

Judgments/Enforcement of Judgments Work Group:

JUDGMENTS

HB 2359

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I. OVERVIEW

In 2003, the Legislative Assembly passed HB 2646,¹ the massive revision of judgment laws produced by the Oregon Law Commission. As can be seen from the report approved by the Commission for that bill,² the new law made numerous significant changes in the substantive law and procedures governing judgments in Oregon. As with any significant revision of the law, especially one with 582 sections, the need for corrections and clarifications became apparent after the bill passed. More importantly, the clearer terminology of the bill brought to light interesting questions relating to the nature of judgments and the types of judicial decisions that should be the subject of judgments.

II. WORK GROUP

Many members of the HB 2646 Work Group participated in preparing the draft that became HB 2359 (2005).³ In addition, Judge Jack Landau and Judge Virginia Linder of the

¹ Chapter 576, Oregon Laws 2003.

² The report is available at
http://www.willamette.edu/wucl/oregonlawcommission/home/work_groups4.html

³ **Work Group Members:**
Cleve Abbe Lawyers Title Insurance

Court of Appeals joined the group on several occasions. The Work Group met some 8 times, and also completed work electronically via email.

The Work Group was chaired by Commissioner Sandra Hansberger.

III. SECTION BY SECTION ANALYSIS OF SIGNIFICANT SECTIONS

Section 2 (appeals; jurisdictional aspects of HB 2646). One interesting question that was addressed by the Work Group was the degree to which the requirements of House Bill 2646 (2003) are jurisdictional for the purposes of seeking appellate review. In particular, the question had been raised as to whether or not the requirement that a judgment be correctly labeled as a

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Interested Participants:

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David Heynderickx, Acting Legislative Counsel, provided drafting and research services for the Work Group.

limited, general or supplemental judgment could be held to be a jurisdictional requirement for the purposes of seeking appellate review of a judgment.

The Work Group was aware that the Court of Appeals was considering this question, and in *Garcia v. DMV*,⁴ the Court found that the labeling requirements of HB 2646 were not jurisdictional for the purpose of appeal. In *Garcia*, the Court administrator incorrectly noted in the register that a limited judgment had been rendered, when in fact the judgment document itself clearly indicated that the judgment was a general judgment. The Court of Appeals, on its own motion, raised the issue as to whether this clerical error defeated the jurisdiction of the Court of Appeals to review the judgment.

The opinion concludes that failure to correctly label a judgment as a limited, general or supplemental judgment is not jurisdictional for purposes of appeal. The court noted that while such clerical errors could be corrected in the register, a holding that such judgments were not really “judgments” until the correction was made would mean that “mistakes like this one and similar ones in titles and in register notations that go undiscovered until years after the fact would render those judgments a nullity in the interim, with all the ensuing chaos and uncertainty that will follow their late discovery.”⁵

The Work Group agreed with the conclusions of the majority opinion in the case, but noted that four judges of the Court of Appeals dissented.⁶ Section 2 of HB 2359 is intended to codify the result in *Garcia*. It does so by providing an exclusive list of the requirements of ORS Chapter 18 that are jurisdictional for the purposes of appeal. As can be seen from the language of this section, these requirements are fairly minimal: The judgment document must be plainly labeled as a judgment, the document must meet minimal form requirements provided in ORS 18.038(4) (e.g. be signed by a judge) and the judgment must be entered in the register of the court as required by ORS 18.058(1).

Sections 3, 4 and 6 (requests for relief that are proper subjects for judgment). The Work Group also spent significant amounts of time discussing the types of claims that are appropriate for decision by judgment. This discussion was prompted in part by concerns about the HB 2646 definition of 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.”⁷ HB 2646 left “claim” undefined, except to indicate that claim included a charge in a criminal action.⁸

⁴ 195 Or App 604 (2004).

⁵ 195 Or App at 620.

⁶ Judges Brewer, Deits, Haselton and Wolheim.

⁷ ORS 18.005(9).

⁸ ORS 18.005(4).

The concern raised about the definition of “judgment” related to whether the effect of HB 2646 was to broaden the types of disputes that were appropriate for decision by judgment. For instance, a motion to compel discovery could broadly be viewed as a “claim,” yet it is quite clear that such motions have never been regarded as being appropriate for decision by a judgment.

As with the case of the issue addressed in section 2 of HB 2359, the Court of Appeals issued an opinion during the Work Group’s discussion that discussed what a “claim” is for the purpose of the HB 2646 definition of “judgment.” In *Galfano v. KTVL-TV*,⁹ the court found that a claim for attorney fees was a “claim” that appropriately could be included in a judgment.

