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A class-ic exception

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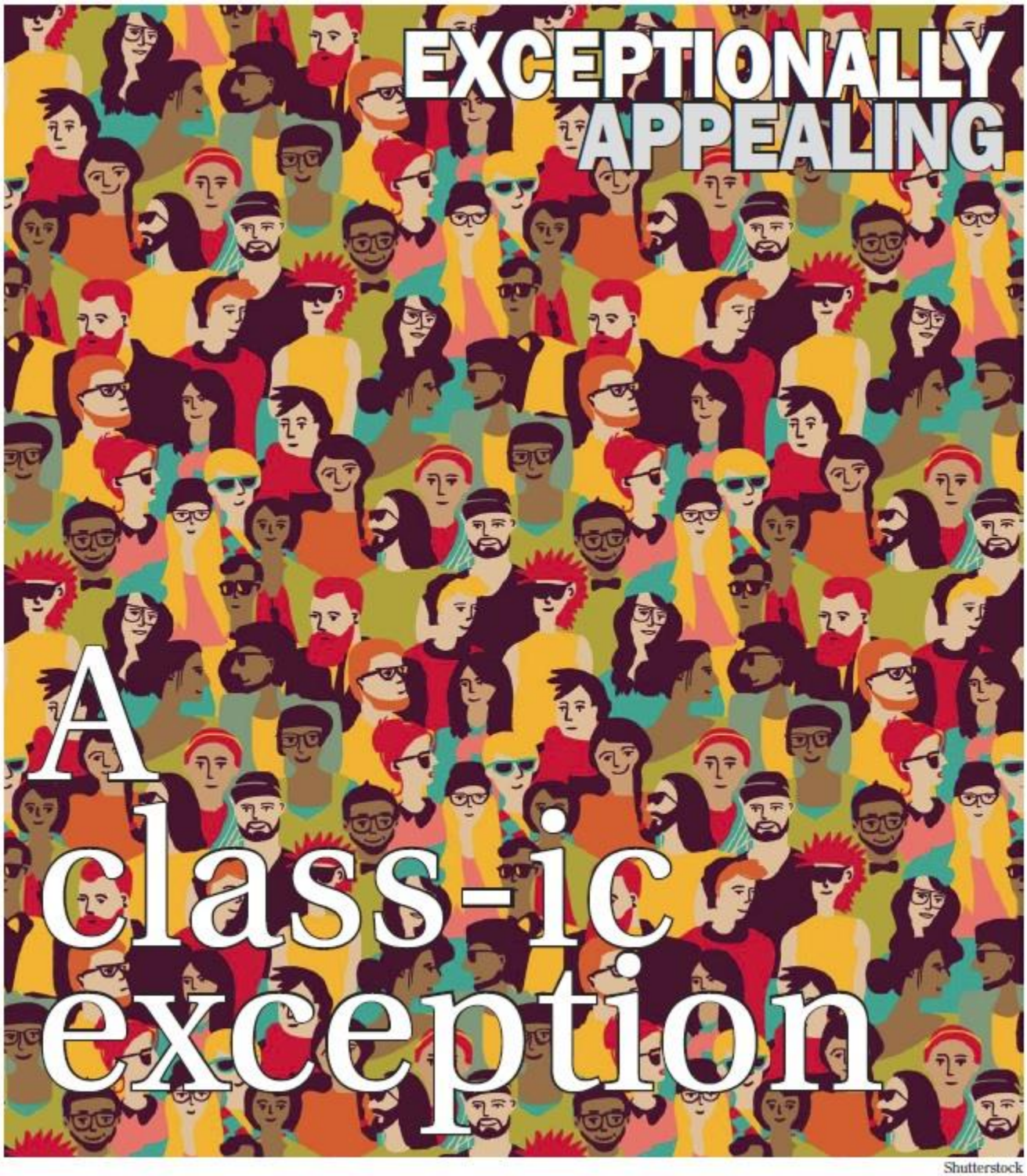

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EXCEPTIONALLY APPEALING

Trial court proceedings are like a black box into which each side throws facts, evidence and law, and what pops out is a judgment -- a formal, enforceable decree declaring a winner. Human nature being what it is, the loser probably wants a second chance to fight again. And that loser, no doubt, has a long litany of reasons why the other side should have lost. Hence, the appellate process. But appeals are far from do-overs of trials. And rather than worry about all the various reasons and steps that lead to the winner winning, appellate courts are more concerned with the bigger picture inquiry about the ultimate result.

This focus on the result differs radically from the academic process of our school days. Remember how math and science teachers would intone, "you earn points by showing your work; merely giving an answer -- even the correct answer -- doesn't count for much." What mattered in that context was explicating *how* a result was reached, with the right answer merely a by-product. But in the real world, and the realm of litigation, getting the right outcome is what matters most, and often all that matters. This is especially so for appeals, where appellate courts are not concerned with the correctness of every step leading to the judgment.

This bring us to an essential general rule of appellate practice: What matters is whether the right side won, meaning whether the win is defensible on the full record. The concern is on outcome, not the reasons the trial court provided to reach that outcome. A consequence of this is that it's perfectly acceptable for the trial court to be affirmed for getting the right result even if the trial court's reasoning was faulty or even dead wrong. In simple terms, it's OK to be right for the wrong reasons. International etc. *Workers v. Landowitz*, 20 Cal. 2d 418, 423 (1942) ("it is judicial action, and not judicial reasoning or argument, which is the subject of review; and, if the former be correct, we are not concerned with the faults of the latter), quoting *Davey v. So. Pac. Co.*, 116 Cal. 325, 329-30 (1897).

