THINGS YOU NEED TO KNOW ABOUT APPELLATE PROCEDURE

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I. WRIT OF SUPERSEDEAS,[1] MOTION FOR TEMPORARY STAY AND ALL ABOUT STAYS OR ORDERS ON APPEAL.

There may be cases in which the trial court enters an order that the petitioner, social service department, decides to appeal and needs to stay compliance pending appeal. For example, if the trial court dismisses a petition and nonsecure custody order despite sufficient clear and convincing evidence of abuse and neglect, your client may want to keep the juvenile in nonsecure custody pending appeal to prevent imminent risk of harm. For that, your client needs a stay.

A. Stays arising by operation of law.

There are several different provisions about stays pending appeal, in the General Statutes, the North Carolina Rules of Appellate Procedure, and Chapter 7B. Importantly, unlike other civil cases under N.C. Gen. Stat. § 7B-1003(a) provides the Chapter 7B order on appeal may be enforced pending appeal unless the trial court or a court of the appellate division stays enforcement. However, the analysis does not

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[1] **Appellate trivia**. What does the word "writ" mean? According to Black's Law Dictionary, a writ is: "An order issued from a court requiring the performance of a specified act or giving authority to have it done." A writ is issued "either [with] the commencement of a suit or proceeding or as incidental to its progress." *Black's Law Dictionary,* 5th Ed.

According to Black's Law Dictionary, the word "supersedeas," conveniently means "to stay the proceedings at law." *Id.*

end there, and this section addresses the various provisions on stays you may encounter and how they affect Chapter 7B cases.[2]

1. The "automatic stay."

Enforcement of all civil orders is stayed for the period within which any party may appeal. N.C. Gen. Stat. § 1A-1, Rule 62(a). In Chapter 7B cases, that period is 30 days from entry of the order. This stay is called "the automatic stay." *Id.* Although there do not appear to be any cases on point, the language of section 7B-1003 (a) should mean that appeals from Chapter 7B cases are never subject to the automatic stay.

2. Stay pending appellate review arising from trial court's lack of jurisdiction after appeal is perfected.

A stay also arises by operation of law when the "appeal is perfected:"

> When an appeal is perfected as provided by this Article it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure; but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from

N.C. Gen. Stat. § 1-294.

The stay under section 1-294 arises from the trial court's loss of jurisdiction when an appeal is docketed in the Court of Appeals. Upon the docketing of the record on appeal in the Court of Appeals, subject matter jurisdiction vests in the Court of Appeals. *State v. Harvey,* 291 N.C. App. 473, 477, 896 S.E.2d 48, 51 (2023) (citations omitted). The appeal is not "perfected" until docketed in the appellate court, but when it is docketed, the perfection relates back to the time of notice of appeal. *Id., citing*

[2] North Carolina General Statues, Chapter I, "Civil Procedure," subchapter IX, "Appeals," addresses the posting of various bonds or "undertakings," to perfect an appeal in a civil case and, thereby, obtain a stay of enforcement pending appeal. N.C. Gen. Stat. § 1-272 *et. seq; and* N.C. Gen. Stat. § 1A-1, Rule 62(d). For appeals in 7B cases, a stay of execution pending appeal does not require the posting of a bond. See N.C. Gen. § 1-285(b) (exempting "the State of North Carolina, a city or a county or a local board of education, an officer thereof in his official capacity, or an agency thereof" from the monetary requirements imposed by that section to obtain a stay pending appeal). Consequently, these statutory provisions do not apply to appeals from Chapter 7B cases.

Ponder v. Ponder, 247 N.C. App. 301, 305, 786 S.E.2d 44, 47 (2016) (citation omitted). Upon perfecting an appeal, therefore, any order rendered by "the trial court after the notice of appeal [is given,] [is] void for lack of jurisdiction." *Id.* at 305, 786 S.E.2d at 47 (citation omitted).

The section 1-294 stay prevents enforcement of the order or judgment on appeal in civil cases. Generally, a trial court has no jurisdiction to enforce its order by contempt while that order is on appeal. *Meeker v. Meeker*, 292 N.C. App. 32, 39–40, 897 S.E.2d 115, 120 (2024). The stay arising when jurisdiction over the order on appeal vests in the appellate division applies equally to Chapter 7B cases.

There are exceptions to this rule, and this manuscript only addresses those that tend to arise in Chapter 7B cases:

