Journal of Consumer Attorneys Associations for Southern California
ADVOCATE

By Honey Kessler Amado

# Statements of decision

Statements of decision are an elegant bridge between the trial and appellate courts. The statement of decision is the trial court's explanation of the factual and legal basis for its decision. (See Code Civ. Proc., § 632.) Thus, they are the appellate court's touchstone to determine whether the trial court's decision is supported by the facts and the law. (*Slavin v. Borinstein* (1994) 25 Cal.App.4th 713, 718 [30 Cal.Rptr.2d 745, 748].)

Statements of decision are critical because, when they are absent, having been waived or untimely requested, the doctrine of "implied findings" controls. (*In re Marriage of Condon* (1998) 62 Cal.App.4th 533, 549 [73 Cal.Rptr.2d 33, 44].) Under this harsh doctrine, the appellate court must infer that the trial court decided all of the factual issues necessary to support the judgment in favor of the prevailing party and appellate review is limited to determining whether there is substantial evidence to support the implied findings. (*In re Marriage of Dancy* (2000) 82 Cal.App.4th 1142, 1159 [98 Cal.Rptr.2d 775, 787].)

Statements of decision serve many purposes. First, they allow the trial court to review its intended decision and "to make . . . corrections, additions or deletions it deems necessary or appropriate." (See *In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 647 [253 Cal.Rptr. 770.]) A tentative decision is not binding upon the court and may be changed at any time until the order or judgment is entered. (Cal. Rules of Court, rule 232(a).) Thus, the statement of decision process becomes an opportunity to point out to the trial court the error of the decision. This is precisely why the statement of decision must be signed by the trial judge and filed with the clerk before entry of the judgment. (See *Phillips v. Phillips* (1953) 41 Cal.2d 869, 873 [264 P.2d 926, 929], and *Trubowitch v. Riverbank Canning Co*. (1947) 30 Cal.2d 335, 347 [182 P.2d 182, 190].)

Second, the statement of decision frames the issues for appeal. A careful identification and delineation of the issues is very helpful to the appellate court. And, once the issues are framed and carefully analyzed, it may become apparent that an appeal would be futile. (*Miramar Hotel Corp. v. Frank B. Hall & Co.* (1985) 163 Cal.App.3d 1126, 1129 [210 Cal.Rptr. 114, 116].) Third, and most significant, the principal function of a statement of decision is to facilitate appellate review. The statement of decision gives the appellate court a fuller appreciation of the action it must either affirm or reverse.

**When are statements of decision appropriate?**

Statements of decision are governed by Code of Civil Procedure sections 632 and 634, and California Rules of Court, rule 232. Code of Civil Procedure section 632 reads, in critical part:

> In superior courts, upon the trial of a question of fact, . . . [t]he court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the requests of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day in which event the request must be made prior to the submission of the matter for decision. The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision.

As seen from the language of the statute, statements of decision are appropriate after any non-jury trial followed by a judgment. (*In re Marriage of Askmo* (2000) 85 Cal.App.4th 1032, 1040 [102 Cal.Rptr.2d 662, 667].) But statements of decision are generally not required after a motion, even when the motion involves an evidentiary hearing or results in an appealable order. (*Id*.) This is true even if the statement of decision would be helpful to the appellate court. (See *People v. Landlords Professional Services, Inc.* (1986) 178 Cal.App.3d 68, 72 [223 Cal.Rptr. 483, 485].)

Occasionally, there will be exceptions to this general rule regarding the inapplicability of statements of decision to motions. In determining whether a particular motion warrants a statement of decision, courts consider the importance of the issues at stake, including the significance of the rights affected and the magnitude of the potential adverse effect on those rights, and whether appellate review can be effectively accomplished in the absence of the statement of decision. (*In re Marriage of Askmo*, *supra*, 85 Cal.App.4th 1032, 1040; *Gruendl v. Oewel Partnership, Inc.* (1997) 55 Cal.App.4th 654, 660 [64 Cal.Rptr.2d 217, 221].)

