PLENARY POWER AND POST-JUDGMENT MOTIONS IN STATE AND FEDERAL COURT

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34th Annual Advanced Civil
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JUDGMENT AS A MATTER OF LAW

Fed. R. Civ. P. 50(a(2)	Fed. R. Civ. P. 50(b)
"A motion for judgment as a matter of law may be made at ***any time before the case is submitted to the jury***. "	"No later than 28 days after the entry of judgment—or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged—***the movant may file a renewed motion*** for judgment as a matter of law … ."

Acadian Diagnostics Labs., LLC v. Quality Toxicology LLC, 965 F.3d 404, 413 (5th Cir. 2020)

*"Acadian did not file a Rule 50(b) motion. The upshot is crystal clear: 'In the absence of such a motion' an `**appellate court [is] without power** to direct the District Court to enter judgment contrary to the one it had permitted to stand.'" (citing Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc., 546 U.S. 394, 400-01 (2006)).*

Shepherd v. Dallas County,
591 F.3d 445, 456 (5th Cir. 2009)

"[T]he record shows that Dallas County made a Rule 50(a) motion at the close of Shepherd's case and again at the close of its own case. It failed, however, to move for judgment as a matter of law or a new trial after the jury's verdict. Accordingly, ***our review is limited to plain error****."*
(citing Polanco v. City of Austin, 78 F.3d 968, 974 (5th Cir. 1996).

Al-Saud v. YouToo Media, L.P.,
754 Fed. Appx. 246, 250 n.1 (5th Cir. 2018)

"[I]t is not entirely clear from Wyatt's briefing whether he argues there was insufficient evidence to find him directly liable or whether he challenges as a legal matter the trial court's rejection of his argument that the jury should not have been asked about his liability. Our best reading is that he does both. That means at least the appeal of the jury question ***was sufficiently preserved in the trial court when he objected to it at the charge conference****."*

Cecil v. Smith,
804 S.W.2d 509, 511 (Tex. 1991)

"'No evidence' points may be raised by either (1) a motion for instructed verdict, (2) a motion for judgment notwithstanding the verdict, (3) an objection to the submission of the issue to the jury, (4) a motion to disregard the jury's answer to a vital fact issue or (5) a motion for new trial."

Stevenson v. DuPont, 327 F.3d 400, 407 (5th Cir. 2003)	*City of San Antonio v. Pollock*, 284 S.W.3d 809, 817 (Tex. 2009)
"[T]his Court ***may review*** the record to determine the sufficiency of the evidence; the defendant's waiver of any challenges to the admissibility of the expert testimony does not preclude such a sufficiency review by this Court."	"[W]hen the challenge is restricted to the face of the record—for example, when expert testimony is speculative or conclusory on its face—then a party ***may challenge*** the legal sufficiency of the evidence even in the absence of any objection to its admissibility."


IT'S A
FINALITY TRAP

Firefighters' Retirement System v. Citco Group Ltd., 963 F.3d 491, 491-92 & n.1 (5th Cir. 2020)

Trap: *"The Funds sought to render an interlocutory decision appealable by dismissing at least one defendant without prejudice. And under Williams, that means—absent some further act like a Rule 54(b) certification—there is no final, appealable decision."*

Hint: *"Because the dismissal without prejudice in this case occurred after the order the Funds seek to appeal, we do not decide how Williams . . . would apply* ***where the dismissal occurred before*** *the adverse, interlocutory order." (citation omitted).*

JUDGMENT CLARIFICATION

Acadian Diagnostics Labs., LLC v. Quality Toxicology LLC, 965 F.3d 404, 413 (5th Cir. 2020)

*"Rule 58 … allows a 'party [to] request that judgment be set out in a separate document.' And the Rule contemplates that the district court must pay careful attention to the preparation of this document, where, as here, the judgment may be more complicated than a general jury verdict. This Rule is designed to ensure that the litigants (and appellate courts) '**know precisely what the judgment is and when it was entered.'** Rule 58 thus ensures that a district court 'specif[ies] what matters: the consequences of the judicial ruling.'"*

