Render Unto Judge Calvert . . . Correct Appellate Court Judgments

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In 1975, the Honorable Robert W. Calvert, retired Chief Justice of the Supreme Court of Texas, authored an article about Texas appellate court judgments. Robert W. Calvert, *Appellate Court Judgments or Strange Things Happen on the Way to Judgment*, 6 TEX. TECH L. REV. 915 (1975). Chief Justice Calvert wrote the article because he observed that some appellate court opinions and judgments had not been compliant with the fundamental concepts by which they should have been governed. Similarly, today, some appellate court opinions and judgments have strayed from those concepts, and thus the basic principles and rules controlling appellate judgments merit review.

CONTROLLING PRINCIPLES

(1) Trial courts "render" and "sign" judgments and orders, but they do not "enter" them. "Entry" of a judgment or order is a clerical function.

"A [trial court] judgment routinely goes through three stages: (1) rendition; (2) reduction to writing; and (3) entry."[1] As the Supreme Court of Texas has reiterated, "a judgment is rendered when the decision is officially announced orally in open court, by memorandum filed with the clerk, or otherwise announced publicly."[2] The date a judgment or order is signed determines the beginning of the post-judgment and appellate time periods.[3]

This contrasts with federal court practice, in which the beginning date for the post-judgment and appellate deadlines is the date the clerk enters the judgment.[4] The first two stages may occur simultaneously—that is, a judgment may first be rendered when it is reduced to writing and signed by the trial court. Nonetheless, trial courts still frequently render judgments and orders orally, before they sign a written judgment or order, and an oral rendition may be significant in some circumstances.[5]

By contrast with the first two stages, entry of judgment is performed by the clerk and "is a ministerial act which memorializes the judicial act of rendition."[6]

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[1] *In re Marriage of Wilburn*, 18 S.W.3d 837, 840 (Tex. App.—Tyler 2000, pet. denied).

[2] *Garza v. Tex. Alcoholic Beverage Comm'n*, 89 S.W.3d 1, 6 (Tex. 2002); *see also In the Interest of R. A. H.*, 130 S.W.3d 68, 70 (Tex. 2004) (per curiam).

[3] *See, e.g.*, TEX. R. CIV. P. 306a(1); TEX. R. APP. P. 26.1.

[4] *See, e.g.*, FED. R. CIV. P. 58(b) and 79(a); FED. R. APP. P. 4(a).

[5] For example, if the parties announce a settlement in open court, if the trial court does not then render judgment based on the parties' consent, and if a party later withdraws its consent, thereafter the trial court cannot render a valid consent judgment. *Able Cabling Servs., Inc. v. Aaron-Carter Elec., Inc.*, 16 S.W.3d 98, 100-01 (Tex. App.—Houston [1st Dist.] 2000, pet. denied); *see also Chisholm v. Chisholm*, 209 S.W.3d 96, 98 (Tex. 2006) (per curiam) ("A court 'cannot render a valid agreed judgment absent consent at the time it is rendered.'") (quoting *Padilla v. LaFrance*, 907 S.W.2d 454, 461 (Tex. 1995)). If, however, the trial court orally pronounces its present intent to render judgment on the settlement agreement, at the time the parties announce the agreement, the judgment is effective, even though not yet reduced to writing and signed, and a party may not thereafter properly withdraw its consent. *In re Marriage of Joyner*, 196 S.W.3d 883, 886-88 (Tex. App.—Texarkana 2006, pet. denied) ("Your divorce is granted" expressed present intent to render judgment) (emphasis added); *Able Cabling Servs.*, 16 S.W.3d at 101; see also TEX. R. CIV. P. 306a(1) (after stating that the date a judgment or order is signed determines the beginning of specified time periods, the rule then continues, "but this rule shall not determine what constitutes rendition of a judgment or order for any other purpose").

[6] *Able Cabling Servs.*, 16 S.W.3d at 100; *see also* TEX. GOV'T CODE ANN. § 24.017 (Vernon 2004) (providing that a district court judge in a multi-county district may sign an order in any county in the district "and forward the order or decree to the clerk for filing and entry"); TEX. R. CIV. P.

