LMT/AMT SUPREME COURT ARGUMENT
CASE SUMMARIES

I. TPR NOT RELIANT ON PPR

In re MIW, 722 SE 2d 469 (Jan. 27, 2012) (Supreme Court) Justice Newby
(best interest of paramount concern - when interpreting statute court must look to legislative intent-timing of TPR does not determine SMJ) **CITED BY DSS AND RM form over substance**

Facts: MIW was initially removed from Respondents at 7 months old after being dropped several times by mom and placed with PGM. In December 2008 Harnett County DSS filed a petition alleging neglect and dependency and was placed via Non-Secure with his uncle and then eventually in foster care. Disposition was held on 3/27/2009 and PPR held 4/24/2009 and 5/8/09 wherein the permanent plan became adoption. The Disposition Order was not entered on 5/8/09. Respondents appealed.

While the appeal was pending, DSS filed a motion to TPR 7/2/2009. RM filed a MTD the motion on 9/29/2009 and RF on 3/12/2010. The trial court continued the hearing while the appeal was pending pursuant to NCGS 7B-1003(b)(1).

The COA affirmed the underlying adjudication on 2/2/2010 and the mandate issued on 2/22/2010. The trial court denied the MTD and held the termination hearings in March and April, and terminated on 6/11/2010. Respondents appealed. The COA affirmed. Respondents sought review on the issue of subject matter jurisdiction.

Issue: Whether, under the Juvenile Code, a trial court has SMJ to terminate parental rights when the motion to terminate parental rights was filed while an underlying appeal was pending but the court acted on the motion only after the mandate resolving the appeal had been issued?

Holding: NCGS 7B-1003 prohibits only the exercise of jurisdiction before issuance of the mandate and that issuance of the mandate by the appellate court returns the power to exercise SMJ to the trial court. Affirmed.

Reasoning: The majority stated its interpretation NCGS 7B-1003 did "not allow form to be elevated over substance." NCGS suspended the exercise not the possession of jurisdiction during the pendency of the appeal. The mere timing of the TPR filing does not determine subject matter jurisdiction. This Court also stated that "**by choosing to prohibit exercising jurisdiction, rather than stating that the trial court is divested of jurisdiction, the General Assembly has signaled that the SMJ of the trial court is not removed**."

Dissenting Opinions (Justices Edmunds, Timmons-Goodson, Parker)

Edmunds: Believed General Assembly 2005 amendments intended to remove the trial court's subject matter jurisdiction over TPRs completely while appeals on underlying matters are pending. NCGS 7B-1003 prohibits the trial court from taking action under Article 11 while an appeal is pending. Same problem occurred in In re RTW prior to the 2005 amendments.

Timmons-Goodson: Agrees fully with Edmunds's dissent. Wrote separately w/concern that majority rewrites significant sections of the Juvenile Code and did nothing to expedite TPRs in the best interest of the juvenile. States the majority's assertion that the word "exercise" in 7B-

1003 intends that "all further requirements of Article 11 would be tolled until the power to exercise jurisdiction is returned to the trial court. Consequences of this: 1) tolls the 30 day answer period required by 7B-1106 and 1106.1, 2) tolls the 7B-1109(a) that the trial court conduct a TPR hearing within 90 days of filing, and 3) tolls the 7B-1105 requirement that the trial court hold a 10 day hearing to identify parents. She wonders how a parent would be informed that the tolling of a 30 day response has restarted.

"My view maintains the current balance of protecting parental and juvenile rights. At the same time it serves the best interests of the child."

In re TES, 203 NC App 572 (April 2010) (Unpublished)(Consolidated A,N,D and TPR hearings) **Cited by DSS and Amicus - TPR order should be considered first**

Facts: Shaken baby case. On 9/9/2008 RF was charged with felony child abuse. On 9/10/2008 DSS filed a petition alleging abuse and neglect. On 10/23/2008 DSS filed a motion to terminate. The cases were consolidated and the RM relinquished. A consolidated hearing was held 8/19-21/2009. TES was found abused and neglected and TPR was granted. RF appealed.

Issue: Did the trial court err 1) by conducting consolidated hearings, 2) not considering paternal grandparents as placement, and 3) concluding that reunification would be futile?

