NO. 12-09-00260-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

ROBERT M. GRIFFIN, ROBERT M. GRIFFIN, JR., CHARLES W. CONRAD, MARVIN OLGILVIE, AND MARIE OGILVIE, APPELLANTS/CROSS-APPELLEES	***§***	***APPEAL FROM THE 124TH***
V.		
LARRY T. LONG, L. ALLAN LONG, AND B. VIRGINIA LONG, IN THEIR CAPACITIES AS TRUSTEES OF THE LAWRENCE ALLAN LONG TRUST, THE CHARLES EDWARD LONG TRUST, THE LARRY THOMAS LONG TRUST, AND THE JOHN STEPHEN LONG TRUST d/b/a THE LONG TRUST, APPELLEES/CROSS-APPELLANTS	***§***	***JUDICIAL DISTRICT COURT***
	§	***GREGG COUNTY, TEXAS***

MEMORANDUM OPINION

Appellants/Cross-Appellees Robert M. Griffin, Robert M. Griffin, Jr., Charles W. Conrad, Marvin Ogilvie, and Marie Ogilvie (collectively the Griffins), in their sole issue, appeal from the judgment of the trial court, challenging its determination of the accrual date for postjudgment interest.

Appellees/Cross-Appellants Larry T. Long, L. Allan Long, and B. Virginia Long, in their capacities as Trustees of the Lawrence Allan Long Trust, the Charles Edward Long Trust, the Larry Thomas Long Trust, and the John Stephen Long Trust d/b/a the Long Trust (collectively the Long Trusts), also appeal the judgment of the trial court, raising three issues in their cross-appeal. We modify the judgment of the trial court, and as modified, affirm.

BACKGROUND

The Griffins sued the Long Trusts in 1997.[1] The Griffins sought, in part, (1) a share of an $11,000,000.00 settlement of a "take or pay" lawsuit involving the Long Trusts and the Tejas Gas Company (the ***Tejas*** settlement), (2) a declaration that the 1978 and 1982 letter agreements the parties operated under were valid and enforceable, (3) an order for specific performance requiring the Long Trusts to assign interests in gas wells to the Griffins in compliance with the letter agreements, and (4) reformation of certain assignments executed on December 20, 2000.

After a bench trial, the trial court signed its "Amended Final Judgment" on February 4, 2003 (the 2003 judgment), awarding most of the relief sought by the Griffins. The Long Trusts appealed to the Texarkana court of appeals, which reversed in part and modified the judgment, but otherwise affirmed the trial court's judgment. The Long Trusts then appealed to the Texas Supreme Court, which reversed the court of appeals' judgment in part and remanded the case to the trial court for the limited purpose of redetermining attorney's fees. As a result of this reversal, the Griffins were entitled to significantly less relief than they had been awarded in the 2003 judgment. For example, they no longer had any interest in the ***Tejas*** settlement, and the 1978 and 1982 letter agreements were held to be unenforceable, at least as to future wells that would have otherwise fallen within the letter agreements' provisions. Other portions of the 2003 judgment, such as the order requiring reformation of the December 2000 assignments, continued to be effective and enforceable.

Upon the supreme court's remand to the trial court, a judge was assigned to preside over the remaining attorney's fees issue. On August 20, 2008, the court sent a letter to the parties in which it informed them that neither side would be entitled to attorney's fees. According to a docket sheet notation, the court and the parties participated in a telephonic hearing on October 7, 2008, regarding the attorney's fees issue. The docket sheet also contains an entry on that same date, noting that the "8/20/08 determination [is] modified to award [attorney's] fees to [the Griffins] in the amount of $30,000.00."[2]

The trial court signed its "Final Judgment After Appeal" on May 30, 2009 (the 2009 judgment). In this judgment, the trial court incorporated all prior judgments, which included the 2003 judgment to the extent it was not reversed on appeal. In addition, the trial court awarded attorney's fees to the Griffins in the amount of $30,000.00 and ordered postjudgment interest at

[1] The underlying factual scenario is complicated and need not be repeated here. The facts will be discussed only as necessary to the disposition of this appeal. For a detailed recitation of the facts and the procedural history, see ***Long Trusts v. Griffin***, 144 S.W.3d 99 (Tex. App.—Texarkana 2004), *aff'd in part and rev'd in part*, 222 S.W.3d 412 (Tex. 2006).

