Case No. S216566
(Court of Appeal No. C062329)
(Sacramento County Superior Court No. 06AS00671)

IN THE SUPREME COURT OF

THE STATE OF CALIFORNIA

F.P.,
Plaintiff and Respondent,

v.

JOSEPH MONIER,
Defendant and Appellant.

After a Decision By the Court of Appeal,
Third Appellate District

BRIEF OF AMICUS CURIAE BY THE CALIFORNIA ACADEMY OF APPELLATE LAWYERS IN SUPPORT OF APPELLANT

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BRIEF OF AMICUS CURIAE CALIFORNIA ACADEMY OF APPELLATE LAWYERS IN SUPPORT OF APPELLANT

Amicus curiae California Academy of Appellate Lawyers respectfully urges the court to reverse the decision of the Court of Appeal. The court should uphold the long-established rule that a trial court's failure to issue a statement of decision, when one is required, is reversible error per se.

When a civil case is tried without a jury, a statement of decision enhances confidence in the judicial system by helping ensure correct decisions, by making the decision-making process transparent, and by allowing litigants a voice in the face of a trial court's apparent mistakes or omissions.

A statement of decision also provides focus, making it possible for appellate lawyers to help clients analyze judgments from the vantage point the reviewing court will use. This in turn promotes better decisions on whether to appeal, and how to narrow the issues if a party chooses to appeal (or resist an appeal). A statement of decision likewise promotes judicial economy because it points the reviewing courts toward the essential elements of the case.

Conversely, a prejudicial error standard would increase the work of appellate courts. Rather than keying in on issues presented – or not presented – in a statement of decision, a reviewing court would have to assess the whole record to determine if the case would have turned out differently had the trial court gone through the statement of decision process.

The premise of the Court of Appeal decision is that article VI, section 13 of the California Constitution requires affirmance unless the appellant shows that an error resulted in a miscarriage of justice. But "some errors in civil cases remain reversible per se, primarily when the error calls into question the very fairness of the trial or hearing itself." (*Biscaro v. Stern* (2010) 181 Cal.App.4th 702, 709.)

I.
The Statement of Decision Process Fosters Thoughtful Decision-Making and Prevents Avoidable Errors

Failure to issue a required statement of decision invariably calls into question the fairness of a trial. In a civil jury trial, litigants rely on the perceptions, experience, wisdom, and eventual agreement of at least nine individuals to resolve disputes. The tradeoff for choosing a court trial, which involves only a single decision maker, in place of the collective deliberative process of jury trial, is the requirement that the judge explain the factual and legal basis for the decision in writing. "Misconceptions and oversights of fact and law are discovered in the process of writing." (Baker, *A Review of Corpus Juris Humorous* (1993) 24 Tex. Tech. L.Rev. 869, 873, quoted in Lebovits, Curtin & Solomon, *Ethical Judicial Opinion Writing* (2008) 21 Geo. J. Legal Ethics 237, 345.) In this way, requiring a written statement of decision helps assure fairness where there is only one factfinder instead of twelve.

Moreover, the process of explaining one's thoughts in writing shifts decisions away from mere subjective preference and toward

objective rationale. (Walker, *Discovering the Logic of Legal Reasoning* (2007) 35 Hofstra L. Rev. 1687; cf., 2 Cooper, State Administrative Law (2d ed. 1965) pp. 467-468 [findings requirement in administrative decision making facilitates orderly analysis and minimizes the likelihood of random leaps from evidence to conclusions]; Baker, *op. cit. supra,* 24 Tex. Tech. L.Rev. at 872, quoted in Lebovits et. al., *op cit. supra,* 21 Geo. J. Legal Ethics at 244 [written decisions "constrain arbitrariness"].)

The guarantee of a statement of decision may be the very reason parties choose a court trial instead of a jury trial. A written explanation of the facts that led the court to reach the result reflected in the judgment may: delineate the collateral estoppel reach of a decision; serve as a guideline for setting future policies; and govern ongoing relationships between the parties. For example, "[i]n family law cases, a statement of decision . . . serves as a useful guide to future decisions; it serves as an evidentiary benchmark for future modification orders." (*In re Marriage of Reilley* (1987) 196 Cal.App.3d 1119, 1126.)

Applying a prejudicial error standard instead of continuing to hold that failure to issue a required statement of decision is reversible error per se would deprive litigants of an important increment of thoughtful judicial decision making.

II.
The Statement of Decision Process Enhances Public Confidence in the Courts

Statements of decision help make trial court decisions transparent. "Unreviewable discretion . . . conflicts with litigants' basic sense of fairness and undermines societal trust in the judicial process." (Effron, *Reason Giving and Rule Making in Procedural Law* (2014) 65 Ala. L. Rev. 683, 704, internal quotation marks omitted.) Statements of decision allow the parties and the public to know how a judge reasoned from Point A to Point B (and perhaps Points C and D) to a judgment.

