Filed 5/17/18 Centinela Freeman Emergency etc. v. Maxwell-Jolly CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CENTINELA FREEMAN EMERGENCY MEDICAL ASSOCIATION et al., Plaintiffs and Appellants, v. DAVID MAXWELL-JOLLY, as Director, etc., et al., Defendants and Respondents.	B270462 Los Angeles County Super. Ct. No. BC406372

APPEAL from an order of the Superior Court of Los Angeles County, Joanne B. O'Donnell, Judge. Reversed.

Boucher, Raymond P. Boucher, Maria L. Weitz and Shehnaz Bhujwala; Blood Hurst & O'Reardon, Timothy G. Blood, and Paula Roach Brown; Liner; DLA Piper, Angela C. Agrusa, and Wendy S. Dowse; Deblase Brown Eyerly and Michael C. Eyerly for Plaintiffs and Appellants.

Xavier Becerra, Attorney General, Julie Weng-Gutierrez, Assistant Attorney General, Ismael A. Castro, Christine M. Murphy and Kirin K. Gill, Deputy Attorneys General, for Defendants and Respondents.

INTRODUCTION

Plaintiffs appeal from an order denying their motion for an award of prejudgment attorney fees under Code of Civil Procedure section 1021.5. The trial court concluded the motion was untimely under rule 3.1702(b)(1) of the California Rules of Court because Plaintiffs filed the motion more than 180 days after the purported entry of judgment.[1] Citing a series of interlocutory orders and a voluntary dismissal disposing of different causes of action, the court reasoned that entry of the final judgment occurred on the date the superior court clerk entered Plaintiffs' dismissal of their last remaining claim. However, these discrete interlocutory orders were never reduced to a single judgment, and the record reveals significant confusion and uncertainty in the lower court about whether or when the final judgment was entered. Because the date of entry of judgment determines not just the deadline for filing an attorney fee motion, but also sets the jurisdictional deadline for filing a notice of appeal, parties and courts cannot be forced to guess as to whether a series of interlocutory orders can be read together to constitute a final judgment. We conclude the final judgment was

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[1] Rule references are to the California Rules of Court.

not entered, and the trial court erred when it denied Plaintiffs' motion as untimely. Accordingly, we reverse.[2]

FACTS AND PROCEDURAL BACKGROUND

1. *Complaint*

Plaintiffs are a collection of emergency physician medical groups practicing in California. They filed this putative class action against the Department of Health Care Services (the Department), alleging the State of California's Medi-Cal reimbursement payments do not bear a reasonable relationship to the costs of providing emergency room care.

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[2] Although no final judgment has been entered, we have jurisdiction to review the order denying Plaintiffs' motion for attorney fees as a final ruling on a collateral matter, severable from the general objective of the litigation. (See *Henneberque v. City of Culver City* (1985) 172 Cal.App.3d 837, 842.)

We acknowledge, however, that in *Sjoberg v. Hastorf* (1948) 33 Cal.2d 116, 119, the Supreme Court, after noting the existence of the collateral order doctrine went on to state: "It is not sufficient that the order determine finally for the purposes of further proceedings in the trial court some distinct issue in the case; it must direct the payment of money by appellant or the performance of an act by or against him." And the order at issue in this appeal did not require the payment of money or the performance of an act. To the extent the challenged order is not appealable, we treat the appeal as a petition for an extraordinary writ. To dismiss the appeal rather than exercising our power to reach the merits would, under the unusual procedural circumstances before us, be unnecessarily dilatory and circuitous. (See *Olson v. Cory* (1983) 35 Cal.3d 390, 401; *Shepardson v. McLellan* (1963) 59 Cal.2d 83, 88.)

On September 4, 2009, Plaintiffs filed their operative third amended complaint, asserting three causes of action for (1) violation of the federal Constitution's Equal Protection Clause; (2) violation of the federal Constitution's Supremacy Clause; and (3) violation of California Welfare and Institutions Code section 14079 (section 14079).[3] With respect to the third cause of action, the complaint alleged that Plaintiffs had "suffered injuries including damages in an amount to be proven at trial" and, "[u]nless Defendants are mandated to comply with the terms of [section] 14079, Defendants will continue to cause injury." Among other prayers for relief, the complaint sought "a writ of mandamus requiring defendants to comply with [section] 14079."

