Making Findings and Drafting Orders

by

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Tennessee Court of Appeals

for

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I. Purpose

Findings of fact and conclusions of law serve three purposes:

1. "[F]acilitate appellate review by affording a reviewing court a clear understanding of the basis of a trial court's decision." *Lovlace v. Copley*, 418 S.W.3d 1, 34 (Tenn. 2013).
2. "[S]erve 'to make definite precisely what is being decided by the case in order to apply the doctrines of estoppel and res judicata in future cases and promote confidence in the trial judge's decision-making.'" *Id.* at 35 (quoting 9C CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2571, at 221-22 (3d ed. 2005)).
3. Serve "to evoke care on the part of the trial judge in ascertaining and applying the facts." *Id.* (quoting WRIGHT & MILLER, *supra*, at 222).

II. Requirement

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. Rule 52.01 also cross-references two other contexts where factual findings and legal conclusions are required:

1. 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).

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 rule excludes from the requirement:

1. Decisions on motions to dismiss under Tennessee Rule of Civil Procedure 12;
2. Decisions on motions for summary judgment under Tennessee Rule of Civil Procedure 56; and
3. Decisions on most other motions, but consider whether evidence was presented.

TENN. R. CIV. P. 52.01.

Factual findings and legal conclusions, as well as speed, are particularly important in parental termination cases, a point emphasized by the parental termination statute. 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) (Supp. 2020). Other statutes also require findings of fact and conclusions of law. *Id.* §§ 4-5-322(j) (review of administrative decisions), 37-10-304(f) (proceeding seeking waiver of the consent requirement for an abortion on an unemancipated minor), 49-5-513(h) (review of the dismissal or suspension of a tenured teacher).

Findings of fact and conclusions of law are required in various criminal contexts too. TENN. SUP. CT. R. 28, § 9(A) (decisions on post-conviction petitions); TENN. R. CRIM. P. 36.1(e) (correction of an illegal sentence), 33(3) (motion for new trial), 12(e) (rulings on pretrial motions); Tenn. Code Ann. §§ 39-13-113(f)(3) (violation of order of protection), 40-30-106(b) (summary dismissal of post-conviction petition), 40-30-111(b) (final disposition of post-conviction petition), 40-35-209(c) (sentencing hearings), 40-35-210(e) (enhancement and mitigating factors); *State v. Banks*, 271 S.W.3d 90, 147 (Tenn. 2008) (requiring consecutive sentences based on defendant being a dangerous offender).

In some circumstances, a statute makes factual findings and legal conclusions unnecessary. Agreements of parties allocating parenting responsibilities do not require "written findings of fact and conclusions of law." *Id.* § 36-6-407(e) (Supp. 2020). Modifications to parenting agreements in divorces on the ground of irreconcilable differences also do not have to include findings of fact and conclusions of law on whether the proposed agreement "makes adequate and sufficient provisions for the custody and maintenance of any children of th[e] marriage or whether the agreement is in the best interest of the parties' children." *Id.* § 36-4-103(b) (Supp. 2020). The statutes address the holding in *Stricklin v. Stricklin*, 490 S.W.3d 8 (Tenn. Ct. App. 2015). In *Stricklin*, the

Court of Appeals held that, "[a]lthough parties may agree to a given parenting arrangement, such an agreement does not obviate the trial court's duty to ensure that it is in the children's best interests." *Id.* at 18.

III. Distinction

Even the U.S. Supreme Court calls the distinction between findings of fact and conclusions of law "vexing." *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982). The federal rule of civil procedure governing findings and conclusions "does not furnish particular guidance with respect to distinguishing law from fact." *Id.* And the Court is not aware "of any other rule or principle that will unerringly distinguish a factual finding from a legal conclusion." *Id.*

Despite the vexing nature of the distinction, because findings and conclusions must be set forth separately, the trial judge is compelled to adopt some methodology for distinguishing one from the other. The following might be as good as any:

- 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 82, 85 (5th ed. 1944). The Supreme Court has cautioned, however, that a factual finding might not be so straightforward:

> The phrase "finding of fact" may be a summary characterization of complicated factors of varying significance for judgment. Such a "finding of fact" may be the ultimate judgment on a mass of details involving not merely an assessment of the trustworthiness of witnesses but other appropriate inferences that may be drawn from living testimony which elude print.

Baumgartner v. United States, 322 U.S. 665, 670 (1944).

Although somewhat beyond the topic, a trial judge may also combine factual findings with a legal conclusion to reach yet another conclusion. A mixed question of law and fact is a "question[] in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated." *Pullman-Standard*, 456 U.S. at 289 n.19. Examples of mixed questions include

the propriety of jury instructions, *State v. Perrier*, 536 S.W.3d 388, 396 (Tenn. 2017), or a constitutional claim that is resolved after an evidentiary hearing, *Abdur'Rahman v. Bredesen*, 181 S.W.3d 292, 305 (Tenn. 2005).

IV. Noncompliance

If a court fails to make "sufficient" findings of fact and conclusion of law, appellate courts typically apply one of two remedies. *Lovlace*, 418 S.W.3d at 36. One remedy "is to remand the case to the trial court with directions to issue sufficient findings and conclusions." *Id.* Another is to "conduct[] a de novo review of the record to determine where the preponderance of the evidence lies." *Id.* But, in rarer circumstances, the appellate court also may vacate the judgment. *Id.* at 37 (citing TENN. R. APP. P. 36(a)).