

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
March 21, 2007 Session

EDWINNA RUTH BLACKBURN v. HEATH BRADLEY BLACKBURN

**Appeal from the General Sessions Court for Bledsoe County
No. 1545 Howard L. Upchurch, Judge**

No. E2006-00753-COA-R3-CV - FILED AUGUST 29, 2007

In this divorce case, Edwinna Ruth Blackburn (“Wife”) challenges the validity of the judgment of divorce entered *nunc pro tunc* following the death of her spouse, Heath Bradley Blackburn (“Husband”). The trial court held that the divorce was granted on June 6, 2005, *i.e.*, before Husband’s death on October 30, 2005, when the parties announced their settlement to the court. Wife appeals and argues that this case was still pending when Husband died. She claims that his death abated her complaint for divorce. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the General Sessions Court
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

John W. Cleveland, Sweetwater, Tennessee, for the appellant, Edwinna Ruth Blackburn.

Keith H. Grant, Dunlap, Tennessee, for the appellee, Heath Bradley Blackburn.

OPINION

I.

Wife filed a complaint for divorce in February 2005. On June 6, 2005, the parties’ attorneys announced a settlement in open court. There is no transcript of the announcement and the court’s file does not reflect what, if any, action the court took following the announcement.

On or about June 13, 2005, Wife’s attorney mailed a proposed judgment of divorce to Husband’s attorney, requesting that he review the document, sign it, and forward it to the court for its approval and entry. The proposed judgment states, in pertinent part, that

[t]his cause came to be heard on the 6th day of June, 2005 before the Honorable Howard Upchurch, General Sessions Court Judge, upon the Complaint for Divorce filed by [Wife], the testimony of the parties as heard in open Court, the statements of counsel, and the entire record as a whole, from all of which it duly appears to the Court that the parties have stipulated grounds for divorce pursuant to T.C.A. Sec. 36-4-129, such that the parties should be declared divorced and returned to the status of single persons; . . . that [Wife] shall be restored to her maiden name, “Edwinna Ruth Swafford[.]”

(Underlining in original). The proposed judgment includes a division of the parties’ property.

On October 30, 2005, Husband died in an automobile accident. At the time of Husband’s death, the proposed judgment prepared by Wife’s attorney had not been signed and approved by Husband’s attorney or sent to the trial judge. Wife subsequently filed a suggestion of death and a motion to dismiss her divorce complaint. According to Wife, her divorce suit abated upon the death of Husband because the court did not enter a judgment prior to his death. Later, Husband’s attorney filed a motion for the entry of a judgment of divorce *nunc pro tunc*.

On February 10, 2006, the trial court held a hearing to address the parties’ respective motions. Wife testified that she did not believe the trial court had granted the parties a divorce at the June 6, 2005, proceeding. Several other witnesses testified regarding the parties’ conduct following the June 2005 announcement. A deputy court clerk testified that, at a criminal arraignment of Wife that occurred subsequent to the announcement, Wife was “adamant about [the clerk] changing the warrant to [] Swafford [*i.e.*, her maiden name] instead of Blackburn.” A friend of Wife testified that, immediately following the proceeding in June 2005, she and Wife “celebrated” the fact that the parties were divorced by going out to eat and shop. The same friend testified that she had seen Wife with other men since the June 2005 proceeding.

The trial judge asked the parties’ trial attorneys, who were both present at the June 6, 2005, proceeding, whether the judge had indicated at that time, “as [he] routinely [did], that the divorce [was] granted and approve the [announced] agreement.” Wife’s attorney stated that the judge did not specifically state that the parties were divorced. She stated that the court told counsel to prepare “the documents,” *i.e.*, the judgment of divorce, and inquired as to who would prepare the judgment. Wife’s attorney testified that she volunteered to prepare the judgment. Husband’s attorney stated that he did not remember the specifics regarding how it was determined who would draft the final judgment, but that he did recall the court approving the parties’ divorce and agreement.

At the conclusion of the February 2006 hearing, the court made the following statements and findings from the bench:

The Court has carefully considered the testimony of the witnesses and has paid particular attention to the witnesses as they testified, including the original plaintiff in this action, be she identified as

Edwinna Blackburn or Edwinna Swafford. The Court has also considered the various exhibits that have been introduced, the trial brief that was filed by [Husband's attorney] on behalf of the decedent, [Husband], and/or the decedent's personal representative, and the opinions that were submitted to me by [Wife's trial attorney] on behalf of [Wife].

