

Order Signed by Magistrate Can Be Final

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Today, the Indiana Court of Appeals issued a decision dealing with the consequences of a magistrate, rather than a judge, signing an order when the issue is not brought to the trial court's attention quickly in *City of Indianapolis v. Hicks*, Case No. 49A02-1002-CT-95. In *Hicks*, Hicks sued the City of Indianapolis for negligence and the City moved to dismiss, arguing Hicks failed to timely file a tort claim notice with the City. The trial court granted the motion and Hicks timely moved to correct error. A magistrate entered an order granting Hicks's motion to correct error and reversing the previous dismissal in favor of the City, signing on a line titled "Judge, Marion Superior Court 11." The CCS entry reflected that "Court approves granting Plaintiff's motion to correct error and denying Defendant's City of Indianapolis, motion to dismiss."

Ninety-nine days later, the City filed a motion, arguing that the order granting the motion to correct error had no legal effect for being signed only by a magistrate, the motion to correct error was deemed denied, and the case came to an end when Hicks failed to file a notice of appeal. The trial court then issued a *nunc pro tunc* order granting the motion to correct error as of the date the magistrate signed the order. The City appealed.

On appeal, the Court first addressed the magistrate's authority to enter the order correcting error. The Court noted that a magistrate may not enter a final appealable order, absent special circumstances described by statute. Nevertheless, the Court held that the City had waived any challenge to the validity of the order by not bringing the "irregularity" to the trial court's attention within the deadline for ruling on Hicks's motion to correct error.

To the extent the case status was unclear based upon the irregularity, it would have been a simple matter for the City to have clarified its understanding by immediately checking the CCS or contacting the trial court. Although attorneys are entitled to rely upon notification by the clerk regarding trial court orders, they have a "general duty to regularly check the court records and monitor the progress of pending cases." *Slay v. Marion County Sheriff's Dep't*, 603 N.E.2d 877, 883 (Ind. Ct. App. 1992), *trans. denied*.



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The Court then went on to say that it would have found no error, even in the absence of a waiver, because of the trial court's subsequent use of a *nunc pro tunc* order. The Court concluded that the CCS entry provided a sufficient basis for the trial court's *nunc pro tunc* entry.

As nothing in the record specifically contradicts the trial court's October 8, 2009 statements in the CCS that the court approved granting Hicks's motion to correct error, we conclude these entries are a sufficient written memorial that Judge Hanley timely approved Magistrate Caudill's recommendation.

The Court concluded by examining the merits of the City's argument regarding the merits of the motion to correct error and affirmed the trial court's decision.

The Court's decision on the issue of waiver is educational. The Court held that the City waived any objection to the magistrate's exercise of judicial authority because it did not raise the issue while the Court still had the opportunity to rule on the motion to correct error. However, the Court was not obliged to rule on the motion at any particular time prior to the deadline and, therefore, the City may have felt it was premature to ask the trial court whether it intended to adopt the magistrate's decision as its own. The Court's decision places an affirmative duty upon all litigants to make sure that the kinds of "irregularities" that took place in this case are resolved in a timely manner, especially if the irregular decision is adverse to you.

The Court's ruling on the issues surrounding the *nunc pro tunc* ruling are less groundbreaking, but are still worth noting. The Court made it clear that all it wanted was some clear evidence in the record supporting the *nunc pro tunc* order. That evidence would be sufficient, even if there were other portions of the record that could raise an inference that the *nunc pro tunc* order was improper. This broadens the latitude trial courts enjoy with respect to issuing *nunc pro tunc* orders.

Lessons:

1. Lawyers are under a duty to regularly check the court's records.
2. If a magistrate signs an order on a judge's signature line and the CCS entry indicates that the judge may have made a decision, bring this discrepancy to the Court's attention as soon as possible.
3. A trial court has fairly broad authority to issue a *nunc pro tunc* order if a litigant can point to some clear evidence in the record supporting that order.