
Pyrrhic Victories: When A “Winner” Can Appeal

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In 279 BC during the Pyrrhic War, the Roman legion met the Epirote army under the command of the Greek King Pyrrhus at the Battle of Asculum. The Greeks prevailed with a narrow victory, but only at substantial loss of soldiers and almost all of Pyrrhus's principal commanders. In fact, according to Plutarch, in response to congratulation on his success, Pyrrhus replied that “one other such [victory] would utterly undo him.”¹

The Battle of Asculum, of course, gives rise to the phrase “Pyrrhic victory,” describing a victory that comes at devastating cost to the victor. No doubt, every lawyer has “won” a case only to realize that some aspect of the court's decision may actually be detrimental to his or her client. The question of *whether* to appeal often involves convoluted analysis and delicate balancing of interests and costs, not to mention some measure of gazing into a crystal ball. Before engaging that process, however, a victor must ask whether it *can* appeal. That is, having “won” the case, does your client have *standing* to appeal?

In general, a party that receives all the relief requested may not appeal. *California v. Rooney*, 438 U.S. 307, 311 (1987) (holding that a prevailing party who disagreed with the court's analysis had no right to appeal). The rationale is that, by resolving all issues in favor of a party, no Article III controversy exists as to that

party. Nevertheless, a prevailing party may sometimes seek an appeal:

[O]ne has standing to appeal only if “aggrieved by the judicial action from which” the appeal is taken. *Vanguards of Cleveland v. City of Cleveland*, 753 F.2d 479, 484 (6th Cir. 1985). However, a “prevailing” party may nevertheless be aggrieved if the judgment entered in its favor was not on the ground for which it sought dispositive relief, but instead, was erroneously grounded in a ruling that misstates the law and leaves the appealing party open to further liability. Stated differently, there are circumstances in which a defendant, although “winning” the lawsuit in the trial court—in the sense that the case against it was dismissed—has standing to appeal the trial court's decision because, for example, the appellant is erroneously denied the legal ruling it requested in its motion for summary judgment or for dismissal. In such an instance, the winning/appelling party continues to stand exposed to liability it should not, and would not, have faced, but

the parties.

for the trial court's erroneous application of the law.

Lynn v. Sure-Fire Music Co., 237 Fed. App'x. 49, 52 (6th Cir. 2007) (concluding that defendant had standing to appeal where trial court rejected defendant's preemption argument but dismissed the action without prejudice for lack of subject matter jurisdiction).

So under what circumstances may a prevailing party appeal? An exhaustive listing of categories of rulings or certain types of cases that may be appealed by a winner is impossible. Nevertheless, the case law signals some significant guideposts.²

Issues Immaterial to Disposition. A prevailing party may appeal an adverse ruling on a litigated issue that is immaterial to, and not supportive of, disposition of the case even if judgment is ultimately entered in its favor. *Elec. Fittings Corp. v. Thomas & Betts Co.*, 307 U.S. 241, 242 (1939) (holding that defendants in patent infringement suit that had been dismissed for failure to prove infringement were entitled to have eliminated that portion of judgment that had adjudged one of claims valid). A party can only seek reformation of the court's decree and not a review on the merits. See, e.g., *R.T. Vanderbilt Co. v. Occupational Safety & Health Review Comm'n*, 708 F.2d 570 (11th Cir. 1983) (holding that party had standing to appeal gratuitous finding but holding that court could not pass on merits of the finding because appellate review of findings immaterial to disposition of a case amounts to nothing more than "advisory opinion").

Collateral Estoppel. "[W]hen the prevailing party is prejudiced by the collateral estoppel effect of the district court's order ... the litigant has been aggrieved by the judgment and has standing to appeal. *Agripost, Inc. v. Miami-Dade County, ex rel. Manager*, 195 F.3d 1225, 1230 (11th Cir. 1999). Thus, where a court makes unfavorable rulings regarding a defendant's defenses but later dis-

misses a plaintiff's claims without prejudice, the defendant has standing to appeal or cross-appeal on those issues. See *Trusthouse Forte, Inc. v. 795 Fifth Ave. Corp.*, 756 F.2d 255 (2d Cir. 1985) (concluding that prevailing defendant could appeal the trial court's rejection of its waiver defense because collateral estoppel would preclude the defendant from raising the waiver defense in any subsequent proceeding or forum); *United States ex rel. Conner v. Salina Regional Health Center, Inc.*, Nos. 07-3033 & 07-3035, 2008 U.S. App. LEXIS 20808, at *34 n. 10 (10th Cir. Oct. 2, 2008) (noting that a defendant whose statute of limitations defense was denied had standing to appeal the court's refusal to exercise supplemental jurisdiction and dismissal without prejudice).