And I think what we have got here is a situation where, if I rule for [Wife] in this case, I have, in effect, taken the position that [Wife], Ms. Swafford or Ms. Blackburn, can be who she wants when she wants when it's advantageous for her.

Now, I think it's clear in this case that [Wife] has assumed the role of a single woman following the divorce, acted as if she was single. She had been before this Court and sworn by affidavit or at least sworn on pleadings that were filed in the criminal division of the General Sessions Court that she was a Swafford and not a Blackburn. She wants to blame that on [the clerk]. She has appeared before the Court of Rhea County and indicated that she is a Swafford rather than a Blackburn. And she wants to blame that on the clerk and on the fact that she has been a Swafford all her life, so she can go by Swafford if she wants to be a Swafford. Yet she makes [an] application to the Social Security Administration as a Blackburn to, in effect, receive some \$1500 a month [in] benefits for herself and her children, which are not children of [Husband]. They were not adopted by [Husband]. Certainly they weren't his biological or natural children and they weren't his obligation to support by any order entered, at least before me or presented to me, by any order entered by a Court of competent jurisdiction. So that's concerned the Court greatly in this case.

Exhibit 2, [*i.e.*, the proposed divorce judgment prepared by Wife's attorney following the June 6, 2005, proceeding,] and this is by stipulation of the parties, with the exception of an issue about a truck and [a] tax return, Exhibit 2 reflects what was announced to the Court on June the 6th of 2005 and what the Court did. And what Exhibit 2 reflects is that these parties appeared before me, that they stipulated grounds for divorce. And that stipulation was that each party committed some act which would give the other grounds for divorce if I heard the case and that a disposition or a division was made by the parties, by agreement, of certain properties. There is a dispute now about a truck and a tax return, but apparently, the truck was really not in dispute, according to [Wife]'s testimony, because she wanted [Husband] to have the truck at all times.

There is some testimony, and we spent some time on this, about a tax return, but even Exhibit 2, as prepared by Counsel for [Wife], doesn't make reference to a tax return, but Exhibit 2, as I indicated earlier, reflects that the parties stipulated to grounds for divorce and reflects that the Court declared the parties divorced and restored the parties to the status of single persons. And, again, the parties have stipulated that that occurred by Exhibit 2 or at least it's reflected by Exhibit 2 that that was the Court's announcement at that time.

It's the Court's right and the Court's duty to make any record for any proceedings or record of that proceeding speak the truth and it's the Court's obligation to discharge that duty. And the most important thing, if the Court discharges that duty, is to make sure that that document or that record, in fact, speaks the truth. And that's what we are after here in a court of law. We put people under oath, we conduct extensive proceedings, and we do that to try to find what the truth is.

And the truth in this case, this Court finds, the truth in this case was that these parties were before me on June 6th, said they wanted a divorce, *I granted them a divorce, I granted them a divorce at that time, and intended that the parties be divorced at that time.* The decree was then prepared and, for whatever reason, [] there has not been any legitimate reason presented to me yet, for whatever reason, that decree was never presented to the Court. The proof is that it left [Wife's attorney]'s office sometime around June the 13th, I think, and was transmitted to [Husband's attorney] and there the decree laid until after [Husband] met his untimely death.

So in order for this Court to make these proceedings truthfully reveal what occurred and to make these proceedings accurate, it's incumbent upon this Court to discharge its duty, enter the decree nunc pro tunc, and I elect to exercise my discretion and I elect to discharge my duty and I elect to enter the decree nunc pro tunc. *These parties were divorced on June the 6th, my order is that they were divorced on June the 6th, and the decree will then be entered nunc pro tunc as of June the 6th.*

(Emphasis added). The court subsequently entered an order, stating that the judgment “previously submitted shall be entered nunc pro tunc to June 6th, 2005, and that the parties were divorced as of that date.” Wife appeals, arguing that the court erred in entering the judgment *nunc pro tunc*.

Our review of this non-jury case is *de novo* upon the record of the proceedings below; but the record comes to us with a presumption of correctness as to the trial court's factual determinations – a presumption we must honor unless the evidence preponderates against those findings. Tenn. R. App. P. 13(d); **Wright v. City of Knoxville**, 898 S.W.2d 177, 181 (Tenn. 1995); **Union Carbide Corp. v. Huddleston**, 854 S.W.2d 87, 91 (Tenn. 1993). The trial court's conclusions of law, however, are accorded no such presumption. **Campbell v. Florida Steel Corp.**, 919 S.W.2d 26, 35 (Tenn. 1996); **Presley v. Bennett**, 860 S.W.2d 857, 859 (Tenn. 1993).