Holding: 1) No 2) No 3) No

Reasoning: 1) Based on reasoning in RBB consolidated hearings were proper. 2) Trial court made proper determination regarding GM. 3) Trial court made finding of futility

In re AM, 202 NC App 584 (Feb. 16, 2010) (unpublished)(TPR may proceed without permanent plan in place) **Cited by DSS - TPR separate action**

Facts: On 1/3/2007 DSS filed neglect and dependency petition and placed AM with MGM and RM. A nonsecure was ordered on 3/15/2007, and AM remained with MGM but if RM returned than AM would go to foster care. AM was adjudicated dependent on 5/10/2007. Some time later, AM was placed in foster care, than with relatives, than in foster care. At a PPR hearing on 2/14/2008 DSS was relieved of reunification. TPR was ordered. In April 2008 a motion to terminate was filed. On 5/12/2008 a motion for visitation was filed and the termination case was held in abeyance while RM worked on recovery and the court worked toward reunification. Mom progressed until late August 2008 when she relapsed. DSS decided to proceed with TPR. RM filed a motion to dismiss on the basis that the permanent plan of reunification ... was in place. At the close of the DSS evidence at adjudication, RM orally moved to dismiss alleging the trial court had no authority to proceed when the plan was still reunification. The trial court determined the motion was properly filed and served and the therefore it had subject matter and personal jurisdiction. MTD was denied. TPR was granted. RM appealed.

Issue: Whether the trial court had the authority to hear the termination matter where the permanent plan was changed back to reunification and the trial court held the TPR proceeding in abeyance?

Holding: Yes. The trial court had SM jurisdiction over the termination and DSS had standing to file.

Reasoning: An action to commence a TPR may commence even without an existing underlying A,N,D case. “This means that TPR may proceed without any permanent plan in place, whether its reunification, adoption, or something else.” To hold otherwise, “would be to flout the legislature’s intent to provide two different avenues to pursue termination.” Regarding the interplay between the PPR statute and termination statutes, “the statute does not specify that a particular permanent plan must be in place before a [DSS] moves to termination proceedings. Nor do the [TPR] statutes ... require a particular plan to be in place before a petition or motion [for TPR] may be filed.” To hold in “abeyance” was akin to a continuance.

The court declined to read a requirement that the trial court must enter a permanent plan of termination prior to an action being filed.

In re K.J.L., 363 NC 343 (June 18, 2009) Justice Newby (Lack of proper summons implicates personal jurisdiction not SMJ) **CITED BY DSS: eval of tpr order**

Facts: A petition alleging neglect and dependency for KJL was filed 3/28/2006. The summons was not dated and signed by the clerk, etc. Copies were served on the parents and both were present in court, without objecting, stipulated to neglect which was entered on 9/8/2006. On 4/12/2007 a TPR petition was filed with a proper summons and was served on both parents. RM appeared in court w/o objection, RF did not appear. On 1/15/2008 their parental rights were terminated. Both appealed.

The COA majority concluded the lack of signature from an appropriate member of the clerk’s office on the neglect and dependency summons meant the summons was not issued and thus vacated the adjudication order and the subsequent TPR order stating the underlying adjudication order was essential to the trial court’s subject matter jurisdiction in the TPR proceeding. The TPR order was also vacated by the majority on the grounds that there was no summons issued for the juvenile or served on the GAL.

The dissent did not dispute the summons not being properly issued to the juvenile in the TPR nor the improper issuance of the summons in the neglect and dependency case. The dissent would have resolved both by concluding that issuance and service affected personal jurisdiction and can be waived by appearance. Appeal was made to the Supreme Court.

Issue: Whether the trial court lacks subject matter jurisdiction over an action when the summons in the case has not been signed by a statutorily designated member of the clerk of court’s office and thus has not been legally issued?

Holding: The lack of a proper summons implicates personal jurisdiction rather than subject matter jurisdiction. Reversed and Remanded.

Reasoning: The purpose of the summons is to obtain jurisdiction over the parties not over the subject matter. Even w/o a summons, a court may properly obtain personal jurisdiction over a party who consents or makes a general appearance by filing an answer or appearing without objection. The parents appeared at the adjudication hearing w/o objection and KJL’s GAL appeared at the TPR w/o objection.

