In re Motion to Correct Transcript, T.C. Memo. 1989-647 (1989)

A court transcript can be corrected to reflect accurate transcription of testimony, but not to alter testimony that was accurately transcribed, even if factually incorrect.

Summary

In this Tax Court case, the petitioner sought to correct the trial transcript, alleging several factual inaccuracies in witness testimony and one instance of misattributed testimony. The court addressed whether a trial transcript could be corrected to reflect what the petitioner claimed were the true facts, or whether corrections are limited to errors in transcription itself. The court held that transcripts can be corrected for transcription errors, such as misattributing statements, but not for accurately recorded testimony that is factually incorrect. The court reasoned that the transcript must accurately reflect the testimony given, including any errors or inconsistencies, as these are relevant to witness credibility and the evidentiary record.

Facts

The petitioner filed a motion to correct the transcript of a Tax Court trial, citing five specific instances of alleged inaccuracies. Four of these instances involved dates and factual details in witness testimony that the petitioner claimed were incorrect based on other evidence in the record. For example, witnesses gave incorrect dates for events and misidentified a lease as “hunting” instead of “grazing.” The fifth instance involved testimony attributed to the wrong person in the transcript.

Procedural History

The petitioner filed a motion to correct the transcript in the Tax Court. The respondent agreed to correct the misattribution of testimony but opposed correcting the transcript for alleged factual inaccuracies in the properly transcribed testimony. The Tax Court considered the motion to determine the scope of permissible transcript corrections.

Issue(s)

1. Whether a trial transcript can be corrected to change factually incorrect testimony that was accurately transcribed by the court reporter.
2. Whether a trial transcript can be corrected to rectify errors in transcription, such as misattribution of statements.

Holding

1. No, because the purpose of a transcript is to accurately reflect what was said during the trial, including any factual errors made by witnesses.

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2. Yes, because the transcript should accurately reflect who made each statement during the trial.

Court's Reasoning

The Tax Court, referencing its status as a court of record and Rule 150(a) regarding transcripts, looked to Rule 60(a) of the Federal Rules of Civil Procedure for guidance on correcting clerical mistakes in court records. The court cited *Dalton v. First Interstate Bank of Denver*, 863 F.2d 702, 704 (10th Cir. 1988), which clarified that Rule 60(a) is for correcting errors where "the thing spoken, written or recorded is not what the person intended to speak, write, or record," not for correcting statements that are later discovered to be factually wrong. The court reasoned that correcting factual inaccuracies in accurately transcribed testimony would undermine the integrity of the record. The transcript is meant to be an exact record of what was said, including any "witness' errors, incapacities, lack of memory, lack of truth, or any other element or factor which may bear upon the witness' credibility." However, errors in transcription, like misattributing testimony, should be corrected to ensure the transcript accurately reflects the proceedings.

Practical Implications

This decision clarifies that trial transcripts are verbatim records of court proceedings and are not subject to post-trial correction for factual inaccuracies in testimony, as long as the testimony was accurately transcribed. Attorneys should focus on addressing factual errors during cross-examination and through the presentation of contradictory evidence at trial, rather than attempting to alter the official transcript post-trial to reflect what they believe to be the "correct" facts. This case highlights the importance of accurate and contemporaneous objections and clarifications during trial to address any perceived factual errors in testimony. It also underscores that the transcript's role is to preserve an accurate account of the proceedings, which includes any imperfections in the testimony itself, as these are relevant to the court's assessment of evidence and witness credibility. Later cases citing this memorandum would likely reinforce the principle that transcripts are records of what was said, not what should have been said.

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