

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

Jack R. YARBROUGH,  
*Plaintiff-Respondent,*

*v.*

VIEWCREST INVESTMENTS, LLC,  
an Oregon limited liability company;  
Robert Harris, an individual;  
S. Fred Hall, Jr., an individual;  
Principal Holding Co., LLC,  
an Oregon limited liability company;  
and Jefferson Equities, LLC,  
an Oregon limited liability company,  
*Defendants-Appellants.*

Linn County Circuit Court  
13CV03671; A166103

Daniel R. Murphy, Judge.

Argued and submitted December 3, 2018.

Steven E. Benson argued the cause for appellants and filed the reply brief. Also on the opening brief were Russ Baldwin and Melinda B. Wilde.

William L. Ghiorso and Ghiorso Law Office filed the brief for respondent.

Before Lagesen, Presiding Judge, and DeVore, Judge, and James, Judge.

DeVORE, J.

Affirmed.



**DeVORE, J.**

Defendants to a foreclosure action appeal a corrected limited judgment and a limited judgment, assigning error to the trial court's decisions to enter each judgment. Defendants argue that the court exceeded its authority under ORCP 71 A when it entered a corrected "limited" judgment to fix the title of a mislabeled "general" judgment.<sup>1</sup> Specifically, defendants contend that: (1) ORS 18.112 provides the sole mechanism for correcting a judgment's designation; (2) the trial court lacked jurisdiction during an appeal; (3) the correction was not "clerical"; and (4) the court failed to follow the procedures of ORCP 71 A during an appeal. Defendants also argue that, because the court lacked authority to enter the new judgment, the original general judgment still controlled, disposing of all claims and precluding subsequent entry of a separate limited judgment. We conclude that the court did not err when it corrected the general judgment or entered the later limited judgment. Accordingly, we affirm.

**I. FACTS AND PROCEEDINGS**

The relevant facts are procedural and not in dispute. In June 2013, plaintiff brought a foreclosure action against Harris, Hall, Jefferson Equities, LLC, and Viewcrest Investments, LLC (hereafter referred to collectively as "Viewcrest") and Principal Holdings Co. ("Principal"). A trial was scheduled for December 2015. Principal failed to appear, and the court granted plaintiff's motion for an order of default. Viewcrest appeared and negotiated a settlement with plaintiff, and, in colloquy with the court, both parties confirmed that they understood the finality of that agreement.

Viewcrest agreed to draft a limited judgment incorporating the settlement's terms.<sup>2</sup> Over the next month, there was related correspondence, including a letter from

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<sup>1</sup> Defendants also challenge the sufficiency of a motion brought by plaintiff under ORCP 71 B. Because the trial court ultimately corrected the judgment's label on its own motion under ORCP 71 A, and it did so without error, we need not address those alternative arguments.

<sup>2</sup> Viewcrest had requested that the trial court enter a limited judgment, rather than a general judgment, to keep the case open and allow for resolution of disputes about attorney fees in the event of a breach.

Viewcrest's counsel to the court with a proposed version of the agreement enclosed. The trial court and parties planned to finalize the judgment against Viewcrest on January 29, 2016. However, a dispute arose as to what terms the December settlement agreement had entailed, delaying entry of that judgment. In February, the court held a hearing to resolve the dispute, reviewed an audio recording of the negotiation, and issued a letter opinion reciting the terms. It was late February when the court finally entered the limited judgment giving effect to the settlement agreement.

Meanwhile, per the trial court's instruction, plaintiff drafted a general judgment of foreclosure against Principal, which he submitted on January 29, 2016. The trial court entered it three days later. The judgment recited that Principal had failed to appear for trial, and that the trial court had entered an order of default against Principal on the judicial foreclosure claim. The judgment then stated:

“[I]t is hereby ordered and adjudged that Plaintiff shall have final judgment against Defendant Principal Holding Co. on Plaintiff's claim for Judicial Foreclosure. From this day forward, Defendant Principal Holding Co. is foreclosed of any and all right, title, lien, interest, or claim in the Subject Property \*\*\*.”

(Capitalization omitted.)

Principal appealed the general judgment of foreclosure, and Viewcrest appealed the limited judgment finalizing the settlement agreement.<sup>3</sup> The Appellate Commissioner, on the court's own motion, raised the issue of whether the limited judgment against Viewcrest was valid in light of the fact that the trial court had previously entered a general judgment in the case, effectively dismissing all claims with prejudice. The commissioner surmised that the predicament occurred “because plaintiff and defendants thought they had settled the case in late 2015, they anticipated that the limited judgment would be entered before the general judgment,” and “the dispute over whether the settlement

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<sup>3</sup> Principal assigned error to the trial court's denial of a motion to extend time and its decision to grant the order of default. Viewcrest's appeal was dismissed before briefing. The merits of these appeals have no bearing on the current case.

should have included a particular term delayed entry of the limited judgment until after entry of the general judgment.” The commissioner entered an order to show cause as to why he should not vacate the limited judgment as a nullity and dismiss the appeal, but he also suggested that “the designation of the respective judgments as general and limited judgments may be correctable under ORCP 71, as provided by ORS 18.112.”

