Do I Need to Include Findings of Fact in this Order?

When must a civil order include specific findings of fact and conclusions of law? Some types of orders must always include at least *some* findings; some orders need only include them if a party asks for them; and for other orders, findings of fact are inappropriate whether requested or not. Rule 52 of the North Carolina Rules of Civil Procedure gives us the core rules, but exceptions and clarifications abound. And, of course, some types of orders are governed by separate, more specific statutes. Here are the fundamentals:

Orders (judgments) after bench trials. In all actions tried without a jury, the judge (as finder of fact) *must* include specific findings of fact and conclusions of law in the written judgment or written memorandum. Rule 52(a)(1), (3). The requirement is mandatory and does not depend on a party's request. If the court later amends the judgment under Rule 59(e) or 52(b), the court must include any necessary additional findings and conclusions.

Findings of fact and conclusions of law are also required when the judge in a bench trial dismisses the case under Rule 41(b) after the plaintiff's evidence. Rule 52(a)(2); *Hill v. Lassiter*, 135 N.C. App. 515 (1999). If, however, the court properly dismissed the case because the evidence was insufficient as a matter of law (as in a directed verdict)—rather than because the judge was simply unpersuaded by it—there are no facts to be found and including them would be inappropriate. *Bauman v. Woodlake Partners, LLP*, 191 N.C. App. 441, 445 (2009).

Orders on motions. The general rule for orders on a party's or the court's own motion is this: Findings of fact and conclusions of law are not required *unless a party requests them*. Rule 52(a)(2). For example, the court of appeals remanded a case where a party's motion to dismiss for lack of personal jurisdiction included such a request, and the trial court failed to include them in the order. *Agbemavor v. Keteku*, 177 N.C. App. 546 (2006). The party is required to make its request before the court enters an order. *J.M. Dev. Grp v. Glover*, 151 N.C. App. 584 (2002).

To this general rule there are two significant categories of **exceptions**:

Findings of fact inappropriate -- Summary judgment and similar dispositive orders. Even if a party requests them, findings of fact are *not* appropriate in orders disposing of summary judgment motions. The court's task at summary judgment is to determine whether genuine issues of material fact exist for a jury to resolve, not to actually resolve those issues ("find" those facts). *Hodges v. Moore*, 205 N.C. App. 722 (2010). The court may, however, include a recitation of *undisputed* facts (ideally labeled "undisputed") in order to set the stage for its ruling. *War Eagle, Inc. v. Belair*, 204 N.C. App. 548 (2010). (Whether it is a good idea include undisputed facts is a matter of opinion and largely depends on the situation; but that is a discussion for a longer blog post.)

The same rule against including findings of fact applies to 12(b)(6) orders, orders on motions for

judgment on the pleadings (12(c)), directed verdict orders, and JNOV orders. For each of these types of orders, the court's task is to make a threshold determination of the sufficiency of the allegations or evidence, not to resolve disputes of fact. *See, for example*, *Tuwamo v. Tuwamo*, 790 S.E.2d 331 (N.C. App. 2016) (12(b)(6) and summary judgment); *Hodgson Constr., Inc. v. Howard*, 187 N.C. App. 408 (2007) (JNOV). (Note, however, that as to JNOV orders on *punitive damages* awards, G.S. 1D-50 requires the judge to issue a written memorandum. For more discussion of this requirement, see Relief from Judgment in North Carolina Civil Cases, pp. 15–19.)

Note also that:

- The "summary judgment divorce" statute *does* require the court to find certain facts supporting its judgment. See G.S. 50-10 and my colleague Cheryl Howell's discussion here.
- In a complex business case, the presiding business court judge must issue a written *opinion* in connection with any order granting or denying a motion under Rule 12, Rule 56 (summary judgment), Rule 59 (new trial), or Rule 60 (relief from judgment), other than an order "effecting a settlement agreement or jury verdict." G.S. 7A-45.3. Presumably this statute is not intended to include a requirement that actual findings of the facts in issue be included in Rule 12(b)(6) and summary judgment orders.

Findings always required -- certain types of orders. Despite the language of Rule 52, our courts have determined that orders on certain specific types of motions must contain written findings of fact and conclusions of law *even if a party does not request them*. Some notable examples include:

- Rule 11 orders. Findings and conclusions should be included in a court's order granting or denying a motion for sanctions under Rule 11 of the Rules of Civil Procedure. *Krantz v. Owens*, 168 N.C. App. 384 (2005). Failure to do so will result in remand unless the record reveals no basis upon which the court could have awarded sanctions. *Sholar Bus. Assocs. v. Davis*, 138 N.C. App. 298 (2000).

- Attorney fee awards generally: An attorney fee award should always include the statutory basis for the award. It must also include findings of fact and conclusions of law as to the factors in *Washington v. Horton*, 132 N.C. App. 347 (1999), where relevant, and the dollar amount awarded, taking into consideration (1) time and labor expended; (2) skill required; (3) customary fees for like work; and (4) experience and ability of the attorney. *Furmick v. Miner*, 154 N.C. App. 460 (2002).

- Attorney fee awards under G.S. 75-16.1: Specific findings reflecting the statutory basis for the fee must be included in the order. *McKinnon v. CV Industries, Inc.*, 228 N.C. App. 190 (2013). If, however, the trial court denied the fee in its discretion, a failure to include findings may not require remand. *Brooks Wilkins Fam. Med., P.A. v. Wakemed*, 784 S.E.2d 178

(N.C. App. 2016).

- Arbitration: An order denying a motion to compel arbitration must include certain findings as set forth in *Cornelius v. Lipscomb*, 224 N.C. App. 14 (2012) and cases that precede it.

- Rule 9(j) dismissals. The trial court must make written findings of fact to support its conclusion that a Rule 9(j) certification in a medical malpractice complaint was not supported by the facts in the record. *Estate of Wooden ex rel. Jones v. Hillcrest Convalescent Ctr., Inc.*, 222 N.C. App. 396 (2012).

When other statutes govern. Rule 52 governs civil orders generally, but it is important to note that many types of orders are covered by more specific statutes. Rule of Civil Procedure 65, for example, requires certain specific findings for TROs and preliminary injunctions. Other examples are found in Chapter 50, governing divorce and alimony, which requires specific findings for certain types of orders, and Chapter 5A, which requires that certain findings appear in orders adjudicating contempt. Of further note is Chapter 7B, which governs abuse, neglect, or dependency of juveniles and termination of parental rights, and mandates findings for certain types of orders, such ceasing reasonable efforts for reunification (G.S. 7B-901(c), 7B-906.2(b)) and review and permanency planning orders (G.S. 7B-906.1). Our now-retired colleague Professor Janet Mason described Chapter 7B as taking an "unusually prescriptive approach to orders" and noted the importance of including all statutorily mandated findings to avoid remand.