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Appellate Practice Corner

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Civil Plain Error Remains an Extraordinary Remedy in the Seventh Circuit

In *Crothersville Lighthouse Tabernacle Church, Inc. v. Church Mutual Insurance Co.*, 168 F.4th 483 (7th Cir. 2026), the Seventh Circuit recently reaffirmed the exceptionally narrow scope of plain-error review in civil litigation. The decision is an important reminder that appellate courts generally will not rescue litigants from foregoing arguments in the trial court, even where new appellate counsel later identifies a potentially stronger legal theory. As the Seventh Circuit explained, civil plain-error review applies only in extraordinary circumstances and remains far narrower than the more familiar doctrine used in criminal appeals.

The dispute arose after a fire severely damaged Lighthouse Tabernacle Church in Indiana. *Crothersville Lighthouse*, 168 F.4th at 486-87. The church carried replacement-cost insurance coverage through Church Mutual Insurance Company. Under the policy, the insurer would pay actual cash value initially and then additional replacement-cost proceeds if the church repaired or replaced the property "as soon as reasonably possible after the loss or damage." *Id*. Church Mutual ultimately paid nearly $1.7 million on the claim. *Id.* at 488. But the church never began reconstruction and instead sued for breach of contract and bad faith. *Id.*

At summary judgment, the insurer focused on a straightforward contractual argument: the church failed to satisfy the policy condition requiring prompt repair or replacement before recovering additional replacement-cost benefits. *Id*. The church's response did not meaningfully address that argument. Instead, trial counsel challenged factual disputes involving replacement estimates and adjuster credibility. *Id.* The district court concluded that those factual disputes were irrelevant because they did not respond to the insurer's dispositive legal position and entered judgment for the insurer. *Crothersville Lighthouse*, 168 F.4th at 488.

With new counsel on appeal, the church attempted to raise a completely different legal theory for the first time. Relying on two Indiana appellate decisions, the church argued that it was unable to begin repairs while the dispute over the replacement-cost estimates remained unresolved. *Id.* at 489. The Seventh Circuit refused to consider the argument.

The opinion provides a thorough discussion of the limited role of plain-error review in civil cases. Writing for the Court, Judge Sykes began by distinguishing waiver from forfeiture. *Id.* Waiver involves the intentional relinquishment of a known right, while forfeiture is merely the failure to timely raise an argument. *Id.* at 489-90. That distinction matters because waived arguments ordinarily are not reviewable at all.

The court explained that civil plain-error review differs dramatically from criminal plain-error review. In criminal cases, Federal Rule of Criminal Procedure 52(b) expressly authorizes review of forfeited errors. *Id.* at 489. Civil litigation contains no comparable rule. Instead, the Federal Rules provide only narrow exceptions allowing plain-error review in limited circumstances, such as unpreserved objections to jury instructions under Federal Rule of Civil Procedure 51(d)(2) and certain evidentiary rulings under Federal Rule of Evidence 103(e). *Id.* at 492. Outside those narrow settings, plain-error review in civil litigation exists only as a severely constrained judicial doctrine.

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Relying on *Henry v. Hulett*, 969 F.3d 769 (7th Cir. 2020), the court reiterated that a litigant seeking civil plain-error review must demonstrate: "(1) exceptional circumstances exist; (2) substantial rights are affected; and (3) a miscarriage of justice will occur if plain error review is not applied." *Crothersville Lighthouse*, 168 F.4th at 490 (quoting *Henry*, 969 F.3d at 786). The Seventh Circuit emphasized that this standard applies only in rare and extraordinary cases.

The court first concluded that the church had waived, not merely forfeited, its new argument. *Id.* at 491. The church chose to oppose summary judgment on certain grounds while entirely omitting the legal theory later advanced on appeal. That constituted waiver because litigants must present their legal theories to the district court before judgment enters. As the court explained, litigants cannot receive "two bites at the apple by raising two distinct arguments before each court." *Id.* at 490.

The Seventh Circuit also rejected the church's attempt to avoid waiver by blaming prior counsel's poor performance. The attorney who handled the matter below had subsequently faced disciplinary issues and suspension from practice before the Seventh Circuit. *Id.* at 489. But the court explained that poor lawyering does not eliminate waiver principles. The court observed: "[t]hat the strategy was not entirely successful . . . does not mean that it was not a strategy." *Id.* at 491 (quoting *United States v. Picardi*, 950 F.3d 469, 475 (7th Cir. 2020). The court stressed that civil litigants generally remain bound by the actions and omissions of counsel they freely select.

The opinion then explained that even if the argument were treated as forfeited rather than waived, plain-error review still would not apply. *Id.* The church argued that review was appropriate because refusing to consider the issue would create an unfair result. *Crothersville Lighthouse*, 168 F.4th at 492. The court disagreed, pointing out that Church Mutual paid almost $1.7 million, representing the actual cash value of the loss, yet the church did not even begin to repair or replace its property before it filed suit. *Id.*

The Seventh Circuit also rejected the church's argument that plain-error review should apply because the issue presented a pure question of law. *Id.* at 492. The court explained that "legal arguments do not have some talismanic quality that exempts them from the normal rules governing the preservation of arguments for appeal." *Id.* at 492-93.

Practice Tips

The case underscores the importance of recognizing the limited nature of civil plain-error review. Unlike criminal appeals, civil appeals rarely permit review of arguments omitted below. Even arguments framed as pure questions of law generally will not qualify, nor will generalized claims of unfairness or allegations of poor lawyering. The doctrine remains reserved for truly exceptional cases involving extraordinary circumstances and a genuine risk of injustice.

Trial counsel should ensure that all potentially viable legal arguments are raised in response to dispositive motions, even if counsel believes other arguments are stronger. Appellate counsel, meanwhile, should carefully assess preservation issues before relying heavily on new theories not presented below. Once a legal argument is omitted in the district court, the chances of obtaining civil plain-error review on appeal are exceedingly slim.

About the Author

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