

A BETTER MANDATE – PERSPECTIVES  
FROM TWO LOWLY TRIAL COURT JUDGES

RICHARD S. GOTTLIEB, SUPERIOR COURT JUDGE  
REBECCA EGGERS-GRYDER, DISTRICT COURT JUDGE  
DECEMBER 9, 2021

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WE ARE

Rebecca Eggers-Gryder  
District Court Judge



Richard S. Gottlieb  
Superior Court Judge





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HAPPY TO BE HERE, BUT  
IF YOU THINK WE'RE  
BEING CRITICAL, PLEASE  
REMEMBER THAT WE  
WERE . . .




...WE'RE NOT NERVOUS.



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### COVER THREE AREAS

- Mandate Rule
- What does it all mean?
- Practical consideration for what we're told to do



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### Mandate Writing (*Deciphering*) Blues

I got the blues... I got the mandate writing blues (Yes I do)  
 I got the blues... I got the mandate writing blues (What's a Court to do?)  
 Reversed in part, please understand  
 We Got no choice but to remand.... Mmm mmm  
 Got the blues... got the mandate writing blues.

I got the blues... I got the mandate deciphering blues (Yes, I do)  
 I got the blues... I got the mandate deciphering blues (What's a Court to do?)  
 Opinion's not plain, please understand  
 What facts are needed on remand... Mmm mmm  
 Got the blues... I got the mandate deciphering blues.

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### MANDATE RULE

- At its most basic, the mandate is the device by which an appellate court closes an appeal and transfers jurisdiction to another court.

#### Rule 32. Mandates of the Courts

(a) **In General.** Unless a court of the appellate division directs that a formal mandate shall issue, the mandate of the court consists of certified copies of its judgment and of its opinion and any direction of its clerk as to costs. The mandate is issued by its transmittal from the clerk of the issuing court to the clerk or comparable officer of the tribunal from which appeal was taken to the issuing court.



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### MANDATE RULE

- Technically, an appellate decision is directed to the lower court from which the appeal arose so that the court can effectuate the appellate judgment. The mandate, therefore, transfers jurisdiction to the lower court to take that action.
- The mandate's substantive aspects are most noticeable when the appellate court orders further proceedings on *remand*.
- The mandate informs the lower court of what it must do to implement the appellate decision on remand and limits further proceedings to the scope of the mandate.
- As its name suggests, it is "mandatory" that the district court follow the appellate court's rulings.
  - The trial court cannot take actions that are contrary to the mandate or revisit the appellate court's conclusions.
  - The issues decided by the appellate court and within the scope of the judgment are deemed incorporated within the mandate and precluded from further adjudication unless specifically remanded to the district court to address.



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### MANDATE RULE:

IN THE COURT OF APPEALS OF NORTH CAROLINA  
 No. COA15-443  
 Filed: 5 April 2016  
 Buncombe County, Nos. 04 CRS 53624; 04 CRS 7096  
 STATE OF NORTH CAROLINA  
 v.  
 RAYMOND WATKINS



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**III. Analysis**  
**A. The Mandate Rule and Scope of Remand**

Although this issue has never been answered directly, this Court's interpretation of its own mandate is properly considered an issue of law reviewable *de novo*. See, e.g., *Latham Corp. v. NEC Corp.*, 115 F.3d 947, 950 (Fed. Cir. 1997) ("We give much weight to the uniform treatment of other types of decrees and omitted). "On the remand of a case after appeal, the mandate of the reviewing court is binding on the lower court, and must be strictly followed, without variation and departure from the mandate of the appellate court." *Bodie v. Bodie*, \_\_ N.C. App. \_\_, \_\_, 768 S.E.2d 879, 881 (2015) (quoting *Collins v. Simms*, 257 N.C. 1, 11, 125 S.E.2d 298, 306 (1962)). "[I]t is well-established that in discerning a mandate's intent, the plain language of the mandate controls." *In re Parkdale Mills*, \_\_ N.C. App. \_\_, \_\_.

*In re Hayes*, 261 N.C. 616, 622, 135 S.E.2d 645, 649 (1964).



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### MANDATE RULE

- Thus, the issues decided by the appellate court and within the scope of the judgment are deemed incorporated within the mandate and precluded from further adjudication unless specifically remanded to the district court to address.
- Appellate courts can cause confusion when they use general language in ordering remands, remanding for “further proceedings consistent with” or “not inconsistent with” its decision.
- Critical issues, confusion, and additional litigation can arise about the scope of those proceedings.



