A Roadblock on the Path to Correcting Error on Appeal

Posted on: Oct 1, 2025
Bar Bulletin Blog: General

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

Civil Rule 52 requires that in all actions tried upon the facts without a jury, the trial "court shall find those facts specially and state separately its conclusions of law."1 While the trial court is not required to (and should not)2 make findings as to every piece of evidence introduced, it must make findings concerning all the ultimate facts and material issues.3 Ultimate facts are the necessary and controlling facts that must be found for the court to apply the law to reach a decision.4 The purpose of findings is to "enable an appellate court to intelligently review relevant questions upon appeal."5 In other words, findings are intended to inform the appellate court "what questions were decided by the trial court, and the manner in which they were decided."6

Rules of the Road

Despite the directive of CR 52, trial courts sometimes fail to make the necessary findings of fact. To the extent the appellate court can discern from the trial court's oral ruling or memorandum decision the facts and theory on which the trial court decided the case, a lack of written findings often is not fatal.7 If, however, the trial court's actual findings on an ultimate fact cannot be ascertained from the record, there are three possible courses: (1) remand, without reversal, with instructions to

the trial court to make the necessary findings, giving the parties an opportunity to file additional arguments after the necessary finding has been supplied; (2) reverse and remand with instructions to the trial court to make and enter the necessary findings and conclusions and judgment thereon from which either party may appeal; or (3) reverse and remand for a new trial.8

Previously, a possible fourth course available to a respondent faced with defending a decision with deficient (or nonexistent) findings on appeal was to file a motion under CR 60(a), a rule that allows a trial court to correct "clerical mistakes" in its judgment "arising from oversight or omission." In Marriage of Stern, 68 Wn. App. 922, 926 (1993), while an appeal was pending, Division One affirmed the trial court's decision to enter post-judgment findings to support its order modifying the parties' child support order. Although the respondent had relied on CR 60(b) in asking the trial court to enter findings, Division One held the relief was more appropriately granted under CR 60(a), which permits corrections for clerical mistakes "arising from oversight or omission."9

In Stern, Division One distinguished between clerical errors, which may be corrected under CR 60(a), and judicial errors, which may not. A clerical error is a "mistake or omission mechanical in nature which is apparent on the record and which does not involve a legal decision or judgment by an attorney. A judicial error is an error of substance."10 Relying on decisions construing the substantially identical federal rule 60(a), Division One noted that "a trial court's inadvertence in failing to memorialize part of its decision does not alter or amend the judgment. Rather, it is a clerical error of omission correctable under CR 60(a)."11 Accordingly, Division One held that the trial court's failure to enter findings was not an error of substance, but an inadvertent oversight that the trial court had authority to correct under CR 60(a).12

As the appellant in Stern had already filed his opening brief before the trial court entered its findings, Division One allowed him to strike his original brief and file a new brief addressing the additional issues raised by the trial court's entry of findings. Division One then addressed all of appellant's challenges to the trial court's child support modification order, including those arising from the trial court's supplemental findings.

Three years after deciding Stern, Division One relied on it to hold that CrR 7.8(a) provides, in the criminal context, an opportunity identical to CR 60(a) to correct clerical errors, allowing the trial court to enter post-judgment findings.13

Possible Rerouting

Division One's recent partially published decision in Marriage of Chea Long, 573 P.3d 456 (2025) calls into question the use of CR 60(a) to allow a trial court to enter post-judgment findings. In Chea Long, the trial court had entered a parenting plan without making findings addressing the statutory factors that trial courts must consider when deciding the residential schedule.14 As contemplated by Stern, the respondent filed a CR 60(a) motion asking the trial court to enter supplemental findings to support its parenting plan after the opening brief was filed. The trial court granted the motion and made findings on each of the necessary factors.

