

Judicial Writing & Findings of Fact

Presented by
Judge Neal McBrayer

Topics Covered

- The Why
- The What
- The How
- Some Special Problems in Civil Cases

The Why

- In civil “actions tried upon the facts without a jury,” findings of fact and conclusions of law are required and must be set forth “separately.” Tenn. R. Civ. P. 52.01.
- If a defendant moves for involuntary dismissal after the close of the plaintiff’s proof, in order to grant the dismissal, the court must “find the facts specially and . . . state separately its conclusions of law.” Tenn. R. Civ. P. 41.02(2).
- If a temporary injunction is granted, denied, or modified, the court must “set forth findings of fact and conclusions of law which constitute the grounds of its action as required by Rule 52.01.” Tenn. R. Civ. P. 65.04(6).

The Why

- In parental termination cases, the trial court must “enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing.” Tenn. Code Ann. § 36-1-113(k).
- Review of administrative decisions. Tenn. Code Ann. § 4-5-322(j).
- Proceeding seeking waiver of the consent requirement for an abortion on an unemancipated minor. Tenn. Code Ann. § 37-10-304(f).
- Review of the dismissal or suspension of a tenured teacher. Tenn. Code Ann. § 49-5-513(h).

The Why

- Summary dismissal of post-conviction petition. Tenn. Code Ann. § 40-30-106(b).
- Final disposition of post-conviction petition. Tenn. Code Ann. § 40-30-111(b).
- Sentencing hearings. Tenn. Code Ann. §§ 40-35-209(c) (specific findings of fact upon which application of the sentencing principles was based), 40-35-210(e) (enhancement and mitigating factors).
- Requiring consecutive sentences based on defendant being a dangerous offender. *State v. Banks*, 271 S.W.3d 90, 147 (Tenn. 2008).

The Why

- Facilitate appellate review by affording a reviewing court a clear understanding of the basis for the trial court's decision
- Make definite precisely what is being decided
- Evoke care on the part of the trial judge in ascertaining and applying the facts
- Promote confidence in the trial judge's decision-making

Lovlace v. Copley, 418 S.W.3d 1, 34-35 (Tenn. 2013).

The Why

- Remand the case to the trial court with directions to issue sufficient findings and conclusions.
- Conduct a de novo review of the record to determine where the preponderance of the evidence lies.
- Rare - vacate the judgment.

Lovlace v. Copley, 418 S.W.3d 1, 36-37 (Tenn. 2013).

The What

“Some time ago, after a fair amount of such reading, I reached the humbling conclusion that I am not very good at distinguishing between findings and conclusions.”

Nevin Van de Streek, *Why Not “Findings of Law” & “Conclusions of Fact” & Opinions About Both?*, 70 N.D. L. Rev. 109, 110 (1994).

The What

“The importance of the law-fact distinction is surpassed only by its mysteriousness.”

Ronald J. Allen & Michael S. Pardo, *The Myth of the Law-Fact Distinction*, 97 Nw. U.L. Rev. 1769 (2003).

The What

“Rule 52(a) does not furnish particular guidance with respect to distinguishing law from fact. Nor do we yet know of any other rule or principle that will unerringly distinguish a factual finding from a legal conclusion.”

Pullman-Standard v. Swint, 456 U.S. 273, 288 (1982).

The What

- What the trial judge concludes flow from the ultimate facts found and illuminated by subsidiary facts.
- A statement of the ultimate facts, the material facts that resolve the issues raised, or determinations by a court from the evidence of a case concerning the facts asserted by one party and denied by another.

C.J.S. Trial

The What

- An inference on a question of law, made as a result of a factual finding, no further evidence being required; a legal inference.
- A determination by a judge, jury, or administrative agency of a fact supported by the evidence in the record, usually presented at the trial or hearing.

Black's Law Dictionary (11th ed. 2019).

The What

- Wherever the thing to be determined involves the application of some principle of the statute or common law, we have a question of law.
- The question of the existence or nonexistence of a physical object, act, state of things, or condition is a question of fact.

John Jay McKelvey, *McKelvey on Evidence* (5th ed. 1944).

The What

“[T]he determination of whether a breach [of contract] has occurred is a question of fact.”

Edmunds v. Delta Partners, LLC, 403 S.W.3d 812, 822(2015).