Concurring Opinion (Justice Timmons-Goodson concurred in the result only)(Justices Martin and Brady joined): Concluding that the trial court’s jurisdiction over the TPR was not dependent upon the underlying adjudication, Justice TG stated “TPR proceedings are independent from underlying abuse, neglect and dependency proceedings and have separate

jurisdictional requirements. Comparing NCGS 7B-200 (gives court exclusive original jurisdiction over abused, neglected, or dependent juveniles) to NCGS 7B-1101 (gives court exclusive original jurisdiction to hear and determine petitions and motions to TPR) Citing In re RTW (Each TPR order relies upon independent findings by clear, cogent, and convincing evidence to support at least ONE ground. A termination order rests on its own merits.)

The trial court in this case made independent findings separate from the underlying adjudication as required by NCGS 7B-1110(a).

In re RBB, 654 SE2d 514 (NC App) (Dec 18, 2007)(simultaneous A,N,D and TPR hearing) Cited by DSS and Amicus - TPR separate action

Facts: A nonsecure for RBB was obtained on 8/18/2006 and a petition alleging abuse and neglect was filed on 8/21/2006. A nonsecure placed RBB in foster care. RM and her boyfriend were charged with felonious child abuse (3 counts). At an adjudication hearing on 12/22/2006 DSS filed a motion to terminate. The consolidated hearing for both petitions was held on 2/9/2007. RBB was found abused and neglected and RM's parental rights were terminated. RM appealed.

Issue: Did the trial court err by holding both hearings simultaneously?

Holding: No

Reasoning: In cases where reunification efforts would be dangerous or futile (NCGS 507(b)) the juvenile code presents no obstacles for simultaneous hearings. Here reunification was found to be dangerous based on a continuing threat of immediate harm to RBB. Court emphasized that trial court must indicate appropriate standards in orders for simultaneous proceedings. Trial court made numerous findings of immediate threat to RBB in the adjudication order that complied with 7B-507.

Standard of Review for TPR: Adjudication phase - Whether the evidence supports the findings and the findings support the conclusions. Findings must be based on clear, cogent and convincing evidence. Disposition phase -Abuse of Discretion - exists when the challenged actions are manifestly unsupported by reason.

In re TM, 643 SE2d 471, (COA)(April 17, 2007)(Cited in the KJL case) Cited by DSS - TPR should be considered first

Facts: DSS filed a petition for neglect and dependency on TM on 6/23/02 and received a nonsecure, as it had custody of his older siblings, referencing their files and alleging that RM home was not safe and the RF had fights involving guns and was a caretaker. At the 3/6/03 adjudication/disposition hearing the court took judicial notice of the siblings underlying files and adopted findings from PPR court orders.TM was found neglected and dependent. The parents appealed. On 1/4/2005 the COA remanded the case based on the fact that it had previously remanded the underlying cases for appropriate ultimate findings and found that since TM's adjudication was based on the underlying adjudications being found deficient and remanded it

for further proceedings. On 12/5/05 a termination case was filed for TM which was granted. The parents appealed. The COA affirmed the TPR.

Issues:
1) Did DSS have standing to file a TPR?
2) Was the TPR petition deficient because a custody order was not attached.
3) Did the trial court err by not complying with the statutory timelines for filing and hearing the TPR?
4) Were the trial court's grounds supported by competent evidence?
5) Did the trial court err by concluding termination was in the best interest of TM?

Holding: 1) Yes. 2) No. 3)No. 4)Yes. 5)No. TPR affirmed.

Reasoning:
1) Once DSS had nonsecure custody and kept it, it had standing to file.
2) Counsel for the Respondents were aware that DSS had custody even though the order was not attached to the petition.
3) Statutory time limits are "directory rather than mandatory and thus not jurisdictional."
4) As there was evidence to support one ground for termination, the others need not be reviewed.
5) Determination of best interest at disposition is discretionary and the court did not abuse its discretion here.

Judge McCullough concurred

Judge Tyson dissented and wrote separately stating DSS failed to file the petition within the statutory time and failed to hold the hearing within said time, prejudicing the Respondent Father.