[2] The telephonic hearing was not recorded or otherwise transcribed. Therefore, the appellate record does not include a record of the hearing.

the rate of 10% to accrue from May 30, 2009. The Griffins appealed and the Long Trusts cross-appealed.

ACCRUAL OF POSTJUDGMENT INTEREST

In their sole issue, the Griffins argue that the trial court erred when it identified the postjudgment interest accrual date in the 2009 judgment as May 30, 2009. The Griffins contend that the correct accrual date was the date the trial court rendered its 2003 judgment.

Standard of Review and Applicable Law

Postjudgment interest is regulated by statute, and as such, its application is a question of law that we review de novo. *See* ***Advanced Messaging Wireless, Inc. v. Campus Design, Inc.***, 190 S.W.3d 66, 71 (Tex. App.—Amarillo 2005, no pet.) (citing ***Columbia Medical Center v. Bush ex rel. Bush***, 122 S.W.3d 835, 865 (Tex. App.—Fort Worth 2003, pet. denied)).

Postjudgment interest is compensation allowed by law for the use or detention of money. ***Sisters of Charity of the Incarnate Word v. Dunsmoor***, 832 S.W.2d 112, 119 (Tex. App.—Austin 1992, writ denied). It is recoverable on any money judgment in this state as long as the judgment specifies the postjudgment interest rate. TEX. FIN. CODE ANN. § 304.001 (Vernon 2006). Postjudgment interest is computed from the date of rendition of judgment and runs until the date of satisfaction. TEX. FIN. CODE ANN. § 304.005(a) (Vernon 2006). Generally, a judgment is rendered when the decision is officially announced orally in open court, by memorandum filed with the clerk, or otherwise announced publicly. ***Garza v. Tex. Alcoholic Beverage Comm'n***, 89 S.W.3d 1, 6 (Tex. 2002).

Discussion

In previously addressing this issue in another case involving the Long Trusts, we stated the general rule that,

> after examining the entire procedural history of a dispute, a party that *ultimately* prevails is entitled to postjudgment interest from the date the original judgment was rendered, irrespective of whether the original judgment was erroneous, because that is the date upon which the trial court should have rendered a correct judgment.

Long Trusts v. Castle Tex. Prod. Ltd. P'ship, 330 S.W.3d 749, 753 (Tex. App.—Tyler 2010, no pet. h.) (emphasis in original). We see no reason to depart from this general rule here.

The trial court awarded a judgment favoring the Griffins on February 4, 2003. The Long Trusts appealed to the Texarkana court of appeals, which reversed in part, modified portions of the judgment, and affirmed the trial court's judgment in all other respects. *See* ***Long Trusts***, 144 S.W.3d at 112, *aff'd in part and rev'd in part*, 222 S.W.3d 412 (Tex. 2006). The Long Trusts

then appealed to the Texas Supreme Court, which reversed the award relating to the ***Tejas*** settlement, and also held that the 1978 and 1982 letter agreements were not enforceable for future wells because they violated the statute of frauds. ***Long Trusts***, 222 S.W.3d at 415-17. The supreme court then remanded the case to the trial court for the limited purpose of redetermining attorney's fees. ***Id.*** at 417. Since the trial court should have issued a correct judgment when it issued its judgment on February 4, 2003, postjudgment interest began to accrue on that date.[3] ***Long Trusts***, 330 S.W.3d at 753-54.

We sustain the Griffins' sole issue.

