**Affirmed and Opinion filed March 21, 2002.**


**In The**

# Fourteenth Court of Appeals

---

**NO. 14-00-00777-CV**

---

**WILLIAM M. CAYAN, Appellant**

**V.**

**AMALIA K. CAYAN, Appellee**

---

**On Appeal from the 328th District Court**
**Fort Bend County, Texas**
**Trial Court Cause No. 98,320**

---

## O P I N I O N

This is the second appeal of the trial court's order granting divorce. In one point of error, appellant claims the trial court erred in entering a judgment nunc pro tunc. We affirm.

### Background and Procedural History

Appellant, William M. Cayan (Husband), appeals the trial court's order granting a divorce from appellee, Amalia K. Cayan (Wife), based on the parties' Rule 11 agreement. This court previously affirmed the judgment of the trial court in *Cayan v. Cayan*, 38 S.W.3d 161 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). During the Husband's first

appeal, it was determined that the original final Decree of Divorce incorrectly stated that the divorce was "judicially PRONOUNCED AND RENDERED in court at Houston, Harris County, Texas on January 14, 1999," rather than in Fort Bend County.[1] Accordingly, the Wife on March 8, 2000, filed a Motion for Judgment Nunc Pro Tunc to correct the Final Decree by clarifying the location where judgment was rendered. The trial court granted the motion on March 22, 2000, over Husband's objection. This appeal followed.

**Analysis**

Husband argues that a judgment nunc pro tunc may not be used to correct a trial court's incorrect recitation of where the judgment was rendered, urging that it was judicial error. It is well settled that, after it loses plenary jurisdiction, a trial court can correct only clerical errors by judgment nunc pro tunc. *See* TEX. R. CIV. P. 329b(f); *see also Escobar v. Escobar*, 711 S.W.2d 230, 231 (Tex. 1986); *In re Rollins Leasing Inc.*, 987 S.W.2d 633, 636 (Tex. App.—Houston [14th Dist.] 1999, orig. proceeding). A clerical error is one that does not result from judicial reasoning or determination. *Andrews v. Koch*, 702 S.W.2d 584, 585 (Tex. 1986). The trial court may correct a clerical error in entering a final judgment at any time. *See Escobar*, 711 S.W.2d at 231. However, a court may not correct judicial errors once the trial court's plenary jurisdiction expires. *Id*. A judicial error is an error that occurs in the *rendering* as opposed to the *entering* of a judgment. *Id*. Whether an error is clerical rather than judicial is a question of law. *Id*.

In this case, the associate judge recommended the grant of a final decree of divorce on January 14, 1999, based on the terms of the Rule 11 mediated settlement agreement of the parties. Rendition occurred when the trial court signed and adopted the associate judge's

[1] In the first appeal, we noted Husband's suggestion that the decree was void based on this error, but we did not address the merits of the claim as Husband failed to perfect the issue for appeal. *See Cayan*, 38 S.W.3d at 163. However, we found the error did not present a jurisdictional problem as there was no suggestion any action was taken in Harris County. *Id*. (citing *DeShazo v. Hall*, 963 S.W.2d 958, 960 (Tex. App.—Houston [14th Dist.] 1998, no pet.) (noting that any order based on proceedings conducted outside a court's geographic jurisdiction is void and that an appellate court has no jurisdiction to consider the merits of an appeal from such a void judgment)).

recommendation that same day, granting the divorce based on the terms of the settlement agreement.[2] *See Stein v. Stein*, 868 S.W.2d 902, 904 (Tex. App.—Houston [14th Dist.] 1994, no writ) (finding rendition occurs on the date the trial court adopts a master's report or signs any analogous recommendation from the associate judge). The *rendered* judgment on January 14, 1999, contained no errors. The error occurred in the *entered* judgment on March 1, 1999, an error that was clerical. *See Universal Underwriters Ins. Co. v. Ferguson*, 471 S.W.2d 28, 29-30 (Tex. 1971) (finding a clerical error is a discrepancy between the judgment that is entered and the judgment as it was actually rendered); *see also In re Fuselier*, 56 S.W.3d 265, 267 (Tex. App.—Houston [1st Dist.] 2001, orig. proceeding) (stating that error in rendering judgment is judicial error, while error in entering judgment is clerical error). Therefore, the trial court properly corrected the clerical error by judgment nunc pro tunc. *See Escobar*, 711 S.W.2d at 231-32 (finding the court can correct a final written judgment that incorrectly states the judgment actually rendered).

Husband relies on two cases as support for his contention that the error was judicial rather than clerical, *America's Favorite Chicken Co. v. Galvan*, 897 S.W.2d 874 (Tex. App.—San Antonio 1995, writ denied) (finding a court's ruling on a nonsuit mistakenly entered "without" prejudice though intended to be made "with" prejudice but for a typographical error, constituted judicial error), and *Wood v. Griffin & Brand of McAllen*, 671 S.W.2d 125 (Tex. App.—Corpus Christi 1984, no writ) (finding an erroneous party designation that read "defendants" take nothing rather than "plaintiffs" constituted judicial error since it was error in the trial court's determination of a "primary judicial decision"). However, both cases are distinguishable. In both cases, unlike here, the court made no rendition prior to signing its final order. *Galvan*, 897 S.W.2d at 877; *Wood*, 671 S.W.2d at

[2] Appellant argues in his brief that the district judge did not approve the associate judge's order on January 14th, but waited until March 1st when he signed the original decree. However, the record reflects that on January 14th the district judge signed and dated a document entitled "Hearing/Trial by Associate Judge Agreed Order." This document shows that the divorce was granted, recites that the action occurred in the district court of Fort Bend County, Texas, and contains a file stamp from the district clerk of Fort Bend County, Texas.

129. Here, as noted above, the order rendered on January 14, 1999, correctly states the location of the action taken as Fort Bend County. The subsequent recitation in the original divorce decree which incorrectly stated the location of the action taken was not the result of judicial reasoning or determination. *See Andrews*, 702 S.W.2d at 585. Accordingly, appellant's point of error is overruled.

The judgment of the trial court is affirmed.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed March 21, 2002.
Panel consists of Justices Yates, Edelman, and Guzman.
Do Not Publish — TEX. R. APP. P. 47.3(b).