The Department demurred to the complaint, arguing, among other things, that the third cause of action for mandamus relief should be adjudicated in the writs and receivers

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[3] Section 14079 provides: "The director [of the Department of Health Care Services] annually shall review the reimbursement levels for physician and dental services under Medi-Cal, and shall revise periodically the rates of reimbursement to physicians and dentists to ensure the reasonable access of Medi-Cal beneficiaries to physician and dental services. [¶] This annual review, as it relates to rates for physician services, shall take into account at least the following factors: [¶] (a) Annual cost increases for physicians as reflected by the Consumer Price Index. [¶] (b) Physician reimbursement levels of medicare, Blue Shield, and other third-party payors. [¶] (c) Prevailing customary physician charges within the state and in various geographical areas. [¶] (d) Procedures reflected by the current Relative Value Studies (RVS). [¶] (e) Characteristics of the current population of Medi-Cal beneficiaries and the medical services needed."

department of the superior court before all other claims. Consistent with the Department's demurrer, on November 20, 2009, Judge Emilie Elias ordered the action transferred to the writs department to address the complaint's third cause of action for violation of section 14079.

2. *October 26, 2010 Order on Plaintiffs' Writ Petition*

On August 23, 2010, Plaintiffs filed a petition for writ of mandate to compel the Department to comply with its ministerial duties under section 14079. (See fn. 3, *ante*.) The petition alleged that the Department's failure to perform the rate reviews and periodic revisions required under section 14079 jeopardized Medi-Cal beneficiaries' reasonable access to physician services, and thus warranted writ relief under Code of Civil Procedure section 1085.[4]

On October 26, 2010, Judge Ann Jones held a hearing on Plaintiffs' petition for writ of mandate. In a written order filed that day, Judge Jones found that Plaintiffs "satisfied their burden of proof in support of [the requested] writ." (See fn. 4, *ante*.) The order stated: "To the extent that [the Department] has failed to comply with [section] 14079, a writ should issue to

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[4] "Code of Civil Procedure section 1085, providing for writs of mandate, is available to compel public agencies to perform acts required by law. [Citation.] To obtain relief, a petitioner must demonstrate (1) no 'plain, speedy, and adequate' alternative remedy exists [citation]; (2) ' "a clear, present . . . ministerial duty on the part of the respondent" '; and (3) a correlative ' "clear, present and beneficial right in the petitioner to the performance of that duty." ' " (*People v. Picklesimer* (2010) 48 Cal.4th 330, 339-340; *Santa Clara County Counsel Attys. Assn. v. Woodside* (1994) 7 Cal.4th 525, 539-540.)

compel compliance. Specifically, the Department shall be compelled to: [¶] (1) Perform annual reviews of the reimbursement levels for physicians and dental services under Medi-Cal pursuant to [section] 14079; [¶] (2) Which include a consideration of the five enumerated factors set forth in [section] 14079; and, [¶] (3) Periodically revise the rates of reimbursement to physicians and dentists to ensure the reasonable access of Medi-Cal beneficiaries to physician and dental services." Judge Jones declined to appoint a neutral third party to oversee implementation of the review processes, and found the Department was "capable of promptly implementing the clear ministerial duties required by [section] 14079." Finally, Judge Jones wrote, "[t]he court makes the order granting the petition for writ of mandate interlocutory and remands the matter to Judge Elias to decide [Plaintiffs'] remaining causes of action and to issue a final judgment."

On December 23, 2010, the Department filed an appeal from the October 26, 2010 order. On January 19, 2011, the clerk of this court issued a letter notifying the Department that the court intended to dismiss the appeal as having been taken from a nonappeable order. The letter stated that the October 26, 2010 order was "interlocutory and therefore not a final judgment," and, "[w]ith no final judgment having been entered, the Court has no jurisdiction to hear the appeal." On February 2, 2011, the Department voluntarily abandoned the appeal.

