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THE TIPSY COACHMAN DOCTRINE REVISITED

In 1879, the Supreme Court of Georgia first recognized the Tippy Coachman Doctrine as "right for the wrong reason."

In essence, if a trial decision is right for the wrong reason it may be affirmed on appeal if there is any theory or legal principle in the record to support it. The key to the application of the doctrine is that there must be support for the alternative theory or principle of law in the record before the trial court. As a result of this doctrine, the appellee on appeal may argue a basis for affirmance even if not presented and argued in trial court.

In applying the doctrine, however, due process is an area of particular concern. Other possible limitations to its application occur if the trial court has failed to exercise discretion, or has failed to make a necessary ruling. The doctrine may be applied to affirm the trial court, but not to reverse a trial court decision.

Finally, a trial court might increase the likelihood of an affirmance when dealing in a fogbound area of law by allowing evidence and argument into the record on alternative basis, and by making alternative findings and holdings.

This summary discusses four recent Florida Supreme Court cases known as "the Butler Tetralogy" and analyzes their impact on the Topsy Coachman Doctrine.

BUTLER I

Yusem v. Butler, 966 So. 2d 405 (Fla. 4th DCA 2007) [Butler I] arose from nearly 20 years of litigation concerning a business partnership gone wrong. After the trial court ruled on many issues, on appeal, Butler contended that the trial court erred by applying "due diligence" to defeat two of his claims against Yusem because Yusem did not plead "due diligence" as an affirmative defense.

The 4th DCA reviewed the trial transcript and determined that the trial court misapplied the term "due diligence" to express its conclusion that Butler did not "justifiably rely" on Yusem's representations. Therefore, the 4th DCA held that Butler failed to establish one of the elements of fraud and affirmed on this issue.

BUTLER II

In *Butler v. Yusem*, 3 So. 3d 1885 (Fla. 2009) [Butler II], Butler sought review of Butler I in the Florida Supreme Court claiming the 4th DCA erred in holding his claims for fraudulent misrepresentation and negligent misrepresentation were barred by failure to show "justifiable reliance." The Florida Supreme Court agreed with Butler and held that the trial court applied the defensive "due diligence" not the lack of "justifiable reliance," in arriving at its final judgment.

The Florida Supreme Court quashed Butler I and remanded for the 4th DCA to determine whether it could apply "justifiable reliance" under the Topsy Coachman Doctrine to affirm the trial court. Specifically, the Supreme Court directed the 4th DCA to

address each claim individually to determine if "justifiable reliance" and the Topsy Coachman principle applied.

BUTLER III

The 4th DCA, in *Yusem v. Butler*, 10 So. 3d 1159 (Fla. 4th DCA 2009) [Butler III], issued an opinion stating it reviewed the trial court's factual findings and concluded that "the trial court's reference to due diligence actually translated to Butler's failure to establish the elements of justifiable reliance." In affirming the trial court's decision, the 4th DCA neither addressed the Topsy Coachman Doctrine nor analyzed the individual claims separately as the Supreme Court had instructed in Butler II.

BUTLER IV

Butler against sought review by the Florida Supreme Court in *Butler v. Yusem*, 44 So. 3d 102 (Fla. 2010) [Butler IV], claiming conflict between Butler III and Butler II since the 4th DCA on remand failed to apply the Topsy Coachman Doctrine.

The Supreme Court determined that the 4th DCA did not comply with the mandate in Butler II and went on to say:

Under the Topsy Coachman Doctrine, where the trial court "reaches the right result, but for the wrong reasons," an appellate court can affirm the decision only if "there is any theory or principle of law in the record which would support the ruling." As we stress, the key to this doctrine is whether the record before the trial court can support the alternative principle of law. Here, the 4th DCA did not address the claims individually, as directed, and summarily concluded that the same findings for a lack of due diligence would equally support the findings justifiable reliance, without ever reviewing whether justifiable reliance was a necessary element of fraudulent misrepresentation or negligent misrepresentation.

Thus, the 4th DCA erred in concluding justifiable reliance was a necessary element of fraudulent representation - it is not. The 4th DCA further erred in applying the Topsy Coachman Doctrine to affirm the trial court's ruling on negligent misrepresentation. The Supreme Court then quashed the 4th DCA's decision in Butler Three and again remanded the case with instructions that it be returned to the trial court for determination of whether Butler was entitled to relief based on fraudulent misrepresentations and negligent misrepresentation claimed.

THE TIPSY COACHMAN POLICY

The policy behind the Topsy Coachman Doctrine is to arrive at the right result. If the lower court uses faulty reasoning to get to the right result, there is no harm to the litigants as long as the record supports the result. It is the appellate court's job to make its own determination as to the correctness of the lower court's decision.

IS TIPSY COACHMAN DISCRETIONARY OR MANDATORY?

Various Florida appellate opinions indicate that an appellate court's application of the doctrine is discretionary. The 4th DCA recently commented that "an appellate court may apply the Topsy Coachman Doctrine to affirm a lower court's holding when the lower court reached the correct result despite using incorrect reasoning." However, the Supreme Court's decision of the doctrine in Butler Tetralogy suggests mandatory application.

ISSUES RAISED IN PRACTICAL MATTERS

It appears that an appellate should generally avoid attacking the reasoning of the lower court. The lower court's reasoning is usually not the real issue, rather, it is the result.

It is unclear whether an appellate court is obligated to apply the Topsy Coachman Doctrine whether or not the appellee raised the doctrine in its brief. However, if there is a potential application of the Topsy Coachman Doctrine, the

appellee should be proactive in asserting application in its answer brief.

The obligation of the appellate court to apply the Topsy Coachman Doctrine seems to be somewhat demanding under the Butler Tetralogy. The Supreme Court mandated the 4th DCA to conduct a specific inquiry into the record and apply the Topsy Coachman Doctrine if applicable.

UNANSWERED QUESTIONS

Is the Butler Tetralogy precedent for future application of the Topsy Coachman Doctrine in all cases, or is it limited to its particular facts?

Will the Butler Tetralogy result in appellate court's issuing more PCAs where the affirmance is based on the Topsy Coachman Doctrine?

What if the appellate court determines there is no addition to precedent or case law by individually detailing the doctrine to each issue in the case?

Has the Butler Tetralogy established a viable path for Supreme Court review, based on an incorrect application of the Topsy Coachman Doctrine?

CONCLUSIONS

The key to applying the Topsy Coachman Doctrine continues to be whether the record can support the trial court's ruling under an alternative principle of law. It is unclear how the appellate and trial judges will actually apply the Butler Tetralogy in their everyday handling of the overwhelming number of cases that come before them.

JLH/MQW/smm/tsr