

Adjudication Orders

Hitting the Highlights



But Don't Forget

- Nonsecure Custody, 7B-503 – 507
- Disposition, 7B-901 -- 905.1, -507
- Review and Permanency Planning, 7B-906.1, -507
- Cease Reunification, 7B-507(b)
- Termination of Parental Rights, 7B-1109 - 1111
- Civil Custody Order, 7B-911 (Chapter 50)
- Responsible Individuals List, 7B-323
- Noninterference Order, 7B-303

Think about the order first, not just after the hearing.

- a. What is the court being asked to do?
- b. What would the court have to conclude in order to have authority, or be required, to grant that relief?
- c. What kind of evidence and findings would be essential or relevant?
- d. What is the standard of proof?
- e. Who has the burden of proof?

Technical Aspects of Every Order

- Correct caption and file number(s)
- How many orders?
 - Should an order cover multiple children?
- Identify who was present, including person's status or role
- Date(s) of hearing
- Judge's Signature
- Date it was signed and date of entry

Multiple Children

- Authorized in G.S. 7B-402(a)
- Clerk's office maintains separate file for each juvenile
- Each juvenile has a separate file number with different subfolders
 - "A" for AND, ICPC, VPA, etc.
 - "B" for Delinquency
 - "T" for TPR
 - "E" for Emancipation
 - "P" for pre-adjudication or pre-petition documents

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Key Aspects of Every Order

1. case and statutory contexts
2. subject matter jurisdiction
3. personal jurisdiction
4. statutory compliance
5. sufficient findings, supported by evidence
6. conclusions supported by findings
7. within court's authority
8. no abuse of discretion
9. understandable to parties
10. timely and proper entry

1. Case and Statutory Contexts

The case:

- Why was the case in court?
- What came before? (But do not repeat the content of prior orders.)

"This matter came before the court on [date] for an adjudication hearing on a petition filed [date], by Township County DSS, alleging that the children named above are neglected juveniles.

The children are currently in nonsecure custody pursuant to an order [date].

Present in court were

[If more than 60 days, note continuances . . .]"

Case and Statutory Contexts

The law:

- What statutes apply?
- What do they say about the order?

Adjudication hearing: G.S. 7B-800 through -807

Definitions: G.S. 7B-101(1), (15)

Adjudication order: G.S. 7B-807(b)

- ✓ must be in writing
- ✓ contain appropriate findings of fact and conclusions of law
- ✓ be entered within 30 days

2. Subject Matter Jurisdiction

UCCJEA – G.S. Chapter 50A

It should be clear from the record, and preferably from the order, that the court has

- a. temporary emergency jurisdiction,
- b. jurisdiction to enter an initial custody order,
- c. exclusive continuing jurisdiction, or
- d. jurisdiction to modify a custody order.

Subject Matter Jurisdiction

- With respect to Bobby and Mandy Parker, the court has exclusive continuing jurisdiction. The children have always lived in N.C., and N.C. was their home state when the action was filed.
- With respect to Angel Parker, having exercised temporary emergency jurisdiction initially, the court now has jurisdiction under G.S. 50A-203 to modify a custody determination. As indicated by its order in the record, the court in Floyd County, FL, where an order awarding custody to Respondent Mother was entered on [date], has determined that N.C. is a more convenient forum.

3. Personal Jurisdiction

- a. Service of process (or waiver)
- b. "Diligent efforts" if service by publication

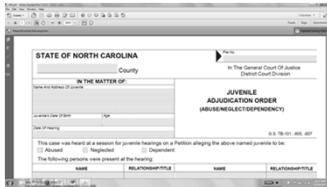
The court has personal jurisdiction over respondents Mr. and Mrs. Parker who were personally served on [date] and on Mr. Winkler who was served by registered mail on [date], as evidenced by the returned receipt in the record.

4. Statutory Compliance

Does a statute require specific contents?

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

Statutory Compliance

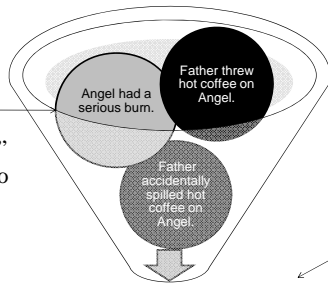


AOC-J-153

- must state that findings are made by clear and convincing evidence
- must make sufficient findings of fact, even if it is a consent order
- must make conclusion(s) of law

5. Sufficient Findings Supported by the Evidence

The evidence.
(The “facts” according to witnesses.)



Father threw hot coffee on Angel, causing a serious burn.

Court's finding of fact.

Findings = what **you** decide the facts are

- Each finding must be supported by
 - competent evidence
 - in the record
- Competent evidence does not include
 - statements by counsel
 - court's knowledge from earlier proceedings

Findings of Fact

- Recitation of testimony
 - "Doctor testified that Bobby had two broken bones."
YES: "Bobby had two broken bones."

Findings of Fact

- Report or Document by Itself
 - "The GAL report is incorporated..."
YES: "After reviewing the GAL report, the court finds that Angel does not have a bedroom and sleeps on the couch in the living room."

Findings of Fact

- Description of Evidence
 - “DSS introduced a summary of its home visit on [date], which describes the filthy conditions of home, including piles of dirty laundry....”
 - YES: “On [date] DSS made a home visit. There were dirty piles of clothes....”

Findings of Fact

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

Findings of Fact

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

Findings of Fact

- Should rarely be in the form of
 - incorporation by reference, or
 - judicial notice
 - May not be sufficient to demonstrate court considered the statutory factors that are required

Findings of Fact

should be tailored and well organized
more is not always better

6. Conclusions Supported by Findings

Conclusion:

- "Mandy Parker is a neglected juvenile as defined in G.S. 7B-101(15)."

OR

- "Petitioner, Township County DSS, has failed to prove by clear and convincing evidence that Mandy Parker is a neglected juvenile as defined in G.S. 7B-101(5)."

6. Conclusions Supported by Findings

Conclusion:

- "Mandy Parker is a neglected juvenile as defined in G.S. 7B-101(15)."

Supported by ultimate finding (or a conclusion?):

- "Mandy Parker does not receive proper care and supervision from respondents, her parents."

Supported by evidentiary findings:

- "On April 13, 2012, Mandy was found living in a dirty home without adequate sleeping arrangements and with very little food in the house."
- "Mandy is developmentally delayed and would benefit from services her parents have failed and refused to seek or provide."
- Etc.

7. Within Court's Authority

- a. cannot adjudicate dependency if the petition alleges only neglect
- b. cannot enter disposition-like orders, imposing requirements on parents, until after an adjudication
- c. cannot grant summary judgment

8. No Abuse of Discretion

Has the court exercised its discretion in a reasoned (not arbitrary) way?

- continuances
- amendments
- closing a hearing

More often an issue at disposition, review, and TPR

9. Understandable to the Parties

Role of Findings...

- Give parties better understanding of decision
- Requires and demonstrates careful review of the evidence
- Challenge on appeal
 - Must be sufficiently specific for appellate court to review decision and test correctness of judgment

10. Timely and Proper Entry

- a. Rule 58: signed & filed with clerk
- b. entry within 30 days
- c. service on parties
- d. local rules
