The Standard of Review on Appeal, Revisited

or How to Appeal to the Appellate Courts of Equity

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California Constitution, Article 6, section 13, provides:

No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

Recent cases applying this constitutional standard include:

Juvenile Dependency:

*In re Y.M.* 2022 DJDAR 9554 (Sept. 5, 2022)

Issue: Applicability of the Indian Child Welfare Act (ICWA) to dependency proceedings. Trial court terminated parental rights. On appeal, father contended court erred in failing to conduct required inquiry of Y.M.’s extended family members (whether any reason to believe Y.M. might be Indian child). Welfare agency conceded failure to conduct mandatory inquiry of paternal grandparents and uncle.

Affirmed despite error based on harmless error standard of Article 6, section 13. DCA concluded that father failed to carry burden to show miscarriage of justice because only offered speculation as to possible response of relatives.

Note: Split of authority; another view is reversal per se (harmless eror analysis)

Criminal:

*People v. Salazar* 2022 DSDAR 6762 (June 28, 2022)

Issue: Applicability of SB 567 to sentencing. Trial court sentenced defendant convicted of false imprisonment and infliction of corporal injury to midterm prison sentence. After sentencing, legislature enacted SB 567 requiring low term sentencing where childhood trauma to defendant was contributing factor in offense, unless contrary to interests of justice. AG conceded SB 567 applies retroactively on appeal.

Affirmed without remand for resentencing because defendant had lengthy criminal record, five prior prison commitments, and “current offenses were aggravated, sadistic . . .and akin to torture” making midterm sentence “lenient” – thus appellate court concluded no miscarriage of justice resulted, pursuant to section 13.

Civil:

*San Diego Gas & Electric Co. v Schmidt* z(2014) 228 Cal.App.4th 1280

Issue: whether erroneous exclusion of evidence required reversal of judgment. Eminent domain proceedings; government’s expert testified highest and best use was residential, loss valued at $712,000. Property owner’s expert testified open-pit mine was possible allowable use, loss valued at $8,000,000. Jury found for property owner. Trial court erred when it sustained hearsay objections to questions posed to property owner’s expert about what government planner/geologist told expert about viability of open-pit mine permit (uncertain permit would be granted).

Affirmed: despite error. No miscarriage of justice resulted because “it is unlikely the response played any part in forming the basis of [expert’s] opinion.”