ISSUE: IRC

UNDERPINNINGS

HARTON EVERETT WEILER ***FROM QUICK***

1. IN RE *HARTON* 577 SE2D 334 (MARCH 18, 2003) **P.54**
   A. THIS CASE INTERPRETS NC RULE 52 THAT CT TO MAKE FOF SPECIALLY
   B. SPECIALLY INTERPRETED IN QUICK V QUICK (BELOW)
   C. TRIAL CT ONLY MADE ONE FOF AND INCORPORATED REPORTS=CLEARLY IMPROPER AND CONTRADICTED BY TRIAL CT'S DETAILED FINDINGS IN LMT CASE
   D. APPELLEE AND AMICUS INDICATE THAT THE LMT TCT DID NOT COMPLY BY FAILING TO INCLUDE AS EITHER REQUIRED "PRONGS" OR "LINKS" TO

      "FUTILE" AND "NOT CONSISTENT WITH NEED OF THE JUVENILE FOR A SAFE, PERMANENT HOME IN A REASONABLE TIME"

2. IN RE *EVERETT:* 588 SE2D 579 (DECEMBER 2, 2003) **P.49**
   A. FOF DO NOT SUPPORT TRIAL CT COL OF CEASE REUNIFICATION
   B. REVERSED ON 7B 507 (B)(1) FACTORS NOT ADDRESSED BY TRIAL CT
   C. FATHERS LIMITATIONS IN CASE WERE NOT A BASIS FOR NOT PROVIDING EFFORTS AND EVALUATION SHOWED RF NOT IN NEED OF TREATMENT
   D. CT APP FOUND THAT "NONE OF THE COURT'S FINDINGS ADDRESSED THE FOUR 7B-507(B) REASONS TO CEASE"
   E. THE CT APP WENT ON TO ANALYZE THE TCT'S FINDINGS AND FOUND THAT THE ***RECORD DID NOT SUPPORT*** THE CONCLUSION OF CEASE REUNIFCATION
   F. THIS IS CLEARLY DISTINGUISHABLE FROM ***LMT*** CASE WHEREIN TCT DID MAKE CLEAR, COGENT AND WELL REASONED FINDINGS, INCLUDING FINDINGS THAT THE HOME OF THE MOTHER WAS NOT SAFE FOR THESE JUVENILES, AND THAT THE ENVIRONMENT WAS INJURIOUS (FOF 10 OF 19 OCTOBER 2010 ORDER.
   G. CT APP ALSO REVERSED ON 7B-907 FACTORS NOT BEING ADDRESSED

(PRIOR TO *J.C.S.* 595 SE2D 155 (MAY 4, 2004) P.68

WHERE COA RULED 7B 907(B) FACTORS NEED *NOT BE SPECIFICALLY IDENTIFIED* THE TCT'S FINDINGS AS BEING MADE PURSUANT TO 7B-907 AS LONG AS *HARTON* IS COMPLIED WITH AND FINDINGS VIA PROCESSES OF LOGICAL REASONING AND NOT RECITING ALLEGATIONS

3. *IN RE WEILER* 581 SE2D 134 (JUNE 17, 2003) **P. 324**

   A. EVIDENCE EXISTED TO SUPPORT THE FOF BUT THE ***FINDINGS DID NOT SUPPORT THE CONCLUSIONS*** TO CEASE REUNIFICATION EFFORTS
   B. CT DID NOT MAKE "REQUIRED FINDINGS" FROM 7B-507(B) AND REFERS BACK TO HARTON
   C. CT CAME CLOSEST IN FOF 20 AND 22
   D. KEY: #20 FINDINGS RE: OBSTRUCTIONIST ATTITUDE ETC DID NOT RISE TO LEVEL OF BEING INCONSISTENT WITH JUVENILES NEED FOR SAFE, PERMANENT HOME
   E. CONTRAST ***LMT*** WHEREIN PROBLEMS CAUSING UNSAFE HOME ARE CLEAR