(2) Parties appeal from trial court judgments or orders, and appellate courts review and act upon those judgments and orders.[7] Parties do not appeal from, nor do appellate courts act in their judgments with regard to, for example, findings of fact, jury instructions, or evidence rulings—although issues about the latter matters may of course be the subject of a party's complaint that the trial court's judgment or order is founded on reversible error.

(3) When a party perfects an appeal from a judgment or order, the case is brought before the court of appeals, and the filing of a petition for review in the Texas Supreme Court brings the case to that court.[8] Appellate courts must decide and dispose of the entire case.[9]

(4) Appellate courts render judgments whenever they decide cases on appeal. The reasons for whatever judgment an appellate court renders are stated in an opinion, which the court must hand down.[10] An appellate court commonly states what its judgment is at the end of its opinion, though it is not required to do so, and sometimes it also recites its judgment in the opening paragraph or section of its opinion.

(5) Texas Rule of Appellate Procedure 43.2 enumerates the types of judgment that a court of appeals may render:

(a) affirm the trial court's judgment in whole or in part;

(b) modify the trial court's judgment and affirm it as modified;

(c) reverse the trial court's judgment in whole or in part and render the judgment that the trial court should have rendered;

(d) reverse the trial court's judgment and remand the case for further proceedings;

(e) vacate the trial court's judgment and dismiss the case; or

(f) dismiss the appeal.

Likewise, Texas Rule of Appellate Procedure 60.2 specifies the types of judgment that the Supreme Court may render:

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26 (requiring each district and county court clerk to "keep a court docket in a permanent record that shall include the number of the case and the names of the parties, the names of the attorneys, the nature of the action, the pleas, the motions, and the ruling of the court as made"); *Bridgman v. Moore*, 143 Tex. 250, 183 S.W.2d 705, 707 (1944) ("Under the provisions of Art. 1899, Vernon's Ann. Civ. Stat., district clerks are required to keep a fair record of all of the acts done, and proceedings had, in their respective courts, and to 'enter all judgments of the court, under direction of the judge . . . in record books to be kept for the purpose.' . . . The judgment in question was signed by the judge, filed and entered by the clerk, and recorded in the minutes of the court on July 3, 1942."); *Matthews v. Looney*, 132 Tex. 313, 123 S.W.2d 871, 872 (1939) ("No formal decree signed by attorneys for all parties was ever presented to the court for approval, or to the clerk for entry."); *Eastin v. Eastin*, 588 S.W.2d 812, 814 (Tex. Civ. App.—San Antonio 1979, writ dism'd) ("Finally, [after a judgment is rendered and reduced to writing and signed by the trial court,] the clerk of the court 'enters' the judgment upon the minutes of the court by copying it in such minutes . . . .").

7 *See, e.g.*, TEX. R. APP. P. 25.1(b) (providing that "[t]he filing of a notice of appeal by any party invokes the appellate court's jurisdiction over all parties to *the trial court's judgment or order appealed from*.") (emphasis added) and 25.1(d)(2) (stating that a notice of appeal must "state the date of *the judgment or order appealed from*") (emphasis added).

8 Texas Rule of Appellate Procedure 12.1(c) requires that the clerk of the court of appeals, upon receiving a copy of the notice of appeal, and the clerk of the Texas Supreme Court, upon receiving a petition for review, "docket *the case*" (emphasis added). Other parts of Rule 12 also refer to "the case." *See also* TEX. R. APP. P. 10.1(a)(5), 19.2, 25.1(d)(1), 32.1, 34.1, 38.1(d), 53.2(d)(1), 53.2(d)(4), 53.2(d)(9), 56.1(a)(3), 56.2, 57.2, and 65.2, all of which make clear that "cases" are brought before the courts of appeals and the supreme court.

