Joseph Zernik DMD PhD
Fax: (801) 998-0917 Email: jz12345@earthlink.net

" Judge shall be faithful to the law…"
Cal Code Jud Ethics 3B(2)
"The rule of law must never be confused with tyranny of the courts"
Anonymous

088. California Court of Appeal, 2nd District, Entry of Judgment, Sustain, Appeals.

Special emphasis should be placed on establishing the basic true facts relative to the roles of the California Court of Appeal, 2nd District relative to corruption of the LA Superior Court.

Entry of Judgment was supposed to be the final public manifestation of the administering of justice by the court, and establishing the law of the land. It was recognized for hundreds of years as a critical step in due process, requiring additional safeguard to prevent frauds. The LA Superior Court and the Cal Court of Appeal 2nd District, acted in concert to make it into a nebulous secretive invisible procedure.

The process reached its peak with the Filipescu decision (See Heading 088), which simply announced that there is no Judgment Book in the LA Superior Court.

In contrast, the Local Rules of Court, even today, 13 years after Filipescu, still state that there is a Judgment Book in each and every District of the Court.

The arbitrary and abusive nature of the drift can be seen in the outcome: Review of the judgments as seen in the microfilm collections shows that the family courts, a division of the civil courts, never found any problem with a clear notice of entry of judgment, and if anything, went the other way , with rules of court that mandate that the Notice of Entry of Judgment must be served using a court provided form. And indeed, all judgment of the Family court are entered. But the civil unlimited court went the other way – no notice and no entry.

http://inproperinla.com/.0Heading-075-la-sup-ct-judgments-copied-from-archives-s.pdf

And the Court of Appeal, until about June 2008 listed no date of Entry of Judgment, and then it listed entry of judgment on Aug 9, 2008. When asked for the legal foundation for this data, the clerk was somewhat confused by the question, and finally stated it was per Minute Order of Aug 9, 2007 (which was never noticed or served, bears no signature of clerk).

That minute order provides false data, stating that the judgment was served.

Even in March 2008, Keshavarzi filed cross appeal where he refused to list a judgment as entered.

And June 2008 to the present (January 2009) the LA Superior Court is refusing to certify whether the judgment was entered or not.

Finally, notice in Heading 087 that court of appeal is no longer even using the term "Date of Entry of Judgment". Instead it uses a legally meaningless term: "Judgment Date". This form underscores the point that the events surrounding judgment in this case are not unique.

AMBIGUITY IN ENTRY OF JUDGMENT IN LA COUNTY

WEST:
From the annotations to Cal Code Civ Pro § 668.5:

Failure of register of actions to indicate that judgment was in fact entered did not preclude running of 60-day time period for filing notice of appeal, where judgment was signed by law and motion judge, since judgment was deemed entered on that date; moreover, in Los Angeles County which does not maintain a judgment book, entry of judgment occurs upon filing of document, which occurred on date that file-stamped copy of judgment bearing facsimile signature of judge was served. Filipescu v. California Housing Finance Agency (App. 2 Dist. 1995) 48 Cal.Rptr.2d 736, 41 Cal.App.4th 738, rehearing denied, review denied.

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Cases Citing This Case

Filipescu v. California Housing Finance Agency (1995) 41 Cal.App.4th 738 , 48 Cal.Rptr.2d 736

[No. B096740. Second Dist., Div. Five. Dec 26, 1995.]

DOINA D. **FILIPESCU**, Plaintiff and Appellant, v. CALIFORNIA HOUSING FINANCE AGENCY, Defendant and Respondent.

(Superior Court of Los Angeles County, No. SC033236, Alan B. Haber, Judge.)

(Opinion by Turner, P. J., with Grignon and Armstrong, JJ., concurring.)

COUNSEL

Richard L. Knickerbocker for Plaintiff and Appellant.

Paul, Hastings, Janofsky & Walker, Harry A. Zinn and Jenny Schneider for Defendant and Respondent. **[41 Cal.App.4th 740]**

OPINION

TURNER, P. J.

Plaintiff, Doina D. **Filipescu**, appeals from a judgment entered after demurrers were sustained without leave to amend to her second amended complaint for wrongful termination. Defendant, California Housing Finance Agency, has moved to dismiss the appeal as untimely. The dismissal motion is granted.