SO, THE FINDINGS IN ***LMT*** CLEARLY HAVE A SOUND, COMPETENT EVIDENTIARY BASIS

THE FINDINGS IN ***LMT*** CLEARLY EXCEED THE MINIMAL NATURE OF *HARTON* AND SHOW THE TRIAL CT USING ITS REASONING PROCESSES TO MAKE THE ULTIMATE FINDINGS OF FACT FROM THE EVIDENCE PRESENTED

THE FINDINGS OF FACT SUPPORT THE CONCLUSIONS OF LAW TO CEASE

THE QUESTION IS, THEN? WHAT IS THE COURT OF APPEALS REQUIRING OF THE TRIAL COURT?

THE CASES ON WHICH IRC AND THE APPELLEE RELIES APPEAR TO ARISE FROM THE COURT'S DECISION IN:

4. *QUICK V. QUICK* 290 SE2D 653 (1982) **P.202**

   A. QUICK IS A COMPLEX ALIMONY CASE WHICH WAS REMANDED DUE TO TRIAL CT FAILURE TO MAKE FINDING REGARDING NECESSARY FACTORS TO DETERMINE AN APPROPRIATE AMOUNT OF ALIMONY (ESTATES, EARNINGS, CAPACITY, STANDARD OF LIVING ETC) AND TRIAL CT'S FAILURE TO FIND THESE FACTORS MADE IT IMPOSSIBLE TO ADEQUATELY REVIEW THE TCT ORDER AND REVIEW THE CONCLUSION OF THE ALIMONY PAYMENT.

THE KEY DIFFERENCE IN THAT CASE AND THE ***LMT*** CASE IS THAT THE APPELLATE COURT CANNOT REVIEW THE NECESSARY MONETARY ISSUES TO DETERMINE IF THE TRIAL COURT ACTED WITHIN ITS SOUND DISCRETION.

B. QUICK DEFINES ULTIMATE FACTS AS THOSE NECESSARY TO ESTABLISH THE PLAINTIFF'S CAUSE OF ACTION OR THE DEFENDANT'S DEFENSE
C. ULTIMATE FACT IS THAT WHICH IS THE FINAL RESULT OF LOGICAL PROCESSES PRODUCED FROM THE EVIDENTIARY FACTS
D. RULE 52 REQUIRES SPECIFIC FINDINGS OF ULTIMATE FACTS WHICH ARE DETERMINATIVE OF THE ACTION AND ESSENTIAL TO SUPPORT THE CONCLUSIONS OF LAW REACHED

5. IN OUR CASE THE ***CONCLUSION IS CEASE REUNIFICATION EFFORTS*** AND THE FINDINGS WHICH SUPPORT IT ARE CLEAR IN THE RECORD. THE ULTIMATE FACTS FOUND BY THE COURT ARE THOSE WHICH SHOW THE MORASS OF DRUG ABUSE AND DOMESTIC VIOLENCE IN THE MOTHER'S HOME. ***IT IS KEY*** THAT THE FINDINGS OF FACT ARE UNCHALLENGED BY THE APPELLEE, AND THEY ONLY ARGUE THAT THE TRIAL COURT DID NOT HAVE A BASIS TO CEASE. THAT IS A MATTER FOR THE DISCRETION OF THE COURT

6. THE DETERMINATION AS TO THE FINAL ISSUES, OR CEASING REUNIFICATION AND MOVING TO A PLAN OF ADOPTION IS IN THE SOUND DISCRETION OF THE TRIAL COURT.

7. THE TRIAL COURT CLEARLY FOUND THE ULTIMATE FACT THAT THE MOTHER'S HOME IS UNSAFE AND INJURIOUS TO THE MINORS. THIS IS BASED ON THE EVIDENCE PRESENTED AT TRIAL AND IS REFLECTED IN THE TRIAL COURT'S ULTIMATE FINDINGS.