1. N.C. Gen. Stat. § 7B-1003 (a) creates an exception to the 1-294 for all Chapter 7B cases. This section allows the trial court to enforce the order on appeal unless enforcement is stayed by the trial court or one of the appellate courts. The trial court can also continue to hold hearings and enter orders in the case, but it may not hear a or motion to terminate parental rights if a prior order is on appeal.
2. Trial court retains general jurisdiction. Pending appeal, the trial court still retains jurisdiction over the case and may enter other orders. *In re Adoption of K.A.R.*, 205 N.C. App. 611, 619, 696 S.E.2d 757, 763 (2010)
3. Settling the record on appeal. The trial court has jurisdiction to settle the record on appeal. The trial court's role in settling the record is limited to: (a) Determining whether a statement required the Rules is accurate; (b) Resolving disputes about the narration of evidence (evidence should only be narrated if there is no transcript); (c) Resolving disputes about "whether materials proposed for inclusion in the record on appeal were filed, served, submitted for consideration, admitted, or made the subject of an offer of proof." N.C. R. App. P. 11(c).
4. Motions to dismiss an appeal. "[A]fter notice and on proper showing, [the trial court] may adjudge the appeal has been abandoned and thereby regain

jurisdiction of the cause." *In re Adoption of K.A.R.,* 205 N.C. App. 611, 619, 696 S.E.2d 757, 763 (2010). Note that motions to dismiss an appeal for failure to take timely action under the Rules are routinely brought and heard in the trial court before the appeal is docketed in the appellate court. After the appeal has been docketed, the motion must be brought in the appellate court. Though docketing the record on appeal in the appellate court divests the trial court of jurisdiction *relating back to the date of notice of appeal,* it is not clear that the *untimely* docketing of the record on appeal has that effect. An appellee would not file a motion to dismiss an appeal for "abandonment" (which would be failure to comply with the Rules in a timely manner, such as service of the proposed record on appeal, etc.).

5. To consider a motion under N.C. Civ. P. 60. N.C. R. Civ. P. 60 allows the trial court to correct clerical errors (60(a)) and errors arising from newly discovered evidence, fraud, the judgment is void or has been satisfied, or "any other reason justifying the operation of the judgment." N.C. R. Civ. P 60(b). With respect to subparagraphs (a) and (b), the trial court may consider the motion "while the appeal is pending for the limited purpose of indicating, by a proper entry in the record, how it would be inclined to rule on the motion were the appeal not pending." *State v. Harvey,* 291 N.C. App. 473, 478, 896 S.E.2d 48, 51 (2023). If the trial court indicates it would grant the motion, the moving party should then file a motion in the appellate court, asking the appellate court to remand the case to the trial court so it can rule on the motion. *Id.*

   With this procedure, the trial court is not ruling on the Rule 60 motion, so it is not actually exercising jurisdiction. Instead, it is only making an advisory ruling. The trial court does need to note its advisory ruling on the record, verbally, and by docket entry.

6. Interlocutory appeals. Interlocutory appeals are authorized in narrow circumstances where an order "affects a substantial right" or "which in effect determines the action and prevents a judgment from which an appeal might

be taken; or discontinues the action or grants or refuses a new trial." N.C. R. Civ. P. 52(b), and N.C. Gen. Stat. §§ 1-277, and 7A-27.

Though appellate courts have dismissed numerous interlocutory appeals for not meeting the high bar, they have uniformly recognized a right to an interlocutory appeal where the order raises issues of sovereign immunity or subject matter jurisdiction. *Lake v. State Health Plan for Tchrs. & State Emps.,* 234 N.C. App. 368, 370, 760 S.E.2d 268, 271 (2014) (sovereign immunity); *Lake v. State Health Plan for Tchrs. & State Emps*., 234 N.C. App. 368, 370, 760 S.E.2d 268, 271 (2014) (subject matter jurisdiction). The language of section § 1–277 is permissive not mandatory. A party entitled to an interlocutory appeal does not have to take one to raise the issue in a subsequent appeal of the final order. *Stanford v. Paris,* 364 N.C. 306, 311, 698 S.E.2d 37, 41 (2010).

Unlike an appeal of a final order, an interlocutory appeal does not give rise to the section 1-294 stay unless it affects a substantial right. Shealy v. Lunsford, 355 F. Supp. 2d 820, 824 (M.D.N.C. 2005). Though the appellate court decides the issue of whether the interlocutory order effects a substantial right and may be appealed, where precedent does not support interlocutory appeal, the trial court may proceed to the merits of the case, as if there was no appeal. *Dalenko v. Peden Gen. Contractors, Inc.,* 197 N.C. App. 115, 122, 676 S.E.2d 625, 630 (2009).

B. Motion for a temporary stay and petition for writ of supersedeas.

The stay arising under N.C. Gen. Stat. § 294 does not excuse compliance with the order; it merely prevents enforcement by contempt or other means. There are many reasons why social services attorneys would want to protect their client by seeking a different type of stay order, an order that the department does not have to comply pending appeal.

The trial court has broad authority to stay its own orders pending appeal. *Wilmington Star-News, Inc. v. New Hanover Regional Medical Center, Inc.* 125 N.C. App. 174, 480 S.E.2d 53 (1997). If the trial court declines to stay its order, the appealing party must pursue stay pending appeal through a motion to stay and writ of supersedeas. For that, the appellant needs a motion for stay and petition for writ of supersedeas.

Courts have defined supersedeas as "a writ issuing from an appellate court to preserve the status quo pending the exercise of the appellate court's jurisdiction, [which] is issued only to hold the matter in abeyance pending review and may be issued only by the court in which an appeal is pending. *City of New Bern v. Walker,* 255 N.C. 355, 356, 121 S.E.2d 544, 545–46 (1961).