On December 16, 2011, the Department filed a purported "Return to Petition for Writ of Mandate," detailing its efforts to comply with the October 26, 2010 order. On January 26, 2012, Plaintiffs responded with "Preliminary Objections" to the purported return.

3. *June 22, 2012 Order Regarding the One Final Judgment Rule*

On June 22, 2012, Judge Jones held a status conference in the writs department to address the purported return and objections. At the hearing, Judge Jones clarified that her October 26, 2010 order was not a writ and could not be the subject of enforcement proceedings, because the court had yet to adjudicate the complaint's "non-writ" claims for relief. She explained that the parties first needed to "adjudicate everything else, get a final judgment that incorporates the writ cause of action," then, "[a]t that junction the writ issues, and . . . a return can be ordered." But, she continued, "without the judgment, no writ," and "without the writ, no enforceable order," and "without an enforceable order, there's nothing to enforce."

In a minute order filed after the status conference, Judge Jones again emphasized that the purported enforcement proceedings were premature because there "may be only one judgment," and, "[a]lthough the mandamus claim may be heard and determined relatively speedily, no judgment can be entered until the remaining causes of action have been tried, dismissed or otherwise disposed of." Because the complaint's Equal Protection Clause and Supremacy Clause claims remained pending, and no judgment had been entered, Judge Jones repeated, "there is nothing to enforce and no return to the writ can be ordered." The minute order concluded: "The matter is remanded to [the civil department] for further proceedings on the remaining legal causes of action. [¶] If the [Plaintiffs] wish to 'enforce' the prior rulings made by this court on the writ cause of action, they first need to resolve the remaining causes of action, have a judgment entered and then (and only then) have a writ issued by the clerk

of the court. Once issued, the court may order a return to the writ to ascertain what efforts have been taken in furtherance of that writ."

4. *Orders Disposing of the Supremacy Clause and Equal Protection Clause Causes of Action*

On June 28, 2012, Judge John Wiley, now presiding over the case in the civil department, issued an order sustaining the Department's demurrer to the complaint's second cause of action for violation of the Supremacy Clause, without leave to amend. Judge Wiley's order made no mention of the complaint's other two causes of action.

On September 14, 2012, Plaintiffs filed a voluntary dismissal of the first cause of action for violation of the Equal Protection Clause. The clerk of the superior court entered the dismissal the same day.

On September 25, 2012, the parties filed a joint request to transfer the action back to the writs and receivers department "to address Plaintiffs' remaining cause of action for writ relief." Judge Wiley ordered the matter transferred to the writs department the next day.

5. *March 27, 2013 Status Conference on Plaintiffs' Request for Entry of Judgment and Briefing Schedule to Enforce the Writ*

On November 2, 2012, the parties filed a joint request for a status conference in the writs department. In the joint filing, Plaintiffs requested that "the Court adopt its Ruling on Petition for Writ of Mandate Heard on October 26, 2010, as a final order and set a briefing schedule for Plaintiffs' Motion for Enforcement." The Department stated its "object[ion] to plaintiffs' request that this Court adopt as a final order its

October 26, 2010 ruling on the petition for writ of mandate," asserting, "[t]here clearly are issues to be resolved because plaintiffs intend to file a motion to enforce the writ."

On March 27, 2013, Judge Joanne O'Donnell, now presiding over the case in the writs department, held the requested status conference hearing. After discussing the history of the case leading up to Judge Jones's June 22, 2012 minute order, the following exchange between the court and counsel occurred:

> "[Plaintiffs' Counsel]: We came back for a status conference here on the petition for writ of mandate on June 22, 2012, seeking to be able to establish a briefing schedule so that we could bring a motion for enforcement, because we believe there are deficiencies in the study that the State did. . . . But at that time Judge Jones stated that because there were remaining causes of action[] in front of Judge Wiley, we had to resolve those issues before we could get a final judgment on the writ.
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> "The Court: Well, a final judgment on the case which includes request[s] for both types of relief.
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> "[Plaintiffs' Counsel]: Yes, absolutely. . . . So in the interim, the two remaining causes of action have been dismissed and . . . the case was transferred by Judge Wiley back to you, and we are here seeking a final judgment and then a briefing schedule.
>
> "The Court: A final judgment on what? You want a briefing schedule.
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> [¶] . . . [¶]
>
> "[Plaintiffs' Counsel]: In this case, Judge Jones issued an interlocutory order . . . saying [Plaintiffs] won on

their petition for writ of mandate, and her interlocutory order is in our favor.