The Work Group was unanimous in deciding that HB 2646 was not intended to change pre-existing law on the types of issues that are appropriate for decision by judgment as opposed to order. The solution arrived at by the Work Group to provide more clarity was to eliminate the use of the term “claim,” and to substitute a defined term, “request for relief.” A “request for relief” is “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.” Section 4(15). As can be seen, this definition hinges on a finding that some “legal authority” authorizes use of a judgment. The amendments to ORS 18.005 by section 4 (12) of HB 2359 provide a definition of “legal authority” that contains two parts that are fairly obvious (a statute or Oregon Rule of Civil Procedure), one that may not be readily apparent (controlling appellate court decisions in effect December 31, 2003) and one that is new (a rule or order of the Chief Justice adopted under section 3 of HB 2359).

Section 3 of the bill clarifies the Chief Justice’s authority to do two things. First, the Chief Justice may authorize or require that specific requests for relief that are not governed by other legal authority be decided by a judgment. This section is designed to clarify that the Chief Justice has the flexibility to allow, or require, the use of a judgment for certain types of relief not otherwise covered by statute, rule or case law. Second, the Chief Justice may authorize or require the use of a limited or supplemental judgment for specific requests for relief that are not governed by other legal authority. This provision is designed to clarify that the Chief Justice has the ability by rule or order to provide for the use of limited or supplemental judgments in situations in which it may not be obvious from other legal authorities. See also ORS 1.002 (providing authority to Chief Justice).

Finally, Section 6 of the bill makes a flat statement of the principles discussed above: ORS Chapter 18 does not impose any requirement that a court use a judgment for any decision of the court if a legal authority allows or authorizes the court to make the decision by order or other means.

Sections 9 and 10 (reinstatement of liens). Section 9 deals with special release of lien issues arising out of child and spousal support awards. Under certain circumstances, general release of lien documents are filed releasing all property of the judgment debtor within a

⁹ 196 Or App 425 (2004).

particular county from the lien or apparent liens of certain support awards. Under certain circumstances, it is appropriate to establish a new lien against the property of the support debtor.

This section provides authority for the administrator of the Division of Child Support to file a notice of reinstatement of the lien in the county clerk lien record. The filing of the notice has the effect of creating a new lien as of the date of recording of the notice of reinstatement. The priority of the reinstated lien is set by the date of recording of the notice of reinstatement.

One common example of the need for a reinstated lien is when a support award is contingent on the dependent child being in the care of the state. In those cases, the support award is automatically suspended, without the entry of a court order or judgment, when the child leaves state custody. Without further court action, the same support order becomes reinstated when the child returns to state care. In this type of case, if the parent has made all required support payments at the time the child leaves state care, it is sometimes appropriate for the state to enter a general release of lien reflecting the status that all past support has been paid in full and that no current support is accruing. If, at a later date, the child goes back into care, the support obligation resumes. At that point, it is appropriate for the administrator of the Division of Child Support to record a notice reinstating the lien as of that date to reflect that support is again accruing.

Another common example arises in cases involving abused spouses. Under federal law, the abused spouse may claim good cause to prevent the state from collecting assigned child support. As part of the good cause process, it is not uncommon for general real property releases to be issued against all the property of a debtor within a county to facilitate the good cause declaration. If at a later time the parent decides that good cause is no longer necessary, it is appropriate for the Division of Child Support to be able to reestablish its liens and to reinstate that collection mechanism.

Sections 12 and 13 (creation of judgment lien). The amendments to ORS 18.042 and 18.048 by sections 12 and 13 of HB 2359 are principally designed to address concerns that the language of those statutes might be used to challenge the validity of judgment liens. Under the preexisting law and HB 2646, to create a judgment lien the judgment document is required to have a separate section labeled in the manner required by law. If a judgment contains a separate section, properly labeled, the clerk of the court makes the appropriate judgment lien entries in the court records. The clerk relies upon the existence of the separate section to make those entries.

The amendments to ORS 18.042 and 18.048 by sections 12 and 13 eliminate any possibility that the content of that separate section can affect the validity of the lien. For example, the separate section is required to include the debtor's driver license number, if known. This argument creates the possibility of separate litigation to void a judgment because the judgment creditor preparing the judgment failed to include a driver license that was known to the judgment creditor. To avoid this unintended consequence, ORS 18.042 and 18.048 have been revised to clarify that the only condition for creating a lien is the existence of the separate section and the entry in the register of information from that separate section. While inaccuracies in the materials provided in the separate section may still create issues regarding matters of enforcement of the lien, they do not affect the existence of the lien itself.

Other amendments to ORS 18.042 by Section 12 of HB 2359 incorporate language regarding Social Security numbers of judgment debtors to make the statute consistent with chapter 380, Oregon Laws 2003.