Following that suggestion, in June 2016, plaintiff moved under ORCP 71 to correct the label of the general judgment to a limited judgment. Plaintiff explained that he had mistakenly designated the judgment against Principal as “general” rather than “limited,” and that the court could correct the mistake pursuant ORS 18.107, ORS 18.112, and ORCP 71 B.

The trial court held a hearing on plaintiff’s motion to correct the judgment, which it eventually granted by order in December 2016. The court explained:

“Under ORCP 71 A the court may, on its own motion, correct clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission ‘may be corrected by the court at any time on its own motion or on the motion of another party’. It is clear to the court that the submission of the general judgment by plaintiff was done in error simply because there is no other explanation consistent with the facts in this case. \*\*\* The court has a vested interest in making sure its orders and judgments are correct and reflect a proper ruling of the court. The court likewise has an interest in correcting its own errors. Therefore the court can and does, on its own motion, as well as plaintiff’s, correct the general judgment to render it a limited judgment.”

Once the trial court granted the motion to correct the judgment, the Appellate Commissioner returned to Viewcrest’s appeal. The commissioner determined that the trial court’s decision granting the motion “[r]edenominating” the judgment against Principal would remove “the impediment to the validity” of the limited judgment against Viewcrest. Operating under the assumption that, “in due course, the trial court [would] enter a judgment, titled as a limited judgment, disposing of plaintiff’s claims” against

Principal, the commissioner proceeded to consider arguments around Viewcrest's appeal.<sup>4</sup>

As it would turn out, however, the trial court did not immediately enter a corrected judgment; Viewcrest objected to, and delayed, that action. Come May 2017, when no corrected judgment had been entered, the Appellate Commissioner issued an order on behalf of the Court of Appeals that vacated the limited judgment against Viewcrest as a nullity and dismissed the appeal.

In August 2017, the trial court was satisfied that it did, indeed, have authority under ORCP 71 A to correct the designation of the general judgment against Principal. It issued an opinion letter stating,

“If the plaintiff submits a corrected limited judgment which is identical in content to the February 16, 2016 limited judgment it will constitute the correction of a clerical mistake and not the alteration of a substantive provision. It will not deviate in any respect from what the parties agreed upon and expressed on the record in open court. It will not add or delete one substantive provision. Under ORCP 71A this court retains the jurisdiction to enter such a corrected limited judgment under the cases cited in this case.

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“This court will enter a proper Corrected Limited Judgment when submitted by the plaintiff with a current date of entry. The court will compare the submitted judgment with the February 2016 judgment to insure it is identical and if it is not it will not be signed. This will be done on the Court's own motion pursuant to ORCP 71A.”

(Emphasis omitted.) Thereafter, the trial court entered a corrected limited judgment of foreclosure against Principal that mirrored the prior general judgment in every respect but the label. No longer precluded from doing so, the court entered a new limited judgment against Viewcrest that, as before, effectuated the December 2015 settlement agreement. Principal and Viewcrest appeal those judgments respectively.

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<sup>4</sup> The Appellate Commissioner considered and denied a motion by plaintiff to dismiss Viewcrest's appeal for involving an unappealable stipulated judgment.

## II. TIMELINESS OF APPEAL

As a preliminary matter, we dispose of Principal's appeal due to its untimely filing. *See* ORS 19.255(1) ("Except as provided in this section, a notice of appeal must be served and filed within 30 days after the judgment appealed from is entered in the register."). The trial court entered the original judgment against Principal in February 2016, but Principal filed the current appeal in October 2017. We decided the merits of an appeal from that general judgment. *Yarbrough v. Viewcrest Investments, LLC*, 293 Or App 121, 432 P3d 1168 (2018), *rev den*, 364 Or 535 (2019). Principal now appeals the corrected limited judgment. However, the two judgments against Principal were identical except for title; nothing changed with respect to the disposition of claims against Principal. Because re-designating the judgment's title did not affect a substantial right of Principal, the deadline for filing remains the same. ORS 18.107(2) ("Unless a correction to a judgment affects a substantial right of a party, the time for appeal of the judgment commences upon entry of the original judgment."). Even if that prior decision did not bar Principal's appeal on the merits, we could not entertain Principal's appeal because it is time-barred.

Viewcrest's appeal is timely because it was filed in November 2017 and arises from the limited judgment that the court entered in October 2017. Therefore, we consider the merits of that appeal.

