

# Superseding the "Other Judgment"

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## I. Introduction

Most appellate practitioners are familiar with the procedures involved in superseding money judgments. Occasionally, however, an appeal involves a nonmonetary judgment. In those instances, the steps for superseding the judgment are less familiar. This article provides an overview of the procedural rules and case law applicable to superseding nonmonetary judgments.

## II. Texas Rule of Appellate Procedure 24.2(a)(3)

Texas Rule of Appellate Procedure 24.2(a)(3) governs suspension of the enforcement of "other judgments" pending appeal:

(3) Other Judgment. When the judgment is for something other than money or an interest in property, the trial court must set the amount and type of security that the judgment debtor must post. The security must adequately protect the judgment creditor against loss or damage that the appeal might cause. But the trial court may decline to permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that that relief was improper.

TEX. R. APP. P. 24.2(3). Under the former rules of appellate procedure, this provision was contained in Rule 47(f).

### A. What is an "other judgment?"

Rule 24.2(a)(3) describes an "other judgment" as a judgment "for something other than money or an interest in property." Case law indicates the term "other judgment" includes:

1. Injunctions. See *Klein Indep. Sch. Dist. v. Fourteenth Court of Appeals*, 720 S.W.2d 87, 88 (Tex. 1986); see also *Isuani v. Manske Sheffield Radiology Group, P.A.*, 805 S.W.2d 602, 608 (Tex. App.—Beaumont 1991, writ denied).
2. Some types of declaratory judgments. Cf. *Delhi Gas Pipeline Corp. v. Hassell*, 730 S.W.2d 159, 161 (Tex. App.—Tyler 1987, orig. proceeding).
3. Appointment of a receiver. See *Winfield v. Renfro*, 792 S.W.2d 524 (Tex. App.—Houston [1st Dist.] 1990, no writ); *Hawkins v. Twin Montana, Inc.*, 810 S.W.2d 441 (Tex. App.—Fort Worth 1991, no writ).

4. Writs of mandamus issued by a district court. See *Anderson v. City of Seven Points*, 806 S.W.2d 791 (Tex. 1991)(mandamus issued by trial court is a civil action subject to appeal, and the mandamus order may be superseded pending appeal); *City Council of Austin v. Save Our Springs Coalition*, 828 S.W.2d 340, 342 (Tex. App.—Austin 1992, no writ); and

5. Judgments in election contests. See *Hill v. Fourteenth Court of Appeals*, 695 S.W.2d 554 (Tex. 1985).

A turnover order may also qualify as an "other judgment." See *Schultz v. Fifth Court of Appeals*, 810 S.W.2d 738, 739 n. 3 (Tex. 1991). In *Schultz*, the Court explained that a turnover order, the purpose of which is to aid in the collection of a final money judgment, may include injunctive and declaratory relief. The Court suggested, but did not hold, that such an order may be considered an "other judgment."

Under the former rules of appellate procedure, an "other judgment" was defined as one for "other than money or property or foreclosure." TEX. R. APP. P. 47(f) (Vernon Pamph. 1997). Applying that language, the Texas Supreme Court held that an injunction restricting the use of property was an "other judgment" because it did not involve recovery of property. *Klein Indep. Sch. Dist.*, 720 S.W.2d at 88; see also *Pena v. Zardenetta*, 714 S.W.2d 72 (Tex. App.—San Antonio 1986, no writ)(judgment awarding easement is an "other judgment").

### B. When is a nonmonetary judgment not an "other judgment?"

There is case law suggesting that a judgment granting declaratory and injunctive relief might be considered a money judgment rather than an "other judgment" if it involves a transfer of an exact amount of money. See *Enriquez v. Hooten*, 857 S.W.2d 153, 154 (Tex. App.—El Paso 1993, orig. proceeding); see also *Man-Gas Transmission Co. v. Osborne Oil Co.*, 693 S.W.2d 576, 577 (Tex. App.—San Antonio 1985, no writ). Under the cited cases, one could argue that such a judgment is considered a money judgment subject to the ordinary rules governing supersedeas. This distinction is important because, unlike an "other judgment," the rules do not give the trial court discretion to refuse superse-

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To deny supersedeas, the trial court must comply with Rule 24.2(a)(3), requiring the appellee to post security to protect the appellant against loss or damage caused by the relief granted in the "other judgment." And if denial of supersedeas would prevent the appellant from obtaining adequate relief on appeal, the trial court may not deny supersedeas. *In Re Dallas Area Rapid Transit*, 967 S.W.2d 358 (Tex. 1998).

#### F. How is an "other judgment" superseded?

Rule 24.2(a)(3) provides that in cases involving an "other judgment," the trial court must set the amount and type of security the judgment debtor must post. TEX. R. APP. P. 24.2(a)(3). The security must adequately protect the judgment creditor against loss or damage that the appeal might cause. *Id.* Some courts have been willing to overlook this procedural step when the judgment awards both monetary and other relief and the appellant files a supersedeas bond covering the amount of the monetary award. *See, e.g., Delhi Gas Pipeline Corp.*, 730 S.W.2d at 161. Still, when a judgment is a combination money judgment and "other judgment," the better practice is to secure from the trial court an order setting the amount and type of security applicable to the nonmonetary portion of a judgment.

Thus, an appellant seeking to supersede enforcement of an "other judgment" must request the trial court to set the amount and type of security to be posted. At the hearing on this motion, the appellee can argue that the appellant should not be permitted

to supersede. The appellee should be prepared to explain why the appellant should not be permitted to supersede and provide support for the amount of security the appellee proposes to post for the protection of the appellant who is not permitted to supersede.

#### III. Conclusion

Occasionally, an appellant will find it necessary to prevent enforcement of a nonmonetary judgment during the pendency of an appeal. In such instances, an additional step is added to the supersedeas process. The appellant must obtain a ruling from the trial court setting the amount and type of security to be posted. *But see Delhi Gas Pipeline Corp.*, 730 S.W.2d 161 (in case involving both monetary relief and declaratory relief, appellant's failure to secure court order setting amount of bond for declaratory relief did not prevent supersedeas bond from suspending the declaratory relief pending appeal).

There is no absolute right to supersede an "other judgment." If the judgment creditor posts security in an amount set by the trial court sufficient to protect the judgment debtor against any loss or damage caused by the relief granted, the trial court may refuse to let the judgment debtor supersede the judgment. It appears that this may be true for governmental units otherwise entitled to automatically supersede a judgment merely by filing a notice of appeal.



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