9 The following rules confirm that courts of appeals and the supreme court decide "cases" that are brought before them: TEX. R. APP. P. 39.1, 40.1, 41.1, 41.2, 47.2(a), 49.3, 53.5, 56.3, 59.2, 60.2(d), 60.2(e), 60.2(f), 60.3, 60.6, 61.4(a)(1), and 63.

10 TEX. R. APP. P. 47.1 ("The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.").

(a) affirm the lower court's judgment in whole or in part;

(b) modify the lower court's judgment and affirm it as modified;

(c) reverse the lower court's judgment in whole or in part and render the judgment that the lower court should have rendered;

(d) reverse the lower court's judgment and remand the case for further proceedings;

(e) vacate the judgments of the lower courts and dismiss the case; or

(f) vacate the lower court's judgment and remand the case for further proceedings in light of changes in the law.

Thus, as Chief Justice Calvert observed, when a court of appeals decides to reverse the trial court's judgment, but not remand the case for further proceedings, it is required by rule "to place itself in the position of the trial court and write the decretal part of a judgment exactly as the trial court should have written it."[11] If the supreme court decides to reverse the judgment of the court of appeals,

> [The supreme court must] place itself in the position of the [court of appeals] and write the decretal part of a judgment exactly as the intermediate court should have written it. Thus restrained, the supreme court cannot reverse the trial court's judgment unless it finds that the trial court also committed reversible error. If the supreme court finds reversible error in the trial court's judgment, it must then place itself in the position of the trial court and write the decretal part of the judgment exactly as the trial court should have written it.[12]

Based on the principles and rules discussed above, an appellate court is required to perform four distinct functions: "(1) *to decide* issues and causes; (2) *to write opinions* which reflect the reasons for the court's decisions; (3) *to render judgments* which must act upon lower court judgments; and (4) *to dispose of causes*."[13]

STRAYING FROM CORE CONCEPTS

Recent appellate court opinions illustrate how courts sometimes have failed to adhere to the principles discussed above:[14]

- "[T]he *trial court entered* a take-nothing judgment against the [plaintiffs] . . . ." *Vela v. Wagner & Brown, Ltd.*, 203 S.W.3d 37, 45 (Tex. App.—San Antonio 2006, no pet.) (emphasis added).[15]

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[11] Robert W. Calvert, *Appellate Court Judgments or Strange Things Happen on the Way to Judgment*, 6 TEX. TECH L. REV. 915, 922 (1975); *see also* TEX. R. APP. P. 43.3.

[12] *Id.*; *see also* TEX. R. APP. P. 61.1.

[13] Calvert, *supra* note 10, at 915-16.

[14] The examples discussed here were derived from the courts' opinions, not their judgments. Some of the errors likely were repeated in the judgments, but in any event, because most practitioners and judges, other than those involved in the cited cases, see only the reported opinions, a correct description of the appellate court's disposition of the case is essential to the opinion. Furthermore, in interpreting an appellate court judgment or mandate, the trial court is instructed to look at the opinion as well as the judgment, so the opinion should accurately state the judgment. *Denton County v. Tarrant County*, 139 S.W.3d 22, 23 (Tex. App.—Fort Worth 2004, pet. denied); *see also Garcia v. Martinez*, 988 S.W.2d 219, 221 (Tex. 1999) (per curiam). The authors do not intend to criticize particular courts or justices. These examples were selected merely by beginning with the latest Southwestern Reporter available when this article was prepared, then reading the opinions in reverse order.

[15] In the several volumes of the *Southwestern Reporter* examined for this article, there are many opinions in which the appellate courts refer to a trial court's having *entered* a judgment or order. Some, but not all, of those opinions are as follows: *Fifth Club, Inc. v. Ramirez*, 196 S.W.3d 788, 798 (Tex. 2006) ("[W]e *enter* a take-nothing judgment in Fifth Club's favor.") (emphasis added); *Disney v. Gollan*, 233 S.W.3d 591, 594 (Tex. App.—Dallas 2007,

Trial courts do not enter judgments or orders; only clerks do so. Trial courts render or sign judgments and orders.