The demurrers were sustained without leave to amend on June 19, 1995. On June 30, 1995, the judgment was signed by the law and motion judge. On July 7, 1995, a file-stamped copy of the judgment was served on plaintiff's counsel by mail. The judgment clearly states that it was filed on June 30, 1995. Further, next to the law and motion judge's file-stamped signature on page 2 of the judgment, the date "Jun 30 1995" clearly appears. On July 19, 1995, defense counsel served a document entitled "Notice of Entry of Judgment." Attached to the document served on July 19, 1995, was: a page indicating the judgment was entered on June 30, 1995; a file-stamped copy of the judgment; and the proof of service attached to the file-stamped judgment previously served by mail on July 7, 1995. The notice of appeal was not filed until September 18, 1995.

[1] Defendant argues that the service of the file-stamped judgment on July 7, 1995, commenced the 60-day maximum allowable time period for filing the notice of appeal. Defendant reasons that the notice of appeal was untimely because it was not filed until September 18, 1995, more than 60 days after the July 7, 1995, service of the file-stamped judgment. We agree.

The present case is controlled by the following provisions of rule 2(a)(2) and (b)(3) of the California Rules of Court fn. 1 which states in pertinent part: "(a) [Normal time] Except as otherwise provided by Code of Civil Procedure section 870 or other statute or rule 3, a notice of appeal from a judgment shall be filed on or before the earliest of the following dates: ... (2) 60 days after the date of

service of a document entitled 'notice of entry' of judgment by any party upon the party filing the notice of appeal, or by the party filing the notice of appeal .... For the purposes of this subdivision, a file-stamped copy of the judgment may be used in place of the document entitled 'notice of entry'. [¶] (b) [What constitutes entry] For the purposes of this rule: ... (3) The date of entry of an appealable order which is not entered in the minutes shall be the date of filing of the order signed by the court." The service of the file-stamped judgment bearing a facsimile signature of the law and motion judge started the running of the 60-day time **[41 Cal.App.4th 741]** period to file the notice of appeal. (Sharp v. Union Pacific R.R. Co. (1992) 8 Cal.App.4th 357 , 360-361 [9 Cal.Rptr.2d 925]; Estate of Crabtree (1992) 4 Cal.App.4th 1119 , 1122-1123 [6 Cal.Rptr.2d 224]; Younesi v. Lane (1991) 228 Cal.App.3d 967 , 973 [279 Cal.Rptr. 89]; People v. One Parcel of Land (1991) 235 Cal.App.3d 579 , 582, fn. 2 [286 Cal.Rptr. 739].)

Plaintiff presents four arguments, all of which we reject, as to why the sixty-day time period specified in rule 2(a) is inapplicable. First, plaintiff argues that there is no evidence when the judgment was entered. However, rule 2(a) provides the 60-day time period is triggered by service of the file-stamped judgment. In Estate of Crabtree, supra, 4 Cal.App.4th at page 1123, our colleagues in the Fourth Appellate District rejected a similar argument when they held: "Among other changes, the [January 1, 1990,] amendment added the last sentence of rule 2(a), which provides that service of a 'file-stamped copy' of the judgment or appealable order is sufficient to provide 'notice of entry.' We interpret the rule change literally: by its terms the rule no longer requires that the document served give notice of when an appealable judgment or order was entered but only requires notice of when the judgment or order was filed." (Cf. Delmonico v. Laidlaw Waste Systems, Inc. (1992) 5 Cal.App.4th 81 , 85 [6 Cal.Rptr.2d 599] [appeal timely despite the fact the notice of entry incorrectly identified the date of entry of judgment].) Our colleagues in the Fourth Appellate District correctly applied the language in rule 2(a) which triggers the 60-day time period when the file-stamped judgment is served. Plaintiff's interpretation of rule 2(a) would require that we construe the time limit to require an additional requirement that the file-stamped judgment set forth the date of its entry; something the drafters of rule 2(a) did not include.

Second, plaintiff argues that because the register of actions, which we have judicially noticed, fails to indicate the judgment was in fact entered, the time for filing the notice of appeal has not yet expired. There are no clerk's minutes for June 30, 1995, the date the judgment was signed. Rule 2(b)(3) provides, "The date of entry of an appealable order which is not entered in the minutes shall be the date of filing of the order signed by the court." Hence, since the judgment was signed by the law and motion judge on June 30, 1995, it was deemed entered on that date given the express language of rule 2(b)(3). Further, in Los Angeles County, which does not maintain a judgment book, the entry of the judgment occurs upon the filing of the document, which in this case occurred on July 7, 1995. (Code Civ. Proc., § 668.5; Tri-County Elevator Co. v. Superior Court (1982) 135 Cal.App.3d 271 , 277 [185 Cal.Rptr. 208]; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 1995) ¶ 3:46, p. 3-16.) **[41 Cal.App.4th 742]**

