

As Anticipated: SCOTUS Makes the Appellate Process of Purely Legal Issues Less Stringent

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In a [prior post](#), we discussed the oral argument in *Dupree v. Younger*, in which the U.S. Supreme Court questioned the preservation requirement in a minority of circuits that a purely legal issue resolved at summary judgment be raised at and after trial for the issue to be reviewable on appeal. In the underlying case, the Fourth Circuit Court of Appeals declined to review an issue that had been ruled on at the summary judgment stage but was not reasserted at and after trial. As we predicted, on May 25, 2023, in a [unanimous decision](#) written by Justice Amy Coney Barrett, the Supreme Court reversed the decision of the Fourth Circuit, holding that litigants can appeal purely legal issues resolved at summary judgment without having to raise them again at and after trial. The court noted that a “repeat-motion requirement” would amount to an “empty exercise,” as “a purely legal question is, by definition, one whose answer is independent of disputed facts” and “factual development at trial will not change the district court’s answer.” And, where litigants are unsure whether an issue involves a factual dispute, they can (and, in an abundance of caution, should) raise it at and after trial. The court declined to decide whether the issue in that case presented a “purely legal” issue, deeming the Fourth Circuit capable of deciding that issue in the first instance.

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