The motion for stay and petition for writ of supersedeas are governed by Rules 8 and 23 of the North Carolina Rules of Appellate Procedure (N.C. R. App. P.) A copy of that Rule is in the Appendix. Important points:

- In general, a party may only request a "temporary stay" of the trial court's final order or judgment if the party also files a petition for writ of supersedeas *with the motion to stay.*[3] The motion for temporary stay may be made in the same document as the petition for writ of supersedeas or filed by separate motion. The stay will remain in effect until the appellate court grants or denies the petition for writ of supersedeas. N.C. R. App. P. 8(a), 23(e).
- The writ of supersedeas grants a more permanent stay than a motion to stay. Indeed, the Rules refer to the motion for stay as a "temporary stay." N.C. R. App. P. 8, 23(e). The motion to stay is designed to be a temporary stay until the appellate court decides the writ of supersedeas which, if granted, will stay enforcement of the order on appeal until after entry of the appellate court's

[3] Our Supreme Court recently allowed a "standalone" motion for temporary stay, filed without a petition for writ of supersedeas, in connection with a petition for writ of prohibition. *Griffin v. North Carolina State Board of Elections,* 909 S.E.2d 867, 868-69 (2025), Earls, J., dissenting. Though the majority granting the motion to stay and writ of mandamus, the dissent pointed out that the Appellate Rules do not provide for this procedure. *Id.*

opinion and the mandate, unless the appellate court enters an order specifying another duration for the supersedeas period. N.C.R. App. P. 8, 23.

- Motions to stay and writs of supersedeas are remedies granted in relation to an appeal or review of an order by certiorari, discretionary review, or writ of mandamus/prohibition. For that reason, these remedies apply only to an order that may be appealed as of right or reviewed by way of extraordinary writ. N.C. R. App. P. 23(a)(1), (b). Though not expressly provided in the Rules, procedurally, a party could file a motion for stay/writ of supersedeas with an interlocutory appeal.
- The motion to stay and petition for writ of supersedeas may filed in connection with the following: a notice of appeal, a petition for discretionary review, a petition for writ of certiorari; a petition for writ of mandamus and prohibition. N.C. R. App. P. 8, 23(a)(1), (b).
- Before applying to the appellate court for a stay and writ of supersedeas the moving party must first present a motion to stay to the trial court. The party seeking the stay may only file the motion to stay/writ of supersedeas in the appellate court when the trial court denies the motion to stay or vacates a previous stay order. Though the Rules of Appellate Procedure do not expressly require the judge who entered the order at issue to hear the stay motion, most of our Local Rules would require the same judge to hear the stay motion. N.C. R. App. P. 8(a), 23(a)(1).
- The moving party may only bypass the trial court and first request the stay in the appropriate appellate court if "extraordinary circumstances make it impracticable to obtain a stay by deposit of security or by application to the trial tribunal for a stay order."
- The moving party must file the stay motion/petition for writ of supersedeas in the Court of Appeals unless (1) the order for which stay/supersedeas is sought is (a) initially docketed in the Supreme Court; (b) or the moving party plans to file a notice of appeal or petition for discretionary review in the Supreme Court. N.C. R. App. P. 23(a)(2).

- The stay motion/petition for writ of supersedeas may be filed before the notice of appeal or petition seeking review of an order by certiorari, discretionary review, or mandamus/prohibition if the movant plans to file the notice of appeal or petition in a timely manner. N.C. R. App. P. 23(b). The stay motion/petition for writ of supersedeas needs to state that the movant will seek appellate review.
- If the trial court, and then the Court of Appeals denies a stay motion/petition for writ of supersedeas, the moving party may file these pleadings in the Supreme Court. The Supreme Court has the authority to issue a temporary stay and a writ of supersedeas, even though the Court of Appeals must decide the appeal.

The motion for temporary stay and petition for writ of supersedeas must contain:

1. A statement that stay was sought in the trial court but was denied or vacated by the trial court. N.C. R. App. P. 23(c).
2. If the moving party was unable to seek stay in the trial court before applying to the appellate court, a statement explaining the "extraordinary circumstances" that made it "impracticable" to do present the request to the trial court. *Id.*
3. A statement of "facts necessary to an understanding of the basis upon which the writ is sought." *Id.*
4. "A statement of reasons why the writ should issue in justice to the applicant." *Id.*
5. The petition for writ of supersedeas must be verified by counsel or by the petitioner. Note that if counsel verifies the petition, ideally, that attorney would have been involved in the case at the trial level, as a verification requires personal knowledge.
6. The moving party may attach affidavits or "any certified portions of the record pertinent to its consideration.

Few appellate cases address the grounds for granting a temporary stay and writ of supersedeas. However, N.C. R. App. P. 23 (e) allows the Court to issue a

temporary stay *ex parte* for "good cause shown." "Good cause" in this context is not further defined. In *State v. Realty*, the dissent argued that appellate courts have been issuing stays liberally and not adhering to the "good cause" standard. 897 S.E.2d 670-71 (2024), Riggs, J., dissenting. The dissent urged the adoption of a standard that required the moving party to allege it will experience "irreparable harm" if the stay is not granted and to attach supporting materials. *Id.* Similarly, the dissent in *Jackson* analogized the motion for temporary stay to generic injunctive relief, arguing that to prevail, the movant must show a likelihood of irreparable loss without the stay and the absence of remedies other than stay. 909 S.E.2d at 868.

