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Is it an Order or a Judgment?

On morning last week I sat in a courtroom in the downtown Los Angeles Superior Court during the law and motion calendar waiting for my motion to be heard. I was focused on preparing for my own motion and argument, which was the last item on the court's calendar. I then heard the trial judge threaten to sanction an attorney for $1,000. Of course, a threat of a $1,000 sanction (and a judge yelling and wagging his finger) wakes up any attorney from the tedium of a very long law and motion calendar. From the banter between the judge and defense counsel, I discerned that the defense attorney had failed to file a proposed judgment with the court after the judge had sustained the defendant's demurrer and ordered that defense counsel file a proposed judgment. The judge then issued an order to show cause regarding the failure to file the proposed judgment and counsel's failure to appear at a case management conference. At the hearing, the judge asked defense counsel why he still had not filed a proposed judgment and whether he had a proposed judgment with him that could be signed and entered right then and there. The defense counsel did not have a good explanation for failing to file the proposed judgment and argued with the judge that it seemed unnecessary (even though the court had ordered him to do so). The judge attempted to explain why it is important that a final judgment be entered in every case. Ignoring the judge's exasperation, defense counsel continued to argue that a proposed judgment was not needed given the ruling on the demurrer. The judge stated that he did not have time to teach defense counsel the basics of civil procedure and then sanctioned him $1,000 for his failure to file a proposed judgment.

My morning in court reminded me of a recent appellate decision that caught my eye last month in the advance sheets. In *Davis v. Superior Court*, 196 Cal. App. 4th 669 (2011), the Second Appellate District, Division Eight, granted a writ of mandate which directed the trial court to enter its final judgment so that the plaintiff, Leon Davis, could file his notice of appeal.

In October 2008, plaintiff Davis filed an employment discrimination complaint against his employer, the City of Los Angeles. The City moved for summary judgment. In a minute order dated October 1, 2009, the trial court granted the City's motion for summary judgment. The minute order read as follows: "The Motion is tentatively granted pending issuance of the Court's final written ruling. LATER: Order Granting Summary Judgment is signed by the Court and filed this date. A copy of the order is sent via U.S. Mail to counsel below. For the reasons set forth in the Order, the Motion for Summary Judgment is GRANTED." *Davis*, 196 Cal. App. 4th at 670-671. On the second page of the minute order, it also stated: "Judgment is therefore entered in favor of Defendant and against Plaintiff on all causes of action in the complaint." *Id.* at 671 n.1.

The clerk of the court served the parties by mail with a copy of the minute order. The clerk's certificate of mailing identified the served document as "NOTICE OF ENTRY OF ORDER." In addition, the clerk attested she had served the "Notice of Entry of the above minute order of 10/01/09." *Id.* at 671. The clerk attached to the minute order the court's written ruling, entitled "Order Granting Summary Judgment." The first paragraph of the order stated: "The court grants summary judgment in favor of the City because Plaintiff has failed to raise a triable issue of fact that race or age was a motivating reason." The order included a discussion of Davis's lack of admissible evidence that the city discriminated against him. The order then closed with a single, underlined sentence on its third page stating: "Judgment is therefore entered in favor of Defendant and against Plaintiff on all causes of action in the complaint." *Id.*

Three weeks later, the City filed and served a proposed judgment and a memorandum of costs. The trial court did not sign the City's proposed judgment. One year later, plaintiff Davis moved for entry of judgment. The trial court denied the motion on the grounds that it had already entered judgment in its October 1, 2009 order. *Id.* at 672.

Davis filed a petition for writ of mandate asking the appellate court to direct the trial court to enter a final judgment. The appellate court issued the writ commanding the trial court to grant Davis's motion for entry of judgment. *Id.* at 674.

The appellate writ proceeding turns on whether the trial court's October 1, 2009 ruling was an order or a judgment. If the October 1st ruling was a judgment, Davis's time to appeal had expired. However, if the October 1st ruling was simply an order granting summary judgment – a non-appealable order – then Davis's time to appeal had not yet begun to run because judgment had not yet been entered. *Davis*, 196 Cal. App. 4th at 672.

In support of his argument that the October 1st ruling was an order, not a judgment, Davis argued that the trial court titled its ruling as an "Order Granting Summary Judgment" and the clerk's certificate of service described the ruling as a "Notice of Entry of Order," not a "Notice of Entry of Judgment." *Id.* at 672-73.

In opposition to the writ, the City argued that "the absence of any need for further trial court action is a final judgment's hallmark" and relied on the trial court's underlined language in the order stating that judgment was entered in favor of the City. *Id.* at 674. The appellate court noted that the City's filing of a proposed judgment belied its assertion that nothing more needed to be done by the trial court. The appellate court granted the writ and reasoned as follows: "construing the trial court's language as its judgment when it was styled as an order extinguishes the right to appeal. Consistent with the importance of the right to appeal, we conclude that denying Davis his appellate rights requires more

than an ‘order’ (the court’s own title for its ruling) dressed up to masquerade as a ‘judgment.’”

The *Davis* decision has several important lessons. First, pay close attention to both the name of the document, i.e. “order” or “judgment” and the substance of the ruling. If the document is ambiguous, out of an abundance of caution, file a timely notice of appeal to preserve your client’s appellate rights and then work with opposing counsel to ensure that a proper judgment is entered. Once that judgment is entered, file an amended notice of appeal from the judgment.

Second, if you have prevailed on a summary judgment motion, take the necessary steps to ensure that your proposed judgment is entered by the trial court. Once judgment is entered, immediately serve a “Notice of Entry of Judgment” so that the opposing party’s time to file a notice of appeal begins to run.

Third, and finally, if the trial court does not enter your proposed judgment in a reasonable amount of time, take action. Often, a simple phone call to the clerk or a joint letter from counsel, can spur the entry of a proposed judgment that has been waiting for execution and entry. If that does not work, bring a motion for entry of the judgment. As the trial court judge who issued the $1,000 sanction clearly understood – all parties in litigation need the certainty and finality of a final judgment, even if no one intends to file a notice of appeal.

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