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SOMETIMES WHEN WE GET THE OPINION WE THINK:



AND, WHAT DO WE DO NEXT?



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THE NEED FOR CLARITY:

SAY WHAT YOU MEAN AND MEAN WHAT YOU SAY



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If reversed and remanded, please specify whether the remand is to dismiss the petition with prejudice (as in Abuse/ Neglect/ Dependency cases)

If vacated, please specify whether another petition may be filed again.



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REVERSED WITH OR WITHOUT PREJUDICE

the sort of harm to the public that N.C. Const. art. I, § 34, is designed to prevent. As a result, we hold that the trial court erred by denying the [redacted] motion for judgment on the pleadings with respect to plaintiffs' [redacted] claim.



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REVERSED WITH OR WITHOUT PREJUDICE

III. Conclusion

Thus, for the reasons set forth above, we conclude that the trial court did not err by granting judgment on the pleadings in favor of the [REDACTED] with respect to plaintiffs' Chapter 75 restraint of trade and monopolization claims. On the other hand, however, we further conclude that the trial court did err by denying the [REDACTED] motion for judgment on the pleadings with respect to plaintiffs' claim pursuant to N.C. Const. art. I, § 34. As a result, the challenged order is affirmed, in part, and reversed, in part.

AFFIRMED, IN PART; REVERSED, IN PART.



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Horizontal lines for notes

REVERSED WITH OR WITHOUT PREJUDICE

- On remand, parties disagreed on the dismissal.
- Was the trial court:
  - Required to enter a dismissal as to all claims?  
OR
  - Could the trial court entertain a motion to amend?



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Horizontal lines for notes

NEW EVIDENCE VS. EVIDENCE ALREADY IN THE RECORD

Please specify and give direction if the lower court is to receive additional evidence or if the lower court is to make the additional findings from the evidence already in the record.



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Horizontal lines for notes


FOR EXAMPLE

*Smith v. Novant Health, Inc.*

Court of Appeals of North Carolina

June 10, 2021, Heard in the Court of Appeals; September 7, 2021, Filed

No. COA19-859



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testimony. **[\*P15]** If the trial court determines that Moore is not  
 instructions qualified under Rule 702 to testify to the standard of  
 which Smi care for any of Smith's purported administrative claims,  
 administrati care for any of Smith's purported administrative claims,  
 court deter the court's existing judgment on these claims can stand.  
 care or clir If the court determines that Moore is qualified to  
 testimony testify **[\*9]** with respect to any of these claims, the  
 concerns o court should set aside its judgment with respect to those  
 testimony f court should set aside its judgment with respect to those  
 then asses claims under Rule 54(b) and conduct further  
 to offer exj proceedings.  
 claims.



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If the issue in the Order was an omission or lack of  
 findings, please specify if the hearing is for an  
 amended order to include those findings or if a  
 whole new trial is necessary. It would be helpful if it  
 is clear in the mandate that a new hearing is  
 required.



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Cite the legal principles that the lower court is to make the findings.  
 When an Order is vacated, please specify if the entire Order is void or if only part is void, please specify the specific portions that need to be addressed by the lower court.



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A/N/D CASES

Making a clear mandate that the trial court must address the issue on remand before proceeding with any other hearing in the action. An example is an initial disposition is remanded and the trial court conducts a Permanency Planning Hearing (PPH) because the case has moved to that stage while the appeal was pending.  
 Specify which issues and evidence are to be received and whether the entire Order has to be re-entered on remand or if only certain issues.



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It would be helpful to the trial court if the appellate court would give specific instructions in the last paragraph(s) of each opinion.



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### PRACTICAL CONSIDERATIONS

- All Superior Court Judges and many District Court Judges rotate between courthouses.
  - Can be difficult to keep up with files, notes, and transcripts.
- May be years between trial court's order and appellate court's ruling.
  - Require special commission to return to address
- Many trial court judges would like the opportunity to fix their mistakes, but practical considerations can make it a difficult and slow process.



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### Gonna Write A Better Mandate

Gonna write better mandate and we're gonna create  
 Opinions clear as can be,  
 Gonna write a better mandate even on a vacate  
 Directions easy to see,  
 Gonna write a better mandate all set to validate  
 Reasons of reverse and remand,  
 Gonna write a better mandate trying to accommodate  
 The law so we all understand.

© Hon. Rebecca Eggers Gryder



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# THANK YOU

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