It is the standard of practice to include in a petition for writ of supersedeas factual and legal arguments that supersedeas is necessary to protect rights of the moving party and that the appeal has a meritorious basis. The form petition for writ of supersedes in the Appendices to the Appellate Rules recommends the petition address those issues. Forms in the Appendices were adopted by our Supreme Court with the Appellate Rules.

It is not necessary to include a brief in the motion for temporary stay/petition for writ of supersedeas if you are able to address the issues in paragraph form. The Courts do not want extensive, complex arguments in petitions for writ of supersedeas when they are unnecessary. That level of detail should be reserved for the brief.

C. What appellate motions can you file with the trial court?

The answer is very few. Under N.C.R. App. P. 3.1, motions for extension of time may only be granted for "extraordinary cause," given the need for children to find permanence as quickly as possible, and the expedited nature of these appeals. Only the appellate courts can determine if the moving party alleges a reason for the continuance request rising to the level of extraordinary cause. Therefore, motions to extend any appellate deadline must be filed in the appellate court, even if the appeal has yet to be documented.

As discussed above, motions to dismiss can be filed in the trial court before the appeal is docketed, motions to settle the record on appeal under N.C. R. App. P. must be filed in the trial court and heard by the judge presiding over the hearing that produced the order on appeal, and motions for a temporary stay must be first made in the trial court. All other appellate motions go to the appellate division.

II. PETITION FOR DISCRETIONARY REVIEW UNDER N.C. GEN. STAT. § 7A-31.

As of October 2023, there is no right to appeal a decision of the Court of Appeals to the North Carolina Supreme Court from a divided panel of the Court of Appeals. A party only has a right to appeal to the Supreme Court where the case "involves a substantial question arising under the Constitution of the United States or of this State." N.C. Gen. Stat. § 7A-30.

There is no bright line for what constitutes a substantial federal or state constitutional question. However, our Supreme Court has made clear that appeal as of right cannot be used to correct constitutional errors by the Court of Appeals. It is not enough that the Court of Appeals' opinion erroneously interpreted constitutional law and thereby affirmed a violation of the appellant's constitutional rights. Instead, to appeal as of right to the Supreme Court the appellant must "allege and show the existence of a real and substantial constitutional question which has not already been the subject of conclusive judicial determination." *Thompson v. Thompson*, 288 N.C. 120, 121, 215 S.E.2d 606, 607 (1975). Thus, appeal as of right is not a remedy to correct errors in an individual case.

Because the Supreme Court could always determine the issue raised in a notice of appeal is not substantial enough to merit appeal as of right, the best practice is to file a petition for discretionary review with the notice of appeal.

The text of N.C. Gen. Stat. § 7A-31 follows this section. That section provides three bases for discretionary review:

> (1) The subject matter of the appeal has significant public interest.
> (2) The cause involves legal principles of major significance to the jurisprudence of the State.
> (3) The decision of the Court of Appeals appears likely to be in conflict with a decision of the Supreme Court.

N.C. Gen. Stat. § 7A-31(b).

Under N.C. Gen. Stat. § 7A-31(a), a party can file a petition for discretionary review while the appeal is pending in the Court of Appeals if delay is likely to result in substantial harm. Such petitions are quite rare in Chapter 7B cases.

N.C. R. App. P. 15(b) addresses the contents of the petition for discretionary review. It must state "plainly and concisely the factual and legal basis" of the grounds for discretionary review. Importantly, the petition must "state each issue for which review is sought." Note that under N.C. R. App. P. 16(b), the scope of review by the Supreme Court upon granting the petition "is limited to a consideration of those issues stated…in the petition for discretionary review and response thereto," unless further limited by the Supreme Court." Therefore, the moving party should carefully draft the issues for which review is sought because that party will probably not be able to add to them date. [4]

If the Court grants the petition for discretionary review, the case proceeds the same as an appeal. The deadline to file briefs will begin to run from the day the Court enters the order granting the petition.

What does it mean if the Court does not grant the petition for discretionary review, or it enters an order that the petition was improvidently granted? The Court's decision to deny the petition for discretionary review does not establish a precedent; it does not mean the Court of Appeals was correct and the moving party's arguments lack merit. *Peaseley v. Virginia Iron, Coal & Coke Co.*, 282 N.C. 585, 592–93, 194 S.E.2d 133, 139 (1973). Our Supreme Court has interpreted N.C. Gen. Stat. § 7A-31

[4] In general, parties can file a motion with the appellate courts to amend records on appeal and briefs. However, a party cannot amend a flawed notice of appeal after the deadline to file a notice of appeal because the notice of appeal is jurisdictional. This topic is discussed in the next section.

as reserving discretionary review for "only those cases of substantial general or legal importance or in which review is necessary to preserve the integrity of precedent established by this Court." *Id.* Therefore, "denial of certiorari does not mean that this Court has determined that the decision of the Court of Appeals is correct." *Id.*

In the unusual situation in which the Supreme Court is equally divided as to whether decision of Court of Appeals would be affirmed or reversed, decision of lower appellate court would be left undisturbed without precedential value. *Wayfaring Home, Inc. v. Ward,* 301 N.C. 518, 272 S.E.2d 121 (1980). An order stating that discretionary review was improvidently granted has the same effect.