## III. ARGUMENTS AND ANALYSIS

On appeal, the remaining defendants challenge the trial court's decisions to enter a corrected limited judgment against Principal and a limited judgment against Viewcrest. They argue that the trial court lacked authority to correct the general judgment on its own motion under ORCP 71 A without having plaintiff satisfy ORCP 71 B's requirements. Defendants contend that, because the court lacked authority to enter a corrected limited judgment, the original general judgment resolved all claims and controlled, such that the court erred in entering a subsequent limited judgment against Viewcrest.

Defendants offer several theories as to why the trial court lacked authority under ORCP 71 A. First, they assert that ORS 18.112 provides the only means by which a court can change a judgment's designation. Second, defendants argue that ORS 19.270(1), which enumerates the powers of a trial court during the pendency of an appeal, permits the court to decide a motion for relief under ORCP 71 B, but not ORCP 71 A. Third, defendants contend that ORCP 71 A is limited to "clerical mistakes made by court staff to speak the truth," and that changing the judgment's designation did not qualify because it was a "legal determination that only a judge can make." Finally, defendants claim that, while an appeal is pending, ORCP 71 A only allows a court to correct a judgment as provided in ORCP 71 B. For all those reasons, they argue that the court should have required plaintiff to comply with ORCP 71 B before correcting the judgment.

Plaintiff counters that ORS 19.270(4)(b) gives the trial court jurisdiction during an appeal to enter a new judgment when the judgment under appeal is defective. He notes that ORCP 71 A expressly allows a trial court to correct clerical errors, even during an appeal. Plaintiff argues that changing the judgment's designation constituted such a correction, as it merely conformed the record to what actually occurred in the proceedings and involved nothing substantive. Therefore, plaintiff contends, entry of each judgment was proper.

The parties' arguments thus present four questions. First, we must decide whether ORS 18.112 confines the trial court's authority under ORCP 71 A. Second, we must ascertain whether the trial court's jurisdiction during the pendency of an appeal covers clerical corrections. If so, we must next resolve whether the correction here was clerical, and finally whether the court followed the necessary steps in correcting the error. For reasons discussed below, we conclude that the trial court did not err in entering either of the judgments at issue in this appeal.

#### A. *Overarching Rule*

Subject to certain exceptions, and unless it states otherwise, a general judgment dismisses with prejudice any



request for relief in an action not decided by or incorporated into the general judgment or otherwise decided by a previous limited judgment. ORS 18.082(3). However, a court may correct the terms of a civil judgment previously entered “as provided in ORCP 71.” ORS 18.107(1). Under ORS 18.112, a court may, upon a party’s motion, enter a corrected judgment changing the judgment’s designation from ‘general’ to ‘limited,’ if

“(1) \*\*\* the moving party establishes that:

“(a) Except by operation of ORS 18.082 (3), the judgment does not decide all requests for relief in the action other than requests for relief previously decided by a limited judgment or requests for relief that could be decided by a supplemental judgment; and

“(b) The judgment was inadvertently designated as a general judgment under circumstances that indicate that the moving party did not reasonably understand that the requests for relief that were not expressly decided by the judgment would be dismissed.

“(2) A motion under subsection (1) of this section must be filed within the time provided by ORCP 71 B.

“(3) Upon a motion of any party, the court shall enter a corrected judgment under ORS 18.107 that changes to a limited judgment any document that has the effect of a general judgment \*\*\*.

“(4) \*\*\* A motion may be filed under this section while an appeal is pending as provided in ORCP 71 B(2).”

At the same time, ORCP 71 provides guidance as to when and how a trial court may grant relief from a judgment:

“A Clerical mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own motion or on the motion of any party and after such notice to all parties who have appeared, if any, as the court orders. During the pendency of an appeal, a judgment may be corrected as provided in subsection (2) of section B of this rule.

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“B(2) When appeal pending. A motion under sections A or B may be filed with and decided by the trial court during the time an appeal from a judgment is pending before an appellate court. The moving party shall serve a copy of the motion on the appellate court. The moving party shall file a copy of the trial court’s order in the appellate court within seven days of the date of the trial court order. Any necessary modification of the appeal required by the court order shall be pursuant to rule of the appellate court.”

- B. *ORS 18.112 does not limit a trial court’s authority to correct a judgment under ORCP 71 A when the designation is a clerical mistake.*

Defendants argue that ORS 18.112 provides the sole avenue for correcting a judgment’s designation, foreclosing the court’s ability to do so under ORCP 71 A.<sup>5</sup> Their argument therefore presents a question of statutory construction. We must determine whether the legislature intended ORS 18.112 to circumscribe the court’s authority to correct clerical mistakes on its own motion. We conclude that it did not.

We begin with the text and context of the statute, looking, as necessary, to any pertinent legislative history. *See State v. Gaines*, 346 Or 160, 171-73, 206 P3d 1042 (2009) (outlining the methodology). Neither statute nor case law discuss the relationship between ORS 18.112 and ORCP 71 A. The statute, ORS 18.112, stipulates the process by which a *party* can move to change a judgment’s designation from general to limited. It references ORCP 71 B. ORS 18.112(2) (“A motion \*\*\* must be filed within the time provided by ORCP 71 B.”); ORS 18.112(4) (“A motion may be filed under this section while an appeal is pending as provided in ORCP 71 B(2).”). However, the statute is silent as to whether or how a court may, on its *own motion*, correct a judgment’s designation or clerical mistakes.