Quality of Judgment. Although granting a party relief on one ground rather than another is generally not appealable, if a party is "denied judgment of the quality to which it has laid claim, it is a party aggrieved on appeal." *Aetna Cas. & Surety Co. v. Cunningham*, 224 F.2d 478, 480 (5th Cir. 1955) (holding that Aetna was "aggrieved" where relief was granted on contract claim rather than fraud claim because contract judgment would be dischargeable in bankruptcy but fraud judgment would not).

Exposure to Future Litigation. Where judgment in favor of a party has potential future adverse consequences, the party has standing to appeal. For example, the Fourth Circuit held that an adult bookstore could appeal a judgment that a licensing scheme was constitutionally deficient because the trial court also suggested that the county could enforce the statute in the future. See *Chesapeake B & M, Inc. v. Harford County, Md.*, 58 F.3d 1005, 1010-11 (4th Cir. 1995). Similarly, where a district court grants summary judgment as to a federal claim but then declines to exercise supplemental jurisdiction over state law claims, the moving party is aggrieved because those same state law claims

may arise in a second lawsuit. *Amazon, Inc. v. Dirt Camp, Inc.*, 273 F.3d 1271, 1275-76 (10th Cir. 2001). In more general terms, a defendant has standing to appeal a dismissal without prejudice because the prospect of future litigation is real. *Disher v. Info. Res., Inc.*, 873 F.2d 136, 139 (7th Cir. 1989). Interestingly, “[a]gainst this it can be argued that a finding which a party had no incentive (other than fear of collateral estoppel) to appeal, because he won, has no collateral estoppel effect.” *LaBuhn v. Bulkmatic Transport Co.*, 865 F.2d 119, 122 (7th Cir. 1988). In other words, collateral estoppel may not apply because the party could not appeal. *Warner/Elektra/Atlantic Corp. v. County of DuPage*, 991 F.2d 1280, 1282 (7th Cir. 1993) (“[A]n unappealable finding does not collaterally estop”).

Objectional Conditions on Dismissal. Ordinarily, a party seeking dismissal cannot appeal that dismissal. A notable exception discussed above is a dismissal *without* prejudice. In the same vein, a plaintiff may appeal a voluntary dismissal if the trial court imposes objectional conditions on the dismissal, such as payment of the defendant’s attorney fees. *See Cauley v. Wilson*, 754 F.2d 769, 770-71 (7th Cir. 1985) (discussing circuits’ various approaches to review of attorney fee orders in connection with voluntary dismissals); *In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India in Dec., 1984*, 809 F.2d 195, 203 (2d Cir. 1987) (finding party could appeal dismissal on *forum non conveniens* where conditions were imposed on the dismissal).

Attorney Misconduct. The circuits are split over whether a prevailing

party’s lawyer is “aggrieved,” for appellate purposes, by an order finding that the lawyer committed misconduct. The Seventh Circuit, for example, has held that a lawyer lacks standing to appeal an order finding that he or she committed misconduct unless the court imposed monetary sanctions. *Seymour v. Hug*, 485 F.3d 926, 929-30 (7th Cir. 1992) (settlement of case). The D.C., Fifth, Tenth, and Eleventh Circuits, on the other hand, allow a lawyer to appeal misconduct findings, even if no sanctions are imposed, because such findings reflects adversely on the lawyer’s reputation. *See, e.g., Kirkland v. Nat’l Mortgage Network, Inc.*, 884 F.2d 1367, 1370 (finding that the court of appeals had appellate jurisdiction over disqualification on grounds of dishonesty and bad faith because of reputational effects); *see also* Moore’s Federal Practice § 205.04[1] (3d ed. 2008) (citing Fifth, Tenth, and D.C. Circuit opinions).

Whether a winner or loser, one’s ability to appeal will depend on a number of case-specific factors. Nonetheless, a common theme seems to run throughout the cases cited above: the potential for future harm from some aspect of the judgment. This factor provides a useful starting point for any litigant considering appeal of a judgment in its favor, but must be followed by thorough appellate standing research in the pertinent jurisdiction, lest the victory utterly undo the litigant.

Endnotes:

¹ Plutarch (trans. John Dryden), *Pyrrhus*, available at <http://classics.mit.edu/Plutarch/pyrrhus.html>.

² This article focuses on decisions in federal courts.