



And APPEALS

Objectives



- Importance of Timing
- Role of Findings

Remedy?

Party Response

- ☐ File for a Writ of Mandamus
- ☐ “The appropriate remedy for a trial court’s failure to enter a timely order is mandamus, not a new hearing.”
 - ☐ *In re T.H.T.*, 362 N.C. 446 (2008)

Rendition

- The child is neglected based on the following findings of fact, which are based on clear and convincing evidence

...



Entered: Rule 58

- 1. In Writing
- 2. Signed by Judge
- 3. Filed by Clerk

FILED
NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
2013 DEC -3 PM 12:04 DISTRICT COURT DIVISION
MOORE COUNTY 02 Cvd 1315
MOORE COUNTY, C.S.C.
LARA (formerly VAN BOURGONDIE) GERHAUSER, :
Plaintiff, vs. :
Vs. :
MARTIN R. VAN BOURGONDIE, :
Defendant. :

ORDER

Roger V. Bradford

Judge Roger V. Bradford

What's the Problem with Rendition?

- An oral order does not become enforceable until it is reduced to writing, signed by the judge, and filed with the clerk of court.
- Carland v. Branch, 164 N.C. App. 403 (2004)
- Quoted in In re L.L., 172 N.C. App. 689 (2005)

Solution?

KIDS

- Temporary order until final order is drafted, so parties can leave with decree in hand
- Note: Rarely contains findings to survive appellate review or funding requirements

STATE OF NORTH CAROLINA			File No.
County			In The General Court Of Justice District Court Division
IN THE MATTER OF:			JUVENILE ORDER
Name And Address Of Juvenile			
Juvenile's Date Of Birth	Age	Date Of Hearing	
			G.S. Ch. 7B
The following persons were present at the hearing:			
NAME	RELATIONSHIP/TITLE	NAME	RELATIONSHIP/TITLE

Notes about Rendition

- Trial court has the discretion to reopen the case and admit additional testimony
 - *Miller v. Greenwood*, 218 N.C. 146, 10 S.E.2d 708 (1940)
 - *In re B.S.O.*, 225 N.C. App. 541 (2013)

Timing of Entry of Juvenile Orders

* Not Entered within 30 days

Court Response:

- ☐ Clerk shall schedule a subsequent hearing...
- ☐ To determine & explain reason for delay and obtain needed clarification
- ☐ Shall be entered within 10 days of subsequent hearing

Effects of Delay in Entry of Order

- Cannot appeal
- Contrary to BIC, *In re* S.Z.H., 247 N.C. App. 254 (2018)
- Delays the permanency planning process
- Impact: compliance with case plan and reasonable progress on TPR ground



Findings of Fact

- Judicial duty to make FOF ≠ delegated.

Best guide to what is required for the order are the statutes governing the type of juvenile hearing

G.S. 7B Statutory Compliance

- Pay attention to the language of the statutes
 - Does it say
 - Considered
 - Written
 - Each of the factors or “relevant” factors?



Findings, Remember the Applicable Standard of Proof

Clear & Convincing Evidence

- ❖ Adjudication
- ❖ TPR grounds
- ❖ Continued nonsecure custody necessary
- ❖ G.S. 7B-901(c)(iii) factor (crimes)
- ❖ Waiving further permanency planning hearings
- ❖ Nonparent Custody/Guardian
 - ❖ Parent unfit or acted inconsistently with parental rights

Does the Order have to use
the exact statutory language?

Is cutting and pasting findings
from the allegations in the
petition is per se reversible
error?