In *Gruendl*, *supra*, the plaintiff brought a post-judgment motion to add the sole shareholder of Oewel Partnership, Charles Oewel, to the lawsuit as a defendant and to the judgment as a judgment debtor. The trial court granted the motion, thereby imposing substantial financial liability upon Mr. Oewel, who had been neither named nor served as a defendant. The appellate court noted that had the plaintiff pleaded alter-ego in his complaint, his claim would have been subjected to the rigors of trial, and the trial court would have been obligated to issue a statement of decision on its findings regarding the alter-ego theory. Thus, the appellate court reasoned, given the financial burden being imposed upon him, Mr. Oewel had no less a right to a statement of decision than had he been originally named in the lawsuit and suffered an adverse decision. The court held that on the narrow facts of the case, the trial court should have issued a statement of decision after the post-trial motion. (*Gruendl*, *supra*, at p. 661.) But the court cautioned against wide applicability of the exception. The court said, "[O]ur conclusion is not intended to have application beyond the facts of this particular case." (*Gruendl*, *supra*, at p. 662.)

*See Amado, Next Page*

Journal of Consumer Attorneys Associations for Southern California
ADVOCATE

**Timely requests are critical**

If a statement of decision is not timely requested, it is deemed waived. (*Tusher v. Gabrielsen* (1998) 68 Cal.App.4th 131, 140 [80 Cal.Rptr.2d 126, 130].) However, if timely requested, the trial court must render the statement of decision. (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1124 [94 Cal.Rptr.2d 579, 593].) The failure of the trial court to do so is reversible error *per se*. (*Miramar Hotel Corp. v. Frank B. Hall & Co.*, *supra*, 163 Cal.App.3d 1126, 1127, 1129.) On reversal, the matter is returned to the trial court for a statement of decision. (*Employers Casualty Co. v. Northwestern Nat. Ins. Group* (1980) 109 Cal.App.3d 462 [167 Cal.Rptr. 296], 475 [167 Cal.Rptr. 296, 303].) The statement of decision will be based upon evidence previously presented and on any additional evidence allowed by the court of appeal's opinion. (*Id*.)

If a matter is returned to the trial court for a statement of decision and the particular judge who heard the original trial is still sitting on the bench, this may be a relatively easy error to correct. If, however, the judge has retired, the judge will not be available to prepare the statement of decision and the appealing litigant may be entitled to an entirely new trial. (See *Armstrong v. Picquelle* (1984) 157 Cal.App.3d 122, 127-128 [203 Cal.Rptr. 552, 555]; *Raville v. Singh* (1994) 25 Cal.App.4th 1127, 1132-1133 [31 Cal.Rptr.2d 58, 60-61].) The judge is unavailable because, absent an agreement by the litigants to appoint the judge as a referee or judge pro tem, there is no mechanism to appoint the retired judge to prepare the statement of decision. The litigants will be entitled to a new trial because only the judge who heard the evidence may prepare the statement of decision. (See Cal. Rules of Court, rule 232.5.)

Therefore, even if opposing counsel requests the statement of decision, be vigilant to its entry. If the court enters the judgment and fails to enter the statement of decision, ask the court to vacate its judgment and to enter a statement of decision. Otherwise, even if the requesting party was derelict in assuring that the court complied with the procedural requirements, he can argue on appeal that he is entitled to a reversal for the failure of the court to enter a statement of decision.

If a party does not timely request a statement of decision, the court is not mandated to enter one. However, the court may enter one in its discretion. A footnote in *Tusher v. Gabrielsen*, *supra*, suggests that if the trial court elects to prepare the statement of decision notwithstanding the tardy request, that court should enter a written order extending the time within which the request could have been made and stating the good cause or just terms for the extension. (68 Cal.App.4th 131, 140, fn. 11.) Otherwise, the appellate court may deem the statement of decision, although entered, to have been waived.

**What is timeliness**

Code of Civil Procedure section 632 states that the request for a statement of decision "must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day *or in less than eight hours over more than one day* in which event the request must be made prior to the submission of the matter for decision." (Emphasis added.)

Because the length of the trial triggers different times for submitting the request, it is important to keep track of the time if a trial exceeds one day. The courtroom clerk is expected to note the time in the court minutes so that the court, counsel and all parties will know when the request must be made. (*In re Marriage of Gray* (2002) 103 Cal.App.4th 974, 979 [127 Cal.Rptr.2d 271, 275].)

The time included is the time that the court is in session in open court, and includes ordinary morning and afternoon recesses when the parties remain in the courthouse. (*Id.*, at p. 980.) The counting does not include time spent by the judge off the bench without the parties present, such as lunchtime, except for the routine recesses, which occur during the day. (*Id*.) Nor does the counting include time spent reviewing a matter or studying the law in chambers or in a home office. (*Id.*, at p. 979.)

