



final. In *North East Independent School District v. Aldridge*, 400 S.W.2d 893, 897-98 (Tex. 1966), this Court explained:

When a judgment, not intrinsically interlocutory in character, is rendered and entered in a case regularly set for a conventional trial on the merits, no order for a separate trial of issues having been entered . . . it will be presumed for appeal purposes that the Court intended to, and did, dispose of all parties legally before it and of all issues made by the pleadings between such parties.

Thus, unless the trial court orders a separate trial to resolve a specific dispute, there is a presumption that the trial court's judgment disposed of all of the plaintiff's claims, as well as any cross-actions and counterclaims. *Id.* at 898. If there is any question about the trial court's intent, "[f]inality 'must be resolved by a determination of the intention of the court as gathered from the language of the decree and the record as a whole, aided on occasion by the conduct of the parties.'" *Continental Airlines, Inc. v. Kiefer*, 920 S.W.2d 274, 277 (Tex. 1996).

Here, although finality of the trial court's judgment was never seriously in question, Briscoe's motion for new trial asserted that "the Court's 'Final Judgment' is not final because it does not dispose of all claims and all parties." *Aldridge*, of course, defeats Briscoe's assertion.<sup>1</sup> Even if *Aldridge* were somehow inapplicable, the trial court dispelled any unreasonable doubt about the judgment's finality in its September 20, 2000 order overruling Briscoe's motion for new trial:

The Defendant Michael Briscoe in his Third Original Answer disclaimed all interest in any counter-claims except as to usury. . . . The Court in its Order grant[ing] a partial summary judgment found as a matter of law that there was no usury as to the notes in question. [Briscoe] in his issues and instructions requested no affirmative relief against Richard Marston or Richard Poe II and asserted only defenses to the Plaintiffs' unpaid notes. *The Court finds that the Judgment heretofore entered disposes of all of the parties and is a Final Judgment.*

(emphasis added). Combined with the presumptively-final judgment, this language reiterates finality with unmistakable clarity. *See Lehman v. Har-Con Corp.*, 39 S.W.3d 191, 206 (Tex. 2001)

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<sup>1</sup> Assuming for purposes of argument that a reasonable question existed concerning finality, other avenues were available for Briscoe to secure a final judgment. *See, e.g.*, Elaine A. Carlson & Karlene S. Dunn, *Navigating Procedural Minefields: Nuances in Determining Finality of Judgments, Plenary Powers, and Appealability*, 41 S. TEX. L. REV. 953, 1001-08 (2000).

(language stating “[t]his judgment finally disposes of all parties and all claims and is appealable” would leave no doubt about the court’s intention). Consequently, there is no merit to Briscoe’s contention that, because the court’s final judgment did not expressly recite all names or mention dead claims, the trial court’s judgment was interlocutory. *See Aldridge*, 400 S.W.2d at 897-98.

Instead of accepting the finality of the trial court’s judgment, however, Briscoe muddied the appellate waters by requesting in his notice of appeal “guidance” from the court of appeals on the judgment’s finality. But in cases like this, “[t]he presumption that a judgment rendered after a conventional trial on the merits is final and appealable has proved fairly workable for nearly a century.” *Lehman*, 39 S.W.3d at 199. We should not allow litigants to foist on appellate courts a responsibility to provide advice on rudimentary rules of appellate practice. Thus, when finality is not reasonably in question, there is no possible justification either for perfecting a qualified appeal or for seeking appellate counsel from the judiciary.

Although Briscoe is responsible for the delay and expense, Goodmark is not without fault. Goodmark had an opportunity to avert this protracted appeal simply by responding to the court of appeals’ invitation to explain “why Briscoe’s appeal should not be dismissed.” Goodmark remained silent and left the court of appeals to determine on its own the trial court’s true intent. While courts of appeals should review trial courts’ judgments independently to determine their own jurisdiction, we expect the parties to assist those courts when requested to do so. When parties ignore a call for clarification, they should not be later heard to complain that the court of appeals erred in dismissing the appeal based on an erroneous conclusion that an obviously final judgment is interlocutory.

It should be noted that, of all the actors in this drama, only Judge Alvarez escapes unscathed. First, he disposed of Briscoe’s claims by partial summary judgment. Then, he conducted a trial on the merits and signed a final judgment, which, by virtue of *Aldridge*, presumptively disposed of all claims and all parties. Judge Alvarez then reiterated the judgment’s finality in his order overruling Briscoe’s motion for new trial. Finally, on remand Judge Alvarez (by now, surely exasperated) was obliged to *again* declare “the judgment signed on July 14, 2000 disposed of all parties and issues

in this case, and is a final, enforceable judgment.”

Judge Alvarez’s March 13, 2001 order interpreting the judgment raises a final (but not insignificant) problem with these proceedings. The Court’s opinion today recognizes a right to appeal not from the final judgment, but from an order that simply declares for the second time the finality of an obviously final judgment. Had Briscoe asked the court of appeals to abate the appeal and remand the case to the trial court for that limited purpose, we would not face the procedural dilemma presented today. *See* TEX. R. APP. P. 27.2. But the quandary is not solved by the Court’s conclusory statement that the court of appeals’ first opinion somehow made an undisputedly final judgment “interlocutory.” We should state the obvious — we are making an exception in this one case because, as everyone acknowledges, Briscoe and Goodmark led the court of appeals into error during the first appeal. It is a holding unsound in principle, but acceptable in equity.

Briscoe, Goodmark, and the court of appeals all aided in errors committed in Briscoe’s first appeal. Briscoe is culpable for disregarding a patently final judgment and perfecting a qualified appeal. The Goodmark appellees, however, wasted an opportunity to keep the appeal on a proper course. Because Goodmark ignored the court of appeals’ request to explain why the appeal should not have been dismissed, I reluctantly agree that we should remand this case to the court of appeals for consideration of the merits.

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Wallace B. Jefferson  
Justice

OPINION DELIVERED: March 27, 2003