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<sup>5</sup> During oral argument, we inquired into whether defendants were arguing that ORS 18.112 limits the trial court’s authority under ORCP 71, *even* in situations involving mistakes that are undisputedly clerical. Defendants agreed with that suggestion. Defendants developed little of this argument in their briefs, and they provide no authority to support it. Nevertheless, “[i]n construing a statute, this court is responsible for identifying the correct interpretation, whether or not asserted by the parties.” *Stull v. Hoke*, 326 Or 72, 77, 948 P2d 722 (1997).

Adopting defendants' interpretation would require us to impermissibly read into the statute language that does not exist. ORS 174.010 ("In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted[.]"). The statute could state that it applies to a trial court's own motions or to clerical corrections. However, it does not, and we are barred from inserting those provisions ourselves.

Nor does the context of the enactment of ORS 18.112 support defendant's interpretation. The statute's legislative history suggests that lawmakers intended it to expand—not limit—avenues available for remedying incorrect judgments, and, in doing so, it intended to preserve existing powers of courts. The legislature enacted ORS 18.112 as part of a comprehensive revision of Oregon law pertaining to judgments. Audio Recording, House Committee on Judiciary, HB 2646, Mar 25, 2003, at 38:15 (comments of David Heyndrickx, Senior Deputy Legislative Counsel), [https://sos.oregon.gov/archives/Pages/records/legislative\\_minutes.aspx](https://sos.oregon.gov/archives/Pages/records/legislative_minutes.aspx) (accessed July 3, 2019). The new statutory scheme created three categories of judgments: general judgments, limited judgments, and supplemental judgments. *Id.* The "single most significant change in judgment procedure made by the bill" was the strict requirement that every judgment document indicate to which of these categories it belongs. Judgments/Enforcement of Judgments: Judgments Report (HB 2646), Oregon Law Commission, Feb 6, 2003, 12 (Judgments Report). Under that system, a general judgment replaced what was commonly known as a final judgment and would resolve all issues that earlier judgments left unaddressed, concluding the litigation. *Id.*

Drafters of the legislation were "very concerned about the consequences of this provision," particularly the "danger posed" that "parties might inadvertently submit a general judgment when only a limited judgment was intended." *Id.* Specifically, drafters contemplated the premature termination of cases and related legal malpractice suits. Audio Recording, House Committee on Judiciary, HB 2646,

Mar 25, 2003, at 46:00 (comments of David Heyndrickx, Senior Deputy Legislative Counsel), [https://sos.oregon.gov/archives/Pages/records/legislative\\_minutes.aspx](https://sos.oregon.gov/archives/Pages/records/legislative_minutes.aspx) (accessed July 3, 2019).

To address these concerns, the legislation included a special section on correcting mislabeled judgments, now ORS 18.112. *Id.*; Judgments Report 16. This provision created a procedure whereby parties could come back later to say that they had not intended the judgment to be a general judgment ending the entire case. Audio Recording, House Committee on Judiciary, HB 2646, Apr 18, 2003, at 3:30 (comments of David Heyndrickx, Senior Deputy Legislative Counsel), [https://sos.oregon.gov/archives/Pages/records/legislative\\_minutes.aspx](https://sos.oregon.gov/archives/Pages/records/legislative_minutes.aspx) (accessed July 3, 2019).

When the legislature devised ORS 18.112 as a new mechanism for relief from mistakenly designated judgments, it also intended to preserve the existing powers of trial courts to make such corrections. At a meeting of the Oregon Law Commission, which drafted the new judgments law, Chairman Lane Shetterly asked whether, under the new statutory scheme, parties would still have the ability to modify inadvertent judgments. Tape Recording, Oregon Law Commission, LC 1090, Feb 6, 2003, Tape 1, Side A (statement of Chairman Lane Shetterly). David Heyndrickx, Senior Deputy Legislative Counsel, responded:

“[Y]ou would then be under section 12,<sup>6</sup> looking at making the correction, you would be under the ORCP, trying to show, you would have to be showing excusable neglect and some of the things that are in ORCP 71 currently to be a correction to the judgment. And *also* in ORCP 71 there is a savings provision that recognizes the *court’s inherent authority to always go back and correct its own judgment*. There are cases about what that means, but there are, of course, ways to go back and correct judgments.”

*Id.* (emphases added).<sup>7</sup> The drafters recognized the trial court’s power to correct judgments without qualification. Further,

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<sup>6</sup> Section 12 refers to what is now ORS 18.107, regarding corrections to civil judgments.