CROSS-APPEAL

In three cross-issues, the Long Trusts argue that (1) the trial court incorrectly set the postjudgment interest rate at 10%, (2) the trial court abused its discretion by awarding the Griffins $30,000.00 in attorney's fees, and finally, (3) the trial court's 2009 judgment lacks the required specificity and definiteness to be enforceable.

POSTJUDGMENT INTEREST RATE

In their first cross-issue, the Long Trusts argue that, in the 2009 judgment, the trial court erroneously set the postjudgment interest rate at 10%. They contend that postjudgment interest should be calculated from May 30, 2009, the date of the 2009 judgment, and that 10% was not the postjudgment interest rate on that date. The Griffins maintain that postjudgment interest began to accrue on February 4, 2003, and the postjudgment interest rate on that date should apply.

The Griffins argue the proper rate is 10% as found by the trial court in its 2003 judgment, without pointing to any evidence in the record substantiating that assertion. Nevertheless, we exercise our discretion to take judicial notice of the correct rate. *See* TEX. R. EVID. 201(b)(2), (c), (f) (at any stage of proceeding, court in its discretion and on its own motion can take judicial notice of facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned); ***Pettus v. Pettus***, 237 S.W.3d 405, 423 (Tex. App.—Fort Worth 2007, pet. denied) (appellate court may take judicial notice of postjudgment interest rate).

When the court issued its judgment in 2003, the postjudgment rate was calculated as follows:

[3] We express no opinion about when postjudgment interest would begin to accrue if the trial court's judgment had been reversed in its entirety and the cause remanded for a new trial.

> Sec. 304.003. JUDGMENT INTEREST RATE: INTEREST RATE OR TIME PRICE DIFFERENTIAL NOT IN CONTRACT.
>
> (a) A money judgment of a court of this state . . . earns postjudgment interest at the rate determined under this section.
>
> (b) On the 15th day of each month, the consumer credit commissioner shall determine the postjudgment interest rate to be applied to a money judgment rendered during the succeeding calendar month.
>
> (c) The postjudgment interest rate is:
>
> (1) the auction rate quoted on a discount basis for 52-week treasury bills issued by the United States government as most recently published by the Federal Reserve Board before the date of computation;
>
> (2) 10 percent a year if the auction rate described by Subdivision (1) is less than 10 percent; or
>
> (3) 20 percent a year if the auction rate described by Subdivision (1) is more than 20 percent.

Act of May 10, 1999, 76th Leg., R.S., ch. 62, § 7.18, 1999 Tex. Gen. Laws 127, 232 (amended 2003, 2005) (current version at TEX. FIN. CODE ANN. § 304.003 (Vernon 2006)). We have sustained the Griffins' issue in which they argue that postjudgment interest began to accrue on February 4, 2003, the date of the trial court's original judgment. On February 4, 2003, the auction rate for fifty-two week treasury bills quoted on a discount basis was 6%.[4] Because that rate was less than 10%, the trial court correctly determined that 10% was the applicable postjudgment interest rate. *See* ***id***.

The Long Trusts' first cross-issue is overruled.

ATTORNEY'S FEES

In their second cross-issue, the Long Trusts contend in a single multifarious issue that the trial court abused its discretion in awarding attorney's fees because (1) the Griffins did not prevail on their claims for which fees may be properly awarded, (2) the Griffins did not incur any fees, and (3) the evidence is legally and factually insufficient to support the trial court's award of attorney's fees.

Standard of Review

Generally, we review a trial court's decision to either grant or deny attorney's fees under an abuse of discretion standard. *See* ***Ridge Oil Co., Inc. v. Guinn Invs., Inc.***, 148 S.W.3d 143, 163 (Tex. 2004). In contrast, we review a trial court's determination regarding the amount of attorney's fees for legal and factual sufficiency of the evidence. *See* ***Bocquet v. Herring***, 972 S.W.2d 19, 21 (Tex. 1998). When determining whether an award for attorney's fees is excessive, we may "look at the entire record and view the matter in light of the testimony, the