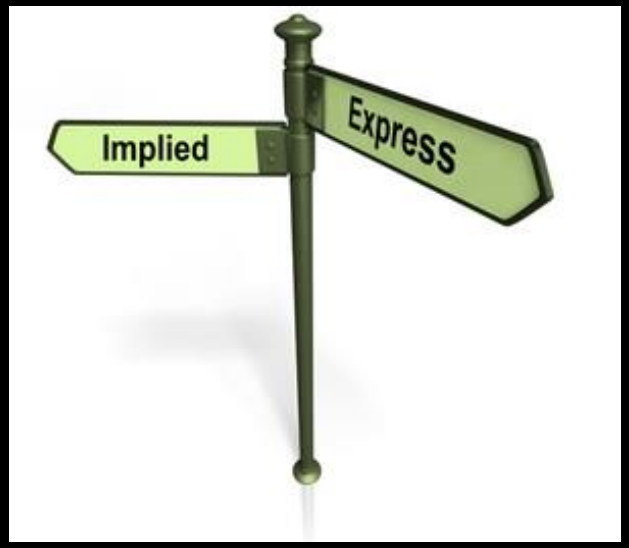
In re: RSR Corp., 405 S.W.3d 265, 271 n.3 (Tex. App.—Dallas 2013, orig. proceeding).

"Although the trial court's order … contains various statements that could be interpreted as 'fact findings,' these 'findings' do not constitute true 'findings of fact' because ***they were not separately filed*** *as required by Texas Rule of Civil Procedure 299a. … Accordingly, we employ the standard of review applicable to cases where no findings have been requested or filed."*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

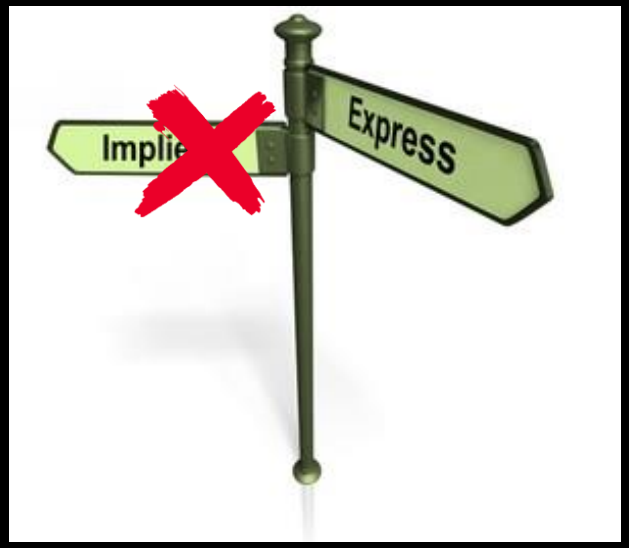
TEX. R. CIV. P. 299

"When findings of fact are filed by the trial court they shall form the basis of the judgment upon all grounds of recovery and of defense embraced therein. The judgment may not be supported upon appeal by a presumed finding upon any ground of recovery or defense, no element of which has been included in the findings of fact; but when one or more elements thereof have been found by the trial court, omitted unrequested elements, when supported by evidence, will be ***supplied by presumption in support of the judgment.*** *…"*



ENI US Operating Co. v. Transocean,
919 F.3d 931, 936 (5th Cir. 2019).

"Under [Fed. R. Civ. P.] 52(a), ***implicit findings will not automatically be inferred*** *to support a conclusory ultimate finding. The district court must lay out enough subsidiary findings to allow us to glean 'a clear understanding of the analytical process by which [the] ultimate findings were reached and to assure us that the trial court took care in ascertaining the facts."*



Guillory v. Dietrich,
598 S.W.3d 284 (Tex. App.—Dallas 2020, pet. denied).

"A trial court should make findings as to only disputed facts significant to the case's ultimate issues. ***Findings that a jury would be asked to make*** *in a case may be an appropriate guide."*

CROSS-APPEAL

Cooper Indus. v. Nat'l Union Fire Ins. Co., 876 F.3d 119, 126 (5th Cir. 2017)	*City of San Antonio v. Whittington*, 384 S.W.3d 766, 789 (Tex. 2012)
"[To the extent that the district court rejected the arguments in National Union's cross-appeal, 'an appellee may urge any ground available in support of a judgment even if that ground was … rejected by the trial court.'"	"The Whittingtons argue that a litigant is only attacking a judgment (and must only file a notice of appeal) if it seeks greater relief than awarded in the judgment. We agree. Here, the Whittingtons … only seek the same relief the judgment provided in the event that we rule for the City on its points of error. "

PLENARY POWER

Plenary Power in Texas State Court

- ***Rules.*** Tex. R. Civ. P. 329b(d), 316, 329b(e).
- ***Effect.*** "Any action taken by a trial court after it loses plenary power is void." *E.g., Pipes v. Hemingway*, 358 S.W.3d 438, 445 (Tex. App.—Dallas 2012, no pet.).
- ***Exception.*** "A judgment is void only when it is apparent that the court rendering the judgment had no jurisdiction of the parties, no jurisdiction of the subject matter, no jurisdiction to enter the judgment, or no capacity to act as a court." *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990).

