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Oregon State Bar Bulletin — JANUARY 2006

Legal Practice Tips

Law of Judgments Redux

Recent amendments to the 2003 revisions

By Mark Johnson & Susan Marmaduke

The 2003 session of the Oregon Legislature made comprehensive revisions to the laws governing judgments. (See "The Law of Judgments: How should a concluding decision be labeled?" 64-May Or St B Bull 31). An Oregon Law Commission work group was the engine behind those changes, producing the draft that became HB 2646 (2003), enacted as Or Laws 2003, ch. 576.

After those massive revisions were adopted, the law commission recognized a need for further corrections and clarifications. The work group reconvened and drafted what became HB 2359 (2005), enacted as Or Laws 2005, ch. 568. As part of the new bill's legislative history, legislative counsel David Heynderickx prepared a report entitled *Judgments* on behalf of the law commission.¹ The new laws updating the previous revisions became effective Jan. 1, 2006. This article surveys some of the more recent changes that may be of greatest interest to practitioners.

Types of disputes appropriate for decision by judgment

Requests for relief that have traditionally been resolved by judgment remain so, but the new law also grants the chief justice of the Oregon Supreme Court the power to expand the use of judgments to decide *other* types of requests for relief. (HB 2359, Section 3).

Concluding Decisions on Requests for Relief

The 2003 revisions defined a "judgment" as "the concluding decision of a court on one or more claims in one or more actions, as reflected in a judgment document," ORS 18.005(9). The legislature provided little guidance as to the meaning of the term "claim," which may have different meanings in different contexts. For example, an assertion of a right to attorney fees is not a "claim" for all purposes. See *Galfano v. KTVL-TV*, 196 Or App 425, 102 P3d 766 (2004) and authorities cited therein.

In an effort to clarify the statutory text, the new law substitutes the phrase "request for relief" in place of "claim." Concerned that the phrase "request for relief" might be interpreted to include discovery requests and motions that have not traditionally been disposed of by judgment, the work group limited the phrase by requiring that there be "legal authority" for deciding the matter by judgment. Accordingly, the new law defines "request for relief" as "a claim, a charge in a criminal action or any other request for a determination of the rights and liabilities of one or more parties in an action that a *legal authority allows the court to decide by judgment.*" [Or Laws 2005, ch. 568, §4.] (Emphasis added.)

Chief Justice Can Authorize Judgments

For traditional "claims," legal authority to decide by judgment is provided by ORCP 67.

However, the new law *does* allow for expansion of judgments into new realms, as the chief justice may see fit. Specifically, the law provides:

The Chief Justice of the Supreme Court by rule or order may:

(1) Authorize or require that specified requests for relief that are not governed by other legal authority be decided by judgment; and

(2) Authorize or require the use of a limited or supplemental judgment for specified requests for relief that are not governed by other legal authority. [Or Laws 2005, ch. 568, § 3.]

The 2003 revisions raised questions about when a limited judgment could be entered in probate and protective proceedings. Sections 33 and 36 of the 2005 law answer those questions by listing the types of decisions in probate and protective proceedings that may be the subject of a limited judgment. The work group cross-referenced Section 3 to authorize the chief justice to add to those lists by rule or order in case they had overlooked something. That section does not, however, limit the chief justice's authority to expand the use of judgments to probate or protective proceedings. To the contrary, Section 3 authorizes the chief justice to designate decisions for disposition by judgment as he or she sees fit.

Requirements for a judgment to be appealable

Section 2 of the new law lists the minimum requirements a judgment must meet in order to be appealable: The judgment document must be titled as a judgment; it must include the names of the parties and the court, as well as the court file number; it must be signed by the judge or court administrator and dated and it must be entered in the register.² A judgment that meets those minimum requirements can be appealed, notwithstanding any other shortcomings. For example, failure to correctly label a judgment as a general, limited or supplemental judgment does not defeat appellate jurisdiction.

The 30-day appeal period remains unchanged. As before, it is important to remember that reducing any order, including an order granting partial summary judgment, to a limited judgment means that it must be appealed within 30 days of entry into the register, if at all. Also still intact is ORS 19.205, which makes some orders appealable as judgments even though they are not, technically speaking, judgments, and presumably need not conform to the requirements of Section 2. Section 6 provides specifically that nothing in ORS Chapter 18 should be construed to require entry of a judgment if the request for relief is properly resolved "by order or other means."

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Standard of Review in Equity Cases

The 2003 revision removed most mention of "decrees" from the Oregon Revised Statutes. This is a continuing project in light of the merger of legal and equitable cases under Oregon civil procedure. An unintended side effect of the amendment to ORS 19.415 was a question about whether equitable claims would still be reviewed *de novo* on appeal.³ Section 27 attempts to resolve that confusion by providing that the Court of Appeals exercises *de novo* review in any "equitable proceeding."

Liens on Real Property

Numerous provisions in the new law deal with the creation and enforcement of judgment liens. Sections 12 and 13 are designed to create a judgment lien whenever the judgment document contains a separate section labeled "money award," without regard to any technical defect in the content of the separate section. Section 21 revises the law (ORS 18.165) pertaining to the relative priority of judgment liens and conveyances that are unrecorded at the time of the judgment. The revised law retains the general rule that the judgment has priority in such situations, but creates four specific exceptions in which the unrecorded conveyance will take priority over the judgment lien.

Family Support Awards

The new law again revises the terminology used to refer to family support awards. Under Section 4, all child or spousal support awards are now defined as "support awards," whether payable in gross or in installments. Similarly, "child support awards" under the new law includes support payable either in gross or in installments. Sections 19, 20 and 22 describe the lien effect of a support or child support judgment ordered to be paid in gross. A lump-sum support award creates an immediate arrearage lien, ORS 18.150(3)(a), that can be recorded in another county, ORS 18.152(3). Judgment remedies expire after 25 years, ORS 18.180(6), unless (in the case of spousal support only) renewed for 10 years as described in ORS 18.185.

Conclusion

The 2003 Legislature made sweeping changes to the law of judgments, primarily in an effort to simplify it. As with most major changes, the new law has had ripple effects. It has answered some questions and raised others. The 2005 Legislature has addressed a number of those questions through its most recent amendments. We can expect the law of judgments to continue its evolution in the coming years.

Endnotes

1. The report is available at http://www.willamette.edu/wucl/oregonlaw_commission/home/work_groups4.html.
2. The effect of that exclusive list is to codify the conclusions of the majority in *Garcia v. DMV*, 195 Or App 604, 99 P3d 316 (2004) (en banc).
3. See, e.g., *Dennis and Dennis*, 199 Or App 90, 92 n 2, 110 P3d 607 (2005).

ABOUT THE AUTHOR

Mark Johnson is a shareholder at Johnson, Renshaw & Lechman-Su in Portland. His practice focuses on appellate litigation, family law and professional ethics. Susan Marmaduke is a shareholder in the Portland office of Harrang Long Gary Rudnick. Her practice focuses on business litigation and appeals.

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Oregon State Bar — 5200 SW Meadows Road — Lake Oswego, OR 97035
(503) 620-0222, toll-free in Oregon (800) 452-8260