III.

Wife raises the following issues:

1. Whether the trial court erred in entering a final divorce decree *nunc pro tunc*.
2. Whether the trial court erred in admitting irrelevant evidence.
3. Whether the evidence preponderated against the finding of the trial judge.
4. Whether Husband failed to meet his burden of proof.
5. Whether the trial court had authority to direct that the judgment in this case be effective before it was signed by the judge and filed with the clerk.

IV.

Wife contends that the trial court should not have entered the judgment *nunc pro tunc* because, according to her, the divorce action abated upon the death of Husband.

It is well-settled that an action for divorce, being a purely personal action, abates upon the death of one of the parties. **Swan v. Harrison**, 42 Tenn. 534, 536-40, 1865 WL 1302, at *3 (1865). However, if a divorce is granted prior to the death, then the divorce action is no longer pending and will not abate upon the death of the spouse. *See e.g.*, **Vessels v. Vessels**, 530 S.W.2d 71 (Tenn. 1975); **In re Littrell**, 1988 WL 86522 (Tenn. Ct. App. W.S., filed August 22, 1988).

In the **Vessels** case, the parties announced on June 21, 1974, that the plaintiff-wife was amending her complaint to seek an absolute divorce and that the parties had reached a property settlement. 530 S.W.2d at 71. After hearing testimony, the court awarded the plaintiff a divorce and wrote "divorce granted, property awarded" on the cover of the court's file. *Id.* This notation was signed by the judge and dated as of the date of the announcement, *i.e.*, June 21, 1974. *Id.* Thereafter, the plaintiff's attorney sent a proposed final judgment to the defendant-husband's attorney for his approval. *Id.* The defendant's attorney sent the proposed judgment back to the plaintiff's attorney suggesting certain changes and additions. *Id.* Counsel for the plaintiff then

drafted a second proposed judgment and forwarded it to the defendant's attorney. *Id.* On August 28, 1974, the defendant-husband died. *Id.* Two hours after the defendant's death, the trial judge signed the final judgment that had been approved by counsel for both parties. *Id.* The defendant's attorney moved the court to enter the judgment *nunc pro tunc* as of June 21, 1974. *Id.* at 72. The court "ruled that the motion was not well taken and should be overruled as not necessary since the court made a notation on the file of the case that the divorce was granted and the property was awarded on the 21st day of June, 1974." *Id.* The plaintiff filed a motion to set aside the judgment. *Id.* The trial court denied this motion. *Id.*

The issue before the High Court in *Vessels* was "the validity of a decree of divorce announced by the trial court [at a time when both parties were alive], but not entered until . . . two hours after the death of one of the parties." *Id.* at 71. The *Vessels* Court affirmed the trial court's decision, stating that

there is an order in the record clearly indicating the trial judge intended the divorce decree to be effective as of the date it was pronounced and that he believed he had done everything necessary to make the decree effective as of that date in entering "a notation on the file of the case that the divorce was granted and the property was awarded on the 21st day of June, 1974." *Cf. Rush v. Rush*, 97 *Tenn.* 279, 37 *S.W.* 13 (1896); *McCown v. Quillin*, 48 *Tenn.App.* 162, 344 *S.W.2d* 576 (1960).

Vessels, 530 *S.W.2d* at 72. *See also In re Littrell*, 1988 WL 86522, at *4 (affirming the trial court's entry of a divorce judgment *nunc pro tunc* where the record established that the court pronounced the parties divorced at a time when both parties were alive).

In *Steele v. Steele*, 757 *S.W.2d* 340 (Tenn. Ct. App. 1988), the Court of Appeals was presented with a similar situation but came to a different conclusion. A divorce trial took place in that case over two days in July 1987. *Id.* at 340. At the conclusion of the trial, the court took the case under advisement. *Id.* In August of 1987, the court wrote a letter to the court clerk indicating the dates on which the case was tried, stating that "[t]he divorce should be granted to the plaintiff[-husband]," and setting forth the court's decision with respect to the parties' separate and marital property. *Id.* at 340-41. The letter also indicated that the judge intended to mail a copy of the letter to the parties' attorneys and that he intended to request that the plaintiff's attorney prepare a judgment in accordance with the letter. *Id.* at 341. In September 1987, prior to the entry of a judgment, the plaintiff died. *Id.* In November 1987, the court entered a judgment in accordance with its letter to the clerk. *Id.* The defendant-wife appealed, arguing that the judgment was void because it was entered after the death of the plaintiff. *Id.* at 342. The Court of Appeals held that all proceedings which occurred after the death of the plaintiff were vacated and that the divorce action abated upon the plaintiff's death. *Id.* at 347. In distinguishing the *Vessels* case from the facts in *Steele*, the Court stated the following:

In *Vessells* [sic], the Trial Judge announced his decision in open court and made a signed, dated, notation on the court file, all before the death of the spouse. In the present case, no decision

was announced in open court; but, some three weeks after the trial, the Trial Judge wrote and signed a letter to the Trial Clerk with copies to counsel announcing his decision. This letter was apparently written before the death of the spouse. There is no evidence of when, if ever, the letter was received by the Trial Clerk. It is physically bound in a volume of the record with documents marked filed by the Trial Clerk, but the letter bears no stamp or other indication that it was ever received or filed by the Trial Clerk. The certificate of the Trial Clerk at the conclusion of the volume mentioned does state that the contents of the volume are from the records of the Trial clerk's office. There is no other evidence that it ever became a part of the records of the Trial Clerk.

In *Vessells* [sic], the informal notation of the Trial Judge was dated, signed, and inscribed upon a record of the Trial Clerk's office, i.e., the cover of the court file. In the present case, the informal notation was upon writing paper sent through the mail.

In *Vessells* [sic] there was a clear and recorded indication of the intent of the Trial Judge that his announced judgment be effective on a date certain, prior to the death of the spouse. In the present case there is no recorded indication of the intended effective date of the judgment except the date of the letter which directed that counsel prepare a judgment for entry. Contrary to the situation in *Vessells* [sic] in which the Supreme Court found that the Trial Judge believed that he had done everything to make the decree effective as of the date of his informed entry, in the present case, the letter of the Trial Judge clearly indicates that he knew that his decision needed to be formalized by entry of judgment on the minutes of the Court.

In *Vessells* [sic], on the date of the death of the spouse, and within 2 hours of the death, the Trial Judge signed and entered the final judgment. On the following day, counsel moved for a nunc pro tunc order, but this motion was overruled, as was a motion to set aside the decree entered 2 hours after the death of the spouse. In the present case, the judgment was entered on November 5, 1987, 44 days after the death of the spouse. On November 17, 1987, an "order of revivor" was entered by agreement of the parties, which order declared:

. . . this action . . . is ordered to stand in the same condition as when [the plaintiff] died on September 17, 1987.

While the meaning of the quoted portion of the last mentioned order is not crystal clear, this Court cannot conceive of any means whereby the action could “stand in the same condition as . . . on September 17, 1987,” except by vacating all orders since that date, especially the [“]final judgment[”] entered on November 5, 1987.[] If this interpretation be correct, there is no final judgment, and the cause remains under consideration by the Trial Judge awaiting the preparation of a final judgment as requested in his letter of August 28, 1987.

In summary, this record does not present the finality of action taken before death that occurred in *Vessells* [sic], and *Vessells* [sic] is therefore not deemed to be decisive of the issue in this appeal.

Steele, 757 S.W.2d at 345-46.

Wife in the instant case argues that the facts before us are akin to those in *Steele* because, according to her, there is no evidence that the trial court pronounced the parties divorced at the June 6, 2005, proceeding, and because there is no notation stating that a divorce was granted at that time.

The facts in the instant case do not fit neatly within the rubric of *Vessells* or the teaching of *Steele*. The *Steele* Court vacated the divorce judgment in that case because of, or at least partially because of, an agreement between the parties to have the action “stand in the same condition” as when the plaintiff died. 757 S.W.2d at 346. We do not have such an agreement in this case. The *Steele* Court further found that the letter sent by the trial judge to the clerk *before the plaintiff’s death* did not rise to the level of the judge’s notation in the *Vessells* case because, “except [for] the date of the letter,” there was “no recorded indication of the intended effective date of the judgment.” *Id.* We find it difficult to reconcile this finding with the *Vessells* case. In our judgment, the letter sent by the trial judge in the *Steele* case is substantially equivalent to the notation in the *Vessells* case in establishing that the trial judge intended the parties to be divorced prior to the death of the party. The judges in both cases knew, at the time of his action, *i.e.*, at the time that the *Vessells* judge made the notation on the court file and at the time that the *Steele* judge wrote the letter to the court clerk, that a judgment needed to be prepared and entered.

