

Daily Business Review

[COMMENTARY](#)

Climbing Over That Wall: Confronting the Challenge of Trial Court Discretion

It may seem like a trial court judge's ruling on an issue on which the judge has discretion means the absolute end of the inquiry. But while trial court discretion certainly presents a hurdle to a party seeking to challenge the decision on appeal, it is not always insurmountable.

October 21, 2024 at 11:23 AM

6 minute read

[Board of Contributors](#)

By Jonathan Mann



It should come as no surprise to attorneys who practice litigation that a large number of trial court decisions on contested matters fall within the discretion of the trial court judge. However, the effects of that fact are often somewhat unclear or overstated. It may seem like a trial

court judge's ruling on an issue on which the judge has discretion means the absolute end of the inquiry. But while trial court discretion certainly presents a hurdle to a party seeking to challenge the decision on appeal, it is not always insurmountable.

The concept of trial court discretion relates directly to the standard of review an appellate court will apply if the decision is appealed. According to Judge Philip J. Padovano, "the phrase 'standard of review' is used in appellate practice to describe the criteria employed by an appellate court to evaluate a decision by a lower tribunal." See Florida Appellate Practice, Section 19.1 (2021 ed). The particular standard of review applied to a given trial court decision depends on the nature of the adjudication. The abuse of discretion standard of review is an intermediate standard. It lies in between the de novo standard, where the appellate court gives no deference to the trial court ruling, and the competent substantial evidence standard, where the appeals courts give nearly complete deference if any evidence supports the trial court's decision.

A party seeking reversal of a discretionary trial court decision on appeal must show that the trial court abused that discretion. What it means for a trial court to have abused its discretion is frequently an ambiguous question when applied in practice. The standard is usually described as a "reasonableness test," as explained in *Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980), where the appellate court will not reverse the trial court's decision if reasonable people could disagree as to its propriety. Under this standard, the appeals court will defer to the trial court judge's ruling, even if the appeals court would have ruled differently than the trial court. Another court referred to the *Canakaris* test as a "right mind" standard. See *Cargile-Schrage v. Schrage*, 908 So. 2d 528, 529 (Fla. 4th DCA 2005) ("We cannot say that no judge in his right mind would have denied the continuance.").

A broad range of trial court decisions is subject to the abuse of discretion standard of review on appeal. Common examples of decisions that are generally discretionary include: rulings on discovery, most pretrial and trial procedural issues, continuances, amendment of pleadings, and many family court orders like equitable distribution and alimony. Of course, the factual circumstances under which trial court rulings occur on these questions vary and can sometimes be quite complicated. Even for a type of decision where a court's discretion is normally broad, "this discretion is not unlimited." See *Udell v. Udell*, 998 So. 2d 1168, 1170 (Fla. 2d DCA 2008). Discretion generally "is not absolute and unbridled;" it should be "sound" and "supported by sound and sufficient reasons." See *Hamilton Investment Trust v. Escambia Developers*, 352 So. 2d 883, 883-84 (Fla. 1st DCA 1977).

As a result, it should not be assumed that a trial court's ruling on an issue subject to the abuse of discretion standard is unassailable. A party should always examine and analyze the trial court's order closely, as there may be avenues to successfully challenge it that are not obvious. Perhaps the law requires findings in the order that the trial court failed to make. See *Haas v. Haas*, 552 So. 2d 221, 224 (Fla. 2d DCA 1989) (even if a particular decision is discretionary, "findings of fact are needed ... to determine that the trial court has in fact acted within its discretion and not in an arbitrary, inconsistent fashion"). Maybe there is case law squarely holding that a trial court ruling under the same circumstances present in your case constitutes an abuse of discretion. Perhaps the ruling is actually subject to a mixed standard of review where the court's legal conclusions or statutory interpretation will be reviewed without deference under the de novo standard. See,

e.g., *Quiceno v. Bedier*, 387 So. 3d 365, 366 (Fla. 3d DCA 2023) (Fla. 3d DCA 2023) ("We ordinarily review timesharing and parental responsibility decisions for an abuse of discretion. But to the extent such a decision implicates an issue of law, we conduct a de novo review.") Indeed, effectively arguing for a favorable standard of review where there is ambiguity is an important aspect of appellate advocacy.

A recent appeal, in which we succeeded in obtaining reversal of a decision that was subject to the abuse of discretion standard, provides a good example. We represented the former wife in her appeal of a final judgment of divorce. The primary issue on appeal was the date of valuation the trial court used to value the marital home. The trial court had valued the home as of the date of trial, which resulted in the court ordering the former wife to pay a large payment to the former husband and to sell the home if she could not refinance.

We argued on appeal that the trial court should have used the date of the parties' separation to value the home, not the date of trial. The fact that the equitable distribution statute explicitly gives the trial court discretion as to the date of valuation of assets presented an obvious challenge. However, we pointed out that the statute also requires the trial court's equitable distribution of assets and liabilities be supported by proper findings establishing that the date of valuation is equitable. In its written opinion reversing the final judgment, the Fourth District Court of Appeal acknowledged the trial court's discretion to value marital assets. The appeals court still held the trial court erred in failing to make specific written findings to justify its discretion to use the more recent valuation of the home. The appeals court also ruled that the facts simply did not justify using the more recent date to value

the home. See *Bellegarde v. Bellegarde*, 49 Fla. L. Weekly D1673 (Fla. 4th DCA, Aug. 7, 2024).

There will, of course, be instances where a trial court's exercise of discretion proves insurmountable on appeal. Yet, as in the example above, acknowledging that a ruling is subject to the abuse of discretion standard does not require a party to automatically accept it as indisputable. As the former NBA great Michael Jordan said, "If you run into a wall, don't turn around and give up. Figure out how to climb it, go through it, or work around it."

The same philosophy Jordan applied on the basketball court could be applied to challenging a discretionary ruling in a court of law. Attorneys may be surprised at how often valid challenges to discretionary decisions present themselves after close scrutiny of the order and some focused research.

Jonathan Mann *is a senior associate with Schwartz Sladkus Reich Greenberg Atlas in the firm's Boca Raton office. He is board certified in appellate practice by The Florida Bar.*

NOT FOR REPRINT

© 2024 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo licensing@alm.com. For more information visit Asset & Logo Licensing.