Third, plaintiff argues that the 60-day time period was triggered on July 19, 1995, because on that date, defense counsel served a document entitled "Notice of Entry of Judgment." She argues the service of the July 19, 1995, document is the only valid date which commenced the 60-day time period. Plaintiff argues that there were in essence two 60-day time periods in which to file the notice of appeal. She contends that defendant's reliance on the "fictional" notice of entry by serving the file-stamped judgment should be rejected. She suggests that the service of the file-stamped judgment was, given the language in the final sentence of rule 2(a), a "fictional" rather than a real notice of entry of judgment. However, the service of a file-stamped copy of the judgment is not a "fictional" method of advising a potential appellant of the commencement of the 60-day time period to invoke appellate jurisdiction. Rather, rule 2(a) specifically provides that the 60-day time period to file the notice of appeal is commenced upon service of the file-stamped judgment.

Fourth, plaintiff argues that the service of the notice of entry of judgment on July 19, 1995, commenced a new 60-day time period to file a notice of appeal. Nothing in the language of rule 2(a) or (b) supports plaintiff's argument in this regard. Rule 2(a)(2) states in explicit terms that "a notice of appeal from a judgment shall be filed on or before the earliest of the following dates ... (2) 60 days after the date of service of a document entitled 'notice of entry' of judgment ...." (Italics added.) The final sentence of rule 2(a) makes clear that service of a file-stamped judgment is the equivalent of a document entitled " 'notice of entry.' " The 60-day time period is triggered at the "earliest" by the service of the document which notifies the parties that the judgment has been signed. Hence, rule 2(a) required in this case that the notice of appeal was to be filed at the "earliest" 60 days after mailing of a file-stamped judgment. Further, rule 3 provides specific circumstances whereby the time frames in rule 2(a) can be extended. Rule 3 does not recognize a scenario where a second notice of entry of judgment can recommence the 60-day time period in rule 2(a). The foregoing is the only common sense construction of rule 2(a). Any other construction would contravene the purpose of the 1990 amendments to rule 2 which were to achieve clarity and reduce appellate delay. (See Delmonico v. Laidlaw Waste Systems, Inc., supra, 5 Cal.App.4th at p. 85.)

to achieve clarity and reduce appellate delay. (See Delmonico v. Laidlaw Waste Systems, Inc., supra, 5 Cal.App.4th at p. 85.) Accordingly, this court is without jurisdiction to consider plaintiff's appeal. (Adoption of Alexander S. (1988) 44 Cal.3d 857 , 862-864 [245 Cal.Rptr. 1, 750 P.2d 778]; Hollister Convalescent Hosp. Inc. v. Rico (1975) 15 Cal.3d 660 , 674 [125 Cal.Rptr. 757, 542 P.2d 1349].) **[41 Cal.App.4th 743]**

The appeal is dismissed. Defendant, California Housing Finance Agency, shall recover its costs on appeal from plaintiff, Doina D. **Filipescu**.

Grignon, J., and Armstrong, J., concurred.

A petition for a rehearing was denied January 16, 1996, and appellant's petition for review by the Supreme Court was denied April 11, 1996.

FN 1. All future references to a rule are to the California Rules of Court.

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Tri-County Elevator Co. v. Superior Court (Dell) (1982) 135 Cal.App.3d 271 , 185 Cal.Rptr. 208

[Civ. No. 65393. Court of Appeals of California, Second Appellate District, Division One. August 23, 1982.]

TRI-COUNTY ELEVATOR COMPANY, INC., Petitioner, v. THE SUPERIOR COURT OF SANTA BARBARA COUNTY, Respondent; ELLIOTT DELL et al., Real Parties in Interest.

(Opinion by Lillie, J., with Spencer, P. J., and Hanson (Thaxton), J., concurring.)

COUNSEL

Hatch & Parent and Gerald B. Parent for Petitioner.

No appearance for Respondent.

Cavalletto, Webster, Mullen & McCaughey, Mullen, McCaughey & Henzell, George L. Wittenburg, Gary W. Robinson, McGowan & Gilbert and Terrance L. McGowan for Real Parties in Interest.

OPINION

LILLIE, J.