Section 15 (support awards). Circuit courts maintain records concerning judgments entered by the court. Under the current law, the records are required to note “whether the money award is a support award.” Since there are judgments with money awards that are only partially a “support award,” the required statement may be misleading. As revised, the court will note “whether the money award *includes* a support award.” (emphasis added). Thus a dissolution of marriage judgment that gives a money award for property settlement and a money award for child support will be noted as including a support award instead of the misleading notation that the entire money award is a support award.

Sections 19, 20 and 22 (lump sum support awards). Sections 19, 20 and 22 amend ORS 18.150, 18.152, and 18.180, respectively. These amendments are made in conjunction with the amendments to the definitions of “child support award” and “support award” in Section 4. The purpose of these amendments is to provide one term to refer to support judgments, whether as installments, lump sums, or both, and to avoid misleading entries in the court records regarding child support judgments.

The current definitions of “child support award” and “support award” are limited to support payable “in installments.” But these definitions do not include all types of support judgments. There are also judgments that include lump sum support as well as judgments for lump sum support only without current support installments.

These limited definitions also lead to misleading entries in the court computer records. The current law requires the court to note in the register (which is maintained as a computer record by the court and part of the court’s OJIN system) if the judgment is a “support award.” ORS 18.075(3)(d). In cases with lump sum support awards only, the court computer records are misleading because the register will only show an ordinary money award instead of a child support judgment. This is important because there are significant differences between the types of judgments. For example, child support judgments expire after 25 years while ordinary money awards expire after 10. Also, certain exemptions from execution and garnishment are not available against a child support judgment.

To make these changes, section 4 of this act amends the definitions of “child support award” and “support award” to eliminate the “in installments” limitation. Thus lump sum support awards are included within the definition of “child support award” and “support award.” The definitional change also requires the section 19 amendments to ORS 18.150. Under both the current and the amended version of ORS 18.150, lump sum support awards have the effect specified by subsection (2) of that section. The inclusion of lump sum support awards as a type of “support award” requires the new clause describing the effect of the lump sum support award as part of the description of the effect of the support award portion of a judgment.

Similarly, Section 20 amends ORS 18.152 to clarify that a support arrearage lien is also created for unpaid lump sum support awards since those are now within the definition of a “support award.”

As part of this same set of changes, Section 22 amends ORS 18.180 to use the revised definition when describing the expiration of judgment period for lump sum support awards.

Section 21 (unrecorded conveyances). Section 21 rewrites ORS 18.165. This section establishes the priority between an unrecorded conveyance of real property and the lien created by the entry of a judgment. The House Bill 2646 workgroup deferred consideration of this issue, but recognized that the language of the statute was misleading and needed to be addressed.

As currently written, ORS 18.165 is not consistent with the statute’s interpretation by the Oregon Supreme Court. See *Chaffin v. Solomon*, 255 Or 141 (1970), *Wilson v. Willamette Industries*, 280 Or 45 (1977), and *Bedortha v. Sunridge Land Company, Inc.* 312 Or 307 (1991). Considering those cases, and balancing the interests of maintaining the integrity of the recording system and the interests of the holder of an unrecorded conveyance, the Work Group reached the following consensus on a rewrite of the statute.

Judgments have lien effect upon entry or recording. Under ORS 18.165, a judgment lien on particular real property will generally have priority over a prior conveyance of that real property unless that conveyance was recorded before the judgment’s lien arose.

There are four exceptions to this general rule:

1. If the grantee is a purchaser in good faith for valuable consideration and records the conveyance document within 20 days of the conveyance, the conveyance grantee will have priority over the judgment creditor. The phrase “purchaser in good faith for valuable consideration” has the same meaning for this statute as it does for ORS 93.640, the statute generally describing the effect of unrecorded instruments.
2. If the judgment creditor has actual notice, record notice, or inquiry notice of the conveyance, when the judgment is entered or recorded to create the judgment lien, the conveyance grantee will have priority over the judgment creditor. The inquiry standard created by this section is the same as that which exists under ORS 93.640 for determining the “good faith” of a purchaser. Thus, to the same extent that a purchaser of real property would have an inquiry duty to maintain status as a “purchaser in good faith,” the judgment creditor has the same inquiry duty.
3. When ORS 93.645 establishes that the rights of a purchaser under a land sale contract have priority over the lien of a judgment creditor, the fulfillment deed delivered to the purchaser will also have priority over the judgment lien. For example: A sells Blackacre to B using a land sale contract. B records the land sale contract. C then obtains a judgment against A. Under ORS 93.645, when the purchaser has fully performed in accordance with the contract, the fulfillment

deed delivered to purchaser B has priority over the judgment lien of creditor C and has the effect of extinguishing the lien against the property. This subsection makes clear that the result is not changed by this section.

4. The fourth exception codifies the general rule that purchase money security interests have priority over other interests. Thus, if a judgment debtor acquires property and gives a mortgage or trust deed to finance the acquisition of the property, the trust deed or mortgage given as security to acquire the property has priority over the preexisting judgment lien.