no pet.) (op. nunc pro tunc) ("The trial judge *entered* an order on September 21, 2004 granting appellants' motion in part.") (emphasis added); *Abilene Diagnostic Clinic v. Downing*, 233 S.W.3d 532, 534 (Tex. App.—Eastland 2007, pet. denied) ("The trial court *entered* an order dismissing with prejudice Downing's claims against Dr. Wachs and the Clinic.") (emphasis added); *King v. Cirillo*, 233 S.W.3d 437, 439 (Tex. App.—Dallas 2007, pet. filed) ("On August 24, 2006, the trial court *entered* an 'Agreed Level III Pre-Trial Scheduling Order.'") (emphasis added); *Landry's Seafood House v. Snadon*, 233 S.W.3d 430, 432 (Tex. App.—Dallas 2007, pet. denied, reh'g filed) ("A jury found in Snadon's favor, and the trial court *entered* a final judgment on the verdict.") (emphasis added); State v. Fiesta Mart, Inc., 233 S.W.3d 50, 53 (Tex. App.—Houston [14th Dist. 2007, pet. denied) ("[T]he trial court *entered* an order severing the State's statutory condemnation claim from Fiesta's inverse condemnation claim.") (emphasis added); *Walker v. Anderson*, 232 S.W.3d 899, 906 (Tex. App.—Dallas 2007, no pet.) ("[O]n June 12, 2000, the trial court *entered* a judgment in favor of the Andersons . . . .") (emphasis added); *AlliedSignal, Inc. v. Moran*, 231 S.W.3d 16, 21 (Corpus Christi 2007), *vacated by agreement by* Orders Pronounced May 2, 2008, *available at* http://www.supreme.courts.state.tx.us/historical/2008/may/050208.htm (last visited May 21, 2008) ("The trial court *entered* a final judgment on the verdict over the objections of Allied and DCC.") (emphasis added); *Park v. City of San Antonio*, 230 S.W.3d 860, 865 (Tex. App.—El Paso 2007, pet. denied) ("Following the bench trial, the trial court *entered* judgment in favor of the City on the inverse condemnation claim.") (emphasis added); *Lal v. Harris Methodist Fort Worth*, 230 S.W.3d 468, 471 (Tex. App.—Fort Worth 2007, no pet.) ("[T]he trial court *entered* the order granting Appellees' motions to dismiss with prejudice.") (emphasis added); *Mullins v. Mullins*, 202 S.W.3d 869 (Tex. App.—Dallas 2006, pet. denied) (referring throughout opinion to orders "entered" by the trial court); *Arocha v. State Farm Mut. Auto. Ins. Co.*, 203 S.W.3d 443, 444 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (plaintiffs "appeal a take-nothing judgment *entered* in favor of" defendant) (emphasis added); *Belew v. Rector*, 202 S.W.3d 849, 852 (Tex. App.—Eastland 2006, no pet.) ("The trial court conducted a bench trial and *entered* judgment for" plaintiff) (emphasis added); *Tex. Thoroughbred Breeders Ass'n v. Donnan*, 202 S.W.3d 213, 214 (Tex. App.—Tyler 2006, pet. denied) (defendants "challenge the trial court's *entry* of a judgment ordering a permanent injunction and awarding" plaintiffs damages) (emphasis added); *Parker v. Barefield*, 202 S.W.3d 211, 212 (Tex. App.—Tyler 2006), *rev'd*, 206 S.W.3d 119 (Tex. 2006) ("[T]he trial court *entered* an order sustaining Appellees' special exceptions and granting the motion to dismiss with prejudice.") (emphasis added).

- ✯ Defendants "*appeal the trial court's finding* that . . . [plaintiff] adversely possessed certain property in Horton County, Texas." *Johnson v. McClintock*, 202 S.W.3d 821, 822 (Tex. App.—Corpus Christi 2006, no pet.) (emphasis added).

Parties cannot appeal a trial court's findings; rather, they appeal its judgment.[16] In this case, defendants appealed the trial court's judgment by challenging the finding of adverse possession on which the judgment is based.