In the *Vessells-Steele* line of cases, the appellate courts had to determine whether the trial court intended to divorce the parties prior to the death of the spouse by looking at, and interpreting, certain actions taken by the trial court prior to the death, *e.g.*, by interpreting the notation on the court’s file in *Vessells*. The instant case is different. In this case, there is no writing reflecting definitively the intention of the trial court. The trial court in the instant case held a hearing to determine whether the parties were divorced prior to Husband’s death. After reviewing the record, hearing testimony from several witnesses regarding the parties’ conduct following the announcement, and questioning the parties’ trial attorneys with respect to the court’s actions at the June 6, 2005, proceeding, the trial court found that it had granted the parties a divorce when they made their announcement to the court on June 6, 2005. It is that decision Wife challenges on this appeal.

V.

The primary issue in this case is whether the trial court granted the parties a divorce at the June 6, 2005, proceeding. Wife argues that the evidence preponderates against the trial court's factual determination that a divorce was granted before Husband's death.

Neither of the trial attorneys recalled the trial judge stating at the June 6, 2005, proceeding that the parties were divorced. Husband's attorney stated that the judge approved the parties' announcement and the divorce. Wife's attorney stated that she only recalled the judge inquiring into who would prepare "the documents." A court clerk testified that, following the June 6, 2005, proceeding, Wife was "adamant about [] changing [her name on a] warrant to [] Swafford instead of Blackburn." A friend of Wife's testified that she and Wife "celebrated" the parties' divorce on the evening of June 6, 2005. The friend also testified that Wife had been with other men since June 2005. On or about June 13, 2005, Wife's attorney prepared and circulated for approval a proposed judgment of divorce. The judgment states, among other things, that the parties stipulated to the existence of divorce grounds and that "the parties should be declared divorced." The judgment prepared and circulated by Wife's trial attorney after the June 2005 proceeding, is the same judgment that was later entered *nunc pro tunc* by the trial court. After considering this evidence and the record as a whole, the trial court concluded that it granted the parties a divorce at the June 6, 2005, proceeding. We do not find that the evidence preponderates against this factual finding.

VI.

As a separate argument, Wife contends that the court erred in admitting the testimony relating to the parties' behavior, and statements made by the parties, after the announcement on June 6, 2005. She asserts that this testimony is irrelevant to the real issue, which, according to Wife, is whether the trial judge has a present recollection of whether or not he granted the parties a divorce on June 6, 2005.

The decision whether to admit or exclude evidence is within the trial court's sound discretion. *Otis v. Cambridge Mut. Fire Ins. Co.*, 850 S.W.2d 439, 442 (Tenn. 1992). The issue before the trial court on February 10, 2006 was whether the court had granted the parties a divorce at the June 6, 2005, proceeding. This is a factual issue. Testimony regarding the parties' actions and statements following the June 6, 2005, proceeding is certainly relevant. Such testimony directly bears upon the crucial issue of whether the trial court had divorced the parties prior to Husband's death. *See* Tenn. R. Evid. 401.

VII.

Wife also argues that the trial court erred in entering the divorce judgment *nunc pro tunc* because, according to her, Husband failed to meet the requisite burden of proof.

In *Rush v. Rush*, 37 S.W. 13 (Tenn. 1896), the Supreme Court affirmed the trial court's entry of a judgment of divorce *nunc pro tunc* on the basis of a notation made by the trial judge on the court's docket. In doing so, the Court said:

It is [] clear that a party whose rights are injuriously affected by a clerical omission to extend upon the record a judgment of the court regularly pronounced may present the matter to the court, and upon a proper showing have the judgment entered nunc pro tunc. All courts have the right, and it is their duty, to make their records speak the truth, and a court, therefore, in a proper case, of its own motion, may order a nunc pro tunc entry to be made; and no sound reason can be suggested why they should not exercise this right and discharge this duty upon the suggestion of one whose rights are impaired by the failure of the record to state the truth. And the lapse of time between the announcement of judgment and the making of this motion is of no importance. *That which is important is that the proof be clear and convincing that the judgment which it is sought to have entered is the one pronounced in the cause.* This rule applies as well to a divorce proceeding as to any other, and its application is not affected by the fact that one of the parties to the cause is dead at the time the nunc pro tunc entry is sought.

