

Right for the Wrong Reason - Reversal Requires More Than Just an Error

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Challenging an adverse judgment on appeal is an uphill battle from the start. A major part of winning an appeal requires demonstrating that an error occurred and confirming that the error was properly raised in the trial court. But more may be required. If the judgment can be affirmed on a basis unaffected by the error, then an appellate court will not reverse. This legal concept was recently reaffirmed in *Tower Hill Preferred Ins. Co. v. Cabrera*, 4D16-220, 2017 WL 2264643, at *1 (Fla. 4th DCA May 24, 2017). There, the appellant argued that

certain evidence was improperly admitted. In a very brief opinion, the appellate court stated that it was affirming based on the “tipsy coachman doctrine.” Pursuant to that doctrine, “even though a trial court’s ruling is based on improper reasoning, the ruling will be upheld if there is any theory or principle of law in the record which would support the ruling.” The appellate court then noted that the evidence at issue was properly admitted, presumably on a different basis than that relied on by the trial court. As if that were not sufficient to affirm, the court went on to note that the evidence was merely cumulative of other evidence on the issue, making any error harmless. **Preservation Issue**

- Not all errors are created equal. Litigators should focus their time and energy on issues that cannot be rendered moot under a different legal theory or through admission of cumulative evidence.
- When an adverse ruling is made on an objection, consider whether additional objections must be raised in order to preserve a *reversible error*

Tips The impact of certain errors, particularly those related to the admission or exclusion of evidence, can be difficult to gauge in the heat of a trial. Understanding the major issues in a case, including how the evidence and arguments fit into the elements of each claim, goes a long way in

determining how to identify and preserve a reversible error. Once the temperature has cooled, it becomes a bit easier to decide whether a particular error can be avoided under a legal theory that the trial court did not employ. In preparing the initial brief, consideration must be given to whether your arguments are subject to the “right for the wrong reason” principle. And, if you do foresee a potential problem, you must decide whether the issue should be addressed head on in the initial brief, or whether to wait for the reply brief. As a general matter, a harmfulness analysis can be woven into your main brief without interrupting the argument’s flow. Indeed, it can even strengthen it. But attempting to diffuse the application of an entirely different legal theory can leave your initial brief disjointed, particularly if that other theory is complex. The decision on whether to address the issue in the initial brief will depend on factors such as:

- how likely the other side is to raise the issue;
- the strength of the “tipsy coachman” argument;
- how complex or distracting it will be to address the alternate legal theory;
- whether addressing the issue for the first time in the reply brief—which is already abbreviated—will be effective (in other words, will you have already lost your audience); and,
- whether waiting until the reply brief could be construed as acting without full candor.

In the end, winning an appeal requires more than preserving an error. It also requires demonstrating that the error is reversible. If not, the appellate court may simply determine that the trial court got it right, even if it gave the wrong reason.

Authored By



Dean A. Morande

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