III. MOTIONS TO DISMISS APPEALS FOR RULES VIOLATIONS.

N.C. R. App. P. 25 authorizes the Court to impose a sanction "against a party or attorney or both when the court determines that such party or attorney or both substantially failed to comply with these rules." Permissible sanctions include all those available under N.C. R. App. P. 35 for frivolous appeals. Dismissal of the appeal is a permissible sanction. Any party to the appeal my file the Rule 25 motion and the Court may impose sanctions on its own motion.

After a period in the early to mid 2000's, in which the Court of Appeals dismissed appeals for *any* violation of the Rules of Appellate Procedure, our Supreme Court decided the case of *Dogwood Development and Management Company, L.L.C., v. White Oak Transport Company, Inc.,* 262 N.C. 191, 657 S.E.2d 361 (2008). *Dogwood* established the framework for evaluating whether Appellate Rules violations should result in dismissal by classifying violations into three types: "(1) waiver occurring in the trial court; (2) defects in appellate jurisdiction; (3) violations of nonjurisdictional requirements.

Waiver in the trial court occurs when the appellant fails to preserve an issue for appellate review. Under N.C. R. Civ. P. 10, to preserve an issue for appellate review, "a party must have presented to the trial court a timely request, objection or motion, or stating the specific grounds for the ruling party the party desired the court

to make if the specific grounds were not apparent from the context." N.C. R. App. P. 10(b). "It is also necessary for the party to obtain a ruling upon the party's request, objection, or motion." *Id.* Any issue preserved in this manner "may be the basis of an issue presented on appeal." *Id.*[5]

Dogwood held that errors involving violations of N.C.R. App. P. 10, waiver of appellate review, will, almost always, result in the dismissal of the appeal, or at least in the dismissal of the unpreserved issue. The Court explained:

> The requirement expressed in Rule 10(b) that litigants raise an issue in the trial court before presenting it on appeal goes to the heart of the common law tradition and our adversary system. This Court has repeatedly emphasized that Rule 10(b) prevents unnecessary new trials caused by errors the trial court could have corrected if brought to its attention at the proper time.

Dogwood, 362 N.C. at 195, 657 S.E.2d at 363 (citations omitted) (cleaned up).

The Court also noted that it has the authority to suspend the Rules of Appellate Procedure under Rule 2 "[t]o prevent manifest injustice to a party or to expedite in the public decision in the public interest." Thus, theoretically, either appellate court could suspend the Rules to prevent manifest injustice or to do so is in the interest of the public, but, the Court cautioned that it would exercise that authority only in "exceptional circumstances," because invoking Rule 2 was, truly, an "extraordinary step." *Id.,* 362 N.C. at 196, 657 S.E.2d at 364. Note that failure to preserve objections to violations of a parent's constitutional rights in a termination of parental rights case does not justify Rule 2 and Courts will not review those arguments. *In re J.N.,* 381 N.C. 131, 497871 S.E.2d 495, 497 (2022). There does not appear to be a case in which the Courts applied Rule 2 to review an unpreserved issue in a Chapter 7B case.

[5] There are a few errors which are deemed preserved without the timely objection and ruling. These include in a civil appeal, whether the trial court had subject matter jurisdiction and whether the judgment is supported by the verdict, or by the findings of fact and conclusions of law. *Id.* Thus, the parties do not have to object to the trial courts findings of fact and conclusions of law, as the sufficiency of evidence to support the findings and whether the findings support the conclusions of law may always be argued on appeal. The only exception would be a consent order. But a consent order only waives appellate review of the findings of fact. The issue of whether the findings support the conclusions of law may still be raised on appeal.

The second category of cases under *Dogwood,* jurisdictional defects, necessitates dismissal. The appellate court cannot apply Rule 2 because, without subject matter jurisdiction, it has no authority to act. Failure to file a timely notice of appeal is a jurisdictional defect that will result in dismissal. *Id.,* 362 N.C. at 197, 657 S.E.2d at 364-65.

The failure of a party to sign the notice of appeal, as required by N.C. Gen. Stat. § 7B-1001(c), is also a jurisdictional defect which prevents the appellate division from exercising jurisdiction over the appeal. *In re Q.M.*, 275 N.C. App. 34, 37–38, 852 S.E.2d 687, 690–91 (2020) (Court dismissed the appeal where respondent mother did not sign her first notice of appeal and her amended notice of appeal, bearing her signature was not timely filed; the Court granted the mother's petition for writ of certiorari).