<sup>7</sup> There is also some indication that courts could decline to give a judgment the effect of a general judgment when it had been improperly designated as such. With respect to the appealability of a general judgment, the drafters noted:

as the word “also” indicates, this power would exist *in addition to* the avenues for correcting judgments under the new statutes. These discussions demonstrate that lawmakers contemplated, and opted to maintain, the court’s inherent authority to correct a judgment *sua sponte* in the comprehensive judgments scheme.

Indeed, the drafters expressly chose not to place additional restrictions on the correction of judgments. They had reservations regarding the potential for abuse under ORS 18.112, and they flagged the provision as possibly needing “further massaging.” Tape Recording, Oregon Law Commission, LC 1090, Feb 6, 2003, Tape 2, Side A (statement of David Heyndrickx, Senior Deputy Legislative Counsel). Nonetheless, they proceeded with the proposal—with no further requirements or limitations—in order to ensure relief for confused practitioners and their clients. *Id.*

The legislature left ORCP 71 intact amidst its comprehensive revisions to Oregon judgment law, further illustrating the intent to preserve and incorporate existing powers. In 1978, ORCP 71 A codified Oregon case law enshrining a trial court’s authority to correct clerical mistakes. *Hopkins and Hopkins*, 102 Or App 655, 658, 796 P2d 660 (1990), *rev den*, 311 Or 87 (1991). Twenty-five years later, when the legislature overhauled Oregon’s judgments scheme, it refrained from amending ORCP 71. As it happened, ORCP 71 would not see an amendment for seven years, and even then, it involved no change to ORCP 71 A. Council on Court Procedures, *2009-2011 Biennium History Materials*, May 21, 2010, Draft 1 to Rule 71, 1 (2011). Neither ORS 18.112 nor ORCP 71 A have seen changes that would suggest an intent to rein in trial court powers.

In light of the statute’s text and context, we conclude that ORS 18.112 does not limit the trial court’s authority to

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“This does not mean that an appellate court must entertain an appeal from anything that has been labeled as a judgment and entered in the register. For instance, if a malicious party labeled a grocery list as a general judgment, an oblivious judge signed the document, and the clerk entered it in the register, the appellate court is not somehow compelled to entertain an appeal from a non-decision by the court.”

Judgments Report 14 (emphasis in original; footnotes omitted). Insofar as a judgment’s designation involves a “non-decision,” it may receive different treatment.

correct clerical mistakes under ORCP 71 A. The text creates no such restriction, and we are in no position to do so. Further, the statute's legislative history indicates that lawmakers intended it to make it easier, not more difficult, to correct judgments, and that they wanted to preserve the authority of the trial court to correct its own judgments.

C. *A trial court retains jurisdiction to correct clerical mistakes under ORCP 71 A during an appeal.*

We next address whether the trial court had jurisdiction to correct a clerical mistake under ORCP 71 A during an appeal. We conclude that it does. Normally, once a party serves and files a notice of appeal, the appellate courts assume jurisdiction over that action. ORS 19.270(1). However, ORS 19.270 enumerates several matters for which the trial court retains jurisdiction. In relevant part, the statute provides, “Notwithstanding the filing of a notice of appeal, the trial court has jurisdiction \*\*\* [t]o enter an order or supplemental judgment under ORCP 71 \*\*\*.” ORS 19.270(5). ORCP 71 A, in turn, allows the trial court to correct clerical mistakes in judgments arising from oversight or omission. “Taken together, ORS 19.270(5)(a) and ORCP 71 A provide that a trial court has jurisdiction to correct clerical mistakes in a judgment after a party files a notice of appeal from that judgment.” *Ramis Crew Corrigan v. Stoelk*, 193 Or App 700, 706, 92 P3d 154 (2004).<sup>8</sup>

We have previously permitted a clerical correction during an appeal like the one at hand. In *Ramis*, the trial court entered a judgment which misstated the accrual of

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<sup>8</sup> What is now paragraph (b) of ORS 19.270(5) was, at the time of *Ramis*, paragraph (a). See ORS 19.270(5)(a) (2001), amended by Or Laws 2013, ch 10, § 1. See also *Ramis*, 193 Or App at 705 n 5 (noting that the opinion would reference the 2001 version of the statute given the timing of the judgments at issue in the case). *Ramis* considered the version of ORS 19.270 preceding the 2003 overhaul of judgments law. However, we find nothing in the text of the statute, or in ORCP 71, to indicate that the legislature intended to change its effect in this regard; the provisions have seen almost no revisions. In addition, when reading ORS 19.270(5)(b) in the context of the entire statutory scheme, it is clear that the statute contemplates the court entering a corrected judgment on its own order. In particular, ORS 18.107, ORS 18.112, and ORCP 71 specifically permit the correction of, and relief from, *judgments*.

interest for an award. *Id.* at 703. The defendants appealed that judgment. *Id.* While the appeal was pending, the trial court entered an amended judgment addressing the accrual issue but otherwise changing nothing. *Id.* The plaintiffs appealed that amended judgment. *Id.* at 705. This court issued an order to show cause as to why we should not dismiss the latter appeal on the ground that the filing of the notice of appeal from the original judgment had terminated the trial court’s jurisdiction, thereby precluding entry of the amended judgment. *Id.* at 703. Ultimately, we concluded that the trial court retained jurisdiction to correct clerical mistakes during an appeal, and we upheld the amended judgment. *Id.* at 710.

