always Appealing: A Judgment is a Judgment, is a Judgment . . . But Not in Washington

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By Howard Goodfriend

One of the recurring challenges of Washington civil appellate practice is determining whether the trial court has entered a final, and therefore appealable, judgment. Entry of a final judgment has all sorts of ramifications for the parties: only a final judgment is enforceable for purposes of collection and execution,1 and entry of judgment starts the 10-day clock for an award of attorney fees and for costs2 and the 30-day clock for filing a notice of appeal.3 This article addresses this last, most critical consequence of a final judgment, focusing on the confusing but necessary task of identifying the "final judgment" in a civil case for purposes of filing a timely notice of appeal.

The consequences of identifying the final judgment are critical because the 30-day time limit for filing a notice of appeal is strictly enforced. Unlike many of the other appellate rules, this deadline may not be waived by the court except in "extraordinary circumstances and to prevent a gross miscarriage of justice." RAP 18.8(b). Washington courts have frequently characterized this deadline as "jurisdictional."4

A “final judgment “ is the first and most common type of decision that is appealable as a matter of right under RAP 2.2(a).5 Somewhat circularly, the rule defines a “Final Judgment,” as “[t]he final judgment entered in any action or proceeding, regardless of whether the judgment reserves for future determination an award of attorney fees or costs.” RAP 2.2(a)(1). CR 54(a) provides only a small additional amount of clarity, defining a “judgment” as “the final determination of the rights of the parties in the action and includes any decree and order from which an appeal lies.”

In practice, it can be a challenge to identify the “final judgment,” particularly in cases where the court has entered a series of orders disposing of multiple claims.6 This challenge is particularly acute because Washington’s civil rules do not mirror the federal rules, which delegate to the clerk, as opposed to the prevailing party’s counsel, the authority to both prepare and enter judgment.

Generally speaking, the federal district court clerk enters a separate document that is the “judgment” when, for example, the district court enters an order of dismissal or enters a dispositive summary judgment order.7 Fed. R. Civ. P. 58(a) requires that “[e]very judgment and amended judgment must be set out in a separate document. . .” The federal rule also authorizes the clerk to “prepare, sign and enter judgment” after the jury returns a general verdict, the court awards “only costs or sum certain” or “the court denies all relief,” all without any approval or direction from the district court. Fed. R. Civ. P. 58(b)(1).

By contrast, Washington’s rules do not require a separately titled document for entry of an appealable final judgment.8 Indeed, the final judgment need not be called a judgment at all. Consistent with RAP 2.2(a)(1)’s caveat that a judgment may be final while leaving attorney fees for “future determination,” the Washington Supreme Court has defined the term “final judgment” as “[a] court’s last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs (and, sometimes, attorney’s fees) and enforcement of the judgment.”9

Using this definition, Washington courts have held that all types of dispositive orders may constitute the court’s “last action,” or the final judgment in the action. In Denney v. City of Richland, the Court held that a summary judgment order that dismissed all claims with prejudice was the final judgment, even though the order recited that “Defendant City of Richland is the prevailing party herein and may present judgment accordingly.” 195 Wn.2d at 652. The Court held untimely a notice of appeal filed within 30-days of a subsequent judgment for attorney fees and costs, but more than 30 days after entry of the summary judgment order.10

The Court's holding is consistent with prior decisions from the Court of Appeals holding that a "final judgment" for purposes of RAP 2.2(a)(1) may not be called a judgment at all and dismissing appeals filed more than 30 days from entry of the last dispositive order.11 The lesson for counsel from these cases is clear: If you think the court's ruling is the decision that adjudicated the last of the parties' claims on the merits, file a notice of appeal. There is little downside, as a premature notice will be deemed effective upon entry of what turns out to be the final judgment under RAP 5.2(g), but an untimely notice will result in forfeiture of the valuable right to appeal.

"Always Appealing" is a column addressing current issues in appellate practice and recent appellate cases written by the lawyers of Smith Goodfriend, PS, a Seattle law firm in Seattle that limits its practice to civil appeals and related trial court motions practice.

Howard Goodfriend is a principal in Smith Goodfriend and current president of the American Academy of Appellate Lawyers. He can be reached at howard@washingtonappeals.com.

1 See Fluor Enterprises, Inc. v. Walter Constr., Ltd., 141 Wn. App. 761, 172 P.3d 368 (2007) (judgment resolving only some of the claims in consolidated case is unenforceable in absent of findings of finality entered pursuant to CR 54(b)).

2 CR 54(d). See Corey v. Pierce County, 154 Wn. App. 752, 774, 225 P.3d 367 (2010) (trial court properly denied request for fees as untimely where filed more than ten days after entry of judgment).

3 RAP 2.2(a)(1), RAP 5.2(a).

4 See, e.g., FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc., 190 Wn.2d 281, 291, ¶ 18, 413 P.3d 1 (2018); Medina v. Public Utility Dist. No. 1 of Benton Cty., 147 Wn.2d 303, 322, 53 P.3d 993 (2002) ("Notice of appeal deadlines are jurisdictional") (citing RAP 18.8 and Schaefco v. Columbia River Gorge Comm'n, 121 Wn.2d 366, 368, 849 P.2d 1225 (1993)).

5 RAP 2.2(a) also allows a timely notice of appeal from orders deciding certain timely post-trial motions, such as CR 59. RAP 2.2(a)(9).

6 Under CR 54(b), the superior court may certify as "final" and therefore appealable a judgment in a multi-party or multi-claim case that does not resolve all the claims as to all the parties, but "only upon an express determination in the judgment, supported by written findings, that there is no just reason for delay. . ." See RAP 2.2(d). The practice issues involving appellate review of partial adjudications are outside the scope of this article.

7See generally, Wright and Miller, Fed. Prac. & Proc. § 2785 (2020 & Supp.).

8Denney v. City of Richland, 195 Wn.2d 649, 658 n.3, 462 P.3d 842 (2020). Similarly, the failure to include the judgment summary required by RCW 4.64.030 affects only the clerk's ability to enter a judgment in the execution docket but does not govern whether the judgment is effective for other purposes. Bank of America, N.A. v. Owens, 173 Wn.2d 40, 51, 266 P.3d 211 (2011).

9Denney, 195 Wn.2d at 654, quoting State v. Taylor, 150 Wn.2d 599, 602, 80 P.3d 605 (2003) and BLACK'S LAW DICTIONARY 847 (7th ed. 1999). See also Bank of America, N.A., 173 Wn.2d at 51.

10 The Denney Court exercised its discretion to extend the time for filing a notice of appeal under RAP 18.8(b) but cautioned "future similarly situated appellants that . . . a summary judgment order disposing of all substantive legal issues can constitute a final, appealable judgment regardless of a subsequent attorney fees award." 195 Wn.2d at 659.

11See, e.g., Carrara, LLC v. Ron & E Enterprises, Inc., 137 Wn. App. 822, 826, 151 P.3d 161 (2007); Bushong v. Wilsbach, 151 Wn. App. 373, 377, 213 P.3d 42 (2009), all holding that a notice of appeal following entry of a judgment awarding attorney fees and costs was untimely to bring up the decision on the merits because filed more than 30-days following the entry of the last dispositive order on the merits.