In re RTW, 359 NC 539 (July 1, 2005) (Justice Newby) (Decided prior to the 2005 amendments to the statute) **CITED BY DSS, RM, AND AMICUS - TPR can proceed on own**

Facts: RTW was placed in the custody of DSS on 8/23/2001 at 3 months old, along with his 15 year old mother, who was impregnated with him by her 21 year old half-brother. He was placed in foster care and his mother in a adolescent home and the next day DSS filed a petition alleging RTW was neglected and dependent. On 10/4/2001 he was deemed dependent. On 11/1/2001 at a Review/PPR efforts to reunify RTW with RM were ceased and the permanent plan was set as adoption. RM appealed. While it was pending, DSS filed a TPR motion on 12/20/2001. Hearings on the TPR were held on 4 dates in 2002 and a termination order was entered on 1/29/2003. RM appealed. On 5/20/2003 the COA remanded the custody review order for further findings, and it was revised with additional findings on 7/25/2003 with the COA opinion stating this aspect of the matter moot. On 7/6/2004 the COA vacated the termination order, stating the trial court lacked jurisdiction while the review order appeal was pending. The COA followed the In re Hopkins, 163 NC App 38 (2004) which permitted the trial court to enter temporary orders while an appeal is pending. The COA found the TPR order was permanent rather than temporary and determined the trial court did not have jurisdiction to terminate. The COA refused to follow In re Stratton, 159 NC App 461 (2003) which held the entry of a TPR order rendered a father's earlier custody order appeal moot. These cases were later found irreconcilable. (In re VLB, 164 NC App 743 (2004). Discretionary review was granted to resolve the lower court's case law conflict.

Issue: Whether a trial court retains jurisdiction to enter an order terminating parental rights while a custody order in the same case is on appeal?

Holding: Decided purely on statutory grounds, the pending appeal of a custody order does not deprive the trial court of jurisdiction over terminations proceedings.

Reasoning: The Court's holding rested on the legislative intent in the Juvenile Code, Subchapter I, affirming Stratton as correctly implementing the legislative intent and overruling Hopkins. The fundamental principle underlying NC's approach to controversies involving child neglect and custody is the best interest of the child is the polar star. ***The Court reiterated the real world effect of the Hopkins approach noting that was 3 months old when placed in foster care and was over 4 years old at the time of the appeal.

Legislative Intent Prior to 2005 Amendments:

Article I, Subchapter I - Among other things, provides standards consistent with the Adoption and Safe Families Act to ensure the best interest of juveniles are of paramount consideration ... when not it is not in their best interest to return home than to place in "a safe, permanent home within a reasonable [ ] time." NCGS 7B-100.

This Court believed the legislature intended "to emphasize when a parent forfeits their constitutionally protected status, the child's best interest should prevail in any proceeding under Subchapter I." This was deemed a "legislative priority."

Articles 2 - 10, Subchapter I - There is "no such thing as a FINAL child custody order, only the most recent one." The PPR process is "meant to bring about a definitive placement plan..." Permanent plan is not immutable. Follow up hearings every 6 months are to review progress. The flexibility of this custody process is most pronounced by the continuing jurisdiction of the court to modify orders based on changed circumstances.

Article 11, Subchapter I - Dissolution of parental rights decisive. This statute contains its own provisions for: 1) legislative intent, 2) jurisdiction, 3) notice, 4) standing, 5) hearings, and 6) appeals. They have adjudicatory and dispositional phases analogous to but independent of those in custody proceedings.

NCGS 7B-1101 - confers "exclusive original jurisdiction" on the trial court "to hear and determine" petitions or motions to terminate parental rights" regarding any juvenile in the legal and physical custody of DSS.

Each termination order relies on independent findings by clear, cogent, and convincing evidence.***"A termination order rests on its own merits."

II. IRC FORM OVER SUBSTANCE

In re APW, 741 SE2d 388 (Court of Appeals) (Feb. 19, 2013) (Petition for Discretionary Review currently pending) Cited by Amicus 7B-1001(a)(5) whether TPR order should be considered independently

Facts: On 4/1/2010 DSS filed a neglect and dependency petition and rec'd a nonsecure. On 6/18/2010 the juveniles were adjudicated dependent. Disposition was entered on 4/22/2010. PPR was on 5/18/2011 and the plan was changed to adoption in a 6/21/2011 order. RM reserved her right to appeal. On 6/27/2011 a TPR petition was filed. On 4/2/2012 TPR was granted. RM appealed the TPR and PPR.