However, the Court of Appeals has interpreted the signature requirement as broadly as possible to mitigate its harsh effect. In *In re J.L.F.,* the Court held that a letter signed by the respondent father and attached to the notice of appeal satisfied the section 7B-1001(c) signature requirement, even though the respondent did not sign the notice of appeal. 378 N.C. 445, 861 S.E.2d 744 (2021). The Court explained that the respondent had "substantially complied" with signature requirement.

The third *Dogwood* category of errors involves nonjurisdictional defects, in the form of failure to comply with the Rules of Appellate Procedure. The "comprehensive set of nonjurisdictional requirements is designed primarily to keep the appellate process flowing in an orderly manner." The Court acknowledged that "[c]ompliance with the rules…is mandatory." However, "the rules of practice and procedure are devised to promote the ends of justice, not to defeat them." (citation omitted). *Dogwood,* 362 N.C. at 198, 657 S.E.2d at 365. For that reason, the Court "stress[ed] that a party's failure to comply with nonjurisdictional rule requirements normally should not lead to dismissal of the appeal." *Id.* Based on the language of Rule 25, which imposes sanctions only where the party "substantially" failed to comply with the Rules, the Court held that no sanctions should be imposed, including dismissal, where the party has substantially complied with the Rules.

The *Dogwood* Court defined "substantial failure" to comply with the Rules as meaning that "only in the most egregious instances of nonjurisdictional default will dismissal of the appeal be appropriate." Factors to be considered include whether the court's "task of review" is impaired, "to what extent review on the merits would frustrate the adversarial process," and "the number of rules violated." *Id.*, 362 N.C. at 198-200, 657 S.E.2d at 367.

Examples of cases involving non-jurisdictional defects:

- Delays in ordering/delivering the transcript. *N. Carolina State Bar v. Sossomon,* 197 N.C. App. 261, 269–70, 676 S.E.2d 910, 916 (2009) (Court denied motion to dismiss based on defendant's failure to file the contract to order the transcript with the trial court and late delivery of the transcript caused by a payment error that was not defendant's fault).
- Delay in service of proposed record on appeal; record on appeal incomplete. *State v. May,* 905 S.E.2d 293, 295 (N.C. Ct. App., August 2024). Court denied motion to dismiss appeal based on these errors, noted the record could be amended.
- Two-week delay in service of respondent father's notice of appeal. *In re E.C.,* No. COA23-1128, 2024 WL 282183 (2024)[6] (citing *In re K.D.C.*, 375 N.C. 784, 787, 850 S.E.2d 911, 915 (2020)). Court denied motion to dismiss the respondent father's appeal where, although father filed the notice of appeal on time, he delayed service on appellees for two weeks. Quoting *Dogwood* for the principal that, "[A] party's failure to comply with nonjurisdictional rule requirements normally should not lead to dismissal of the appeal," the Court noted that the appellees had received the respondent mother's appeal. Thus, "there has been no disruption in the orderly flow of the appellate process."
- Failure to serve a copy of the notice of appeal to some of the parties. *Lee v. Winget Rd., LLC,* 204 N.C. App. 96, 102–03, 693 S.E.2d 684, 690 (2010). Court

[6] This is an unpublished published opinion.

dismissed the appeal where the appellants never served the notice of appeal on some of the parties and there was no indication the unserved parties knew of the appeal. The Court held the appellees, who were not the unserved parties, had standing to raise the issue, though it did not directly affect them. In dismissing the appeal, the Court explained:

> In this instance, we find that the noncompliance has impaired this Court's task of review and that review on the merits would frustrate the adversarial process. Failure to serve notice of appeal on all parties is a significant and fundamental violation. A notice of appeal is intended to let all parties to a case know that an appeal has been filed by at least one party. Because two of the parties to this case were never informed of the fact that there was an appeal which affects their interests, this Court has no way of knowing the positions these parties would have taken in this appeal. The fact that these parties have not objected to our consideration of the appeal is irrelevant, because as far as we can tell from the record, these parties are unaware of the appeal. Simply put, all parties to a case are entitled to notice that a party has appealed. The unserved plaintiffs have been denied the opportunity to be heard, as they received no notice of the appeal and there is no written waiver filed in the record or in response to the motion to dismiss.

Id.

- Failure to file a brief that contains a legal argument, facts, or standards of review. *Midland Credit Mgmt., Inc. v. Mitchell*, 909 S.E.2d 911 (N.C. Ct. App. 2024). The defendant's brief omitted a legal argument related to relevant facts and supporting authority. From the Court's description, it appears that the brief consisted of random statements of law that did not appear relevant to any legal issue he could have raised on appeal The brief also omitted standards of review. In dismissing the appeal, the Court observed that the Defendant's brief was "wholly

deficient under Rule 28." As a result, "Defendant's failures substantially "impaired the Court's task to review and frustrated the adversarial process as any review on the merits would require this Court to construct and decide arguments that Defendant has not adequately presented and to which Plaintiff has not had an opportunity to respond." (cleaned up).

APPENDIX

Rule 23. Supersedeas

(a) Pending Review of Trial Tribunal Judgments and Orders.

