Dual Action

Limited Jurisdiction Remains in Trial Court After Filing of Appeal

By James C. Martin and Benjamin G. Shatz

Conventional wisdom seemingly would dictate that jurisdiction over a case can only be in one place at one time. After a notice of appeal is filed, the trial court ought to lose jurisdiction over the case because of the pending appeal. Presumably, then, there should be no further proceedings in the trial court during the pendency of an appeal because of the shift in focus to the higher court.

Refreshingly, conventional wisdom works in most situations. Perhaps not surprisingly, however, there is a reservoir of jurisdiction that remains with a trial court despite a pending appeal. Knowing what issues fall within this retained jurisdiction can benefit both trial and appellate lawyers.

This schizophrenic aspect of jurisdiction was recently highlighted in two cases: Franklin & Franklin v. 7-Eleven Owners For Fair Franchising, 85 Cal.App.4th 1168 (2000), and Natural Resources Defense Council v. San Diego Baykeeper Inc., 2001 DJDAR 2823 (9th Cir. March 20, 2001).

In Franklin, the Court of Appeal affirmed the trial court's grant of injunctive relief after a final judgment had been entered and after an appeal had been filed. Because of the discrete nature of the issue presented by the injunction, the Court of Appeal found that the proceedings fell within the narrow reservoir of jurisdiction left in the trial court after an appeal.

The filing of a valid notice of appeal is an event of jurisdictional significance that typically divests a trial court of jurisdiction and confers jurisdiction on embraced in the action and not affected by the judgment or order.”

The language of this statute, of course, raises the question: “What issues are embraced in the action, but do not materially affect a judgment or order on appeal?” Franklin provides some helpful insights on this question.

In Franklin, 7-Eleven franchisee owners brought a class action in Alameda County Superior Court against 7-Eleven’s franchiser, alleging breach of their franchise agreements. During the course of this lawsuit, the plaintiffs changed counsel, replacing Franklin & Franklin with new class counsel. The discharged Franklin firm unsuccessfully moved to reinstate itself as class counsel, alleging that the class representatives and their new lawyers were guilty of fraud, self-dealing and conflicts of interest.

When the class action settled for $37 million, the settlement included an attorney-fee award to class counsel, specifically notes that the types of matters “embraced” in an action, but not “affected” by the judgment, “fall into no particular pattern.” Witkin, Section 24.

Instead, the court focused on the purposes underlying Section 916 and reiterated the operative test: jurisdictional divestiture depends on the “impact” the exercise of post-judgment jurisdiction would have on the “effectiveness” of the pending appeal. See also Pankow v. Beta, 16 Cal.App.4th 931 (1993) (“the pendency of an appeal does not divest the trial court of jurisdiction to determine ancillary or collateral matters which do not affect the judgment on appeal”).

That same test carries through to federal practice. In fact, federal law is very similar to California law on these jurisdictional issues. The timely filing of a notice of appeal in U.S. District Court transfers jurisdiction over orders and judgments encompassed by the notice to the Court of Appeals. See Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982).

As with California law, this rule exists to prevent a district court from materially modifying its decision pending appellate review. Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982) (“the appellate court is entitled to review a fixed, rather than mobile record.”) Unlike California law, this divestiture of jurisdiction does not rest on statute but rather is a judge-made doctrine designed to avoid the confusion and waste that would result from having the same issues before two courts at the same time.
Meanwhile, the Franklin firm also filed an action in San Diego County Superior Court against the class representatives and their new counsel, alleging breach of contract and breach of fiduciary duty. The class representatives and class counsel then moved the Alameda court (whose judgment was the subject of Franklin's appeal) for a preliminary injunction to stay the San Diego litigation. The Alameda court granted injunctive relief, restraining the Franklin firm from prosecuting the San Diego action. The Franklin firm appealed the order granting the injunction, arguing that its pending appeal of the Alameda court's judgment robbed that court of the ability to entertain the injunction motion because jurisdiction vested solely in the Court of Appeal.

The Court of Appeal rejected the Franklin firm's argument, holding that the Alameda court had jurisdiction to enjoin the San Diego litigation—and, on the merits, properly did so. In reaching this result, the court followed Section 916's directive and looked at whether the subject matter of the post-judgment proceeding was "embraced" or "affected" by the judgment and, thus, necessarily would have an "impact" on the "effectiveness" of the appeal.

Using that test, the court reasoned that the Alameda court's post-judgment injunction had no impact on the effectiveness of Franklin's appeal of the class-action settlement and that the injunction staying the San Diego litigation did not infringe on the appellate court's jurisdiction over it.

To the contrary, rather than modify or destroy the judgment on appeal, the injunction would preserve the integrity of the appeal by maintaining the status quo. Without the injunction, the San Diego proceedings could have changed the settlement's attorney-fee award and, thereby, materially altered the judgment being reviewed on appeal. The injunction, therefore, protected the judgment pending the appeal and was properly granted.

The motion seeking an injunction to stay related litigation at issue in Franklin was not the sort of post-judgment motion that came within any existing exception to the transfer of jurisdiction. But this gave the Court of Appeal no reason for pause. After all, Witkin also, as in California, the jurisdictional divestment is not total. A district court retains jurisdiction to correct "clerical" or "ministerial" errors involving the matter appealed. In re Thorp, 655 F.2d 997 (9th Cir. 1981) (District Court retains jurisdiction to "correct clerical mistakes"). And a district court retains jurisdiction over orders enforcing the judgment, tolling motions or ancillary matters (like attorney fees) and any other part of a case not affected by the notice of appeal.

The district court's retention of limited jurisdiction derives from both statute and decisional law and is designed to assist the appellate court by entering orders appropriate to preserving the status quo. Davis v. United States, 667 F.2d 822 (1982).

Applying these rules, the 9th U.S. Circuit Court of Appeals issued a decision similar to Franklin two weeks ago. In Natural Resources, the 9th Circuit held that the District Court had jurisdiction to slightly modify an injunction despite a pending appeal of the injunction. Specifically, the District Court changed the wording of the injunction to clarify what otherwise could be interpreted as vague directives.

The Court of Appeals recognized that these changes were only "minor adjustments" to the injunction that served to better enforce it and preserve the status quo. Because the changes did not materially alter the status of the case on appeal, these changes were not beyond the District Court's jurisdiction.

As Franklin and Natural Resources make clear, the pendency of an appeal does not absolutely foreclose further proceedings in the trial court. Instead, trial-court proceedings can be initiated, and affirmative relief sought, if the scope of the ruling or relief is not embraced by the judgment on appeal and would not impact the effectiveness of the appeal.

Further, if the ruling or relief would help preserve the status quo pending appeal, that too can provide a basis for further action by the trial court. Given these options, savvy practitioners can use both courts—trial and appellate—to fully protect their clients' interests during a pending appeal.

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