"The Court: And I'm going to issue [this] interlocutory –

"[Plaintiffs' Counsel]: . . . It's been litigated and decided by Judge Jones. We need to enter that and get a final order, judgment on this thing and issue the writ.

"[The Department's Counsel]: I disagree. Yes, Judge Jones granted the writ of mandate and we filed a return and they're disputing the return. So it's not – we're not here to get a judgment entered. They don't like the way we did the return. So they indicated that they want to file a motion to enforce the writ. And so that's why we're here to get a briefing schedule.

"The Court: Do you agree with that part?

"[Plaintiffs' Counsel]: Yes. . . .

[¶] . . . [¶]

"[The Department's Counsel]: I think it's a motion to enforce the writ.

"The Court: Okay, enforce the writ. Yes, sounds good."

Following this exchange, the court set a briefing schedule on Plaintiffs' motion to enforce the writ. The court did not reduce the prior interlocutory orders and dismissal to a final judgment, and the clerk of the court did not issue "a writ" as contemplated by Judge Jones's June 22, 2012 minute order.

6. *November 10, 2014 Order Discharging the Writ*

On May 23, 2013, Plaintiffs filed their motion to enforce the writ. The trial court granted the motion with respect to the Department's obligation to review annually physician

reimbursement levels under section 14079, subdivision (b), and issued a series of orders to show cause to compel the Department's compliance. On November 10, 2014, the court found the Department had complied with its ministerial duty, and entered an order discharging the "October 26, 2010 writ."

7. *Plaintiffs' Motion for Attorney Fees*

On May 22, 2015, Plaintiffs filed a motion for attorney fees under Code of Civil Procedure section 1021.5.[5] Plaintiffs argued they were entitled to compensation under the private attorney general doctrine for the fees incurred both to obtain the writ of mandate and subsequently to compel the Department to "undertake annual reviews of Medi-Cal's physician reimbursement rates as required by section 14079."

The Department opposed the attorney fee motion, arguing, among other things, that it was untimely under rule 3.1702. Rule 3.1702 requires a motion for prejudgment attorney fees to be filed within the time for filing a notice of appeal – that is, either 60 days after notice of entry of judgment is served, or 180 days after judgment is entered. (See Rule 8.104(a)(1)(A) & (a)(1)(B).) Citing Judge Wiley's order sustaining the demurrer to the Supremacy Clause cause of action and Plaintiffs' voluntary dismissal of the Equal Protection Clause claim, the Department argued judgment was entered on November 10, 2014, when the trial court discharged the writ and "finally resolved" all matters pending between the parties. Because Plaintiffs filed their

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[5] A proof of service attached to the motion shows it was served on the Department on March 19, 2015. Plaintiffs maintain in their opening brief that the motion was not filed until two months later due to a "clerical oversight."

attorney fee motion 193 days later, the Department argued it should be denied as untimely.

In their reply brief, Plaintiffs argued the November 10, 2014 discharge order was not a final judgment because it did not dispose of "Plaintiffs' outstanding complaints regarding the substance of [the Department's] review and [its] abuse of discretion in performing [its] legal duties" relating to "physician reimbursement rates." Plaintiffs also maintained it was a "complex and debatable" question whether the discharge order constituted a judgment, and, thus, "good cause" existed to permit a late filing under rule 3.1702(d).[6]

On July 10, 2015, the trial court issued an order requesting supplemental briefing to address the timeliness of Plaintiffs' attorney fee motion. The order explained: "It appears that neither party is correct in its assessment of when a final judgment was entered. . . . While the parties focus on the torturous multi-year process of getting [the Department] to actually comply with its statutory duties as a component of the proceeding, the judgment – meaning the final determination of [Plaintiffs'] rights – was entered before that process began." After recounting the writ proceedings before Judge Jones, and the subsequent dismissals before Judge Wiley, the order concluded: "While the parties do not place the relevant judgment or order before the Court, presumably Judge Wiley or another