Making A Finding

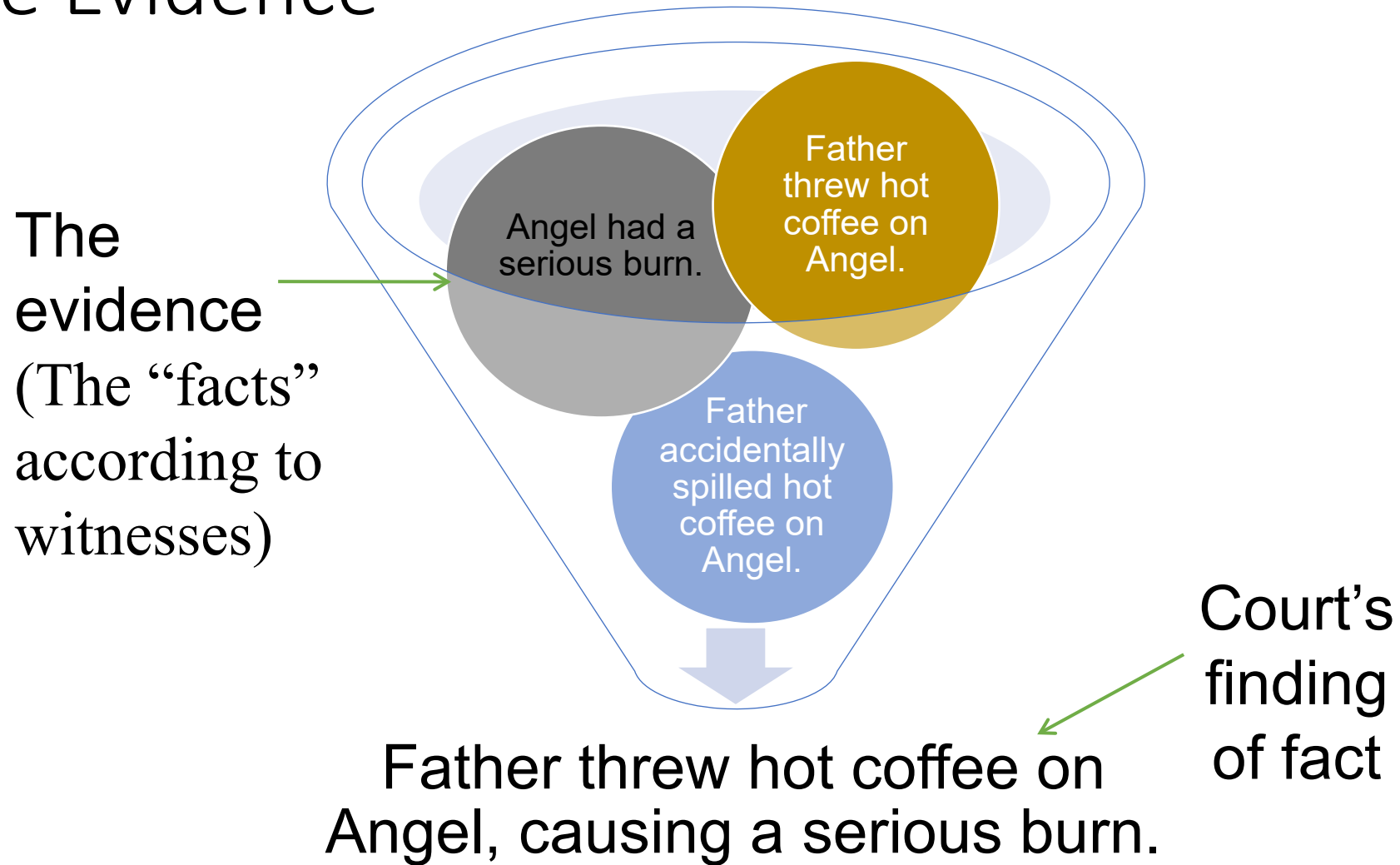
- Competent Evidence
 - Things the court should consider
 - Relevance and Admissibility
 - Witness credibility
 - Weight of the value of the different evidence presented

- Competent evidence does not include

X

- statements by counsel
- court's knowledge from earlier proceedings

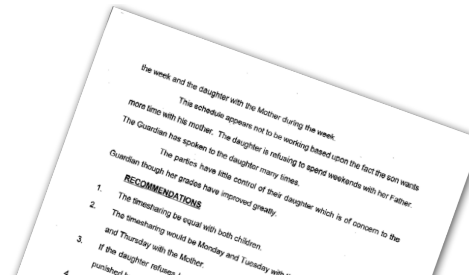
Sufficient Findings Supported by the Evidence



Report

- Report or Document by Itself
 - “The GAL report is incorporated...”

