Supreme Court of Texas

No. 25-0175

In re Marquez AD, LLC,

Relator

On Petition for Writ of Mandamus

PER CURIAM

Marquez AD, LLC seeks mandamus relief from the district court's order modifying a final judgment. At issue is whether the court acted after the expiration of its plenary power. We conclude that it did, and we conditionally grant relief.

Marquez, a landscaping business, sued Jarrod Adreon in May 2021 over a contract dispute. The parties agreed to have the court resolve attorney's fees after a jury trial. Marquez prevailed at trial in August 2023. It filed a motion for attorney's fees and entry of final judgment, attaching a proposed final judgment to its motion. The motion set out in detail the reasons Marquez believed it was entitled to fees of almost $82,000. At the hearing on attorney's fees a week later, the court stated from the bench that it was inclined to allow each party to recoup only a nominal amount of attorney's fees. The court did not state that it had made up its mind; on the contrary, it merely advised of

its inclination to award nominal fees, stating "that's what I'm feeling" at the time of the hearing and "that's what I feel is just at this point." About a month later, on November 20, 2023, the court signed Marquez's proposed final judgment, which awards Marquez almost $82,000 in fees and states that it "finally disposes of all claims and all parties and is appealable."

The case sat dormant for eight months until Adreon filed a motion to reform the judgment in July 2024. On September 3, 2024, the court held a hearing on Adreon's motion and then signed an order prepared by Adreon. This order, from which Marquez now seeks mandamus relief, vacated the prior "erroneous" final judgment and lowered Marquez's attorney's fees to roughly $2,000. The order required Marquez to "immediately return all funds seized under the erroneous judgment." The order also included a handwritten notation stating that the November 2023 judgment "was obtained by misleading the court," but the record and argument before us lacks any explanation of how the district court was misled into signing the judgment.

Marquez sought mandamus relief in the court of appeals, to no avail. No. 03-24-00769-CV, 2024 WL 5098540, at *1 (Tex. App.—Austin Dec. 12, 2024). It contends in this Court, as it did below, that the district court's order modifying the final judgment is void because the court lost plenary power before signing it. Adreon's counsel has not responded to Marquez's petition despite numerous polite reminders from our patient and professional Clerk's office.[1]

[1] The Court requested a response from Adreon's counsel, who twice missed the filing deadline. On the third try, Adreon's counsel submitted a

As a general rule, mandamus relief "is proper if a trial court issues an order beyond its jurisdiction." *In re Sw. Bell Tel. Co.*, 35 S.W.3d 602, 605 (Tex. 2000). Attempting to set aside a final judgment after plenary power has expired is a serious jurisdictional overstep for which a writ of mandamus is an appropriate remedy. *See In re Daredia*, 317 S.W.3d 247, 250 (Tex. 2010).

The document signed by the district court on November 20, 2023 was a clear, unequivocal final judgment. *See Patel v. Nations Renovations, LLC*, 661 S.W.3d 151, 154 (Tex. 2023). A court retains plenary power to vacate, modify, correct, or reform its judgment for thirty days after the judgment is signed. TEX. R. CIV. P. 329b. Once plenary power expires, the court lacks jurisdiction to modify a final judgment except by bill of review or to correct a clerical error through a judgment nunc pro tunc. *See id.* R. 329b(f). Adreon has not filed a bill of review. The district court's power to modify its final judgment beyond mere clerical errors therefore expired in December 2023, well before the September 2024 order.

Adreon's response, had he filed one, might have argued that the September 2024 order served as a judgment nunc pro tunc, by which clerical mistakes in a judgment may be corrected. *See id*. R. 316. But

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blank piece of paper, which we struck before again requesting the correct document. Despite numerous other overtures from the Clerk's office, counsel failed to file either a response to Marquez's petition or a response to Marquez's brief on the merits. While we never wish to proceed without hearing from both sides, neither will we deny Marquez the relief to which it is entitled merely because its opponent knowingly refuses to participate.

the record and evidence do not support this conclusion. As an example of a fixable clerical error, a court may correct the clerk's "entry of a final written judgment that incorrectly states the judgment actually rendered." *Escobar v. Escobar*, 711 S.W.2d 230, 231-32 (Tex. 1986). But if the court "renders [judgment] incorrectly, it cannot alter a written judgment which precisely reflects the incorrect rendition." *Id.* at 232. Similarly, "[p]rovisions alleged to have been inserted by mistake of the attorney nevertheless become a part of the court's judgment and therefore are judicial errors when thus rendered in writing by the court." *Daredia*, 317 S.W.3d at 249 (quoting *Dikeman v. Snell*, 490 S.W.2d 183, 185-86 (Tex. 1973)).

The district court may have orally stated at the October 16, 2023 hearing that it was inclined, at that time, to award a nominal amount of attorney's fees. But the equivocal statements at the October 16 hearing were plainly not a firm decision by the court, much less an oral rendition of judgment. The signed judgment of November 2023 therefore did not incorrectly memorialize a previous decision of the court. To the contrary, the signed judgment is the first and only indication in the record of a decision by the court on the amount of attorney's fees. To the extent it contained an "incorrect" amount of attorney's fees, this was a judicial error in the substance of the court's announced decision—not a clerical error in the memorialization of the court's decision. Fixing it therefore required plenary power. *See Escobar*, 711 S.W.2d at 232. Yet by the time of the September 3, 2024 order purporting to reduce the attorney's fees award and provide other relief not afforded in the original judgment, the court's plenary power

had long ago expired.

Our conclusion might be different if Adreon had complied with directives from this Court, described above, to defend his position, and had done so persuasively. Mandamus relief is governed by equitable principles, including the principle that equity aids the diligent and not those who slumber on their rights. *In re Walker*, 683 S.W.3d 400, 402 (Tex. 2024); *Rivercenter Assocs. v. Rivera*, 858 S.W.2d 366, 367 (Tex. 1993). Adreon has forfeited his right to provide the Court with argument or evidence as to why the award of attorney's fees was a clerical error. Given the lack of adversarial presentation before this Court, we caution that this opinion resolves this case only, and nothing herein should be understood to alter in any way the law regarding judgments nunc pro tunc.

For these reasons, we conditionally grant mandamus relief and direct the district court to vacate its September 2024 order and reinstate the November 2023 judgment.[2] We are confident the court will comply, and the writ will issue only if it does not.

OPINION DELIVERED: November 20, 2026

[2] Having admonished Adreon's counsel's conduct in this Court, we should also note that there may be plenty of blame to go around in this curious case. The district court believed the original judgment in Marquez's favor had been procured by fraud. By granting mandamus relief based on the finality of that judgment, we express no view on its validity or enforceability in the face of fraud allegations.