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[6] Under rule 3.1702(c)(2), "[t]he parties may by stipulation . . . extend the time for filing the motion up to an additional 60 days in an unlimited civil case." Rule 3.1702(d) states that, "[f]or good cause, the trial judge may extend the time for filing a motion for attorney's fees in the absence of a stipulation or for a longer period than allowed by stipulation."

judge presiding over the complex causes of action disposed of any remaining claims, resulting in a final judgment. The presumption arises from the fact that this final adjudication of the remaining causes of action was a precondition to the return and enforcement of the writ – both as a matter of law and by virtue of the Court's express instructions [in Judge Jones's June 22, 2012 minute order]."

In its supplemental brief, the Department argued the final judgment was entered on September 14, 2012, when the clerk entered Plaintiffs' voluntary dismissal of the Equal Protection Clause claim. Plaintiffs maintained that all prior orders were interlocutory and that the final judgment had not yet been entered.

8. *Order Denying Plaintiffs' Attorney Fee Motion*

On February 5, 2016, the trial court entered an order denying Plaintiffs' motion for attorney fees as untimely, stating, "[i]t appears that judgment was entered in the action on September 14, 2012," when Plaintiffs voluntarily dismissed the Equal Protection Clause claim. The court explained: "A judgment is the final determination of the rights of the parties therein. [Citation.] The writ petition was resolved on its merits on October 26, 2010. The Supremacy Clause cause of action was resolved on its merits on June 28, 2012. The sole remaining cause of action for violations of the Equal Protection Clause was voluntarily dismissed on September 14, 2012. At this point, 'no issue [was] left for future consideration except the fact of compliance or non-compliance with the terms of the [writ].' [Citation.] Accordingly, the judgment was final at that point." Having concluded the motion was time-barred, the court did not

reach the merits of Plaintiffs' request for private attorney general fees under Code of Civil Procedure section 1021.5.

DISCUSSION

Rule 3.1702 establishes time limits for filing a motion to claim prejudgment attorney fees by cross-referencing the time limits prescribed by rules 8.104 and 8.108 for filing a notice of appeal. The rule states in pertinent part: "A notice of motion to claim attorney's fees for services up to and including the rendition of judgment in the trial court . . . must be served and filed within the time for filing a notice of appeal under rules 8.104 and 8.108." (Rule 3.1702(b)(1).)

Rule 8.104(a)(1) sets forth the following jurisdictional deadlines for filing a notice of appeal: "Unless a statute or rules 8.108, 8.702, or 8.712 provides otherwise, a notice of appeal must be filed on or before the earliest of: [¶] (A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled 'Notice of Entry' of judgment or a file-endorsed copy of the judgment, showing the date either was served; [¶] (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled 'Notice of Entry' of judgment or a file-endorsed copy of the judgment, accompanied by a proof of service; or [¶] (C) 180 days after entry of judgment." Rule 8.108 extends these time limits when a party serves and files a valid notice of intention to move for a new trial.

The trial court denied Plaintiffs' motion for attorney fees as untimely, concluding Plaintiffs filed the motion more than 180 days after entry of judgment. (See Rules 3.1702(b)(1) & 8.104(a)(1)(C).) In reaching this conclusion, the court reasoned that entry of judgment occurred through a series of two interlocutory orders and one voluntary dismissal, entered on

different dates, each disposing of a separate cause of action. But the record shows this series of orders and the dismissal were never reduced to a judgment, notwithstanding Plaintiffs' request to do so at the March 27, 2013 status conference. In view of the implications for timeliness – not only for Plaintiffs' attorney fee motion, but also with respect to the jurisdictional deadlines affecting the parties' appellate rights – we cannot conclude that these three separate documents can be read together to constitute the final judgment in this action.