[4] ***Federal Reserve Bank - Fifty-Two Week Treasury Bill Auction Rate Quoted on a Discount Basis by Issue Date***, http://www.federalreserve.gov/releases/h15/data/Monthly/discontinued_AH_Y1.txt (last visited May 5, 2011).

amount in controversy, the nature of the case, and the court's own common knowledge and experience as lawyers and judges." ***McFadden v. Bresler Malls, Inc.***, 548 S.W.2d 789, 790 (Tex. App.—Austin 1977, no writ). We may not, however, substitute our own judgment for that of the trial court. ***Walker v. Gutierrez***, 111 S.W.3d 56, 63 (Tex. 2003).

Applicable Law

Generally, a party may not recover attorney's fees unless such an award is authorized by statute or contract. ***Tony Gullo Motors I, L.P. v. Chapa***, 212 S.W.3d 299, 311 (Tex. 2006). For example, a person may recover reasonable attorney's fees in suits on an oral or written contract. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 38.001(8) (Vernon 2008). Additionally, the trial court may award such reasonable and necessary attorney's fees as are equitable and just in a suit for declaratory judgment. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.009 (Vernon 2008).

When a claim for attorney's fees is based on Chapter 38 of the Texas Civil Practice and Remedies Code, the trial court may take judicial notice of the usual and customary attorney's fees, and those fees are presumed to be reasonable, although the presumption may be rebutted. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 38.003-.004 (Vernon 2008). However, in a declaratory judgment action, a party enjoys neither the presumption of reasonableness nor the availability of judicial notice. *See* ***Gorman v. Gorman***, 966 S.W.2d 858, 867 (Tex. App.—Houston [1st Dist.] 1998, pet. denied). But unlike a suit under chapter 38, attorney's fees may be awarded to the nonprevailing party in a suit for declaratory judgment. *See* ***Barshop v. Medina County Underground Water Conservation Dist.***, 925 S.W.2d 618, 637 (Tex. 1996); ***Scottsdale Ins. Co. v. Travis***, 68 S.W.3d 72, 77 (Tex. App.—Dallas 2001, pet. denied). Finally,

> [a] reversal of a trial court's decision on a declaratory judgment does not necessarily require reversal of an award of attorney's fees to the party who prevailed in the trial court. [citations omitted].
>
> A trial court's grant or denial of attorney's fees in a declaratory-judgment action need not be reversed on appeal unless the complaining party clearly shows the trial court abused its discretion.

City of Temple v. Taylor, 268 S.W.3d 852, 858 (Tex. App.—Austin 2008, pet. denied).

The Long Trusts' Arguments

1. The Griffins are not prevailing parties, and thus are not entitled to attorney's fees. It is undisputed that the Griffins prevailed at trial. However, after the Texarkana court of appeals and Texas Supreme Court issued their respective opinions and judgments, very little of the original relief granted to the Griffins remained. Nonetheless, the Griffins still prevailed on their reformation claim as to the December 2000 assignments. A party need not necessarily obtain monetary relief in order to be awarded attorney's fees. *See* ***Rasmusson v. LBC***

PetroUnited, Inc., 124 S.W.3d 283, 287 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (stating failure to recover monetary damages does not preclude award of attorney's fees under section 38.001(8)); ***Butler v. Arrow Mirror & Glass, Inc.***, 51 S.W.3d 787, 796-97 (Tex. App.—Houston [1st Dist.] 2001, no pet.) (noting recovery of "something of value" supports award of attorney's fees under section 38.001(8), even absent an award of monetary damages); ***Rodgers v. RAB Investments, Ltd.***, 816 S.W.2d 543, 551 (Tex. App.—Dallas 1991, no writ) (same).

Even though significant portions of the award to the Griffins have been reversed, the Griffins still obtained affirmative relief in the form of reformation of the December 2000 assignments. Nothing in the record before us suggests that this reformation is not "something of value." *See* ***Butler***, 51 S.W.3d at 796-97. The Long Trusts argue that this relief is not of sufficient magnitude to warrant classifying the Griffins as prevailing parties because one of the conditions of reformation required the Griffins to execute a joint operating agreement. However, the Long Trusts have not shown how this requirement diminishes the value of the reformation awarded.

