



NORTH CAROLINA **Judicial** COLLEGE

Findings of Fact & Conclusions of Law

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Purpose of FOF/COL


- Dispose of issues raised by pleadings
- Collateral estoppel / res judicata
- Evoke care on the part of trial judge
- Allow for meaningful appellate review

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General Principles

- FOF/COL may be required:
- If evaluating evidence
 - As finder of fact
 - In *de novo* review as appellate court
- FOF/COL not appropriate:
- If matter requires that you accept one party's version "in light most favorable" to that party
- In "whole record" review as appellate court

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What is Required?

- Find facts
- Ultimate vs. evidentiary facts
- Declare conclusions (separately from findings of fact)
- Enter judgment accordingly
- In writing by separate order?
- Sometimes – e.g. Motion to Suppress

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Ultimate Facts

- “Ultimate facts are those found in that vaguely defined area lying between evidential facts on the one side and conclusions of law on the other. . . . The line of demarcation between ultimate facts and legal conclusions is not easily drawn.”
(Farmers Bank v. M.T. Brown Distr., Inc., 307 N.C. 342 (1983))

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Scenario 1.

- Defendant (pedestrian) challenges constitutionality of stop and moves to suppress evidences obtained after search.
- At issue at the hearing on defendant’s motion to suppress was whether defendant was searched and seized in a manner permissible pursuant to the Fourth Amendment of the United States Constitution.
- After hearing on motion to suppress, trial court says: “Your motion to suppress is denied. I find that the stop was not unreasonable.”
- Adequate FOF/COL?

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Scenario 1, cont.

- No.
- In determining whether a seizure for the purposes of 4th Amendment occurred it was “incumbent upon trial court to determine whether a reasonable person in the position of the defendant would not have felt free to leave.”
- Material conflict in the evidence presented
- Failure to make FOF and COL is “fatal to validity of denial of motion.”
- State v. Baker, COA10-98 (7 Dec. 2010)

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Scenario 2

- Motorist arrested for DWI. While being transported for breathalyzer, he was informed not to put anything in his mouth. Defendant disobeyed, was instructed again to refrain, and disobeyed again.
- Defendant appeals trial court’s findings that he willfully refused without just cause or excuse to submit to a chemical analysis.

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Scenario 2, cont.

- Trial court order says, in pertinent part:
 - D taken before Officer who gave oral and written notice to D of all rights as set out in statute
 - That D willfully refused, without just cause or excuse, to submit to chemical analysis upon request
 - Court concludes that D is subject to revocation of license pursuant to NCGS . . .
- Sufficient FOF/COL?

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Scenario 2, cont.

- Yes.
- Trial court need not recite every evidentiary fact presented
- “Must only make specific findings on the ultimate facts established by the evidence that are determinative of the questions raised in the action and essential to support its conclusions”
- “Without just cause or excuse” indicates trial court rejected all opposing inferences.
- *Tolbert v. Hiatt*, 95 N.C. App. 380 (1989)

Scenario 3

- DSS Juvenile Petition alleged dependency and neglect due to lack of care and proper supervision.
- The petition alleged Respondent (mother) left home, did not return, and child was not picked up from school. No one knew mother’s whereabouts for several days.

Scenario 3, cont.

- Trial court entered order “incorporating each of the factual allegations set forth in the petition as findings of fact as if set forth herein in their entirety.”
- Court adjudicated the child neglected and dependent; granted custody to DSS
- Sufficient FOF?

Scenario 3, cont.

- No.
- The trial court must, through process of logical reasoning based upon evidentiary facts before it find the ultimate facts essential to support the conclusions of law.
- Must be stated with sufficient specificity to allow for meaningful review.
- This it cannot do, particularly without making sufficient additional findings of fact which indicate the trial court considered the evidence presented at the hearing. (*In re SCR*, 217 N.C. App. 166, 169-70 (2011)).

When are FOF/COL required?

- Criminal Law
- Motions to suppress evidence (NCGS 15A-977(f))
 - Written findings required
 - Sufficient to announce ruling in open court and later file written order
 - Where ruling announced in open court, trial court has jurisdiction to enter written order with FOF/COL even after notice of appeal. *State v. Franklin* (Dec. 18, 2012)
- Proceedings regarding capacity (15A-1002, 1003)
- Mistrials (15A-1064)
- Motions for Appropriate Relief (15A-1420(c))

Criminal law, cont.

