

Civil Appeals: Common Roadblocks and Pitfalls to Reversal

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Potential Roadblocks and Pitfalls



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COMMON ROADBLOCKS

- Failure to Properly Preserve Error
 - Either during or after trial
- Lack of a Final Appealable Judgment
- Mootness
- Lack of Standing



COMMON PITFALLS

- Failure to File Timely Notice of Appeal
- Failure to Comply with Rule 81.12
 - Failure to Prepare / File Transcript
- Failure to Comply with Rule 84.04
 - Failure to Comply with Point Relied On Formula
 - Improper Statement of Facts



2023 APPEAL DISMISSALS

- By May 1st, no fewer than 15 appeals were dismissed this year alone
 - Failure to Comply with Rule 81.12
 - Failure to Comply with Rule 84.04
 - Untimely Appeal
 - Lack of Final Judgment
 - Lack of Standing
 - Mootness

Post-Trial Preservation of Error



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TRIAL COURT JURISDICTION

- Trial court retains jurisdiction for 30 days, *Rule 75.01*
 - *Exceptions: e.g., appealable interlocutory orders*
- Motion for Judgment Notwithstanding the Verdict / New Trial / Amend Judgment
 - Can be filed up to 30 days after entry of judgment, *Rule 78.04*
 - Extends jurisdiction for up to an additional 90 days, *Rule 81.05*



PRESERVATION OF ERROR

- Jury Trial
 - Allegations of error must be included in motion for new trial to be preserved for appeal, *Rule 78.07(a)*
- Bench Trial
 - No motion for new trial or to amend is necessary to preserve error, if the matter was previously presented to the trial court, *Rule 78.07(b)...* BUT



PRESERVATION OF ERROR

- In all cases, allegations of error relating to the form or language of the judgment must be raised in a motion to amend the judgment in order to be preserved, *Rule 78.07(c)*
 - Includes failure to make statutory or requested findings

Can You Appeal?



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WHAT ORDERS ARE APPEALABLE?

- The right to appeal is purely statutory and where a statute does not give a right to appeal, no right exists.

State ex rel. Koster v. ConocoPhillips Co., 493 S.W.3d 397, 399 (Mo. banc 2016)

- Not all adverse rulings are appealable



WHAT ORDERS ARE APPEALABLE?

- In most case, a party can only appeal a “final judgment.”
- A final judgment disposes of all claims, parties, and remedies, “leaving nothing for future adjudication.”

Zweifel v. Zweifel, No. ED 109261, 2021 WL 2420099, at *2 (Mo. App. E.D. June 15, 2021)



WHAT ORDERS ARE APPEALABLE?

- Order granting a new trial;
- Order refusing to revoke, modify, or change an interlocutory order appointing a receiver or receivers, or dissolving an injunction;
- Interlocutory judgments in actions of partition which determine the rights of the parties;



WHAT ORDERS ARE APPEALABLE?

- Order granting or denying class action certification, provided that:
 - The court of appeals, in its discretion, permits such an appeal; and
 - An appeal of such an order shall not stay proceedings in the court unless the judge or the court of appeals so orders.

Mo. Rev. Stat. § 512.020

- Orders made appealable by statute
 - e.g., Mo. Rev. Stat. § 456.4-420 (trust no-contest safe harbor decisions)



EXAMPLES OF NON-APPEALABLE ORDERS

- Generally, a dismissal without prejudice is not a final, appealable judgment.

Lee v. Missouri Dep't of Transportation, 618 S.W.3d 258, 262 (Mo. App. W.D. 2021)

- Unless... it has the “practical effect of terminating the litigation in the form cast or plaintiff’s chosen forum.”



EXAMPLES OF NON-APPEALABLE ORDERS

- Denial of summary judgment
 - Only appealable, even after final judgment, only where cross-motion was granted

See, e.g., Behrick v. Konert Farms HOA, 601 S.W.3d 567
- Discovery rulings
- Orders granting/denying preliminary injunctive relief (*c.f.*, Mo. Rev. Stat. 512.020(2))



STANDING

- Only a party “aggrieved by any judgment” can appeal
- “A party is ‘aggrieved’ when the judgment operates prejudicially and directly on his personal or property rights or interest.”
In re Knichel, 347 S.W.3d 127, 130 (Mo. App. E.D. 2011)



STANDING

- “A party is not aggrieved by, and cannot appeal, a judgment that grants all relief sought by the party, but a party can appeal a judgment that grants only part of the relief sought.”