Our Supreme Court's decision in *Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894 (*Alan*) is instructive. There, the court considered whether the plaintiff filed a timely notice of appeal, after the superior court clerk mailed two documents on the same day, neither of which satisfied the alternative ways to trigger the 60-day appeal period under former rule 8.104(a)(1). (*Alan,* at p. 898.) Like current rule 8.104(a)(1)(A), former rule 8.104(a)(1) required a notice of appeal to be filed no later than " '60 days after the superior court clerk mails the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, showing the date either was mailed.' " (*Alan,* at p. 898, quoting former rule 8.104(a)(1).) In dismissing the appeal as untimely, the Court of Appeal in *Alan* had reasoned that the 60-day period was triggered because the two documents – a file-stamped statement of decision and a minute order indicating the date of mailing – could be considered together to establish compliance with the rule. (*Alan,* at pp. 904-905.) The Supreme Court disagreed, holding, "the 60-day period for filing a notice of appeal [applies] only when the clerk has sent a single, self-sufficient document satisfying all of the rule's conditions." (*Id.* at p. 903.) In reaching

this conclusion, the court emphasized that the rule could not be interpreted to "require litigants to glean the required information from multiple documents or to guess, at their peril, whether such documents *in combination* trigger the duty to file a notice of appeal. 'Neither parties nor appellate courts should be required to speculate about jurisdictional time limits.' " (*Id.* at p. 905, italics added.)

The principle stated in *Alan* applies here. Like the appellate court in *Alan*, the trial court reasoned that a series of distinct documents – Judge Jones's October 26, 2010 order on Plaintiffs' petition for writ of mandate, Judge Wiley's June 28, 2012 order sustaining the Department's demurrer to the Supremacy Clause claim, and the clerk's September 14, 2012 entry of Plaintiffs' voluntary dismissal of the Equal Protection Clause claim – could be read together and combined in effect to constitute entry of the one final judgment in this case. That ruling, while addressed to the timeliness of Plaintiffs' motion for attorney fees, necessarily implicated the jurisdictional deadline for filing a notice of appeal. Because rule 3.1702 incorporates the jurisdictional deadlines set forth in rule 8.104, the final judgment (and the date of its entry) must be the same for purposes of assessing timeliness under both rules.[7] Just as the plaintiff in

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[7] For this reason, we reject the Department's suggestion that rule 3.1702(d) has any bearing on the determination of when the final judgment is entered in a case. Rule 3.1702(d) vests the trial court with discretion to extend the time for filing an attorney fee motion on a showing of "good cause" (see fn. 6, *ante*); it does not give a court discretion to find entry of judgment occurred on one date for purposes of assessing the timeliness of an attorney fee motion and another date for purposes of assessing the timeliness of an appeal.

Alan could not be forced to speculate about when the jurisdictional time limit began to run on his duty to file a notice of appeal, so too Plaintiffs cannot be required to guess about whether a series of interlocutory orders and a voluntary dismissal, entered on different dates by different trial judges, could be read together to constitute the final judgment triggering their obligation to claim prejudgment attorney fees.

The Department contends *Alan* is distinguishable because it concerned the "form of the ***document*** that triggered the time to appeal under the shortened 60-day time limit imposed by rule 8.104(a)(1)(A)," not the 180-day time limit triggered by entry of the final judgment under rule 8.104(a)(1)(C). The Department further argues that "*Alan* does not reach the question of 'finality' for purposes of the final judgment rule," nor does it "signal a departure from the general principle that the substance and effect of a judgment, not its form, determines finality." And, the Department maintains "the Supreme Court could not have intended the *Alan* decision to allow [Plaintiffs] to claim a judgment was never entered when that was [Plaintiffs'] objective in dismissing their final cause of action." None of these contentions convinces us that *Alan* is inapposite to this case.

