

# IN THE SUPREME COURT OF TEXAS

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No. 98-1031  
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LANE BANK EQUIPMENT CO., PETITIONER

v.

SMITH SOUTHERN EQUIPMENT, INC., RESPONDENT

=====  
ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS  
=====

**Argued on September 22, 1999**

JUSTICE ENOCH, joined by JUSTICE OWEN, concurring.

I agree with Justice Hecht's conclusions except to the extent he would permit a postjudgment motion that requests relief that *could* be included in the judgment to extend the trial court's plenary jurisdiction and the time for perfecting an appeal. The time-focus of Rule 329b<sup>1</sup> is predicated on a motion assailing the judgment. Consequently, the postjudgment motion must target the judgment in order to extend the court's plenary jurisdiction under Rule 329b.

Rule 329b(g) refers to a "motion to modify, correct, or reform a judgment."<sup>2</sup> At a minimum, the motion must alert the court to the fact that the movant wants the judgment changed — whether because of the nature of the relief requested or by an explicit request that the judgment be changed. A request for relief that could, but need not, be included in a final judgment is not sufficient.

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<sup>1</sup> See TEX. R. CIV. P. 329b(g).

<sup>2</sup> *Id.*

In any event, I agree with Justice Hecht that a timely-filed postjudgment motion that seeks a change in an existing judgment, whether or not the change sought is material or substantial, qualifies as a Rule 329b(g) motion to modify. Because the Court holds that the change must be substantial, I can only concur in the judgment.

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Craig T. Enoch  
Justice

Opinion delivered: January 6, 2000