As noted, if the matter takes less than one day or less than eight hours, the statement of decision must be requested before the matter is taken under submission. "Submission" is defined in California Rules of Court, rule 825. A matter is deemed submitted when the first of the following occurs: "(1) the date the court orders the matter submitted; or (2) the date the final paper is required to be filed or the date argument is heard, whichever is later." (*Id.*; see also *In re Marriage of Gray*, *supra*, 103 Cal.App.4th at p. 977.)

If the matter takes longer than one day or eight hours, then the time within which to request a statement of decision is triggered by the announcement or mailing of the tentative decision. (Cal. Rules of Court, rule 232(a).) If a statement of decision has already been requested, then the tentative decision should indicate whether the court or a designated party will prepare the statement. If a statement of decision has not already been requested, then the tentative decision may direct that the tentative decision will be the statement of decision "unless within 10 days either party requests a statement of decision on specific controverted issues or makes proposals not covered in the tentative decision." (Cal. Rules of Court, rule 232(a); see also *Slavin v. Borinstein*, *supra*, 25 Cal.App.4th 713, 718-719.)

Sometimes after a long matter is taken under submission, the court will issue a document entitled "statement of tentative decision" or even "statement of decision." Beware: Neither of these announcements of the court's tentative decision is a statement of decision. If the parties are concerned about pursuing a statement of decision, then it is appropriate for the parties to stipulate that the court's document, by whatever title it bears, is truly a "tentative decision" and is not the statement of decision. The parties can submit the stipulation to the court asking that the document be deemed to be the tentative decision; or, if there is no stipulation, one party can write to the courtroom clerk, cite to California Rules of Court, rule 232(a), and ask the court to deem its document to be a tentative decision. The party seeking a statement of decision must then file a formal request for a statement of decision, setting forth the principal controverted issues it wants

*See Amado, Next Page*

Journal of Consumer Attorneys Associations for Southern California
ADVOCATE

addressed, in conformity with Code of Civil Procedure section 632 and California Rules of Court, rule 232.

**The statement of decision**

The statement of decision must explain the factual and legal basis for each of the "principal controverted issues at trial" for which there is a request. (Code Civ. Proc., § 632.) The request, then, must specify the controverted issues the party wants addressed. (Code Civ. Proc., § 632.) If an issue is not designated, it will be deemed waived from the statement of decision and that issue will be subject to the rule of implied findings. A principal controverted issue is one which is relevant and essential to the judgment and is closely and directly related to the trial court's determination of the ultimate issues in the case. (See *Kuffel v. Seaside Oil Co.* (1977) 69 Cal.App.3d 555, 565 [138 Cal.Rptr. 575, 580]; and see *Kuffel*, *supra*, at p. 566, for a good example of the distinction between principal controverted issues and subsidiary facts remote to the determination of the ultimate issue.)

The statement of decision need not address all the legal and factual issues raised by the parties. (*Muzquiz v. City of Emeryville*, *supra*, 79 Cal.App.4th 1106, 1125.) The court is required to state only the ultimate, rather than the evidentiary, facts because findings on ultimate facts necessarily include findings on all intermediate evidentiary facts necessary to sustain them. (*Id.*, and see *People v. Dollar Rent-A-Car Systems, Inc.* (1989) 211 Cal.App.3d 119, 128 [259 Cal.Rptr. 191, 196].) In effect, the court need do no more than state the grounds upon which the judgment rests without necessarily specifying the particular evidence considered by the court in reaching its decision. (*Muzquiz v. City of Emeryville*, *supra*, 79 Cal.App.4th at p. 1125.)

Therefore, the court is not required to address how it resolved intermediate evidentiary conflicts in the evidence. (*Muzquiz v. City of Emeryville*, *supra*, 79 Cal.App.4th at p. 1125.) Parties are simply not entitled to such a detailed analysis of the decision. (*People v. Dollar Rent-A-Car Systems, Inc.*, *supra*, 211 Cal.App.3d at p. 128.) On the one hand, the court need not respond point-by- point to the various issues raised by the parties in the request for statement of decision or proposals of issues to address. (*Id.*, and see *Miramar Hotel Corp. v. Frank B. Hall & Co.*, *supra*, 163 Cal.App.3d 1126, 1130.) On the other hand, the statement of decision cannot be so conclusionary that the basis for the trial court's decision remains unknown. (*Employers Casualty Co. v. Northwestern Nat. Ins. Group* (1980) 109 Cal.App.3d 462 [167 Cal.Rptr. 296], 474 [167 Cal.Rptr. 296, 302], overruled on other grounds in *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1137 [275 Cal.Rptr. 797, 801].)

