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CALIFORNIA COURT OF APPEAL REMINDS APPELLANTS TO PROVIDE A COMPLETE TRIAL COURT RECORD AND ADEQUATELY BRIEF ALL GROUNDS FOR APPEAL

The California Court of Appeal's decision in People v. Roscoe, Case No. C055801 (3d Dist., December 26, 2008), is a reminder of the potential adverse consequences of failing to: (1) provide the Court of Appeal with a complete record of relevant proceedings in the trial court, including the reporter's transcript of any trial or evidentiary hearing; and (2) raise all grounds for challenging the trial court's judgment or order in the appellant's opening brief.

Roscoe was a civil penalty action by the Sacramento County District Attorney against a company and its individual officers, directors, and shareholders for violations of California's statutes governing the underground storage of hazardous substances, Cal. Health & Saf. Code §§ 25280, et seq. Roscoe, Slip Op. at 3. Following a trial, the Superior Court concluded that the individual defendants were jointly and severally liable under the responsible corporate officer doctrine for nearly $2.5 million in penalties for violating those statutes. Id. at 4-5.

The individual defendants argued on appeal that: (1) the Superior Court erred in applying the responsible corporate officer doctrine; and (2) the amount of the penalties must be overturned as excessive because it was unsupported by any proportionality analysis in the Superior Court's written statement of decision. Roscoe, Slip Op. at 5-6, 16-17. However, in support of those arguments, the defendants provided the Court of Appeal only with the Superior Court clerk's transcript, not the reporter's transcript of the trial. Id. at 15. Moreover, their opening brief did not raise the asserted deficiency in the statement of decision at all. Id. at 17.

The Court of Appeal affirmed. After holding that the responsible corporate officer doctrine applied to the specific statutory violations at issue, the Court concluded that:

> Application of the[] elements [of the doctrine] is simplified here because the [individual defendants] have provided us only with a clerk's transcript. In this judgment roll appeal, therefore, we presume the trial court's findings of fact and conclusions of law are supported by substantial evidence. They are binding on us, unless reversible error appears in the record. No reversible error appears here because the . . . factual findings made by the trial court are sufficient to satisfy the three elements . . . .

Roscoe, Slip Op. at 15-16 (citations omitted). See also, e.g., Navarro v. Perron, 122 Cal. App. 4th 797, 801 (2004) ("[w]here the appeal is on the clerk's transcript only, we must conclusively presume the evidence is sufficient to support the trial court's findings").

The Court then rejected the challenge to the amount of the penalties. It concluded that the defendants had waived any "arguments regarding the purported inadequacy of the [Superior Court's] statement of decision" by failing to raise those arguments in their opening brief. As the Court explained:

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> The requirements that issues be raised in the opening brief and presented under a separate argument heading, showing the nature of the question to be presented and the point to be made, are part of the [o]bvious considerations of fairness to allow the respondent its opportunity to answer these arguments and also to lighten the labors of the appellate [courts] by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass.

Roscoe, Slip Op. at 17 (citations and internal quotations omitted). Despite this waiver, the Court of Appeal went on to explain why, "[i]n any event, the arguments as to the alleged legal sufficiency of the statement of decision and the excessive nature of the penalties imposed fail on their merits." Id. at 18-19.

Roscoe underscores two basic but often-violated principles of appellate practice. First, it is essential that an appealing party provide the reviewing court with a complete record to support any claim that the evidence was insufficient to support the Superior Court's judgment or order. Where the judgment or order is based on a trial or evidentiary hearing, a complete record includes the reporter's transcript of the trial or hearing. In addition to showing what evidence was presented, the reporter's transcript often contains statements by the trial judge that may assist the Court of Appeal in determining how the trial court arrived at the decision that is being challenged. See, e.g., Birkenfeld v. City of Berkeley, 17 Cal.3d 129 161 (1976) (although trial court's tentative remarks cannot be used to contradict its judgment or order, those remarks may be used "as an aid to the[] interpretation" of the judgment or order). This assistance may be especially important in cases not subject to the general rule that the Court of Appeal does not review the Superior Court's reasoning and will affirm if the judgment or order is correct under any legal theory. See, e.g., Rickley v. County of Los Angeles, 114 Cal. App. 4th 1002, 1008 (2004) (notwithstanding general rule requiring affirmance if order is correct under any theory, Court of Appeal will reverse order granting new trial that is based exclusively on "an erroneous application of legal principles"); Corbett v. Superior Court, 101 Cal. App. 4th 649, 658 (2002) ("we review only the reasons given by the trial court for denial of class certification, and ignore any other grounds that might support denial").

Second, all grounds for challenging the Superior Court's judgment or order must be raised in the appellant's opening brief. Even though the Court of Appeal has discretion to consider arguments raised for the first time in a reply brief or at oral argument, the Court is likely to have little incentive to do so in the typical appeal. Moreover, even where the Court of Appeal chooses to address the merits of an argument that has not been raised in the appellant's opening brief, it is likely to take the argument less seriously and therefore may give it less attention than it gives arguments that have been properly briefed.