“after reviewing the GAL report, the court finds there was the mother arrived at the supervised visitation center drunk.”



Testimony

- Recitation of testimony
 - “Doctor testified that Bobby had two broken bones.”

“Bobby had
two broken bones.”



Description

- Description of Evidence
 - “DSS introduced a case plan setting out steps respondents agreed to take.”

“On [date] respondents and DSS agreed on a case plan that provided for”



Other Issues with Findings

- Should not be equivocal
NOT: “It appears that Mrs. Parker suffers from depression.”
YES: “Mrs. Parker suffers from depression.”

Other Issues with Findings

- Lack of specificity
 - “Father has a serious drinking problem.”

“Father lost his license on [date] for driving under the influence. He regularly gets drunk on weekends and when he is drunk he is easily angered and sometimes violent toward his wife and children. The children try to avoid him. On week nights he regularly drinks at least a 6-pack of beer. . .”



Is this a finding of fact?

The parties stipulate the juvenile is abused

Conclusions of Law

- Conclusion of Law: Judicial determination requiring the exercise of judgment (i.e. judicial discretion) or the application of legal principles
- FOF must support the COL
 - FOF may fail to support a COL if inconsistent with it
 - FOF may fail to support a COL if not specific enough

Conclusions of Law

- Common COL:
 - Statutory definitions (A/N/D)
 - TPR grounds
 - Reasonable efforts
 - Best interest determinations
- Appellate courts do *not* reverse or remand orders that mislabel FOF and COL
 - But, conclusions of law will not be inferred if not stated in the order

Decree

1. Must be based on competent evidence in the record
2. Must include sufficient findings and conclusions
3. Consistent with FOF and COL
4. Specific statutory requirements
 - Specific Burden of Proof
 - Ex. visitation plan if child not in parent custody

Dispositional Orders

5. Clear & precise language for parties to understand
6. Must include precise terms of the disposition:
 - ☐ kind,
 - ☐ duration,
 - ☐ person responsible for carrying it out, and
 - ☐ person or agency with custody

7. if the child is removed from the home

- a. address visitation
- b. do not delegate visitation decisions
- c. address possible relative placements
- d. address authority to consent to treatment
- e. schedule a review or permanency planning hearing

KIDS



UNC
SCHOOL OF GOVERNMENT

NO. 2013/02 | SEPTEMBER 2013

JUVENILE LAW BULLETIN

Drafting Good Court Orders in Juvenile Cases

Janet Mason

Now, it can be appealed



Appeal



WHAT ORDERS CAN BE
APPEALED?



WHO CAN APPEAL?

Standard of Review

Question of Law:

1. de novo review

Adjudication:

1. Are findings supported by clear, cogent, and convincing evidence?
2. Do the findings support the conclusions?

Disposition:

1. Did the court abuse its discretion?
2. Did the court act within its authority?
3. Did the court make sufficient findings based on competent evidence about relevant factors?

What Can the District Court Do in an A/N/D or TPR Action when an Appeal Is Pending?

This entry was contributed by Sara DePasquale on August 2, 2019 at 1:12 pm and is filed under Child Welfare Law.



The North Carolina Juvenile Code (G.S. Chapter 7B) establishes the substantive law for abuse, neglect, dependency (A/N/D) and termination of parental rights (TPR) actions and also sets forth specific procedures. Although A/N/D and TPR cases are civil proceedings, many of the juvenile procedures differ from the general rules that apply to civil actions. One of the procedural differences applies to the district court's jurisdiction in the underlying action when an appeal is pending.

Keep KIDS in Mind



Benchmark