Several cases serve as excellent examples of the kinds of statements of decision which satisfy the requirement of explaining the factual and legal basis for each of the principal controverted issues at trial and illustrate the distinction between ultimate facts and intermediate facts. These cases are: *Muzquiz v. City of Emeryville*, *supra*, 79 Cal.App.4th 1106, 1118-1119, and fn. 6; *People v. Dollar Rent-A-Car Systems, Inc.*, *supra*, 211 Cal.App.3d 119, 127-128.

I like to prepare the statement of decision in the form of a narrative. I conceptualize the legal elements of the case and organize my discussion of the facts and relevant law around those elements. I review opposing counsel's request for statement of decision to be certain that I have addressed the principal controverted issues he or she has identified. I then present the facts as if I were telling a story, with identifying questions or headnotes for each major element. My presentation is based on two presumptions: All of us like stories, and stories are easier to retain than a recitation of facts presented in response to isolated questions. My goal is to have the appellate justices, my ultimate audience, understand the facts easily and to have them understand the facts from a point-of-view that supports the trial court's decision. My stories, though, generally omit adverbs and adjectives – especially adjectives. The facts should speak for themselves, as do the brief citations to supporting law.

I do not feel compelled to respond – nor do I respond – to the detailed requests that counsel might present. Recall that litigants are not entitled to a detailed analysis of a decision. (*People v. Dollar Rent-A-Car Systems, Inc.*, *supra*, 211 Cal.App.3d 119, 128.) Nor do I engage in debate with opposing counsel about their requests for a statement of decision. If counsel objects to the statement as prepared, the appropriate remedy is to file objections to the proposed statement of decision. (Cal. Rules of Court, rule 232(d).)

**Objections to the statement of decision**

The opportunity to file objections and the timely filing of any objections are critical to the statement of decision process. If there is an omission, ambiguity or error in the proposed statement of decision, it must be brought to the attention of the trial court, or it will be deemed to have been waived on appeal. (*In re Marriage of Arceneaux*, *supra*, 51 Cal.3d at pp. 1132, 1136, 1138 [275 Cal.Rptr. 797, 800-801].) When the record shows that a defect in a proposed statement of decision was brought to the attention of the trial court, the presumptions in favor of the judgment on those facts or legal issue will not apply. (Code Civ. Proc., § 634.)

The opportunity to object to a proposed statement of decision is so critical to the appellate process that any agreement between the trial court and counsel to streamline the statement of decision process, which eliminates or shortens time for objections must expressly state the abrogation of the right to object. (*Bay World Trading, Ltd. v. Nebraska Beef, Inc.* (2002) 101 Cal.App.4th 135, 140 [123 Cal.Rptr.2d 632, 635].) Although *Saks v. Charity Mission Baptist Church* (2001) 90 Cal.App.4th 1116, 1149 [110 Cal.Rptr.2d 45, 72] seems to suggest that alternatives to the timing and procedures for the statement of decision set forth in the court rules may be waived if counsel does not object to the suggested alternatives, the better procedure is to expressly state that the established procedures are being varied and that all counsel expressly agree to the variations.

The trial court may resolve the objections to the proposed statement of decision with or without a hearing, in its discre-

*See Amado, Next Page*

Journal of Consumer Attorneys Associations for Southern California
ADVOCATE

tion. (Cal. Rules of Court, rule 232(f).)

Statements of decision are the trial court's opportunity to speak to the appellate court. When asked to prepare a statement of decision, it is prevailing counsel's opportunity to speak for the trial court and to present a cogent factual and legal explanation of the court's decision. If representing the losing party, the objection process is the opportunity to point out to the trial court the errors of its decision and to persuade the court – short of a motion for new trial or in advance of a motion for new trial – where the decision is factually or legally unsound. The statement of decision process brings closure to the trial and the statement of decision itself is an elegant introduction to the court of appeal.

*Honey Kessler Amado is an appellate law specialist, certified by the State Bar of California Board of Legal Specialization. A solo practitioner in Beverly Hills, she recently celebrated her first quarter century practicing law. She has many published opinions and has lectured and written often on subjects related to appellate law.*