- Order allowing remote testimony of child witness (15A-1225.1)
- Maintenance of order in courtroom & restraint of defendant and witnesses (15A-1031)
- Material witness order (15A-803(d))

Criminal law, cont.

- *Batson* issues – St. v. Hood, 848 S.E.2d 515 (N.C. Ct. App. 2020).
- Sex offenses –
 - Bail & pretrial release – deviation from standard no contact orders
 - Sentencing – permanent no contact orders
 - Sentencing – deviation from structured sentencing
 - Satellite based monitoring requirements

Civil Law – when are FOF/COL required?

- Bench trials – N.C.R. Civ. P. 52(a)(1)
- “in all actions tried upon facts without a jury . . . , the court shall find the facts specially and state separately the conclusions of law thereon and direct the entry of the appropriate judgment.”

Civil Law, cont.

- N.C.R. Civ. P. 41(b) – Involuntary dismissal
- In actions tried without a jury, at close of plaintiff’s evidence, judge may dismiss if based on law and facts the plaintiff has shown no right to relief.
- If it does so, court must make FOF/COL as required by Rule 52(a).

Civil Law, cont.

- N.C.R. Civ. P. 52(a)(2) – FOF/COL are required on any decision of any motion or order ex mero moto only when requested by a party or otherwise required by statute or case law
- Absent request, FOF/COL is within court's discretion. If none, appellate court presumes court on proper evidence found facts to support judgment.

Civil Law, cont.

- Timing of request
 - Prior to entry of written order
- Preparation of Order
 - Rely upon orders submitted by parties
- Amendment of Order
 - Rule 52(b) (w/in 10 days of judgment); even after notice of appeal

Specific Civil Law issues

- TRO/Preliminary Injunctions
 - Generally subject to Rule 52(a)(2) (only if requested)
 - But civil contempt cannot be imposed based upon conduct preceding entry of order
- Consent Judgments – FOF/COL not required, even if requested.

Specific Civil Law issues

- Rule 12(b)(6) motions to dismiss, Motions for Judgment on the Pleadings
- FOF/COL not required, even if requested.
- Court deemed to have accepted pleadings in light most favorable to non-movant
- Motions for Summary Judgment
 - FOF/COL not required – same rationale
- Motion for relief from judgment
 - FOF/COL not required – but encouraged.

Specific Civil Law issues

- FOF/COL are required for (by case law or statute):
- Motions to compel arbitration
- Criminal and civil contempt
 - In criminal contempt, be sure to recite that facts are found “beyond a reasonable doubt”.
 - Civil contempt FOF/COL – must be in writing
- Rule 11 sanctions
- Award of Attorneys fees
- Sanctions for non-attendance at mediation
- Motion for JNOV on jury award of punitive damages

Appeals to Superior Court from Clerk of Court

- Threshold question: What is Superior Court’s jurisdiction? *Appellate* or *Original*?
- FOF are not appropriate for where court sits as *appellate* court and is confined to correcting errors of law
 - E.g. appeal of clerk’s order denying petition to reopen estate.
- Trial court is confined to record made below.

Appeals to Superior Court from Clerk of Court, cont.

- Some appeals, by statute, invoke the Superior Court's *original* jurisdiction. FOF/COL are then required.
- Examples:
 - Competency determinations (N.C. Gen. Stat. Ch. 35A)
 - Foreclosure appeals (N.C. Gen. Stat. Ch. 45)
- Require court to consider evidence anew.

Appeals from Administrative Agencies

- When superior court reviews agency decision under its original jurisdiction, the court conducts a *de novo* hearing, and must make FOF/COL.
- When the superior court reviews agency decisions under its appellate jurisdiction, the court it is considering only errors of law, and is bound by the facts found below if supported by substantial evidence.

Agency appeals

- Most agency appeals only invoke the superior court's appellate jurisdiction
- No new evidence – limited to record and findings below
- Superior court order should not make FOF because that would suggest that the court strayed from its appellate jurisdiction.
- But, some agencies have specific statutes directing how appeals to superior court are to be reviewed (DMV, zoning, ESC)
- Look to statute – if statute specifically requires *de novo* review of an agency's findings, it is invoking the original jurisdiction of the superior court, and then order should contain FOF as well as COL.



• QUESTIONS or COMMENTS?