- ✯ Defendant "*appeals the trial court's rulings* on" several issues. "We *affirm the trial court's rulings* granting special exceptions, but *reverse and remand the ruling* dismissing the declaratory judgment and conversion causes of action." *Ross v. Goldstein*, 203 S.W.3d 508, 510, 514 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (emphasis added).

Again, a party appeals the trial court's judgment, not its rulings. The court of appeals cannot affirm a trial court's rulings sustaining special exceptions; rather, it affirms the portion of the judgment concerning such rulings. Likewise, a court of appeals neither reverses nor remands rulings; instead, the court of appeals reverses the portion of the judgment pertaining to those rulings and remands the case to the trial court.

- ✯ "That *part of the judgment* [holding there is no duty to indemnify] *is*

[16] Nor can parties appeal a jury's verdict or findings. *Akin, Gump, Strauss v. Nat'l Dev. & Res Corp.*, 232 S.W.3d 883, 887, 889 (Tex. App.—Dallas 2007, pet. filed) ("This is an appeal from a jury verdict . . . . On appeal, Akin Gump *does not appeal the [jury's] finding* of negligence . . . .") (emphasis added); *Smith v. Dean*, 232 S.W.3d 181, 184 (Tex. App.—Fort Worth 2007, pet. denied) ("[A]ppellants Dr. David and Mrs. Cathy Smith *appeal the jury's verdict* and trial court's judgment for appellees . . . .") (emphasis added); *Bryan v. Watumull*, 230 S.W.3d 503, 507 (Tex. App.—Dallas 2007, pet. denied) ("Valerie Bryan *appeals* an adverse medical malpractice *jury verdict* in favor of Dr. Denton Watumull.") (emphasis added).

reversed and *remanded* to the trial court for a determination of the amount of that indemnity." *Seelin Med., Inc. v. Invacare Corp.*, 203 S.W.3d 867, 873 (Tex. App.—Eastland 2006, pet. denied) (emphasis added).[17]

A court of appeals can reverse a portion of a judgment, but it cannot remand a portion of the judgment to the trial court. The entire case is remanded to the trial court for a determination of the indemnity amount.[18]

- "We *remand the issue* of Johnson's attorneys' fees to the trial court for consideration." *Johnson v. State Farm Lloyds*, 204 S.W.3d 897, 903 (Tex. App.—Dallas 2006, pet. granted) (emphasis added).[19]

An "issue" cannot be remanded; instead, the entire case is remanded for a determination of the issue the trial court must decide.[20]

- "We *reverse and remand the remaining claims* . . . . We reverse the trial court's judgment as to the remaining claims and remand those claims for further proceedings consistent with this opinion." *Prospect High Income Fund v. Grant Thornton, L.L.P.*, 203 S.W.3d 602, 606, 622 (Tex. App.—Dallas 2006, pet. filed) (emphasis added).[21]

An appellate court cannot reverse "claims"; rather, the court reverses the portion of the judgment pertaining to those claims. Likewise, an appellate court does not remand "claims" for further proceedings, but instead remands the entire case for further proceedings as to the identified claims.

- "We reverse the judgment of the court of appeals, and *render judgment in favor of [defendant] Cooper Tire.*" *Cooper Tire & Rubber Co. v. Mendez*, 204 S.W.3d 797, 808 (Tex. 2006) (emphasis added).[22]

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[17] *See also Abilene Diagnostic Clinic*, 233 S.W.3d at 535 ("[T]he *portion of the trial court's order* denying the Clinic's request for attorney's fees and costs of court *is* reversed and *remanded* for an entry of an award of attorney's fees and costs of court.") (emphasis added); *Thomas v. Alford*, 230 S.W.3d 853, 860 (Tex. App.—Houston [14th Dist.] 2007, no pet.) ("[T]he *judgment of the trial court is* affirmed as to the dismissal of claims against Malone and reversed *and remanded as to* the dismissal of claims against Alford and Sweetwater.") (emphasis added).