8. HOW IS THIS NOT ROCK SOLID PROOF OF THE TRIAL COURT'S SOUND REASONING?

9. APPELLEES ARGUE, AND THE COURT OF APPEALS AGREES, THAT THE TCT HAS FAILED TO MEET THE 2 REQUIRED "PRONGS" OF 7B-507(B) OR HAS FAILED TO "LINK" THE FINDINGS TO THE REQUIRED PRONGS.

10. AGAIN, WHAT IS REQUIRED OF THE TRIAL COURT? WHAT IS THE MISSING LINK?

11. IF THE APPELLATE COURT CAN REVIEW THE RECORD AND THE TRIAL COURT'S FINDINGS, AND FROM THAT REVIEW CAN DETERMINE THAT THE TCT'S CONCLUSIONS ARE SUPPORTED BY THE EVIDENCE AND THE TRIAL COURT'S ULTIMATE FINDINGS OF FACT AND THAT THE TRIAL COURT'S FINAL RULING IS SUPPORTED BY ITS FINDING S AND CONCLUSIONS OF LAW AND IS WITHIN ITS SOUND DISCRETION THEN THE TRIAL COURT HAS DONE ITS JOB AND MADE FINDINGS NECESSARY FOR AN APPROPRIATE APPELLATE REVIEW

12. SO, WHAT DOES THE COURT OF APPEALS REQUIRE? IT IS CLEAR THAT THE COURT OF APPEALS HAS NOT APPROPRIATELY CONSIDERED THE UNDERPINNINGS OF THE CASES SET FORTH IN IRC. THEY ARE CLEARLY REQUIRING THAT THE TRIAL COURT USE EITHER THE EXACT LANGUAGE OF THE STATUTE (FUTILE OR INCONSISTENT WITH THE JUVENILES NEED FOR A SAFE PERMANENT HOME) OR PER THE APPELLEE MOTHER'S BRIEF SOME SYNONYMOUS LANGUAGE

13. APPELLEES IGNORE THE STATEMENT IN THE COURT OF APPEALS OWN OPINION IN THIS CASE OF LMT--- THAT "WE FIND SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT THE REQUIRED FINDINGS".

14. CLEARLY THE TRIAL COURT DOES NOT NEED TO, ON REMAND, MAKE FURTHER FINDINGS REGARDING THE UNSAFE NATURE OF THE MOTHER'S HOME ENVIRONMENT, SO THE COURT OF APPEALS IS SENDING IT BACK TO ADD IN THE PHRASES FROM THE STATUTE SUCH AS "FUTILE AND INCONSISTENT"

15. THIS IS THE VERY DEFINITION OF "FORM OVER SUBSTANCE" AND BELIES THE COMMON SENSE APPROACH SET FORTH BY THIS COURT IN INTERPRETING THE TPR STATUTES IN THE ***IN RE MIW CASE, 722 SE2D 469 (2012).*** WE URGE THIS COURT TO ADOPT THE LINE OF REASONING REGARDING STATUTORY CONSTRUCTION AS IN THE ***IN RE JCS CASE 595 SE2D 155 (2004)***

16. THE TRIAL COURT'S CONCLUSION OF LAW CEASING REUNIFICATION EFFORTS, CAN BE REVIEWED ON APPEAL FROM THE RECORD AND MORE IMPORTANTLY FROM THE ULTIMATE FINDINGS OF FACT IN THE TRIAL COURT'S ORDER. THE BASIS FOR THE CONCLUSION OF LAW TO CEASE REUNIFICATION EFFORTS IS CLEAR.

17. TO REQUIRE THE CASE TO BE REMANDED SIMPLY TO ADD IN STATUTORY PHRASES IS A CLEAR DEVIATION FROM THE PATH SET OUT FOR THE COURT WHICH IS GUIDED BY THE POLAR STAR OF THE BEST INTERESTS OF THE JUVENILES.