Likewise, here, the trial court would have the power to make clerical corrections notwithstanding the appeal. As in *Ramis*, the trial court entered a corrected judgment to address a purported clerical mistake. Assuming that mistake was indeed ‘clerical,’ correcting it was within the court’s jurisdictional authority. *Id.*; *cf. Mullinax v. Mullinax*, 292 Or 416, 424, 639 P2d 628 (1982) (the trial court has the “inherent power” to address clerical errors to “make the record speak the truth and conform it to what actually occurred,” even during an appeal) (quoting *Hubbard v. Hubbard*, 213 Or 482, 487, 324 P2d 469 (1958))).

Defendants cite three cases to argue that the trial court lacked jurisdiction. The first is *Koller v. Schmaing*, 254 Or App 115, 296 P3d 529 (2012), *rev den*, 353 Or 445 (2013). Defendants’ reliance on *Koller* is misplaced because that case addresses another provision, ORCP 71 C. *Id.* at 128-31. Moreover, we explicitly recognized in *Koller* that, although “once a notice of appeal is filed, the trial court’s jurisdiction to set aside or ‘correct’ a general judgment is extremely limited,” ORCP 71 A and B do, under ORS 19.270(5), “confer such authority and, concomitantly, jurisdiction.” *Id.* at 130-31. The other two cases that defendants cite make no mention of ORCP 71 A or any statute. *Dickey v. Rehder*, 239 Or App 253, 244 P3d 819 (2010), *rev den*, 349 Or 664 (2011); *Duwall v. McLeod*, 331 Or 675, 21 P3d 88 (2001). In sum, contrary to defendants’ view, the trial court had jurisdiction to correct a clerical error under ORCP 71 A.

D. *Entry of a mislabeled judgment can be a clerical mistake subject to correction under ORCP 71 A.*

The more crucial question, then, is whether the judgment's mistaken designation is "clerical." Under these circumstances, we conclude that it is. We have previously explained the meaning of clerical mistakes:

"When the Oregon Rules of Civil Procedure were adopted in 1978, ORCP 71 A codified Oregon case law, which had previously given the court power to correct 'clerical, as contrasted with judicial errors, in order to make the record speak the truth and conform it to what actually occurred.'"

*Hopkins*, 102 Or App at 658-59 (quoting *Hubbard*, 213 Or at 487). We noted that the Oregon Supreme Court had broadly defined "clerical":

"Clerical \*\*\* covers all errors, mistakes, or omissions which are not the result of the exercise of the judicial function. In other words, the distinction does not depend so much upon the person making the error as upon whether it was the deliberate result of judicial reasoning and determination, regardless of whether it was made by the clerk, by counsel or by the judge."

*Id.* at 659 (internal quotation marks and brackets omitted) (quoting *Hubbard*, 213 Or at 487-88). A clerical error "is a type of mistake or omission mechanical in nature which is apparent on the record and which does not involve a legal decision or judgment by an attorney." *Id.* (quoting *United States v. Kenner*, 455 F2d 1, 6 (7th Cir 1972)) (noting that ORCP 71 A is patterned on FRCP 60(a)). It is one "that causes a 'judgment, through oversight or omission, not to reflect what occurred in the proceeding that led to the judgment.'" *Ramis*, 193 Or App at 707 (quoting *McClure v. Lebenbaum*, 181 Or App 268, 274, 45 P3d 1038 (2002)).

For instance, in *Hopkins*, a trial court corrected a "clerical" error when it amended a judgment to incorporate a settlement agreement, which it initially omitted by mistake, in order to reflect what actually occurred in the proceedings. 102 Or App 655. There, a husband and wife executed a property settlement agreement. *Id.* at 657. Some years later, the parties finally separated and filed for dissolution. *Id.* At that



time, the trial court entered a letter opinion that, in part, approved the earlier division of property. *Id.* Subsequently, the court entered a dissolution judgment that specifically distributed the remaining property. *Id.* at 658. That dissolution judgment incorporated by reference the earlier letter opinion, but failed to specifically mention or address the properties that the settlement agreement had covered. *Id.* at 657-58. A few years later, after a dispute arose, the court entered an amended judgment specifically awarding property in accordance with the settlement agreement. *Id.* at 658.