The What

“The question of whether facts established by a party constitute a breach of contract is one of law to be determined by the court, but whether facts sufficient to constitute a breach of contract have been established is ordinarily a question of fact to be determined by the trier of fact, under proper instructions from the court.”

17B C.J.S. *Contracts* § 1034 (2015).

The What

“This order renders additional findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52. To the extent that any conclusions of law are inadvertently labeled as findings of fact (or vice versa), the findings and conclusions shall be considered ‘in [their] true light, regardless of the label that the . . . court may have placed on [them].’”

Rodriguez v. Barrita, Inc., 62 F. Supp. 3d 936, 938 n.1 (N.D. Cal. 2014) (quoting *Tri-Tron Int’l v. Velto*, 525 F.2d 432, 435-36 (9th Cir. 1975).

The How

- “[F]indings and conclusions must accurately reflect the decision of the trial court.”
- “[T]he record must not create doubt that the decision represents the trial court’s own deliberations and decision.”

Smith v. UHS of Lakeside, Inc., 439 S.W.3d 303, 316 (Tenn. 2014).

The How

Elements of Claim

Witnesses and Exhibits

Existence of Contract

Breach

Damages

The How

- “A stipulation is an agreement between counsel regarding business before the court, which is entered into mutually and voluntarily by the parties.”
- “A stipulation obviates the need for evidence regarding the stipulated matters.”

Overstreet v. Shoney's, Inc., 4 S.W.3d 694, 701 (Tenn. Ct. App. 1999).

The How

- “[Q]uestions of law are not subject to stipulation by the parties to a lawsuit[;] . . . a stipulation purporting to state a proposition of law is a nullity.”
- A stipulation that “is not patently untrue in view of the other evidence in the record” will be given effect by the appellate court.

Mast Advertising & Pub., Inc. v. Moyers, 865 S.W.3d 900, 902 (Tenn. 1993).

The How

- “A stipulation should discuss the who, what, where and why of the contested matter.”

Stumpenhorst v. Blurton, No. W2000-02977-COA-R3-CV, 2002 WL 1751380, at *4 (Tenn. Ct. App. Feb. 27, 2002) (quoting 83 C.J.S. *Stipulations* § 13 (2000)).

- “[S]tipulations within the range of possibly true fact and valid legal strategies are allowed.”

Overstreet v. Shoney’s, Inc., 4 S.W.3d 694, 701 (Tenn. Ct. App. 1999).

The How

- Make credibility determinations
- Consider evidence weight and value

State v. Bland, 958 S.W.2d 651, 660 (Tenn. 2014) (“Questions concerning the credibility of witnesses, the weight and value to be given evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact.”)

The How

⁴ He that saith, I know him, and keepeth not his commandments, is a liar, and the truth is not in him.

1 John 2: 4

The How (Not)

- Adopt verbatim findings of fact, conclusions of law, opinions, and orders prepared by counsel for the prevailing party
- Summarize the proof

The How

Elements of Claim	Witnesses and Exhibits
Existence of Contract	Pl. testimony & Ex. 1
Breach	Pl. testimony Contractor who completed job
Damages	Contractor who completed job & Ex. 3 - Invoice Pl. testimony & Ex. 2 – Rental Bill Attorney Affidavit

Special Problems

“When more than one claim for relief is present in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the Court, whether at law or in equity, may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.”

Tenn. R. Civ. P. 54.02(1).

Special Problems

- A “claim” is defined as the aggregate of operative facts which give rise to a right enforceable in the courts.
- A complaint asserting only one legal right, even if seeking multiple remedies for the alleged violation of that right, states a single claim for relief.
- Cannot certify an order that disposes of only some, but not all, elements of damages, as final and appealable.

E Sols. for Buildings, LLC v. Knestrick Contractor, Inc., No. M2017-00732-COA-R3-CV, 2018 WL 1831116 (Tenn. Ct. App. Apr. 17, 2018).

Special Problems

Entry of a judgment or an order of final disposition is effective when a judgment containing one of the following is marked on the face by the clerk as filed for entry:

- (1) the signatures of the judge and all parties or counsel, or
- (2) the signatures of the judge and one party or counsel with a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel, or
- (3) the signature of the judge and a certificate of the clerk that a copy has been served on all other parties or counsel.

Tenn. R. Civ. P. 58