18. AS TO THE APPELLEE'S PLEA THAT THERE ARE OTHER POLICY CONSIDERATIONS, NAMELY THE RIGHTS OF THE PARENTS, IT IS CLEAR THAT THE APPELLEE MOTHER WAS AFFORDED ALL OF HER CONSTITUTIONALLY PROTECTED DUE PROCESS RIGHTS, PARTICIPATED IN THE HEARINGS, AND HAD THE BENEFIT OF THE TRIAL COURT WORKING WITH HER FOR A SUBSTANTIAL PERIOD OF TIME BEFORE THE EVENTS LEADING UP TO THE 19 OCTOBER 2010 HEARING WHEREIN THE COURT DETERMINED, IN ITS SOUND DISCRETION, THAT IT WAS TIME TO CEASE REUNIFICATION EFFORTS AND PURSUE A PLAN OF ADOPTION AS IT WAS TIME FOR THE JUVENILES TO HAVE A SAFE, PERMANENT HOME WITHIN A REASONABLE PERIOD OF TIME.

19. THE TRIAL COURT'S DECISION TO CEASE REUNIFICATION WAS BACKED BY COMPETENT EVIDENCE AND WAS WITHIN IT'S SOUND DISCRETION AND THE RULING OF THE COURT OF APPEALS IN THIS CASE SHOULD BE REVERSED.

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TURNING NOW TO THE ISSUES SURROUNDING THE COURT OF APPEALS REVERSAL OF THE TERMINATION OF PARENTAL RIGHTS WITHOUT CONSIDERING THE TPR

1. THIS QUESTION IS BY ITS VERY NATURE A SIMPLE ONE. SHOULD THE COURT OF APPEALS REVERSE TPR'S WITHOUT REVIEWING THEM WHEN AN APPEAL COMES BEFORE THAT COURT WHICH CONTAINS A QUESTION REGARDING THE PPR?

2. THE ANSWERS ARE, HOWEVER, A BIT MORE COMPLEX THAN THE QUESTION

3. THIS IS NOT AN ISSUE INVOLVING DETAILED PARSING OF CASE LAW BUT CLEARLY REVOLVES AROUND THE INTERPRETATION OF THE APPELLATE PROCESS SET FORTH IN NCGS 7B 1001 (A)(5).

4. THE APPELLEE MOTHER AND AMICUS ADVOCATE THAT THAT THE COURSE SET OUT BY THE COURT OF APPEALS IS THE ONLY LOGICAL ONE, FOR TO DO ANYTHING BUT FIRST HEAR THE PPR AND WITHOUT CONSIDERING THE TPR REVERSE IT IF A PERCEIVED FLAW IS FOUND IN THE PPR ORDER WOULD BE ILLOGICAL.

5. THIS DISREGARDS THE VERY NATURE OF THE ISSUES AT HAND, WHICH GO BACK TO THE YEAR 2005 WHEN THIS COURT IN ***THE CASE OF RTW (2005)*** RESOLVED A CLEAR CONFLICT REGARDING A TRIAL COURTS JURISDICTION TO HEAR TPR CASES WHEN APPEALS WERE PENDING IN THE UNDERLYING A/N/D CASE.

6. WHILE IT IS TRUE THAT THE NEW APPELLATE PROCESS DID CHANGE THE LAW CONCERNING APPEALS AND HOW THEY WERE TO BE HANDLED, IT IS CLEAR THAT THE LEGISLATURE WAS RESPONDING TO THE UNTENABLE SITUATION CLEARLY BEFORE THE COURTS OF THIS STATE IN THE FORM OF THE CONFLICTS BETWEEN MULTIPLE APPEALS AND THE NEED FOR JUVENILES TO HAVE A SAFE, PERMANENT HOME WITHIN A REASONABLE TIME.