The wife appealed the amended judgment, arguing, in part, that the dissolution judgment invalidated the settlement agreement. *Id.* We disagreed, reasoning that “[w]hat actually occurred” in the initial judgment “was a distribution identical to the distribution of properties in the [settlement] agreement with the additional award of the [remaining] property,” and that the court’s failure to explicitly incorporate the settlement agreement into that initial judgment “was a clerical error of omission by the judge, the correction of which involves no judicial reasoning or determination.” *Id.* at 659. Therefore, “ORCP 71 A gave the trial court authority to amend the judgment to correct the omission.” *Id.*

In contrast, we have determined that errors were judicial, and not clerical, when they reflected the conscious and unequivocal decision of the court, and the record contained no evidence from the proceedings to suggest otherwise. *See, e.g., Horrocks and Horrocks*, 124 Or App 233, 237, 862 P2d 540 (1993), *rev den*, 318 Or 326 (1994) (where the record showed that the court “made a conscious and unequivocal decision” on the division of retirement benefits in a dissolution judgment, mistake of fact as to the value of retirement plan was a judicial error not subject to clerical correction); *McClure*, 181 Or App at 274 (trial court’s failure to rule on court costs by the time of the final judgment’s entry was not a “clerical mistake”; the court was not conforming the judgment to what “actually occurred” in the action when it entered a supplemental judgment imposing all costs on the plaintiff, the plaintiff had petitioned for

deferral or waiver of filing fees, and the record contained no evidence that the court had intended to enter a judgment against the plaintiff for all costs).

Although we have not directly decided the issue, we have suggested that assigning the wrong title to a judgment can constitute a correctable clerical mistake under ORCP 71 A. In *Garcia v. DMV*, the trial court, after resolving all claims in the case, signed and filed a general judgment. 195 Or App 604, 606, 99 P3d 316 (2004), *aff'd*, 201 Or App 299, 120 P3d 29 (2005). However, the court administrator described the document as a limited judgment when making the notation in the court register. *Id.* We determined that mislabeling the judgment in the court register was a mere clerical error and would, therefore, not alter the effect of the judgment, *i.e.*, its enforceability or appealability. *Id.* at 618. We further indicated that fixing the title on a judgment would similarly constitute a clerical correction, but one subject to the procedural requirements of ORCP 71 A. *See id.* at 618 n 13 (recognizing that such a clerical correction could be made to the judgment itself, but would implicate “further procedures pertaining to the court’s authority when an appeal is pending” under ORCP 71 A).

We conclude that, on this record, designating the judgment as “general” rather than “limited” was a clerical error subject to correction under ORCP 71 A. The designation was not the deliberate result of conscious legal reasoning and determination. To the contrary, it undermined the express decisions of the parties and the trial court. Changing the designation merely conformed the judgment to what actually occurred throughout the proceedings leading to its entry.

Indeed, defendants concede, and the record shows, that dismissal of claims against Viewcrest was a mistake.<sup>9</sup> Court communications and proceedings demonstrate an intent to settle claims involving Viewcrest and to give the judgment against Principal limited effect. The settlement

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<sup>9</sup> At oral argument, defendants conceded that the trial court never intended to resolve all claims against all parties when entering the judgment against Principal.

was reached—and the court confirmed its finality—on the record. Subsequent correspondence with the court showed everyone planned to follow through. The court later held a hearing, issued a letter opinion, and entered a limited judgment addressing and incorporating the settlement, and no one asserted that the claims had been dismissed. Meanwhile, the court entered a judgment against Principal without mentioning Viewcrest, focusing entirely on the case history and disposition with respect to Principal.<sup>10</sup>

Insofar as one judgment’s title rendered the other judgment invalid, that was an unintentional error. It is evident that the court intended the two judgments to be distinct and concurrent. The court instructed Viewcrest to submit the limited judgment in the very same proceeding that it requested the general judgment, suggesting that the latter would not singularly dispose of all matters.<sup>11</sup> The proposed timeline for entry of the limited judgment would have, if observed, ensured no conflict with the general judgment. Entering a judgment with the designation “general,” despite delay in entry of the limited judgment, was an oversight; the mislabeling involved no factual analysis, legal reasoning, or conscious decision-making. It was a clerical mistake.

Correcting that mistake allowed the judgment to reflect the proceedings that undisputedly transpired. What had actually occurred was a default judgment against

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<sup>10</sup> We recognize that a general judgment dismisses with prejudice claims that it does not explicitly mention. Here, we allude to the judgment’s text only to help discern whether its designation was “the deliberate result of judicial reasoning and determination.”

<sup>11</sup> In fact, the court, Viewcrest, and plaintiff expressly stated that the two were separate matters. The following discussion occurred at the December 2015 proceedings:

“[PLAINTIFF’S COUNSEL]: This is with regard to [Principal]. Under Rule 69, Your Honor, ‘When a party against whom judgment for affirmative relief is sought and served has failed to appear by filing a motion, answer, or otherwise to defend as provided in the rules the party seeking affirmative relief may apply for an order of default by the judgment (phonetic),’ and I think it’s appropriate for plaintiff today to ask for an order of default. \*\*\*

“THE COURT: So was there something that—

“[VIEWCREST’S COUNSEL]: This is not part of the settlement.