The judicial system requires judges to explain their rulings "'to expose the court's decision to public scrutiny, to nail it up on the wall for all to see. In no other way can it be known whether the law needs revision, whether the court is doing its job, whether a particular judge is competent.'" (Lebovits et. al., *op. cit., supra*, 21 Geo. J. Legal Ethics at 244, quoting Smith, *A Primer of Opinion Writing, For Four New Judges* (1967) 21 Ark. L. Rev. 197, 209.)

Enforcing the statement of decision requirement also enhances the image of trial courts. A statement of decision provides "a framework for principled decision-making," and therefore serves to enhance the integrity of the fact-finding process. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 516, fn. 14 [discussing administrative fact-finding], quoting *Environmental Defense Fund, Inc. v. Ruckelshaus* (D.C.Cir. 1971) 439 F.2d 584, 598.) Conversely, allowing trial judges to skirt the statement of decision process undermines respect for courts.

Further, Code of Civil Procedure section 632 requires statements of decisions when timely requested. It reflects a legislative policy about what courts must do. Even though some trial judges view the process of preparing factual findings as "a pain" (*R.E. Folcka Constr. v. Medallion Home Loan Co.* (1987) 191 Cal.App.3d 50, 54), compliance with a statutory requirement is as much an obligation of a superior court judge as any other person, even when compliance is deemed burdensome – and an effective statement of decision need not be a long, complicated document. But applying a prejudicial error standard could lead some busy judges to skip over the statement of decision process, gambling that the reviewing court would affirm regardless of whether there is a statement of decision; judges who anticipate that their failure to prepare a statement of decision might be given a "pass" by virtue of a prejudicial error standard might decide not to bother.

The reversible per se standard of review is protection against judges who do not follow the law. Conversely, the prejudicial error standard of review breeds disrespect for the law to the extent it sends the message that a judge may decide for him or herself when to follow a mandatory statute.

III.
The Statement of Decision Process Promotes Focused and Efficient Appellate Review

Appellant's opening brief touched on the importance of a statement of decision to the process of appellate review in terms of framing the issues, especially with regard to the review of

discretionary rulings. (AOB 10-14.) It bears repeating that written findings "make the case easily reviewable on appeal by exhibiting the exact grounds upon which the judgment rests." (*Frascona v. Los Angeles R. Corp.* (1920) 48 Cal.App. 135, 137.) As Justice Cardozo wrote, a reviewing court "must know what [a] decision means before the duty becomes [the court's] to say whether it is right or wrong." (*United States v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.* (1935) 294 U.S. 499, 511.)

Without a statement of decision, appellate courts can only speculate about the factual basis of the trial court's ruling. (*Charlton Co. v. Aerfab Corp.* (1976) 56 Cal.App.3d 808, 812 [requiring findings of fact in arbitration-related judicial proceedings].) "'Absent such roadsigns [findings], a reviewing court would be forced into unguided and resource-consuming explorations; it would have to grope through the record to determine whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order or decision.'" (*Ibid.*, quoting *Topanga Assn. for a Scenic Community v. County of Los Angeles, supra*, 11 Cal.3d at p. 516, fn. 14.)

For lawyers whose practices focus on appellate law, including the members of amicus curiae California Academy of Appellate Lawyers, a written decision enhances the value they can provide to clients. Appellate lawyers devote substantial time to screening (and often turning down) potential appeals long before they ever reach a Court of Appeal. Statements of decision make it feasible to advise a litigant contemplating appeal about *whether to* appeal without a

significant investment of time by affording immediate insight into the facts and the legal theories at issue. Discouraging unmeritorious appeals lightens the burden of appellate courts and protects litigants against wasted attorney fees.

Even if a litigant decides to go forward after consulting an appellate lawyer, the availability of a statement of decision provides a framework for challenging the judgment. If there is no statement of decision, the appellant must challenge every possible theory on which the judgment could be upheld. When there is a statement of decision, record preparation and briefing can be limited to the legal issues illuminated by the statement of decision, permitting a less expensive and more effective briefing process, and increasing the efficiency of appellate courts.

CONCLUSION

The court should reverse the judgment and declare that the failure to provide a statement of decision when one is required under Code of Civil Procedure section 632 is reversible error per se.

Dated: March 11, 2015

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

(Rule 8.204(c), California Rules of Court)

The text of this brief consists of 1,619 words as counted by the Microsoft Word word-processing program used to generate this brief.

Dated: March 11, 2015

Wendy C. Lascher

PROOF OF SERVICE

I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action; my business address is 1050 South Kimball Road, Ventura, California 93004.

On March 11, 2015, I served the foregoing document described as **"BRIEF OF AMICUS CURIAE BY THE CALIFORNIA ACADEMY OF APPELLATE LAWYERS IN SUPPORT OF APPELLANT"** on the interested parties in the action entitled *F.P. vs. Joseph Monier;* Sacramento County Superior Court Case No.: 06AS00671; Court of Appeal, Third Appellate District Case no.: C062329.

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Executed on March 11, 2015, at Ventura, California.

Alice Duran

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