Petitioner Tri-County Elevator Company, Inc., seeks a writ of mandate directing respondent Santa Barbara Superior Court to vacate its order denying petitioner's motion for a new trial and thereafter conduct a hearing for the purpose of ruling on the merits of said motion. [1] We issued an alternative writ. fn. 1 **[135 Cal.App.3d 274]**

On March 19, 1982, judgment in favor of real parties in interest and against petitioner was signed and filed. On March 22, 1982, a conformed copy of the judgment showing the date of its filing was mailed to petitioner by the attorneys for real parties. On March 29, 1982, the clerk of respondent court mailed to petitioner a document entitled "Notice of Entry of Judgment/Order" stating that the judgment had been entered on March 19. On April 9, 1982, petitioner filed its notice of intention to move for a new trial. Respondent court denied the motion on the ground that it was filed more than 15 days after the service of a conformed copy of the judgment, which the court determined was sufficient to constitute notice of entry of the judgment.

Code of Civil Procedure section 659 reads in pertinent part: "The party intending to move for a new trial must file with the clerk and serve upon each adverse party a notice of his intention to move for a new trial .... [¶] 2. Within 15 days of the date of mailing notice of entry of judgment by the clerk of the court pursuant to Section 664.5, or service upon him by any party of written notice of entry of judgment ... whichever is earliest...." Prior to its amendment in 1981 (Stats. 1981, ch. 904, § 1), section 664.5 required that notice of entry of judgment be given by the clerk of the court. fn. 2 As amended, section 664.5 now provides in relevant part: "(a) In any contested action or special proceeding in a superior, municipal, or justice court ..., the party submitting an order or judgment for entry shall prepare and mail a copy of the notice of entry of judgment to all parties who have appeared in the action or proceeding and shall

file with the court the original notice of entry of judgment together with the proof of service by mail; provided, that the court may order the clerk to mail notice of entry of judgment in those cases where justice would be better served thereby...." **[135 Cal.App.3d 275]**

[2a] Petitioner argues that the conformed copy of the judgment served upon it by real parties does not meet the requirements of section 664.5, which contemplates that the notice of entry of judgment must be a document separate from the judgment. The only notice of entry of judgment was that mailed to petitioner by the clerk of respondent court on March 29, 1982; petitioner's notice of intention to move for a new trial (filed Apr. 9, 1982) therefore was timely. We do not agree.

[3] It is a general rule of statutory construction that modifying phrases are to be applied to the words immediately preceding them and are not to be construed as extending to more remote language. (People v. Corey (1978) 21 Cal.3d 738, 742 [147 Cal.Rptr. 639, 581 P.2d 644].) [2b] Thus, in section 659 the phrase "pursuant to Section 664.5" applies to service of notice of entry of judgment by the clerk of the court, not to service of the notice by a party. Indeed, this is the only logical construction of section 659 because prior to January 1, 1982, section 664.5 provided for mailing of notice of entry of judgment by the clerk exclusively, and did not authorize such service by a party. As amended, section 664.5 now places on the party submitting the judgment for entry the duty of giving notice of entry; the clerk may give such notice only when the court orders him to do so. fn. 3 Section 659 was not amended to make section 664.5 applicable to service of notice of entry of judgment by a party; it continues to incorporate the provisions of section 664.5 only in connection with service of such notice by the clerk. Since 1959, section 659 has expressly authorized service of written notice of entry of judgment by a party as an event which starts the running of the period within which a motion for new trial may be made. The Legislature alone has the power to provide that the newly adopted procedure of section 664.5 governs preparation and service of written notice of entry of judgment by a party for purposes of section 659; the Legislature has not done so. We may not, under the guise of statutory construction, insert qualifying provisions in section 659 or rewrite it in an attempt to make it conform to a presumed intention of the Legislature not expressed in the statutory language. (See Code Civ. Proc., § 1858; Goins v. Board of Pension Commissioners (1979) 96 Cal.App.3d 1005, 1010 [158 Cal.Rptr. 470]; Cemetery Board v. Telophase Society of America (1978) 87 Cal.App.3d 847, 858 [151 Cal.Rptr. 248].) If the Legislature intended the newly adopted procedure of section 664.5 to govern the preparation and service of written notice of entry of judgment **[135 Cal.App.3d 276]** by a party for the purpose of determining the start of the period within which a motion for new trial may be made under section 659, it should amend section 659 to express that intention.

The language of section 659 does not make applicable the procedure outlined in section 664.5 for the purpose of determining whether a party has given notice of entry of judgment sufficient to trigger the 15-day period of section 659. Accordingly, in determining whether the document served on petitioner by real parties constituted such notice, we look to general principles.

