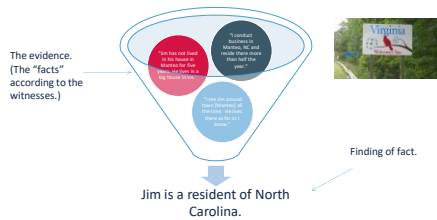
"Finding" a fact



UNC SCHOOL OF GOVERNMENT

30

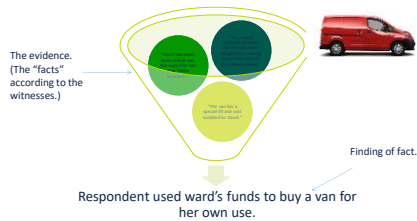
"Finding" a fact



UNC SCHOOL OF GOVERNMENT

31

"Finding" a fact



UNC SCHOOL OF GOVERNMENT

32

“Finding” a fact

Findings of fact should not merely
recite or recount the evidence.

They present what you have decided the
facts are.

UNC SCHOOL OF GOVERNMENT

33

“Finding” a fact

- NO:

“Mr. Jones testified that Mr. Davis did not review the
accounting filed on June 28, 2013.”

- YES:

“Mr. Davis did not review the accounting filed
on June 28, 2013.”

What is the difference between these two?

UNC SCHOOL OF GOVERNMENT

34

“Finding” a fact

*“[R]ecitations of the testimony of each witness do not
constitute findings of fact by the trial judge, because they do
not reflect a conscious choice between the conflicting
versions of the incident in question which emerged from all
the evidence presented.”*

- Chloride, Inc. v. Honeycutt, 71 N.C. App. 805 (1984)

UNC SCHOOL OF GOVERNMENT

35

“Finding” a fact

In re O.W., 164 N.C. App. 699 (2004).

“[I]t is not the role of the trial court as fact finder to simply restate the testimony given.”

UNC SCHOOL OF GOVERNMENT

Findings of fact Nos. 12-15 are not even really facts as they simply recite what some unknown source said.

*703 12. That [collaterals state that] B.F.] has a history of co-sleeping and crack use.

13. That [collaterals also state that] B.F.] has a bad temper, he is impatient, he hollers at the baby and slaps her on her hands.

14. That [collaterals state that] B.F.] only wants the child, so he won't have to give child support.

15. That [collaterals stated that] [the] paternal grandmother [never] was or is willing to help to baby-sit the child while she is in her home.

A more appropriate example of an “ultimate finding of fact” would have been for the court to state that “B.F. has a history of cocaine and crack use” or that “B.F. has a bad temper, he is impatient, he hollers at the baby and slaps her on her hands,” if it found these facts were true.

36

“Finding” a fact

Avoid merely referring to the allegations from the Petition or other documents.

Remember to make your *own determinations of fact*.

UNC SCHOOL OF GOVERNMENT

37

“Finding” a fact

In re S.C.R., 718 S.E.2d 709 (N.C. App. 2011).

“In its second finding...the trial court incorporated the allegations from the DSS petition as its findings of fact. This it cannot do, particularly without making sufficient additional findings of fact which indicate the trial court considered the evidence at the hearing.”

UNC SCHOOL OF GOVERNMENT

[4] Here, the trial court made the following findings on adjudication:

a. The Juvenile is a special needs child and Respondent Mother understands that and the Court anticipates that she will provide support to mitigate these issues.

b. The Court incorporates each of the factual allegations set forth in the Petition as findings of fact as if set forth herein in their entirety.

c. Respondents Mother and Father were unable to provide for the proper care, supervision and discipline of the minor child and they lacked an appropriate child care arrangement.

38

“Finding” a fact

- Findings of fact should not sound equivocal or uncertain.
- Avoid leaving the reader with uncertainty about whether you have actually *decided*.



UNC SCHOOL OF GOVERNMENT

39

“Finding” a fact

- NO:
“It would seem that Mr. Davis did not inform the heirs.
(“It seems that...”; it would appear that...; “The Court is inclined to find that...”; it appears to the Court that...)”
- YES:
“Mr. Davis did not inform the heirs.”

UNC SCHOOL OF GOVERNMENT

40

“Finding” a fact

How do I get there?

- Listen to the evidence.
- Assess the credibility of the witnesses.
- Weigh the value of the various bits of evidence.
- Make the necessary deductions.
- **Have confidence.**

UNC SCHOOL OF GOVERNMENT

41

How many of the facts do I have to include?

Orders only have to contain
"controlling facts".

Usually called "ultimate facts".