7. SO, THEN WHAT WAS THE INTENT OF THE LEGISLATURE IN ENACTING THE NEW APPELLATE PROCEDURE?

8. THIS COURT DID SET FORTH AT LENGTH THE ROLE OF THE COURT'S IN INTERPRETING LEGISLATION IN THE *RTW* CASE. THE KEYS IN THAT INTERPRETATION WERE THE INITIAL POLICY OBJECTIVES SET FORTH IN 7B101, PRIMARLY INVOLVING THE POLAR STAR OF THE BEST INTERESTS OF THE CHILD AND THE NEED FOR A SAFE, PERMANENT HOME IN A REASONABLE TIME. THIS WAS RECENTLY AGAIN ADDRESSED BY THIS COURT IN THE ***IN RE MIW CASE, 722 SE2D 469 (2012).*** AND WHILE THAT OPINION ADDRESSED THE TIME OF EXERCISE OF JURISDICTION IN A TPR CASE, IT CLEARLY SHOWS THAT THE TRIAL COURT WILL HAVE JURISDICTION OVER TPR'S.

9. THE NEW APPELLATE PROCEDURE IN NO WAY DIVESTS THE TRIAL COURTS OF THIS STATE OF JURISDICTION OVER TPR PROCEEDINGS, ONLY ADDRESSES THE TIMING OF APPEALS.

10. THEREFORE, THE QUESTION ARISES, WHAT WAS THE INTENT OF THE LEGISLATURE IN ENACTING THE NEW APPELLATE PROCESS? APPELLANTS ARGUE THAT THE FACE OF THE LEGISLATION ITSELF IS INSTRUCTIVE. THE TITLE, AS ENACTED IS, IN PART:

> **AN ACT TO AMEND THE JUVENILE CODE TO EXPEDITE OUTCOMES FOR CHILDREN AND FAMILIES INVOLVED IN WELFARE CASES AND APPEALS…..**

11. THIS TITLE INDICATES A SIMPLE REASON FOR THE CHANGES AND THAT IS EXPEDITING OUTCOMES FOR CHILDREN. ONE WAY TO EXPEDITE OUTCOMES FOR CHILDREN IS TO STREAMLINE THE APPELLATE PROCESS AND TO ENSURE THAT THERE WILL NO LONGER BE MULTIPLE APPEALS PENDING IN A SINGLE CASE.

12. WHEN CONSIDERED IN THIS SETTING, IT NOW IS CLEAR THAT THE INTENT OF THE LEGISLATURE IS TO HAVE ONE APPEAL, AND ONE APPELLATE REVIEW OF EACH CASE.

13. FOR THE COURT OF APPEALS TO RULE AS IT HAS IN THIS CASE AND IN ***IRC*** AND ITS OTHER PROGENY, BY NOT REVIEWING A TPR WHICH CLEARLY HAS ITS OWN BASIS AS A SEPARATE ACTION, BUT TO REVERSE THAT TPR WITHOUT CONSIDERATION, AND TO REMAND FOR FURTHER FINDINGS WILL LIKELY REQUIRE AT LEAST ONE FURTHER APPELLATE REVIEW, AS FOLLOWS:

14. CASE REMANDED FOR PPR ISSUE AND TPR REVERSED WITH NO REVIEW. ON REMAND COURT ADDRESSES THE PPR ISSUE. AFTER FURTHER REVIEW, ASSUMING FACTS ARE AND REMAIN THE SAME, AND THE TRIAL COURT STAYS WITH OR RETURNS TO A PLAN OF ADOPTION, THEN TPR IS AGAIN FILED (2ND TIME) AND TRIAL HELD. THEN 2ND ROUND OF APPELLATE REVIEW, AND THE NEW PPR ISSUE DU JOUR (AS REFERENCED IN THE AMICUS BRIEF) IS RAISED, PERHAPS PPR REMANDED AGAIN, ADDRESSED AND TPR FILED (3RD TIME) AND SO ON.

15. THIS RETURNS THE TRIAL COURT TO THE VERY ISSUES THAT THIS COURT DEALT WITH IN THE *HOPKINS* DECISION ADDRESSED BY ***RTW***.