2. <u>The Griffins did not actually incur attorney's fees in the prosecution of their claims</u>. The Long Trusts contend that (1) the Griffins and their attorneys operated under a contingency fee contract, (2) the primary relief awarded after completion of the appeals consisted of reformation of the December 2000 assignments, and (3) therefore no monetary damages other than fees were awarded. Consequently, their argument continues, the contingency never occurred, and thus no fees were incurred.

First, it is not clear that to be awarded attorney's fees, the plaintiff is required to actually incur attorney's fees, at least not in the manner that the Long Trusts claim. *Compare* ***AMX Enterprises, L.L.P. v. Master Realty Corp.***, 283 S.W.3d 506, 520 (Tex. App.—Fort Worth 2009, no pet.) (proof of fees actually incurred is not prerequisite to recovery of attorney's fees), *with* ***Simmons v. Kuzmich***, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.) (holding, without citing authority, that admission of attorney represented by his own law firm that neither he nor anyone from his office was billing or incurring fees and that he only "lost some time from the office" precluded award of attorney's fees).

Second, in any event, the fact that the attorney and the claimant operated under a contingency fee agreement does not mean that fees were not incurred. ***Sloan v. Owners Ass'n of Westfield, Inc.***, 167 S.W.3d 401, 404 (Tex. App.—San Antonio 2005, no pet.). In ***Sloan***, the San Antonio court of appeals rejected the argument made here by the Long Trusts, namely that because the plaintiff had a contingent fee agreement with its counsel, it had not incurred any attorney's fees. *See* ***id.*** We agree with the analysis in ***Sloan*** as applied to the facts of the instant case.

3. <u>The evidence is legally and factually insufficient to support the trial court's award of attorney's fees</u>. The Long Trusts assert that the Griffins failed to present a new affidavit or other evidence demonstrating the percentage of time spent on the remaining portions of the assignment claim that were still valid—i.e., reformation of the December 2000 assignments. In essence, this argument is an evidentiary sufficiency argument, even though it is partially cast as a failure to segregate claim.

In the 2003 judgment, the trial court awarded Griffin $35,000.00 in attorney's fees. The only evidence pertaining to the Griffins' attorney's fees was the affidavit of the Griffins' counsel, in which he requested $100,000.00 in attorney's fees at trial on all claims. The affidavit itemized the total amount based on a percentage for each portion of the litigation, and as relevant here, showed that 30% of counsel's time was spent on the "assignment claim." The appellate court judgments left only a portion of the assignment claim intact. When the Texas Supreme Court remanded the suit for a redetermination of attorney's fees, the evidence that was allegedly before the court was counsel's affidavit that was used to support fees in the original trial that led to the 2003 judgment.

In its 2009 judgment, the trial court awarded Griffin $30,000.00 in attorney's fees. The Long Trusts speculate that the trial court awarded $30,000.00 simply because that was the amount requested by the Griffins in their 2003 affidavit for work performed on the assignment claim (30% of the requested $100,000.00 in attorney's fees). The Long Trusts point out that only a portion of that "assignment claim" remains valid, and argue that the fees for the remaining part of the assignment claim could not amount to $30,000.00. Essentially, the Long Trusts claim that there is no evidence in the record to support that the Griffins' counsel's fees for work related to the December 2000 assignment claim amounted to $30,000.00. As part of their argument, the Long Trusts implicitly suggest that an award of fees must be determined by mathematical formula only.