[18] *See, e.g., Trunkhill Capital, Inc. v. Jansma*, 905 S.W.2d 464, 470 (Tex. App.—Waco 1995, writ denied) (reversing a portion of the trial court's judgment, affirming a portion of the trial court's judgment, and remanding "the entire cause" for further proceedings in accordance with the opinion).

[19] *See also Sefzik v. Mady Dev., L.P.*, 231 S.W.3d 456, 466 (Tex. App.—Dallas 2007, pet. granted) ("We also reverse the trial court's award of attorney's fees for [plaintiff] and *remand the issue* of attorney's fees to the trial court.") (emphasis added).

[20] *Lifshutz v. Lifshutz*, 199 S.W.3d 9, 20-21 (Tex. App.—San Antonio 2006, pet. denied) (prior appeal resulted in remand of case limiting trial to particular issue, and trial court erred in making determination outside scope of remand).

[21] *See also Kalyanaram v. Univ. of Tex. Sys.*, 230 S.W.3d 921, 923 (Tex. App.—Dallas 2007, pet. denied) ("We reverse the trial court's judgment as to [plaintiff's] claim for breach of the Settlement Agreement by the University of Texas System and UTD and *remand that claim* to the trial court for further proceedings.") (emphasis added); *Wagner v. Edlund*, 229 S.W.3d 870, 879 (Tex. App.—Dallas 2007, pet. filed) ("We reverse that portion of the judgment awarding Wagner attorney's fees and *remand Wagner's claim* for attorney's fees to the trial court for further proceedings.") (emphasis added); *Brown v. Villegas*, 202 S.W.3d 803, 807 (Tex. App.—San Antonio 2006, no pet.) (stating that the trial court's order dismissing the plaintiff's claims "must be reversed, and those claims must be remanded to the trial court for further proceedings").

[22] *See also Borg-Warner Corp. v. Flores*, 232 S.W.3d 765, 774 (Tex. 2007) ("We reverse the court of appeals' judgment and render judgment for [defendant,] Borg-Warner."); *Sefzik*, 231 S.W.3d at 466 ("[W]e reverse the portion of the trial court's judgment awarding [plaintiff] $17,379.09 and render judgment in favor of [defendants]."); *Kennedy v. Andover Place Apartments*, 203 S.W.3d 495, 498 (Tex. App.—Houston [14th Dist.] 2006, no pet.) ("We sustain Kennedy's second issue, reverse the trial court's judgment, and render judgment in favor of [defendant,] Kennedy."); *Kilpatrick v. McKenzie*, 230 S.W.3d 207, 208 (Tex. App.—Houston [14th Dist.] 2006, no pet.) ("We

The appellate court judgment is favorable to the defendant, but the appellate court is supposed to render the judgment that the trial court should have rendered. In this situation, the judgment should be one denying relief to the plaintiff and not one granting relief to the defendant: "We reverse the judgment of the court of appeals, and render judgment that plaintiffs take nothing."[23]

CONCLUSION

The supreme court and courts of appeals should render judgments that are unambiguous and accurate. This requires that they observe controlling principles and use correct terminology. Clarity and precision are necessary for each case's parties, who should not have to litigate further over the disposition of the case intended by the appellate court, and for the trial court, which must observe and enforce the appellate court judgment. Furthermore, because most judges and attorneys in the state read only appellate court opinions and not appellate court judgments, a careful and accurate description of the determinative actions of the trial court and of the appellate court's disposition of the case is essential to the opinion. By adhering to governing principles, rules and terminology, appellate courts assist the parties in understanding and lower courts in following their appellate judgments.

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reverse and render judgment in favor of the defendant/appellant.").

[23] *See White v. CBS Corp.*, 996 S.W.2d 920, 921 (Tex. App.—Austin 1999, pet. denied); *see also Cash v. Kosberg*, 374 S.W.2d 773, 774 (Tex. Civ. App.—San Antonio 1963, writ ref'd n.r.e.) (per curiam).