“THE COURT: This doesn’t sound like it’s part of the settlement. This is a separate matter.

“[PLAINTIFF’S COUNSEL]: We have to file a separate motion.”

Principal and a settlement between plaintiff and Viewcrest. The subsequent correction was consistent with—and necessary to carrying out—the intent of the parties and the decisions of the court. Only the title changed; the body of the judgment was identical to that of its predecessor. The court merely made the record speak the truth. Relabeling the judgment was a clerical correction that ORCP 71 A permitted.

Defendants assert that the judgment’s designation was a judicial error, not clerical, because it involved a “legal determination that only a judge can make.” However, that view focuses too narrowly on the *type* of decision involved, ignoring whether that decision was the deliberate result of the court’s reasoning and determination. Correctly analyzed, a court can correct a judgment to make the record speak the truth and conform it to what actually occurred, even when the correction addresses an oversight or omission of matters of legal significance. *See e.g., Hopkins*, 102 Or App 657-59 (trial court corrected a “clerical” error when it amended a judgment to incorporate a settlement agreement, which it initially omitted by mistake, in order to reflect what actually occurred in the proceedings); *Johnson v. Overbay*, 85 Or App 576, 582, 737 P2d 1251, *modified on recons*, 87 Or App 540, 743 P2d 181, *rev den*, 304 Or 547 (1987) (purchaser was entitled to have interlocutory judgment of foreclosure on land sales contract set aside in order to correct a clerical error of including land in judgment that was not involved in the land sale contract).

Defendants also contend that, because it was plaintiff’s attorney who prepared the general judgment against Principal, the judgment’s designation necessarily required “legal judgment” and was therefore not a clerical mistake. This argument misses the mark; the proper inquiry focuses on the degree of conscious and purposeful judicial decision-making—not the identity of the person—involved in making the error. *Hopkins*, 102 Or App at 659. Here, the record neither suggests that the court meant to dismiss claims against Viewcrest nor, for that matter, that the parties contemplated whether the title remained correct given the timing of the judgments.

In sum, a judgment's designation can constitute a clerical mistake when, as here, it was not the deliberate result of judicial reasoning and determination. Under such circumstances, the court can, pursuant ORCP 71 A, correct the error so that the record reflects what actually occurred in the proceedings.

E. *The trial court followed the proper procedural requirements of ORCP 71 A.*

As noted, the trial court corrected the clerical error pursuant its authority under ORCP 71 A. Next, we must determine whether the court adhered to the procedural requirements of that rule. We conclude that it did.

Defendants state that, under ORCP 71 A, “for judgments on appeal, they are to be corrected, if at all, only as allowed under ORCP 71 B(1) and (2).” ORCP 71 A contains no reference to ORCP 71 B(1). However, as defendants correctly note, ORCP 71 A states that judgment may be corrected as provided under ORCP 71 B(2) during an appeal. ORCP 71 B(2), in turn, imposes service and filing requirements on the moving party and requires that necessary modifications to the appeal be made pursuant to appellate court rule. We understand defendants to argue that the trial court erred in correcting the clerical issue because plaintiff failed to comply with the service and filing requirements of a moving party.

Defendants' argument makes little sense given the fact that the trial court ultimately made the correction on *its own* motion in September 2017—not based on plaintiff's original motion in June 2016. In other words, plaintiff was not the moving party and he therefore had no service or filing obligations. Indeed, making the trial court's authority dependent on a party's motion, service, and filing would defeat the purpose of allowing the court to act on its own motion. Such a requirement would greatly inhibit the court's ability to correct even the most obvious and noncontroversial of mistakes. Defendants point to no specific procedural error under ORCP 71 A on the part of the court itself, and we see none. Accordingly, we affirm.

- F. *The trial court was free to enter a subsequent limited judgment against Viewcrest.*

Defendants argue that the general judgment against Principal precluded entry of the limited judgment against Viewcrest that later followed. However, in entering a corrected limited judgment, the court removed that obstacle and was free to enter another limited judgment resolving remaining claims. Because the trial court did not err in correcting the general judgment, it did not err in entering the limited judgment.

#### IV. CONCLUSION

We conclude that the trial court did not err in entering either contested judgment. The court properly exercised its authority to address a clerical error under ORCP 71 A. ORS 18.112 did not limit this power. Under the factual circumstances of this case, the judgment's designation clearly qualified as the sort of clerical mistake that the trial court had jurisdiction to correct, regardless of the pending appeal. Defendants cite no other procedural errors, and we observe none. Consequently, because the court did not err in entering the corrected limited judgment against Principal, nothing precluded entry of a limited judgment against Viewcrest.

Affirmed.