"Notice [of entry of judgment] must be in writing. [Citations.] But no particular form is required; 'any notice in writing which will convey to a losing party that the judgment has been entered is sufficient in California.' (Bank of America v. Superior Court (1931) 115 C.A. 454, 457 ....)" (4 Witkin, Cal. Procedure (2d ed. 1971) Judgment, § 58, p. 3221.) Ordinarily, entry of a judgment consists of copying it at large in the judgment book which the clerk keeps among the records of the court. (Code Civ. Proc., § 668; Brown v. Barham (1966) 242 Cal.App.2d 696, 702 [51 Cal.Rptr. 718]; Wilson v. L. A. County Employees Assn. (1954) 127 Cal.App.2d 285, 289 [273 P.2d 824].) However, "In those counties where the clerk of the superior court places individual judgments in the file of actions and a microfilm copy of the individual judgments is made prior to their placement in the file of actions the clerk shall not be required to enter judgments in a judgment book, and the date of filing the judgment with the clerk shall constitute the date of its entry." (Code Civ. Proc., § 668.5.) The foregoing procedure is followed in Santa Barbara County, the site of respondent court. Real parties served on petitioner a conformed copy of the judgment which bore a stamp showing that the judgment had been filed with the clerk on March 19, 1982. Thus, petitioner was given written notice, in substance and effect, of the entry of the judgment. No more was required. [4] We emphasize, however, that in counties where the clerk enters judgments in a judgment book (Code Civ. Proc., § 668), the date of filing the judgment with the clerk is not the date of its entry. In such counties notice of entry of judgment, for purposes of Code of Civil Procedure section 659, would consist of mailing either a conformed copy of the judgment showing the date of its entry in the judgment book, or a separate document stating the date of entry. Mailing a copy of the judgment showing merely the date of its filing with the clerk would not constitute notice of entry of judgment. **[135 Cal.App.3d 277]**

[5] Proof of service of a copy of the judgment on petitioner was not filed until May 24, 1982. Petitioner argues that this fact is significant because Code of Civil Procedure section 664.5 requires that proof of service of the notice of entry of judgment be filed "together with" the original notice. As previously stated, the procedure set forth in section 664.5 is inapplicable in determining, for

"together with" the original notice. As previously stated, the procedure set forth in section 664.5 is inapplicable in determining, for purposes of section 659, the sufficiency of notice of entry of judgment given by a party. In any event, "'[i]t is the fact that service was made, rather than the proof of service, that vests the court with jurisdiction to act. [Citations.] The jurisdiction of the court does not depend upon the preservation of the proof of service but upon the fact that service has been made.'" (Call v. Los Angeles County Gen. Hosp. (1978) 77 Cal.App.3d 911, 917 [143 Cal.Rptr. 845]; Otsuka v. Balangue (1949) 92 Cal.App.2d 788, 791 [208 P.2d 65].)

[2c] Real parties mailed written notice of entry of judgment to petitioner on March 22, 1982. Eighteen days later, on April 9, 1982, petitioner filed its notice of intention to move for a new trial. Because compliance with the 15-day requirement of section 659 is jurisdictional (In re Marriage of Beilock (1978) 81 Cal.App.3d 713, 721 [146 Cal.Rptr. 675]; Douglas v. Janis (1974) 43 Cal.App.3d 931, 936 [118 Cal.Rptr. 280]), respondent court was without power to entertain the motion and properly denied it.

Alternative writ discharged; peremptory writ denied.

Spencer, P. J., and Hanson (Thaxton), J., concurred.

FN 1. Mandamus is an appropriate means of reviewing an otherwise nonappealable order of a trial court where the issue presented is one of law and it is in the public interest to have a prompt determination of that question. (People v. Superior Court (Olson) (1979) 96 Cal.App.3d 181, 189, fn. 6 [157 Cal.Rptr.628].)

By issuing an alternative writ we necessarily determined that petitioner has no other adequate remedy and that this is a proper case for the exercise of our original jurisdiction through the prerogative writ. (Randone v. Appellate Department (1971) 5 Cal.3d 536, 543 [96 Cal.Rptr. 709, 488 P.2d 13]; City of Huntington Beach v. Superior Court (1978) 78 Cal.App.3d 333, 339 [144 Cal.Rptr. 236].)

FN 2. Section 664.5 provided: "Promptly upon entry of judgment in a contested action or special proceeding in a superior, municipal, or justice court, the clerk of the court shall mail notice of entry of judgment to all parties who have appeared in the action or special proceeding and shall execute a certificate of such mailing and place it in the court's file in the cause...."

FN 3. The record does not show that respondent court ordered the clerk to mail the notice of entry of judgment which was sent on March 29, 1982.

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