

When Does a Non-Appealable Order Gain Appeal?

By Herb Fox

In the world of civil appeals, judgments and orders came in two colors: appealable and non-appealable. Not anymore. The California Supreme Court has now created a third shade: an appeal from a non-appealable order that operates as an appeal from a prior, appealable judgment.

Got that?

Here is what happened. Plaintiff loses a jury trial. Judgment is entered and notice is served, triggering the normal 60-day window for filing a Notice of Appeal from that Judgment.

Plaintiff then files a timely Motion for New Trial, which under certain circumstances extends the time for filing the Notice of Appeal. The trial court denies the motions, and on the last day for filing the Notice of Appeal from the Judgment, plaintiff instead files a Notice of Appeal from the "order denying the motion for new trial." But an order denying a motion for new trial is not appealable, and the Notice of Appeal makes no mention of the Judgment itself.

Incredibly, the defendant does not move to dismiss the appeal, but instead allows it to proceed to full briefing, raising the apparent defect for the first time in the Respondent's Brief. The Court of Appeal concludes that the Notice of Appeal is from a non-appealable order and not from the judgment, and dismisses the case.

The Supreme Court granted review to resolve the question of whether a

Court of Appeal may construe a Notice of Appeal from a non-appealable order to be, in fact, an appeal from the appealable underlying judgment.

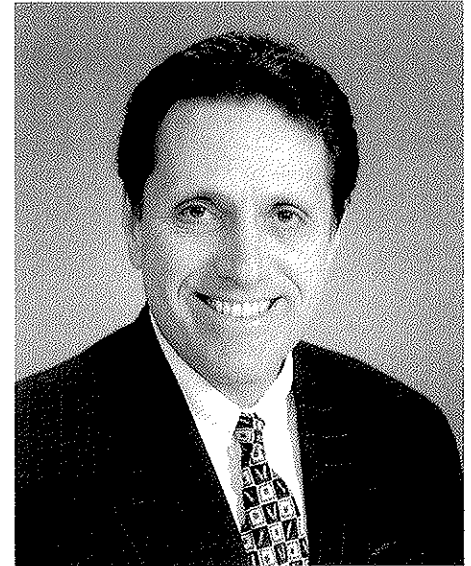
The Supreme Court reversed the dismissal and reinstated the appeal, holding that where "it is reasonably clear what appellant was trying to appeal from" and "no prejudice would accrue to the respondent" the Court of Appeal should treat the notice as an appeal from the underlying judgment.

Relying on the rule that notices of appeal should be liberally construed, the Supreme Court distinguished earlier cases where the appeal from the non-appealable order was dismissed, because those appellants had also filed a Notice of Appeal from the judgment and so had their day in court. Here, in contrast, the dismissal was appellant's death knell.

The Supreme Court remanded the case to the Court of Appeal to determine whether it is "reasonably clear the appellant intended to appeal from the judgment and the respondent would not be misled or prejudiced."

The case is *Walker v. Los Angeles County Metropolitan Transit Authority*, decided on February 3, 2005.

Santa Barbara County has filed a Notice of Appeal from the \$5.4 million jury verdict in favor of Adams Bros. Farming Co. in Santa Maria.



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The jury found that individuals in the County's Planning Department conspired to falsely designate the farmers' land as a protected wetland, thereby preventing them from growing crops. The case is *Adams Bros. Farming Co. v. County of Santa Barbara*, Court of Appeal case no. B180880. The County and its personnel are represented by **Alan Seltzer** of County Counsel's office, and by **David Pettit of Caldwell, Leslie, Newcombe & Pettit** in Los Angeles. **Richard C. Brenneman** and **Mario A. Juarez** of Santa Maria's **Chern & Brenneman** represent Adams Bros. Farming. ■