So even if a trial court glaringly misapplies the law, the ruling will still be affirmed "as long as any other correct legal reason exists" to justify the ruling. *Rappleyea v. Campbell*, 8 Cal. 4th 975, 981 (1994). It is "axiomatic" that appellate courts "review the trial court's rulings and not its reasoning." *Coral Construction, Inc. v. City & County of San Francisco*, 50 Cal. 4th 315, 336 (2010). The reason for this rule is readily understandable: Why bother reversing a judgment and ordering the parties to battle again, only to end up with the same result?

Although this makes perfect sense, it can be highly distressing to experience firsthand. Clients rarely enjoy litigation, and that distaste sours to disgust in scenarios where the trial court made dozens of egregious mistakes, yet there is no viable appellate remedy. One phrasing of this corollary that follows from the general rule is that litigants do not

have a right to a pristine trial. Indeed, not even criminal defendants are "entitled to a perfect trial." *People v. Smith*, 6 Cal. 4th 685, 703 (1993). "An error-free trial exists more in imagination that in reality." *People v. Jeffrey*, 142 Cal. App. 4th 192, 194 (2006).

This single-minded focus on outcome also jibes with the constitutional directive that reversing a judgment on appeal requires a "miscarriage of justice," i.e., prejudicial error. Cal. Const. art. VI, Section 13. Any error short of prejudicial error is harmless.

This can make winning on appeal as an appellant pretty darn hard. Not only does an appellant have to establish that the trial court made a mistake, that mistake must have affected the outcome, meaning that an appellant must also overcome any other basis in the record that would justify the judgment as is. An appellant might be able to show that the trial court was flatly wrong in analyzing an issue -- wrong about the facts, wrong about the law -- and yet still have no chance on appeal.

The powerful general rule favoring affirmances is subject, naturally, to several exceptions. There are some specific instances where the trial court must not only be right, but must be right for the right reasons.

First, the rule that a trial court can be affirmed on any basis in the record does not apply to an order granting a nonsuit. This is because applying the regular rule "would frequently undermine the requirement that a party specify the ground upon which his motion for nonsuit is based in order to afford the opposing party an opportunity to remedy defects in proof." *Lawless v. Calaway*, 24 Cal. 2d 81, 92-94 (1944). Thus nonsuit orders can be affirmed only on grounds specified by the trial court or grounds specified in the nonsuit motion. *Saunders v. Taylor*, 42 Cal. App. 4th 1538, 1541-42 (1996).

A second situation where the trial judge must "show her work for full credit" is when granting a new trial. A do-over trial is a big deal, so it better be clear what the reasoning is for ordering that. By statute, an order granting a new trial must specify the grounds for granting the motion and provide reasons for those grounds. Code Civ. Proc. Section 657 ("When a new trial is granted ... the court shall specify the ground or grounds upon which it is granted and the court's reason or reasons for granting the new trial upon each ground stated."). Such a statement of reasons must be "specific enough to facilitate appellate review and avoid any need for the appellate court to rely on inference or speculation." *Oakland Raiders v. NFL*, 41 Cal. 4th 624, 634 (2007).

A third, and particularly interesting and important exception involves class certification. "An appeal from an order denying class certification presents an exception to customary appellate practice by which we review only the trial court's ruling, not its rationale. If the trial court failed to conduct the correct legal analysis in deciding not to certify a class action, 'an appellate court is required to reverse an order denying class certification ... "even though there may be substantial evidence to support the court's order."'" *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 399 (2015); *Thompson v. Auto.*

Club of So. Cal., 217 Cal. App. 4th 719, 726 (2013) ("Ordinarily, appellate review is not concerned with the trial court's reasoning but only with whether the result was correct or incorrect. [Cite.] But on appeal from the denial of class certification, we review the reasons given by the trial court for denial of class certification, and ignore any unexpressed grounds that might support denial.").

As our Supreme Court has put it: "We review the trial court's actual reasons for granting or denying certification; if they are erroneous, we must reverse, whether or not other reasons not relied upon might have supported the ruling." *Ayala v. Antelope Valley Newspapers*, 59 Cal. 4th 522, 530 (2014), citing *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 436 (2000).

But *why* does this exception for class certification orders exist? San Francisco County Superior Court Judge Curtis Karnow explored this question in "Fiat Lux: Tracing A Standard of Review for Class Certification Orders," 17 J. of Appellate Practice & Process 217 (2016). After scrupulously spelunking the precedential genealogy back to "dry holes," he concludes that its "origins are lost to us." But he then provides a cogent rationale: Class certification orders are exceedingly important, usually decisive orders, over which trial courts have a very high level of discretion. Given the trial judge's "enormous discretion," the appellate court "is in a very poor position to decide if the *result* is correct; it can only guard the process." *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 612 (1987) ("Our focus on correct process requires us to reverse even though there may be substantial evidence to support the court's order.").

Like ending a case at the nonsuit stage, or ordering a new trial, class certification orders are simply too important to focus solely on the end result. In these exceptional situations, judges must show their work for full credit; otherwise it's back to the chalkboard on reversal for a step-by-step exposition.