Complaints regarding the legal and factual sufficiency of the evidence may be raised for the first time on appeal in a nonjury case. *See* TEX. R. APP. P. 33.1(d). However, the appellate court must have the relevant portions of the record before it in order to review an evidentiary sufficiency complaint. *See* ***Sam Houston Hotel, L.P. v. Mockingbird Restaurant, Inc.*** 191 S.W.3d 720, 721 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (holding that court could not review appellate issues without a reporter's record because resolution depended on reference to evidence admitted at trial). Consequently, the appellant has the burden to bring forth an appellate record showing that the trial court committed reversible error. *See* ***Simon v. York Crane & Rigging Co.***, 739 S.W.2d 793, 795 (Tex. 1987); ***Christiansen v. Prezelski***, 782 S.W.2d 842, 843 (Tex. 1990); *see also* TEX. R. APP. P. 34.6(b)(1). When an appellant fails to bring a

complete record, an appellate court must presume the evidence presented is legally and factually sufficient to support the trial court's order.[5] *See* ***Willms v. Americas Tire Co.***, 190 S.W.3d 796, 803 (Tex. App.—Dallas 2006, pet. denied).

In the instant case, the trial court held a telephonic hearing on October 7, 2008. The Long Trusts acknowledge in their brief that the hearing was not recorded. On October 7, 2008, the trial court made the following entry on its docket sheet: "Conf[erence] call [with] attorneys. 8/20/08 determination [that none of the parties were entitled to fees is] modified to award [attorney's] fees to [the Griffins] in the [amount] of $30,000.00." Because the Long Trusts complain of this ruling on appeal, they had the burden to bring a record of this telephonic hearing. *See* ***Simon***, 739 S.W.2d at 795.

There is a conflict of authority on whether the court reporter or the complaining party bears the obligation to ensure that trial proceedings are recorded. Texas Rule of Appellate Procedure 13.1(a) provides that the court reporter must make a full record of the proceedings "unless excused by agreement of the parties." TEX. R. APP. P. 13.1(a). Some courts have held that Rule 13.1 requires the reporter to record all trial proceedings unless a record is waived by the parties. *See, e.g.,* ***Rittenhouse v. Sabine Valley Ctr. Found., Inc.***, 161 S.W.3d 157, 161-62 (Tex. App.—Texarkana 2005, no pet.); ***Smith v. State***, 114 S.W.3d 66, 70 (Tex. App.—Eastland 2003, pet. ref'd); ***Palmer v. Espey Huston & Assocs., Inc.***, 84 S.W.3d 345, 350-51 (Tex. App.—Corpus Christi 2002, pet. denied). If the court reporter does not record the proceedings, the complaining party must object to preserve error. *See, e.g.,* ***Valle v. State***, 109 S.W.3d 500, 508-09 (Tex. Crim. App. 2003); ***Rittenhouse***, 161 S.W.3d at 162; ***Garza v. State***, 212 S.W.3d 503, 506 (Tex. App.—Austin 2006, no pet.); *see also* TEX. R. APP. P. 33.1(a). This rule applies to telephonic hearings. *See* ***McCray v. Dretke***, No. 04-06-00104-CV, 2007 WL 1200058, at *1 (Tex. App.—San Antonio Apr. 25, 2007, no pet.) (mem. op.) (holding that inmate attending hearing in civil case by telephone must still object to failure to court reporter to make record). A motion or written objection might suffice to preserve the error in certain circumstances. *See* ***Reyes v. Credit Based Asset Servicing and Securitization***, 190 S.W.3d 736, 740 (Tex. App.—San Antonio 2005, no pet.).

Section 52.046(a) of the Texas Government Code provides that the court reporter shall record certain portions of the trial proceedings "[o]n request." *See* TEX. GOV'T CODE ANN. § 52.046(a) (Vernon 2005). Thus, some courts have held that Rule 13.1 conflicts with Section 52.046, and therefore a party is required to request a record. *See, e.g.*, ***Garza v. State***, 212

[5] Texas Rule of Appellate Procedure 34.6 prescribes the procedure to be followed when an appellate requests on a partial record. *See* TEX. R. APP. P. 34.6(c) (requiring a statement of issues to be presented on appeal to be included in a request for a partial reporter's record). The Long Trusts do not contend that Rule 34.6(c) is applicable here.