UNC SCHOOL OF GOVERNMENT

42

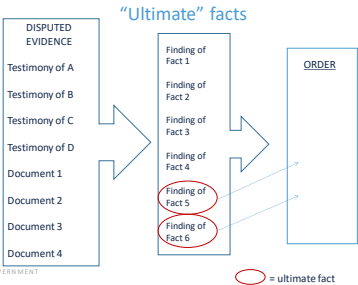
"Ultimate" facts

- "Ultimate facts are the final facts required to establish the plaintiff's cause of action or the defendant's defense."

Woodward v. Mordecai, 234 N.C. 463, 470, 67 S.E.2d 639, 644 (1951).

UNC SCHOOL OF GOVERNMENT

43



UNC SCHOOL OF GOVERNMENT

44

Fender bender exercise

UNC SCHOOL OF GOVERNMENT

45

Components of an Order

- INTRODUCTORY PARAGRAPH
 - Nature of Matter and Hearing; Jurisdiction
- FINDINGS OF FACT
- CONCLUSIONS OF LAW
- ORDER/DECREE

UNC SCHOOL OF GOVERNMENT

46

Neutral Application of Legal Principles

Facts → LEGAL RULE → Conclusions

UNC SCHOOL OF GOVERNMENT

47

Four Things an Order Must Do

ACCORDING TO NORTH CAROLINA COURT OF APPEALS JUDGE DONNA STROUD

- Accurately memorialize the court's ruling
 - Including findings of fact
 - Conclusions of law
 - Decree
- Provide clear basis for appellate review
- Guide actions of the parties and avoid future conflict
- Provide foundation for future modifications and contempt actions

UNC SCHOOL OF GOVERNMENT

48

What is a conclusion of law?

Application of the law at issue to the facts you have just found.



UNC SCHOOL OF GOVERNMENT

49

Drafting Tips

- Remember to find all the facts necessary to dispose of all the legal issues.
- So...
 - Know what the issues are.
 - Check off the issues as you go.



UNC SCHOOL OF GOVERNMENT

50

Drafting Tips

- Make sure there are conclusions of law to address the questions you must decide.
- Make sure each conclusion of law is supported by findings of fact.

UNC SCHOOL OF GOVERNMENT

51

Components of an Order

- INTRODUCTORY PARAGRAPH
 - Nature of Matter and Hearing; Jurisdiction
- FINDINGS OF FACT
- CONCLUSIONS OF LAW
- **ORDER/DECREE**

UNC SCHOOL OF GOVERNMENT

52

Attorney Drafts

- Okay to have attorneys draft the orders?
 - Yes.

But, remember:

UNC SCHOOL OF GOVERNMENT

53

Attorney Drafts

- Avoid *ex parte* contact.
- Include both (all) parties in all communications.
- Helpful:
 - Instruct parties how to communicate with you about drafts (email, etc.).
 - Remind parties to copy the other party(ies) on all communications.

UNC SCHOOL OF GOVERNMENT

54

Attorney Drafts

- Review draft orders carefully.
- Avoid wholesale adoption of one party's draft of a complicated order.
- Lack of thorough review can lead to appearance of partiality.

UNC SCHOOL OF GOVERNMENT

55

Attorney Drafts

Habitat for Humanity of Moore Co., Inc. v. Pinebluff, 653 S.E.2d 886, 889 (2007):

- Trial judge's order was "printed, signed, and filed on the ruled stationary of [prevailing party's] trial attorney."
- Court of Appeals: "Without deciding whether this practice violates either the Code of Judicial Conduct or the Revised Rules of Professional Conduct, we strongly discourage lawyers from submitting or judges from signing orders printed on attorneys' ruled stationary bearing the name of the law firm. Such orders could call into question the impartiality of the court."

UNC SCHOOL OF GOVERNMENT

56

Attorney Drafts

In re T.M.H., 186 N.C. App. 451 (2007)

[5] We further note that the termination order was printed, signed, and filed on the ruled stationery of petitioner's trial attorney. It is important that our trial courts not only be impartial, but also have *456 every appearance of impartiality. We strongly discourage judges from signing orders prepared on stationery bearing the name of any law firm.

UNC SCHOOL OF GOVERNMENT

57

Attorney Drafts

Heatzig v. McLean,
191 N.C. App. 451 (2008)

signing of an order marked as "Defendant's Proposed Order" does not convey an appearance of impartiality on the part of the court. We also note that the trial court signed the order *462 on 22 January 2007 after announcing her ruling on 27 September 2006. Given the long delay in signing the order, the trial court should have directed the revision of the order so that it was entirely typewritten and contained consistent paragraph numbers.

UNC SCHOOL OF GOVERNMENT

58

The order is the clerk's and the clerk is responsible for its contents.

59



60