(1) *Application--When Appropriate.* Application may be made to the appropriate appellate court for a writ of supersedeas to stay the execution or enforcement of any judgment, order, or other determination of a trial tribunal which is not automatically stayed by the taking of appeal when an appeal has been taken, or a petition for mandamus, prohibition, or certiorari has been filed to obtain review of the judgment, order, or other determination; and (1) a stay order or entry has been sought by the applicant by deposit of security or by motion in the trial tribunal and such order or entry has been denied or vacated by the trial tribunal, or (2) extraordinary circumstances make it impracticable to obtain a stay by deposit of security or by application to the trial tribunal for a stay order.

(2) *Application--How and to Which Appellate Court Made.* Application for the writ is by petition which shall in all cases, except those initially docketed in the Supreme Court, be first made to the Court of Appeals. Except when an appeal from a superior court is initially docketed in the Supreme Court, no petition will be entertained by the Supreme Court unless application has been made first to the Court of Appeals and denied by that court.

(b) Pending Review by Supreme Court of Court of Appeals Decisions. Application may be made in the first instance to the Supreme Court for a writ of supersedeas to stay the execution or enforcement of a judgment, order, or other determination mandated by the Court of Appeals when a notice of appeal of right or a petition for discretionary review has been or will be timely filed, or a petition for review by certiorari, mandamus, or prohibition has been filed to obtain review of the decision of the Court of Appeals. No prior motion for a stay order need be made to the Court of Appeals.

(c) Petition for Writ--Filing and Service; Content. The petition shall be filed with the clerk of the court to which application is being made and shall be accompanied by proof of service upon all other parties. The petition shall be verified by counsel or the petitioner. Upon receipt of the required docket fee, the clerk will docket the petition.

For stays of the judgments of trial tribunals, the petition shall contain a statement that stay has been sought in the court to which issuance of the writ is sought and denied or vacated by that court or shall contain facts showing that it was impracticable there to seek a stay. For stays of any judgment, the petition shall contain: (1) a statement of any facts necessary to an understanding of the basis upon which the writ is sought; and (2) a statement of reasons why the writ should issue in justice to the applicant. The petition may be accompanied by affidavits and by any certified portions of the record pertinent to its consideration. It may be included in a petition for discretionary review by the Supreme Court under N.C.G.S. § 7A-31, or in a petition to either appellate court for certiorari, mandamus, or prohibition.

(d) Response; Determination by Court. Within ten days after service of the petition any party may file a response thereto with supporting affidavits or certified portions of the record not filed with the petition. Filing shall be accompanied by proof of service upon all other parties. The court for good cause shown may shorten the time for filing a response. Determination will be made on the basis of the petition, the response, any supporting items, and any briefs filed under Rule 28.1. Except as provided by Rule 28.1, no briefs or oral argument will be received or allowed unless ordered by the court upon its own initiative.

(e) Temporary Stay. Upon the filing of a petition for supersedeas, the applicant may apply, either within the petition or by a separate filing, for an order temporarily staying enforcement or execution of the judgment, order, or other determination pending decision by the court upon the petition for supersedeas. If application is made by a separate filing, it shall be filed and served in the manner provided for the petition for supersedeas in Rule 23(c). The court for good cause shown in such a petition for temporary stay may issue such an order *ex parte*. In capital cases, such stay, if granted, shall remain in effect until the period for filing a petition for certiorari in the United States Supreme Court has passed without a petition being filed, or until certiorari on a timely filed petition has been denied by that Court. At that time, the stay shall automatically dissolve.

§ 7B-1001. Right to appeal

(a) In a juvenile matter under this Subchapter, only the following final orders may be appealed directly to the Court of Appeals:

(1) Any order finding absence of jurisdiction.

(2) Any order, including the involuntary dismissal of a petition, which in effect determines the action and prevents a judgment from which appeal might be taken.

(3) Any initial order of disposition and the adjudication order upon which it is based.

(4) Any order, other than a nonsecure custody order, that changes legal custody of a juvenile.

(5) An order under G.S. 7B-906.2(b) eliminating reunification, as defined by G.S. 7B-101(18c), as a permanent plan by either of the following:

a. A parent who is a party and:

1. Has preserved the right to appeal the order in writing within 30 days after entry and service of the order.

2. A termination of parental rights petition or motion has not been filed within 65 days of entry and service of the order.

3. A notice of appeal of the order eliminating reunification is filed within 30 days after the expiration of the 65 days.

b. A party who is a guardian or custodian with whom reunification is not a permanent plan.

(6) Repealed by S.L. 2017-41, § 8(a), eff. Jan. 1, 2019; S.L. 2017-102, § 40(f), eff. Jan. 1, 2019.

(7) Any order that terminates parental rights or denies a petition or motion to terminate parental rights.

(8) An order eliminating reunification as a permanent plan under G.S. 7B-906.2(b), if all of the following conditions are satisfied:

a. The right to appeal the order eliminating reunification has been preserved in writing within 30 days of entry and service of the order.

b. A motion or petition to terminate the parent's rights is filed within 65 days of entry and service of the order eliminating reunification and both of the following occur:

1. The motion or petition to terminate rights is heard and granted.

2. The order terminating parental rights is appealed in a proper and timely manner.

c. A separate notice of appeal of the order eliminating reunification is filed within 30 days after entry and service of a termination of parental rights order.