Id. at 14 (emphasis added; citations omitted). See *McCown v. Quillin*, 344 S.W.2d 576, 582 (Tenn. Ct. App. 1960); *In re Littrell*, 1988 WL 86522, at *3-4.

Wife contends that Husband did not prove – by clear and convincing evidence – that the judgment sought to be entered *nunc pro tunc* was the judgment announced on June 6, 2005. We disagree. Within two weeks of the announcement, Wife’s trial attorney prepared and circulated the proposed judgment that was later entered *nunc pro tunc* by the court. Given this, along with the other evidence discussed in this opinion, we conclude that there is clear and convincing evidence that the judgment entered *nunc pro tunc* was the judgment that was pronounced on June 6, 2005.

VIII.

In a further attempt to invalidate the judgment in this case, Wife argues that “the trial court did not have authority to direct that the judgment in this case be effective before it was signed by the judge and filed with the clerk.” To support this argument, Wife cites Tenn. R. Civ. P. 58 and its precursor, Tenn. R. Civ. P. 58.02. Prior to an amendment in July 1993, Rule 58.02 read as follows:

The filing with the clerk of a judgment, signed by the judge, constitutes the entry of judgment. The effective date of judgments and other actions of the court shall be the date of filing; provided, however, that no judgment or other action of the court shall be filed unless and until it bears the signature of the judge and either: (1) the signatures of all parties or their counsel or (2) a certificate of counsel or the clerk that copies of the judgment or action of the court have been served on all parties or counsel of record. The clerk shall note the entry of the judgment and date of such entry

thereof upon the civil docket and upon the face of the judgment and shall promptly copy all judgments of the court upon the official minutes, but all judgments shall be effective upon entry of same as hereinbefore provided, *unless otherwise ordered by the court.*

(Emphasis added). The 1993 amendment consolidated former Rules 58.01, 58.02, and 58.03 into one Rule 58. In its current form, Rule 58 provides the following:

Entry of a judgment or an order of final disposition is effective when a judgment containing one of the following is marked on the face by the clerk as filed for entry:

- (1) the signatures of the judge and all parties or counsel, or
- (2) the signatures of the judge and one party or counsel with a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel, or
- (3) the signature of the judge and a certificate of the clerk that a copy has been served on all other parties or counsel.

Following the entry of judgment the clerk shall make appropriate docket notations and shall copy the judgment on the minutes, but failure to do so will not affect validity of the entry of judgment. When requested by counsel or pro se parties, the clerk shall forthwith mail or deliver a copy of the entered judgment to all parties or counsel. If the clerk fails to forthwith mail or deliver, a party prejudiced by that failure may seek relief under Rule 60.

Wife asserts that, because Rule 58 does not include a “provision to allow a judgment to be effective before it is signed by the judge and filed with the clerk if the judge otherwise directs,” the trial court had no authority to direct that the divorce judgment in this case would be effective before it was signed and filed with the clerk. We note here that, though the current text of Rule 58 does not include the “unless otherwise ordered by the court” language previously found in Rule 58.02, the Advisory Commission’s comment on Rule 58, a comment effective as of May 17, 2005, provides that

[the] Rule is designed to make uniform across the State the procedure for the entry of judgment and to make certain the effective date of a judgment. Under this Rule, *unless otherwise ordered by the court*, the effective date of a judgment is the date of its filing with the clerk after being signed by the judge, even though it may not be copied or entered on the minute book until a later date.

(Emphasis added).

In effect, Wife's argument on this issue requests that we hold that, because the text of Rule 58 does not include the "unless otherwise ordered by the court" language previously found in Rule 58.02, courts no longer have the authority to enter judgments *nunc pro tunc*. Nothing in the language of Rule 58 abrogates a court's right and duty to enter a *nunc pro tunc* judgment. Accordingly, we decline to construe the Rule as abolishing a court's authority to enter such judgments.¹ This issue is therefore found adverse to Wife.

¹ Of course, the effective date of all judgments for purposes of an appeal is the date of entry.

IX.

The judgment of the trial court is affirmed. This case is remanded to the trial court for enforcement of that court's judgment and for the collection of costs assessed below, all pursuant to applicable law. Costs on appeal are taxed to the appellant, Edwinna Ruth Blackburn.

CHARLES D. SUSANO, JR., JUDGE