S.W.3d at 505; ***Nabelek v. Dist. Attorney of Harris Cnty.***, 290 S.W.3d 222, 231-32 (Tex. App.—Houston [14th Dist.] 2005, pet. denied); ***Langford v. State***, 129 S.W.3d 138, 139 (Tex. App.—Dallas 2003, no pet.); ***Washington v. State***, 127 S.W.3d 111, 113-15 (Tex. App.—Houston [1st Dist.] 2003, no pet.); ***Polasek v. State***, 16 S.W.3d 82, 88-89 (Tex. App.—Houston [1st Dist.] 2000, pet. denied) (en banc).

The record shows that, seven months after the telephonic hearing, the Long Trusts filed written objections to the proposed final judgment. However, they did not object that the reporter failed to make a record of the hearing and do not complain here of that omission. Moreover, the record does not show that the Long Trusts requested that a record be made. Thus, the Long Trusts did not take steps to ensure that the reporter made a record of the hearing. This prevented them from meeting their burden to provide a record showing the error of which they complain.

Because we do not have a record of what occurred during the telephonic hearing, we are unable to review the trial court's action. *See* ***Sam Houston Hotel, L.P. v. Mockingbird Restaurant, Inc.***, 191 S.W.3d 720, 721 (Tex. App.—Houston [14th Dist.] 2006, no pet.). Therefore, we must presume that the evidence is legally and factually sufficient to support the trial court's award of attorney's fees.

The Long Trusts' second cross-issue is overruled.

JUDGMENT

In their third cross-issue, the Long Trusts contend that the 2009 judgment lacks the required specificity and definiteness to constitute an enforceable order of the court.

Standard of Review and Applicable Law

Public policy favors the validity of judgments, and thus there is a general presumption of validity extending to district court judgments. ***Vickery v. Comm'n for Lawyer Discipline***, 5 S.W.3d 241, 251 (Tex. App.—Houston [14th Dist.] 1999, pet. denied) (citing ***Crawford v. McDonald***, 88 Tex. 626, 33 S.W. 325, 328 (1895)). Without such a presumption, a district court's judgment would have very little import and there would be no end to troublesome litigation. ***Id.*** As explained by one court,

> a judgment, the final action taken by a court of competent jurisdiction in disposing of matters properly before it, is of such solemn import and of such supreme importance that every intendment should be given it in order to sustain its validity, that to give further emphasis to the thought would be almost a matter of triteness. Judgments constitute the considered opinion of courts; they are judicial acts with the primary objective in view of concluding controversies with as high a degree of exact justice as it is humanly possible to do. When an attack is made upon a judgment, whether directly or collaterally, all presumptions consonant with reason are indulged in order to uphold the binding effect of such judgment.

Id. (quoting ***Jackson v. Slaughter***, 185 S.W.2d 759, 761 (Tex. Civ. App.—Texarkana 1944, writ ref'd w.o.m.)). In determining the validity of a judgment, the substance of the judgment and not the form controls, and no particular wording or phraseology is required. ***Gen. Elec. Capital Auto Fin. Leasing Servs., Inc. v. Stanfield***, 71 S.W.3d 351, 355 (Tex. App.—Tyler 2001, pet. denied).

However, a judgment must be sufficiently definite and certain to define and protect the rights of all litigants, or it should provide a definite means of ascertaining such rights, to the end that ministerial officers can carry the judgment into execution without ascertainment of facts not stated in the judgment. ***Stewart v. USA Custom Paint & Body Shop, Inc.***, 870 S.W.2d 18, 20 (Tex. 1994). Thus, a judgment cannot condition recovery on uncertain events or base its validity on what the parties might or might not do postjudgment. ***Hinde v. Hinde***, 701 S.W.2d 637, 639 (Tex. 1985). A purported judgment that leaves undecided a question or an issue essential to the determination of the controversy between the parties is void for vagueness and uncertainty. ***In re R.J.A.H.***, 101 S.W.3d 762, 763 (Tex. App.—Houston [1st Dist.] 2003, no pet.); ***Am. Cas. & Life Ins. Co. v. Boyd***, 394 S.W.2d 685, 688 (Tex. Civ. App.—Tyler 1965, no writ).