Issue: Whether the trial court erred in changing the permanent plan to adoption and "effectively" ceasing reunification efforts without making findings of fact pursuant to 7B-507(b)(1)?

Holding: Yes

Reasoning: The PPR order "implicitly" ceased reunification by changing the permanent plan to adoption and ordering the filing of a TPR. The trial court neither made findings regarding reasonable efforts should continue nor cease.

The COA reiterated to the trial court that "an order ceasing reunification efforts must contain ultimate findings mandated by 7B-507."

In re MIW, 722 SE 2d 469 (Jan. 27, 2012) (Supreme Court) Justice Newby
(best interest of paramount concern - when interpreting statute court must look to legislative intent-timing of TPR does not determine SMJ) **<u>CITED BY DSS AND RM form over substance</u>**

Facts: MIW was initially removed from Respondents at 7 months old after being dropped several times by mom and placed with PGM. In December 2008 Harnett County DSS filed a petition alleging neglect and dependency and was placed via Non-Secure with his uncle and then eventually in foster care. Disposition was held on 3/27/2009 and PPR held 4/24/2009 and 5/8/09 wherein the permanent plan became adoption. The Disposition Order was not entered on 5/8/09. Respondents appealed.

While the appeal was pending, <u>DSS filed a motion to TPR</u> 7/2/2009. RM filed a MTD the motion on 9/29/2009 and RF on 3/12/2010. The trial court continued the hearing while the appeal was pending pursuant to NCGS 7B-1003(b)(1).

The COA affirmed the underlying adjudication on 2/2/2010 and the mandate issued on 2/22/2010. The trial court denied the MTD and held the termination hearings in March and April, and terminated on 6/11/2010. Respondents appealed. The COA affirmed. Respondents sought review on the issue of subject matter jurisdiction.

Issue: Whether, under the Juvenile Code, a trial court has SMJ to terminate parental rights when the motion to terminate parental rights was filed while an underlying appeal was pending but the court acted on the motion only after the mandate resolving the appeal had been issued?

Holding: NCGS 7B-1003 prohibits only the exercise of jurisdiction before issuance of the mandate and that issuance of the mandate by the appellate court returns the power to exercise SMJ to the trial court. Affirmed.

Reasoning: The majority stated its interpretation NCGS 7B-1003 did "not allow form to be elevated over substance." NCGS suspended the exercise not the possession of jurisdiction during the pendency of the appeal. <u>The mere timing of the TPR filing does not determine subject matter jurisdiction. This Court also stated that "**by choosing to prohibit exercising**</u>

jurisdiction, rather than stating that the trial court is divested of jurisdiction, the General Assembly has signaled that the SMJ of the trial court is not removed."

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Timmons-Goodson: Agrees fully with Edmunds's dissent. Wrote separately w/concern that majority rewrites significant sections of the Juvenile Code and did nothing to expedite TPRs in the best interest of the juvenile.States the majority's assertion that the word "exercise" in 7B-1003 intends that "all further requirements of Article 11 would be tolled until the power to exercise jurisdiction is returned to the trial court. Consequences of this: 1) tolls the 30 day answer period required by 7B-1106 and 1106.1, 2) tolls the 7B-1109(a) that the trial court conduct a TPR hearing within 90 days of filing, and 3) tolls the 7B-1105 requirement that the trial court hold a 10 day hearing to identify parents. States majority asserts that the issuance of a summons is not an exercise of jurisdiction which is contrary to the holding in In re JT, 363 NC 1(2009).(trial court's SMJ was properly invoked upon the issuance of a summons)(authored by Newby) W/o reversing JT does not see how the issuance of a summons does not invoke jurisdiction. Also wonders how a parent would be informed that the tolling of a 30 day response has restarted.

"My view maintains the current balance of protecting parental and juvenile rights. At the same time it serves the best interests of the child."