The distinction the Department draws between rule 8.104(a)(1)(A) and rule 8.104(a)(1)(C) ignores the broader principle that guided the *Alan* court's analysis. The Department maintains that, "[i]n contrast to rule 8.104(a)(1)(A), rule 8.104(a)(1)(C) does not specify any form on the entry of judgment that triggers the time to appeal within the 180-day outer limit." However, both subdivisions refer to the "judgment," and, in the case of rule 8.104(a)(1)(A)'s reference to "a filed-endorsed copy of the judgment," the Supreme Court in *Alan* interpreted the phrase

to "contemplate a single document." (*Alan, supra,* 40 Cal.4th at p. 900.) More importantly, the broader principle stated in *Alan* – that neither parties nor courts should be forced to speculate about whether multiple documents in combination trigger jurisdictional deadlines – applies equally to rule 8.104(a)(1)(C), which, like rule 8.104(a)(1)(A), limits the right to appeal by establishing a jurisdictional time limit that cannot be extended. (See rule 8.104(b) [except in the case of a public emergency "as provided in rule 8.66, no court may extend the time to file a notice of appeal"].) Like other decisions considering such deadlines, *Alan* recognizes that fair notice and certainty are essential to every jurisdictional time limit, regardless of their different formulations. (See, e.g., *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 64 [clerk's mailing of file-stamped copy of the judgment did not shorten jurisdictional time period to rule on new trial motion because the copy of the judgment did not "affirmatively state that it was given 'upon order by the court' or 'under [Code of Civil Procedure] section 664.5' "].)

The Department's focus on "finality" likewise fails to acknowledge the need for certainty and definiteness that underpins the *Alan* decision. It is true that in considering questions of finality, courts have recognized that "it is the substance and effect of an adjudication that is determinative, not the form of the decree." (*Otay River Constructors v. San Diego Expressway* (2008) 158 Cal.App.4th 796, 801.) But the cases the Department cites for this principle considered only whether the substance of a *single* order or decree disposed of all pending issues – not whether several separate orders in combination may be read to constitute a final judgment. (See *Otay River,* at p. 801

["we conclude that the order denying Otay's petition to compel arbitration was essentially a judgment on the only issue before the trial court"]; *Griset v. Fair Political Practices Com*. (2001) 25 Cal.4th 688, 699-700 [order denying plaintiffs' writ petition, which disposed of the entire case and left nothing else to decide, constituted final judgment]; *Vivid Video, Inc. v. Playboy Entertainment Group, Inc*. (2007) 147 Cal.App.4th 434, 436-437 ["order compelling arbitration of the arbitrability question" was not a final judgment]; *JKH Enterprises, Inc. v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1056 [where plaintiff sought only writ of administrative mandamus, order denying the petition for writ was appealable, despite "no formal judgment in the record," because the order "appears to have terminated the trial court proceedings"].)

Indeed, *Abatti v. Imperial Irrigation Dist.* (2012) 205 Cal.App.4th 650 – the case upon which the Department principally relies – addressed only whether a judgment could be deemed final notwithstanding that certain claims were dismissed without prejudice, while acknowledging that, "[a]fter the appellants dismissed their remaining non-CEQA claims without prejudice, *the court entered a judgment* on the CEQA claim in favor of the District." (*Id.* at p. 654, italics added.) In *Abatti*, there was no dispute that a single judgment had been entered; the only question was whether the judgment was final. (See *Abatti,* at p. 666 [judgment was final because the unadjudicated causes of action had been voluntarily dismissed "without any waiver of the applicable statute of limitations as to the dismissed claims, and without any stipulation that would facilitate the potential future litigation of the dismissed claims"]; cf. *Kurwa v. Kislinger* (2013) 57 Cal.4th 1097, 1105 [judgment was not final

because the parties had "agreed to preserve the voluntarily dismissed counts for potential litigation upon conclusion of the appeal from the judgment rendered"].)[8]

Finally, we cannot agree with the Department's contention that *Alan* is inapposite because, here, Plaintiffs voluntarily dismissed their Equal Protection Clause claim with the objective of effecting entry of judgment in order to pursue enforcement of the writ. At the June 22, 2012 status conference, Judge Jones explained to the parties that her October 26, 2010 order was not a writ, and that they needed to "adjudicate everything else, *get a final judgment that incorporates the writ cause of action*," then, "[a]t that junction the writ issues, and . . . a return can be ordered." (Italics added.) In her subsequent minute order, Judge Jones emphasized the point again: "If [Plaintiffs] wish to 'enforce' the prior rulings made by this court on the writ cause of action, they first need to resolve the remaining causes of action,

