CARLTON FIELDS

Appealing Alternative Holdings: Don't "Sit Down on the Track" After Clearing "Just the First Hurdle in the Race"

March 13, 2021

On March 5, 2021, the Sixth Circuit Court of Appeals provided us with a reminder about preservation principles when appealing alternative holdings. To obtain a reversal, an appellant must establish error as to each independently sufficient holding that supports the final judgment. It is not enough to show that the district court erred as to only one holding if another holding supports the final judgment. Merrilee Stewart used to be the co-owner of RRL Holding Company of Ohio and served as president of its subsidiary, IHT Insurance Agency Group. But then Stewart created a potential competitor to IHT. So the title of president was stripped from her. In turn, she launched a smear campaign against her successor. The other members of RRL voted to buy out her ownership interest and remove her from the company altogether. When Stewart refused to sell her membership units, RRL brought a lawsuit against her. She filed a counterclaim. Her counterclaim was based on an allegation that she was entitled to continuing health insurance and life insurance benefits from RRL, which benefits had been cut off by RRL. The case in state court proceeded to arbitration. RRL completely prevailed in arbitration. The arbitration panel ordered Stewart to sell her membership units and to execute a release of all claims against RRL and its affiliates. The state court affirmed this order. This federal lawsuit arose during the course of the state arbitration proceeding. Stewart and her son sued the defendants under, among other things, ERISA, based on the discontinued benefits. The federal district court dismissed the complaint with prejudice on two alternative grounds: (1) Stewart had released all her claims against the defendants; and (2) res judicata. The Stewarts filed this appeal in the Sixth Circuit. But the only issue they raised on appeal was directed to the release holding. The Sixth Circuit seized on this selective framing of issues to warn litigants that "[a]n appellant's goal is to undo the judgment below. It does no good for a track-and-field hurdler to clear just the first hurdle in a race and then sit down on the track." The panel observed that, "[e]ven if we agreed that Stewart's claims were not released, the district court's res judicata conclusion would still stand. As a result, so must the judgment." The panel's important takeaway is as follows: "We review

judgments, not opinions. The Stewarts needed to win two arguments for us to reverse the district court's judgment. Since they raised only one, we affirm." One other preservation issue bears emphasis. It turns out that the Stewarts did suggest a challenge to the res judicata ruling in their reply brief. But that was not sufficient to preserve the point on appeal. The "only reference to res judicata is a suggestion in their reply brief that the claims in arbitration had 'not been fully litigated' because some matters were not addressed." Apparently, that point was not developed. In any event, "even well-developed arguments raised for the first time in a reply brief come too late." **Tips:**

- An appellant should be alert to every holding that supports the final judgment. An appellant cannot prevail by challenging only one of the alternative bases for the district court's decision.
- This principle is akin to the "right-for-any-reason" or "tipsy coachman" rules. That is, an appellate court will often affirm a final judgment for any reason supported by the record. An appellant must do more than show an isolated error. To obtain a reversal, the appellant should establish that there is no ground supported by the record that would support the final judgment.
- All points on appeal must be squarely raised in the initial brief. Most appellate courts will not recognize points raised for the first time in a reply brief.

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