In re IRC, 714 SE2d 495 (NC App April 2, 2011) Cited by ALL - form over substance

Facts: Eight year old IRC was brought into care via nonsecure custody in a neglect and dependency petition filed 10/1/08 after the DSS had worked with the RM for a month prior. IRC was adjudicated neglected and dependent on 11/10/08. On 12/14/09 a PPR was held where RM had partially complied with the disposition order and IRC remained in custody. RF was incarcerated. On 3/4/10 RM had not attended counseling or AA and admitted to taking prescription drugs and IRC was thriving in foster care. ROR was ordered and RM preserved her right to appeal. On 3/4/10 DSS filed a motion to terminate which was heard on 8/31/10. on 11/9/10 an order was entered terminating RM's parental rights, with a modified order being entered on 11/22/10. RM appealed.

Issue: Whether the trial court's failure to link any of the findings of fact in the PPR order, where ROR was entered, to the two prongs in 7B-507(b)(1) of futility and inconsistency is reversible error for both the PPR and the subsequently filed TPR?

Holding: Yes. PPR and TPR reversed and remanded.

Reasoning: The COA stated that it could not "simply infer from the findings that reunification efforts would be futile or inconsistent with the juvenile's health, safety, and need for a safe, permanent home where the trial court was required to make ultimate findings "specially" based on a "process [ ] of logical reasoning." The COA stated it was bound by the Weiler, and In re Civil Penalty holdings. It stated that the trial court recited allegations against RM but failed to ***link*** them to the ultimate findings of fat required by statute.

In re TRM, 702 SE 2d 299 (COA Nov. 16, 2010) (TPR and PPR Orders were reviewed separately) **Cited by DSS - IRC standard/form over substance Cited by RM/Amicus - 507 language/IRC standard**

Facts: Petition for neglect filed on 2/12/08 and non-secure issued on 2/13/08. Adjudication entered on 5/20/08 for neglect with parents' consent. PPR was entered 6/12/09 ceasing reunification with RM and plan changed to adoption. TPR petition filed on 7/17/09 and order entered on 3/5/10 against RM. RM appealed both orders.

Issue:
1) Did the trial court lack subject matter jurisdiction over the TPR because it was not verified?
2) Whether the trial court's findings ceasing reunification in the PPR order were supported by the evidence?

Holding: 1) Yes. 2) Yes. Termination order vacated and PPR affirmed.

Reasoning: 1) 7B-1004 requires verification. Lack of it is a jurisdictional defect. 2) The trial court made numerous findings of fact as to why "return to the RM was contrary to TRM's health, safety, and need for a permanent home." The COA concluded that the findings supported the COL that reunification would be inconsistent with TRM's "health, safety, and need for a safe, permanent home within a reasonable period of time," consistent with 7B-507(b)(1).

In re Weiler, 158 NC App 473 (COA) (June 17, 2003) **Cited by AMICUS 7b-507 language not in order/findings under IRC**

Facts: DSS filed a petition for abuse and neglect and obtained a nonsecure of these two children on 5/18/98. On 6/1/98 DSS was given legal custody and physical custody was given to MGP. On 7/17/98 DSS was returned legal/physical due to the MGPs violation of the order. On 2/15/99 legal/physical was given to PGP but the kids were returned after one week. On 4/27/2000 the PPR directed that a TPR be filed. On 9/21/2000 a consent order entered a change in the plan to reunification from TPR. A THV was started on 12/15/2000. On 3/29/01 they were removed. On 9/19/01 the plan changed from reunification to TPR. The mother appealed.

Issue: Whether the trial court made sufficient findings to cease reunification efforts under 7B-507(b)?

Holding: No. Reversed.

Reasoning: The findings did not include that efforts would be "futile" or "inconsistent with ...need or a permanent home." The COA said the findings came close. One of the findings was a summing of the "types of problems the court identified in respondent's efforts." None of these

were found to be “inconsistent...” Therefore the court concluded they were insufficient. The court referenced the findings here being similar to those in In re Eckerd (cease reun. order reviewed) facts not sufficient for relief of reunification, In re Nesbitt (tpr order reviewed) holding that the facts “did not provide an adequate basis for terminating the mother’s parental rights.” The COA said the findings here were less extensive than in the above-referenced cases and that there were no statutory findings “that reunification efforts would be futile or that the health and safety of the children were inconsistent with such efforts.”