16. NAMELY A CONTINUING APPELLATE LOOP. THE APPELLANTS ASK THIS COURT TO RULE THAT THE PROPER PROCEDURE, IN LIGHT OF THE CLEAR INTENT OF THE LEGISLATURE TO STREAMLINE THE APPELLATE PROCESS AND EXPEDITE OUTCOMES FOR CHILDREN, IS TO RULE THAT THE COURT OF APPEALS SHOULD ADDRESS THE TPR PORTION OF AN EXPEDITED APPEAL IN ADDITION TO ANY ISSUES IN THE PPR AND IF THAT TPR IS APPROPRIATE THEN THE PPR NEED NOT BE ADDRESSED, OR THAT IF AN ERROR IS FOUND THAT IT BE CONSIDERED HARMLESS ERROR IN THAT THE TPR STANDS ON ITS OWN MERITS.

17. THE BASIS FOR THIS REQUEST IS THAT THE ACTIONS ARE SEPARATE, AND THAT THE TPR IS CLEARLY NOT DEPENDENT ON THE UNDERLYING ACTION OR ORDERS AND THAT A DEFECT IN AN UNDERLYING PPR ORDER DOES NOT HAVE ANY BEARING ON THE TPR.

18. THIS IS CLEARLY DELINEATED IN THE RULING OF THE COURT IN THE ***IN RE RBB CASE (654 SE2D 514(2007)*** WHEREIN ADJUDICATION AND TPR WERE HELD SIMULTANEOUSLY. CLEARLY TPR IS NOT DEPENDENT ON ANY PERMANENCY PLANNING ORDER.

19. AS ACKNOWLEDGED IN THE AMICUS BRIEF, PARENTS, EVEN WHEN REUNIFICATION EFFORTS HAVE BEEN CEASED, CAN CONTINUE TO WORK ON THE ISSUES WHICH LED TO REMOVAL, AND EVEN ON ISSUES THAT LED TO THE COURT RULING TO CEASE REUNIFICATION EFFORTS.

20. AND AS IS CLEAR IN OUR STATE'S CASE LAW, THE TRIAL COURT AT TPR MUST, AS TO SOME ISSUES, CONSIDER THE TIME PERIODS PRIOR TO THE FILING OF THE TPR AND AS TO OTHERS MUST CONSIDER THE CIRCUMSTANCES AT THE TIME OF THE HEARING.

21. THEREFORE, TO RULE, AS HAS BEEN DONE IN THE COURT OF APPEALS AND AS URGED BY THE APPELLEE AND AMICUS, THAT THE TPR IS DEPENDENT ON THE PPR WILL CAUSE DELAYS IN OBTAINING OUTCOMES AND PERMANENCE FOR CHILDREN

22. IN THE LMT CASE, THE APPELLEE HAS HITCHED HER WAGON TO THE PURPORTEDLY DEFECTIVE PPR ORDER, AND IN HER BRIEF TO THE COURT OF APPEALS DID NOT CHALLENGE ANY OF THE GROUNDS FOUND BY THE TRIAL COURT AT ADJUDICATION OF THE TPR, AND ONLY ASSERTED THAT THE TRIAL COURT ABUSED ITS DISCRETION BY TERMINATING HER RIGHTS AND THAT IT WAS NOT IN THE JUVENILES BEST INTERESTS TO DO SO.

23. THIS POINTS OUT AGAIN THE FALLACY OF TYING THE SEPARATE ACTION OF A VALID TPR TO AN UNDERLYING PPR HEARING. THE TPR STANDS ON ITS OWN MERITS

24. WHEREFORE THE APPELLANTS URGE THIS COURT TO ADOPT A PLAN FOR APPELLATE REVIEW OF THESE COMBINED STREAMLINED CASES WHEREIN THE TPR IS REVIEWED FIRST IN ORDER TO PROMOTE EXPEDITED OUTCOMES FOR CHILDREN IN ACCORD WITH THE INTENT OF THE LEGISLATURE.