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[8] Plaintiffs maintain Judge Jones's October 26, 2010 order did not resolve all pending controversies between the parties with respect to the third cause of action for violation of section 14079. In addition to writ relief, Plaintiffs emphasize the claim also alleged they "suffered injuries including damages in an amount to be proven at trial" and sought "economic damages according to proof" and "equitable relief including restitution, according to proof at trial." Because we conclude final judgment was not entered, we need not address the effect of these allegations on the question of finality. Nor do we express an opinion as to whether Plaintiffs' attorney fee motion was premature, given their assertion that the section 14079 claim is still pending. On remand, the trial court should consider these allegations in determining whether to enter judgment and rule on the attorney fee motion at this stage of the litigation.

have a judgment entered and then (and only then) have a writ issued by the clerk of the court." (Italics added.) The record shows Plaintiffs attempted to follow Judge Jones's prescription, but they were thwarted in their effort to have the relevant interlocutory orders reduced to a final judgment by what appears to have been shared confusion stemming from the idiosyncratic nature of the proceedings leading up to the enforcement stage.

On March 27, 2013, following Plaintiffs' voluntary dismissal of their Equal Protection Clause claim and Judge Wiley's remand of the action back to the writs department, the parties had a status conference hearing before Judge O'Donnell, who was then presiding over the writ proceeding in Judge Jones's stead. Plaintiffs, relying on Judge Jones's June 22, 2012 minute order, explained that the two non-writ claims had been dismissed, and that they were now "seeking a final judgment and then a briefing schedule" to enforce the writ. The court asked, "[a] final judgment on what?" Plaintiffs responded that Judge Jones's October 26, 2010 order was "interlocutory" and they needed to "enter that and get a final order, judgment on this thing and issue the writ." The Department's counsel objected, arguing "we're *not* here to get a *judgment entered*," but rather to obtain a "briefing schedule" on Plaintiffs' "motion to enforce the writ."[9] (Italics added.) At the end of the hearing, Plaintiffs

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[9] In the parties' November 2, 2012 joint request for a status conference, the Department similarly objected to Plaintiffs' request to enter a final order on the writ cause of action, arguing, "[t]here clearly are *issues to be resolved* because plaintiffs intend to file a motion to enforce the writ." (Italics added.) The statement appears to express the Department's belief that, even after Plaintiffs' dismissal of the Equal Protection Clause claim,

assented to the Department's assertion (and the court's apparent understanding) that the enforcement proceedings could move forward without reducing the interlocutory orders and dismissal to a final judgment.

This evident confusion confirms that the principle stated in *Alan* is sound and apposite to this case. In opposing Plaintiffs' attorney fee motion, the Department initially argued the final judgment was not entered until November 10, 2014, when the trial court discharged the writ and "finally resolved" all matters pending between the parties. Plaintiffs argued the judgment had yet to be entered, citing Judge Jones's June 22, 2012 minute order and the parties' March 27, 2013 exchange with the trial court. The court rejected both parties' positions, ultimately concluding a final judgment was entered several years earlier when Plaintiffs dismissed the Equal Protection Clause claim. Litigants cannot be required to "guess, at their peril, whether [a series of] documents *in combination* trigger the duty to file a notice of appeal" (*Alan, supra,* 40 Cal.4th at p. 905, italics added) or, by virtue of rule 3.1702 incorporating the deadlines established by rule 8.104, the duty to file a motion for attorney fees. Because the prior interlocutory orders and Plaintiffs' voluntary dismissal were never reduced to a final judgment, we conclude that judgment has not been entered and the trial court erred when it denied Plaintiffs' motion as untimely.

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the proceeding still had not reached finality for purposes of entering judgment.

DISPOSITION

The order is reversed and the matter is remanded for further proceedings consistent with this opinion. Plaintiffs are entitled to their costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

LAVIN, Acting P. J.

CURREY, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.