(a1) Repealed by S.L. 2021-18, § 2, eff. July 1, 2021. See now, (a)(7), (a)(8) of this section.

(a2) In an appeal filed pursuant to subdivision (a)(8) of this section, the Court of Appeals shall review the order eliminating reunification together with an appeal of the order terminating parental rights. If the order eliminating reunification is vacated or reversed, the order terminating parental rights shall be vacated.

(b) Notice of appeal and notice to preserve the right to appeal shall be given in writing by a proper party as defined in G.S. 7B-1002 and shall be made within 30 days after entry and service of the order in accordance with G.S. 1A-1, Rule 58.

(c) Notice of appeal shall be signed by both the appealing party and counsel for the appealing party, if any. In the case of an appeal by a juvenile, notice of appeal shall be signed by the guardian ad litem attorney advocate.

§ 7B-1003. Disposition pending appeal

(a) During an appeal of an order entered under this Subchapter, the trial court may enforce the order unless the trial court or an appellate court orders a stay.

(b) Pending disposition of an appeal, unless directed otherwise by an appellate court or subsection (c) of this section applies, the trial court shall:

(1) Continue to exercise jurisdiction and conduct hearings under this Subchapter with the exception of Article 11 of the General Statutes; and

(2) Enter orders affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile.

(c) Pending disposition of an appeal of an order entered under Article 11 of this Chapter where the petition for termination of parental rights was not filed as a motion in a juvenile matter initiated under Article 4 of this Chapter, the court may enter a temporary order affecting the custody or placement of the juvenile as the

court finds to be in the best interests of the juvenile. Upon the affirmation of the order of adjudication or disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the case on appeal was pending, provided that if the modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if there be any, within 10 days thereafter, as to why the modifying order should be vacated or altered.
(d) When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior, the court shall consider the opinion of the mental health professional who performed the evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual pending resolution of an appeal.
(e) The provisions of G.S. 7B-903.1 shall apply to any order entered during an appeal that provides for the placement or continued placement of a juvenile in foster care.

7A-31. Discretionary review by the Supreme Court

(a) In any cause in which appeal is taken to the Court of Appeals, including any cause heard while the Court of Appeals was sitting en banc, except a cause appealed from the North Carolina Industrial Commission, the North Carolina State Bar pursuant to G.S. 84-28, the Property Tax Commission pursuant to G.S. 105-345, the Board of State Contract Appeals pursuant to G.S. 143-135.9,[1] the Commissioner of Insurance pursuant to G.S. 58-2-80 or G.S. 58-65-131(c), a court-martial pursuant to G.S. 127A-62, a motion for appropriate relief, or valuation of exempt property pursuant to G.S. 7A-28, the Supreme Court may, in its discretion, on motion of any party to the cause or on its own motion, certify the cause for review by the Supreme Court, either before or after it has been determined by the Court of Appeals. A cause appealed to the Court of Appeals from any of the administrative bodies listed in the preceding sentence may be certified in similar fashion, but only after determination of the cause in the Court of Appeals. The effect of such certification is to transfer the cause from the Court of Appeals to the Supreme Court for review by the Supreme Court. If the cause is certified for transfer to the Supreme Court before its determination in the Court of Appeals, review is not had in the Court of Appeals, but the cause is forthwith transferred for review in the first instance by the Supreme Court. If the cause is certified for transfer to the Supreme Court after its determination by the Court of Appeals, the Supreme Court reviews the decision of the Court of Appeals.

Except in courts-martial and motions within the purview of G.S. 7A-28, the State may move for certification for review of any criminal cause, but only after determination of the cause by the Court of Appeals.

(b) In causes subject to certification under subsection (a) of this section, certification may be made by the Supreme Court before determination of the cause by the Court of Appeals when in the opinion of the Supreme Court any of the following apply:

(1) The subject matter of the appeal has significant public interest.

(2) The cause involves legal principles of major significance to the jurisprudence of the State.

(3) Delay in final adjudication is likely to result from failure to certify and thereby cause substantial harm.

(4) The work load of the courts of the appellate division is such that the expeditious administration of justice requires certification.
(5) The subject matter of the appeal is important in overseeing the jurisdiction and integrity of the court system.

(c) In causes subject to certification under subsection (a) of this section, certification may be made by the Supreme Court after determination of the cause by the Court of Appeals when in the opinion of the Supreme Court any of the following apply:

(1) The subject matter of the appeal has significant public interest.

(2) The cause involves legal principles of major significance to the jurisprudence of the State.

(3) The decision of the Court of Appeals appears likely to be in conflict with a decision of the Supreme Court.

§ 7A-30. Appeals of right from certain decisions of the Court of Appeals

Except as provided in G.S. 7A-28, an appeal lies of right to the Supreme Court from any decision of the Court of Appeals rendered in a case:

(1) Which directly involves a substantial question arising under the Constitution of the United States or of this State.

(2) Repealed by S.L. 2023-134, § 16.21(d), eff. Oct. 3, 2023.