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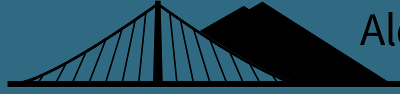

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Also in this issue:

Judicial Profiles: The Honorable Brad Seligman and The Honorable Christopher Bowen
by Alexis McKenna and Laura R. Ramsey

Traps for the Unwary: The Process from Tentative Decision to Notice of Appeal in Court Trials
by John T. Schreiber

Appellate Update
by Valerie McGinty

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Traps for the Unwary

The Process from Tentative Decision to Notice of Appeal in Court Trials

by John T. Schreiber

After a long, hard-fought non-jury trial and some waiting, the anticipated email and correspondence arrives from the trial court: the tentative decision. While trial counsel and the parties may have devoted years of time, money, and effort to reach this point, select provisions of California's Code of Civil Procedure and Rules of Court, and fundamental principles of appellate litigation can make this stage at least as much the beginning of a new, different part of the proceedings, rather than a winding down of the case. Both the prevailing and losing parties must either protect their hard-won result from further trial and appellate court challenges or try to maximize their chances for those challenges. What each side does next may greatly affect whether and to what degree that trial court result remains intact.

The trial court's memorandum of intended decision, or tentative decision, may illustrate the trial court's theory but cannot be used "to impeach the order or judgment." *Marriage of Ditto* (1988) 206 Cal.App.3d 643, 646. The statement of decision and judgment, not the tentative or memorandum of intended decision, represent the final decision of the trial court. *Ditto*, 206 Cal.App.3d at 646-647.[1] The trial court is not bound by its tentative ruling or intended decision and can enter a statement of decision and judgment wholly different from that initially announced by the trial court. *Ditto*, *supra*. California Rule of Court 3.1590(b) adopted this rule. The concept derives from the time-honored principle that appellate courts are concerned with the correctness of the decision and judgment, not with the reasoning. An appealed judgment will be affirmed if it is correct on any theory, even if different from that asserted by the trial court, even if it was not raised in the trial court. *Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329-330.

California Rule of Court 3.1590(c) provides two exceptions to this rule: 1) Rule 3.1590(c)(1) allows a trial court in its tentative decision to state that the tentative decision is the court's proposed statement of decision subject to a party's objection under Rule 3.1590(g); 2) Rule 3.1590(c)(4) allows the trial court to direct in its tentative decision that the tentative decision will become the statement of decision, unless, within 10 days of announcement or service of the tentative decision, a party specifies controverted issues as to which the party seeks a statement of decision or makes proposals not included within the tentative decision.

Otherwise, the trial court in its tentative decision will indicate that the trial court will either prepare the statement of decision under Rule 3.1590(c)(2) or direct a party to prepare the statement of decision. Rule 3.1590(c)(3).

A statement of decision explains the factual and legal basis for the trial court's decision as to each of the principal controverted issues at trial. CCP §632. It is "at least as much, if not more, for the benefit of the appellate court as for the trial court." *In re Marriage of Sellers* (2003) 110 Cal.App.4th 1007, 1010. It is important enough that a trial court's failure to provide the factual and legal basis for its decision on a principal, controverted issue comprises reversible error. *In re Marriage of Ananeh-Firempong* (1990) 219 Cal. App.3d 272, 282.

If timely requested, the statement must be in writing, unless the parties appearing at trial agree otherwise, or if the trial is concluded within one calendar day or less than eight (8) hours over more than one day, in which case the statement may be made orally in the presence of the parties. CCP §632. To be timely requested, a party must request a statement of decision within ten (10) days after the trial court announces or serves its tentative decision, except if the trial lasts less than one calendar day or less than eight hours over more than one day, in which case the request must be made before submission of the matter for decision. CCP §632.

The party requesting the statement must specify the controverted issues for which it requests a statement. CCP §632; Rule 3.1590(d). In this context, "controverted issues" mean "ultimate facts" rather than "evidentiary facts." *Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 559. An "ultimate fact," in turn, refers to an essential element of a claim or defense, without which that claim or defense must fail. *Yield Dynamics, supra*.

People v. Casa Blanca Convalescent Homes, Inc. (1984) 159 Cal.App.3d 509 represents an extreme example of seeking too much information in the statement of decision. In *Casa Blanca*, the defendant nursing home made 16 demands, each with several subparts, totaling over 75 questions on evidentiary facts on issues not at stake in the pleadings. *Casa Blanca*, 159 Cal.App.3d at 525. The appellate court termed the nursing home's request as "seeking an inquisition, a rehearing of the evidence," and found that the trial court was not required to provide specific answers "so long as the findings in the statement of decision fairly disclose the court's determination of all material issues." *Casa Blanca*, *supra*.

If *Casa Blanca* provides an example of too broad a request, if anything, failing to request an adequate statement of decision, or none at all, poses even greater perils to counsel and litigant. In *Marriage of Ditto*, the appellant failed to request a statement of decision and none was rendered. Instead, appellant relied on the memorandum of intended decision to show error. *Ditto*, 206 Cal.App.3d at 646. The Court held that the appellant could not rely on the memorandum of intended decision.

The consequences for failing to timely request a statement of decision are severe. If a litigant fails to timely request a statement of decision, then the appellate court will infer that the trial court made all necessary findings to support the judgment, i.e. apply the doctrine of implied findings. *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133. This doctrine "is a natural and logical corollary to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error." *Fladboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 58.

Timely requesting a statement of decision is only the first of a two-step process to avoid application of the doctrine of implied findings. The second step arises if the statement of decision includes any misstatements or omits any controverted issues. In that instance the party seeking to avoid the doctrine and use the statement of decision as a basis for reversal must either file objections to such deficiencies or file either a motion for new trial under CCP §657 or a motion to vacate and enter a different judgment, under CCP §663. CCP §634; *Arceneaux*, *supra*, 51 Cal.3d at 1133-1134. The deadline for timely objecting is 15 days following service of the proposed statement of decision. Rule of Court 3.1590(g).[2]

If a litigant fails to timely file such objections then once again, the doctrine of implied findings will apply to imply all necessary findings to support the decision as to the statement's deficiencies. *Arceneaux*, 51 Cal.3d at 1133-1134.[3] When the doctrine of implied findings applies, an appellant must show that there is no substantial evidence to support the judgment. *Fladboe*, 150 Cal.App.4th at 60. The substantial evidence standard presents a "daunting burden" for an appellant seeking reversal of a factual determination made in the trial court. *Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1188.

A party seeking to challenge an unfavorable result following a court trial therefore must take care to carefully follow these post-trial procedures lest their path to a successful appeal becomes far more difficult, if not impossible, to overcome. ◆

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[1] California no longer requires written "findings of fact and conclusions of law." California Code of Civil Procedure §632. Instead, CCP §632 provides for preparation of a written statement of decision.

[2] Under CCP §1013(a), the 15-day deadline for filing an objection is extended by five (5) days if the proposed statement was mailed. However, there is no 5-day extension under CCP §1013(a) for filing a new trial motion or motion to vacate and enter different judgment under CCP §§657, 663. CCP §1013(a).

[3] Failure to object to a defective statement of decision under CCP §634 does not comprise a waiver when a legal error appears on the face of the statement and the litigant fails to respond to it. *United Services Auto Assn. v. Dalrymple* (1991) 234 Cal.App.3d 182, 186. In those instances, there is no omission or ambiguity, no "findings," just a legal conclusion subject to challenge. *Dalrymple*, 234 Cal.App.3d at 186.

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