LVNV Funding, LLC v. Mavaega, 527 S.W.3d 128 (Mo. App. 2017)



MOOTNESS

- An appeal is moot when the question presented seeks relief on some matter that, if awarded, would not have any practical effect on a then-existing controversy
 - Two exceptions: (1) case becomes moot *after* submission and argument; (2) issue is of public interest and importance, recurring in nature, and will otherwise evade appellate review

State ex rel. Peters-Baker v. Round, 561 S.W.3d 380 (Mo. banc 2018)

The Notice of Appeal



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NOTICE OF APPEAL

- Filed in the trial court, *Rule 81.04*
- Must be filed within 10 days after judgment/order becomes final, *Rule 81.04*
- Judgment is final for purpose of appeal 30 days after entry unless authorized after-trial motion (AATM) is filed, *Rule 81.05*
 - Again, AATM delays finality up to 90 additional days



NOTICE OF APPEAL

- Must specify:
 - The party(ies) taking the appeal
 - The judgment(s)/order(s)/decree(s) appealed from
 - The court to which the appeal is taken

Rule 81.04(a)
- Use O.S.C.A. Form 8-A(2) (Civil); defect in notice of appeal should be rare



NOTICE OF APPEAL

- List all judgments/orders you are appealing
- Brief description of case can be brief
 - Notice of appeal is used to perfect appeal, not to present all relevant facts and argument
- Issues expected to be raised are non-binding, do not need to be in Point Relied On format
 - The NOA does not frame, or preserve, issues

The Point Relied On



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IMPORTANT OF POINT RELIED ON

- Probably the single most important part of an appellant's brief
- P.R.O., alone, preserves claim of error
- Many, many traps for the unwary (or even the most careful practitioners)
 - If it is not in the P.R.O., is it not preserved
 - Failure to comply with the 84.04(d) formula
 - Multifarious P.R.O.



RULE 84.04(d)

- Provides mandatory formula for issues raised on appeal
- In appeals from trial court (as opposed to administrative review or writ proceeding) requires the appellant to:
 - Identify the trial court ruling/action challenged
 - State the legal reasons for reversible error
 - Explain why, in context of case, legal reasons support reversal



RULE 84.04(d) – THE FORMULA

- “The trial court **erred** in [*identify the challenged ruling or action*], **because** [*state the legal reasons for the claim of reversible error*], **in that** [*explain why the legal reasons, in the context of the case, support the claim of reversible error*].”



THE CHALLENGED ACTION

- Generally refers to the challenged judgment/order or portion thereof
 - “The trial court **erred** in *granting summary judgment* in favor of X”
 - “The trial court **erred** in *entering judgment in favor of Y*”
 - “The trial court **erred** in *submitting instruction number 8*”



THE LEGAL REASONS FOR CLAIM OF REVERSIBLE ERROR

- Generally references the legal standard for reversal
 - In a court-tried case, *Murphy v. Carron*, 536 S.W.2d 30 (Mo. banc 1976)
 - Not supported by substantial evidence;
 - Against the weight of evidence;
 - Erroneously declares the law; **or**
 - Erroneously applies the law



THE LEGAL REASON FOR REVERSIBLE ERROR

- “The trial court **erred** in entering judgment in favor of X, **because** the trial court *erroneously applied the law* in concluding that Y first breached the contract...”
- This is where “multifarious” P.R.O. will cause an appeal to fail.



MULTIFARIOUS POINTS RELIED ON

- A “multifarious” point is one that groups together multiple, independent claims rather than a single claim of error
- Generally means there should only be one legal reason (e.g., one element of the review standard) in each point relied on

Dieckmann v. JH Constr. 2, LLC, 619 S.W.3d 513 (Mo. App. E.D.



MULTIFARIOUS POINTS RELIED ON

- “Generally, multifarious points preserve nothing for appellate review and are ordinarily subject to dismissal.”

Sauvain v. Acceptance Indem. Ins. Co.,
437 S.W.3d 296, 299 (Mo. App. W.D. 2014)



MULTIFARIOUS POINTS RELIED ON

- Each element of the *Murphy v. Carron* standard is a separate legal challenge
 - E.g., “[A]gainst-the-weight-of-the-evidence’ challenges are not the same as ‘not-supported-by-substantial-evidence’ challenges; hence, pursuant to Rule 84.04, these separate and distinct challenges should have been separated into two distinct points relied on.”
Sauvain v. Acceptance Indem. Ins. Co., 437 S.W.3d 296, 299 (Mo. App. W.D. 2014)



EXPLANATION OF ERROR

- This is where the factual argument comes into play, and where you can assert various grounds for reversal
- You can generally raise multiple facts to support the claim of error, without making the P.R.O. multifarious



EXPLANATION OF ERROR

- “The trial court **erred** in entering judgment in favor of X, **because** the trial court erroneously applied the law in concluding that the parties’ contract was enforceable, **in that *the contract (1) is void as matter of law because..., or (2) is illusory because....***



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