In re Harton, 577 SE2d 334 (COA Mar. 18, 2003) **Cited by ALL - findings of fact “specially”**

Facts: Appeal from PPR Order where RM’s children were continued in DSS custody. At the PPR Review hearing, the trial court adopted more recent reports of DSS and the GAL as findings of fact and further found that Respondent had no intention of ending her relationship with a certain man and had lied about her relationship with him to DSS. The trial court concluded that DSS had made reasonable efforts with her but that they should cease. The court outlined a permanent plan of guardianship.

Issue: Whether the trial court’s findings of fact were sufficient to support it’s order ceasing reunification? (Specifically, the RM argued the trial court failed to comply with 907(b).)

Holding: Yes

Reasoning: When a trial court is required to make findings of fact it must make them specially. The court may not simply “recite allegations” but must through “processes of logical reasoning from the evidentiary facts” find the ultimate facts essential to support the conclusions of law. Here, the trial court found RM had not intention of separating from her man, and adopted DSS and GAL reports as the remaining facts. The court found there were no findings made under 907(b), stated only ONE single evidentiary fact. By doing so and adopting reports only these were not “specific ultimate facts...sufficient for the court to determine the judgment is supported by competent evidence.”

In re Anderson, 564 SE2d 599 (COA June 18, 2002) **Cited by RM - IRC standard/form over substance**

Facts: Father appealed an order terminating his parental rights.

Issue: Whether the findings were supported by the evidence and therefore supported the COL?

Holding: No. Reversed and remanded.

Reasoning: NCGS 1A-1, Rule 52 requires three separate and distinct acts by the trial court: 1) find the facts specially, 2) state separately the conclusions of law resulting from the facts so found, and 3) direct the entry of the appropriate judgment. Quick v. Quick, 290 SE2d 653 (Supreme Court 1982) Thus the trial court’s findings must be more than a recitation of the allegations. They must be sufficient ultimate facts that allow the COA to determine the judgment is supported by competent evidence. “Ultimate facts are the final resulting effect reached by processes of logical reasoning from the evidentiary facts. In sum, Rule 52 does not require a recitation of the evidentiary and subsidiary facts required to prove the ultimate facts, but does require specific findings of the ultimate facts established by the evidence, admissions and stipulations which are determinative of the questions involved in the action and essential to

support the conclusions of law reached. Here the order only contained 3 findings (two which recite that DSS filed a petition and service was proper, and the third that recites and allegation).

Williams v. Pilot Life Insurance Company, 218 SE2d 368 (Supreme Court, Oct. 7, 1975) Justice Huskins **Cited by DSS and Amicus under ultimate facts/form over substance Cited by RM - standard of review**

Facts: This was a civil action to recover $5000.00 allegedly due under a life insurance policy. After the evidence was presented, the trial court made, in addition to other, made 4 findings cited by the Court in its analysis and entered judgment for the plaintiff. The COA affirmed. Defendant appealed to the Supreme Court.

Issue: Whether the trial court's refusal to make findings of fact as to the specific cause of the fall (slipping on the floor, a seizure, or both) constitutes error requiring reversal, or, in the alternative, remand for appropriate findings?

Holding: Neither. Affirmed. There was plenary (full and complete) evidence to support the finding that the insured "suffered and accidental fall" and that her death was a direct result thereof, independent of all other causes. This finding supports the judgment.

Reasoning: There are two kinds of facts: ultimate facts and evidentiary facts. Ultimate facts are the final facts required to establish the plaintiff's cause of action or the defendant's defense. Evidentiary facts are those subsidiary facts required to prove the ultimate facts. NCGS 1-185 requires the trial judge to find and state the ultimate facts only. Here the trial judge acted as judge and jury. He weighed the conflicting inferences in the evidence and determined the insured died as a result of an accidental fall and that her death was "solely" a direct result, independent of all other causes. By so finding, the judge rejected opposing inferences that the fall was not accidental. The finding resolved the ultimate issue and the resolution is binding on the appellate courts since the evidence supports the findings and the findings support the judgment.