Murphy v. Mejia Arcos, 2020 WL 4034967 *15
(Tex. App.—Dallas July 17, 2020, no pet. h.)

"It is well established that a party may amend its pleadings after verdict but before judgment."

STAYS PENDING APPEAL

TEX. R. APP. P. 29.5

"While an appeal from an interlocutory order is pending, the trial court retains jurisdiction of the case and unless prohibited by statute may make further orders, including one dissolving the order complained of on appeal. … But the court must not make an order that: (a) is ***inconsistent with*** *any appellate court temporary order; or (b)* ***interferes with or impairs*** *the jurisdiction of the appellate court or effectiveness of any relief sought or that may be granted on appeal."*

In re: Geomet Recycling,
578 S.W.3d 82, 88 (Tex. 2019)

*"**EMR did not ask the court of appeals to enforce any orders.** It asked the court of appeals to lift the stay so the trial court could proceed with matters that were pending in the trial court prior to the interlocutory appeal. One of those matters was a hearing on a motion for temporary injunction, which is plainly not a proceeding to enforce an existing order as contemplated by Rule 29.4."*

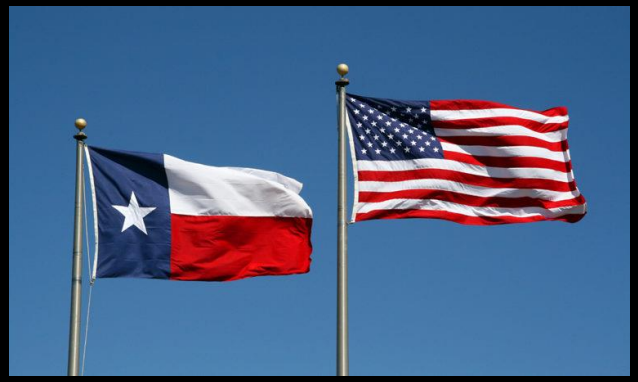
BNSF Railway Co. v. Panhandle Northern R.R. LLC, No. 4:16-cv-01061 (Doc. 265) (Nov. 21, 2018)

"[T]he Court does not believe PNR is likely to succeed on the merits on appeal—otherwise the Court would not have ordered equitable relief. But considering the second, third, and fourth factors, the Court finds the possibility that PNR could succeed on appeal means there is a possibility that denying a stay would result in BNSF and PNR both engaging in ***resource-consuming business rearrangements that would affect third parties****—such as BNSF's customers—and cause general instability throughout the pendency of appeal for freight business along the Borger Line. … This burden on resources and uncertainty for third parties is not, the Court finds, in the interest of BNSF, PNR, or the public. This is particularly true because it is possible for the Court to order PNR to mitigate the injury to BNSF of delayed relief over a finite period* ***'on terms for bond.'*** *See Fed. R. Civ. P. 62(c)."*

APPELLATE FEES

Atom Inst. Corp. v. Petroleum Analyzer Co.,
2020 WL 4557635 *6 (5th Cir. Aug. 7, 2020)

"The Texas Supreme Court has held that a Texas court of civil appeals does not have jurisdiction to initiate an award of appellate attorneys' fees because 'the award of any attorney fee is a fact issue which must [first] be passed upon the trial court.' … Our … Local Rule 47.8 does not require a party seeking appellate attorneys' fees to first request appellate attorneys' fees in the district court as a placeholder." (citations omitted).



APPELLATE COSTS

City of San Antonio v. Hotels.com. L.P.,
959 F.3d 159, 165 (5th Cir. 2020)

"In addition to the $905.60 sought in our court and various other court fees and copying costs, the bill of costs included ***$2,008,359.00*** *for 'post-judgment interest" and "****premiums paid for the supersedeas bonds*** *required to secure a stay of execution and preserve rights pending appeal (Fed. R. App. P. 39(e)(3)).*"

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