This time, Division One rejected the respondent's use of CR 60(a) to correct the trial court's initial failure to enter written findings. Division One reasoned that absent evidence in the record that the trial court engaged "in an adequate legal analysis" addressing the evidence presented against the necessary statutory factors, the trial court committed a substantive error that could not be corrected retroactively through supplemental findings. Division One distinguished Chea Long from Stern on the grounds that the trial court in Stern "performed an adequate legal analysis on the record but inadvertently failed to memorialize it in writing."15

In addressing the merits of the appellant's challenge to the parenting plan, Division One in Chea Long did not hold the trial court abused its discretion in entering its parenting plan, which provided each parent with equal residential time and joint decision-making. Division One nevertheless reversed after holding that there was no evidence in the record that the trial court considered the necessary statutory factors, as its parenting plan merely identified the residential schedule without providing any legal reasoning.16 Division One remanded for the trial court to consider and make findings under the statutory factors when determining the parenting plan.17

For purposes of this article, I do not take issue with Division One's rejection of CR 60(a) as a means for the trial court to correct its omission of findings in the first instance. However, I propose that the rigmarole over whether the omission of findings is a clerical or substantive error — the sole issue addressed in the published portion of Chea Long — could have been avoided if the respondent had sought relief directly from the appellate court under RAP 8.3,18 which authorizes the appellate court to issue orders "to insure effective and equitable review."

Before the court addresses the merits of the appeal, the respondent could ask that it remand for the trial court to enter findings in support of its decision, and allow the parties to file supplemental briefs addressing those findings once they are entered. This would be similar to the first approach identified by our Supreme Court in Bowman v. Webster, 42 Wn.2d 129 (1953), as the "most lenient remedy" when the appellate court is faced with reviewing a case with deficient findings.

It seems that as a matter of judicial economy, this approach makes the possibility of a second appeal from the trial court's decision on remand less likely than when appellate courts follow the second approach of reversing and remanding with instructions to the trial court to enter the necessary findings of fact and conclusions of law, to be followed by the entry of judgment from which either party may appeal. The Court in Bowman identified this second approach as "the remedy most frequently applied."19

In my experience, in many cases where the appellate court reverses and remands for entry of findings, the trial courts maintain their original decision by making the findings it should have made in the first instance. Often, the appellant then appeals again, particularly when the appellate court did not fully address their challenges in the first appeal due to the lack of findings. If the matter were instead remanded for entry of findings earlier in the appellate process, any challenges to the trial court's order could be resolved in a single appeal, as opposed to multiple appeals. This would also allow a trial court to make findings at a time closer to when it heard the evidence on which the findings are to be made. If the matter is not remanded for findings until after the appeal is concluded, it could be 18 months or longer between the close of evidence at trial and the time that the trial court must enter findings on remand.

In cases where an appeal is based largely on the absence of findings, regardless of whether the omission of findings is a clerical or substantive error, allowing trial courts to correct that omission sooner than at the end of the appellate process would preserve judicial resources while still insuring effective and equitable review.

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1 CR 52(a)(1).

2 A topic for another column.

3 Wold v. Wold, 7 Wn. App. 872, 875, 503 P.2d 118 (1972).

4 Wold, 7 Wn. App. at 875.

5 Schoonover v. Carpet World, Inc., 91 Wn.2d 173, 177, 588 P.2d 729 (1978).

6 Daughtry v. Jet Aeration Co., 91 Wn.2d 704, 707, 592 P.2d 631 (1979) (quoting Bowman, 42 Wn.2d 129, 253 P.2d 934 (1953); internal quotation omitted).

7 Heikkinen v. Hansen, 57 Wn.2d 840, 845, 360 P.2d 147 (1961).

8 Wold, 7 Wn. App. at 877 (citing Bowman, 42 Wn.2d at 135-36).

9 Stern, 68 Wn. App. at 927.

10 Stern, 68 Wn. App. at 927 (quoted source omitted).

11 Stern, 68 Wn. App. at 927.

12 Id.

13 State v. Vailencour, 81 Wn. App. 372, 378, 914 P.2d 767 (1996).

14 573 P.3d at 460.

15 573 P.3d at 462.

16 Chea Long, 573 P.3d 456 (unpublished portion of opinion).

17 Id.

18 RAP 7.2(e), which is referenced in CR 60(a), arguably does not govern the lack of or insufficiency of findings under these circumstances, because the whole point of obtaining findings is to support, not to “change or modify,” the decision on appeal.

19 Bowman, 42 Wn.2d at 135.