This section also includes definitions of "conveyance" and "memorandum of conveyance" which were modeled on the provisions in ORS 93.640.

Section 27 (scope of appellate review). As discussed in the Work Group report on HB 2646, that bill eliminated references to decrees, substituting references to judgments. As a consequence of that change, ORS 19.415, describing the scope of review by an appellate court had to be revised. Under the language of that statute, *de novo* review was provided for "decrees in suits in equity." HB 2646 substituted the phrase "a judgment in a case that constituted a suit in equity under common law."

The Work Group became aware that some attorneys might argue that the common law did not encompass suits in equity. Since the HB 2646 Work Group obviously did not intend to eliminate *de novo* review of equitable proceedings,¹⁰ the HB 2359 Work Group decided to substitute a reference to "equitable proceedings" to make clear that any matter treated as an equitable proceeding by the court is to continue to be subject to an appeal as an equitable proceeding.

Section 28 (contempt). The current law requires that all decisions imposing a sanction for contempt be entered as general judgments. Since each case should have only one general judgment, this has been confusing to practitioners. Particularly troublesome are those instances in which a court had previously entered a general judgment granting a decree of dissolution of a marriage. The logic of the judgment title would suggest that the appropriate title for the contempt judgment in that case would be a supplemental judgment. Equally confusing were circumstances in which a contempt judgment was to be entered concerning a pre-trial matter resulting in the opportunity for two general judgments in the same case.

To eliminate confusion, this revision simply requires that the decision must be entered as a judgment. Depending upon the circumstances, the contempt judgment will either be a limited, general, or supplemental judgment.

Section 29 (dissolution of marriage). ORS 107.105 controls the entry of judgment in actions seeking dissolution of marriage. In the process of rewriting the section to conform to the

¹⁰ It would have been surprising if the report of the Work Group failed to mention such a significant change to appellate law.

new judgment provisions, provision for recovery of costs and expenses reasonably incurred in the action was inadvertently omitted. This section merely restores the provision inadvertently deleted.

Section 30 (administrative child support order). When an administrative child support order is entered in the register of a circuit court, it has the force, effect and attributes of a judgment. This section adds additional language to ORS 416.440 to confirm that the entry in the register includes the notations in the separate record required by ORS 18.075(3).

Section 31 (attorney fees and costs). The amendments to ORCP 68C remove an obsolete reference to Rule 70B (repealed by HB 2646). In addition, the amendments to ORCP 68C(5)(b) make it clear that a supplemental judgment for attorney fees or costs may only be used when issues relating to attorney fees or costs have not been resolved before entry of a general judgment.

Section 33 (limited judgments in probate proceedings). The passage of HB 2646 raised questions about when a limited judgment could be entered in a probate proceeding. Section 33 answers that question by listing those types of decisions in probate that may be the subject of a limited judgment. The listing specifically cross-references the authority of the Chief Justice to add to the list by adopting a rule or order under section 3 of the bill. Because of questions relating to whether the Oregon Rules of Civil Procedure applied to probate proceedings, subsection (2) of the section specifically requires that the judge make the ORCP 67B findings (no just reason for delay) before entering a limited judgment pursuant to the provisions of the section.

Section 34 (probate). The amendments to ORS 116.113 clarify that final distribution in a probate proceeding is made by a general judgment. HB 2646 had amended ORS 116.213 to indicate that the subsequent discharge of the personal representative is done by supplemental judgment.

Section 36 (limited judgments in protective proceedings). As with probate proceedings, questions were raised about when a limited judgment could be entered in protective proceedings (guardianships, conservatorships). Section 36 answers that question in essentially the same manner as section 33, listing those decisions of the court that properly can be decided by limited judgment. However, the appointment of a fiduciary was felt by the Work Group to be so significant that a limited judgment should always be used for this decision. Section 36 reflects this requirement.

Section 37 (termination of protective proceeding). The amendment to ORS 125.090 clarifies that termination of a protective proceeding (e.g. guardianship, conservatorship) is accomplished by entry of a general judgment.

Sections 39 and 40 (repeal of 18.478). These sections address the repeal of ORS 18.478. Last session's judgment bill inadvertently failed to repeal ORS 18.478. The actions addressed by that section are now addressed by other sections of ORS Chapter 18.

IV. AMENDMENT NOTE

HB 2359 was amended in the House. The amendments were developed through the Law Commission's work group process and had the support of the Judgments Work Group. The amendments are generally technical. They provide additional clarification on various matters including (a) those specific aspects of a judgment that are jurisdictional for purposes of creating a judgment lien; and (b) the scope of appellate court jurisdiction when limited and supplemental judgments are appealed.