Texas courts generally construe orders and judgments under the same rules of interpretation as those applied to other written instruments. ***Azbill v. Dallas Cnty. Child Protective Servs. Unit of Tex. Dep't of Human and Regulatory Servs.***, 860 S.W.2d 133, 136 (Tex. App.—Dallas 1993, no writ). Thus, a judgment may incorporate by reference an earlier judgment or order in the same judicial proceeding into its terms. *See* ***id.*** The fact that dispositive rulings appear in more than one document does not necessarily affect the judgment's validity or definiteness. *See* ***id.*** at 137.

Discussion

The 2009 judgment stated in relevant part as follows:

> ORDERED that Defendants shall reform and execute the Assignments they made to Plaintiffs on December 20, 2000, consistent with the Amended Final Judgment dated February 10, 2003, and as reformed and modified in the opinions of the Sixth Court of Appeals and the Texas Supreme Court; it is further
>
> ORDERED that that [sic] the Amended Final Judgment dated February 10, 2003, is adopted and incorporated by reference into this Final Judgment After Appeal to the extent not inconsistent with the Judgment and Opinion of the Sixth Court of Appeals and the Judgment and Opinion of the Texas Supreme Court.

The Long Trusts contend that "[c]ompliance with the judgment, as now written, will require an independent construction of the terms of the Amended Final Judgment, as affirmed, modified and reversed in part by the Texarkana Court of Appeals and the Texas Supreme Court."

Contrary to the Long Trusts' argument, however, the judgment is not rendered void for vagueness or lack of definiteness or specificity by the fact that the 2003 judgment, the court of appeals' judgment, the supreme court's judgment, and the 2009 judgment must be read together. *See* ***Deaton v. United Mobile Networks, L.P.***, 966 S.W.2d 113, 116 (Tex. App.—Texarkana 1998, pet. denied) (op. on reh'g) (stating trial court judgment can be read in conjunction with subsequent appellate court judgment, implying that when appellate court judgment refers to or reverses trial court judgment in part, both judgments are read together). The trial court could properly incorporate the 2003 judgment to the extent it was not reversed by the court of appeals and the supreme court, as well as the judgments of the appellate courts, into the 2009 judgment, which in turn additionally awarded attorney's fees and postjudgment interest. *See* ***Azbill***, 860 S.W.2d at 136. Each of those judgments conclusively identifies portions of the final relief awarded in the case, and when read together, all of the courts' judgments in this case dispose of the disputes between the parties. *See* ***Deaton***, 966 S.W.2d at 116. We conclude that a ministerial officer can read the judgments and determine the relief awarded with sufficient certainty without ascertainment of facts not in the judgments.

In a related argument, the Long Trusts also complain that the 2009 judgment does not clearly explain how the parties are to reform the December 2000 assignments. However, as shown in the above quoted portion of the 2009 judgment, the parties were ordered to reform the judgments as specified in the prior judgments. Importantly, the 2003 judgment provided specific instructions relating to the December 2000 assignments, and as modified on appeal, that relief still stands. The time to complain of that relief was in the Long Trusts' prior appeal. We therefore conclude that the Long Trusts' waived that argument. *See* ***Cook v. Cameron***, 733 S.W.2d 137, 140 (Tex. 1987) (holding failure to bring issue in prior appeal that could have been brought resulted in waiver).

The Long Trusts' third cross-issue is overruled.

DISPOSITION

We ***modify*** the judgment of the trial court to reflect that postjudgment interest began to accrue on February 4, 2003, and as modified, we ***affirm***.

SAM GRIFFITH
Justice

Opinion delivered May 11, 2011.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)