



Summaries of Published Opinions: The Nevada Supreme Court and Nevada Court of Appeals

The following summaries include, in bold, a case citation along with the primary area of practice and/or subject matter addressed in the decisions. In addition, each summary identifies significant new rules of law or issues of first impression decided by Nevada’s appellate courts.

These summaries are prepared by the state bar’s Appellate Litigation Section as an informational service only and should not be relied upon as an official record of action. While not all aspects of a decision can be included in these brief summaries, we hope that readers will find this information useful, and we encourage you to review full copies of the advance opinions, which are located on the Nevada Supreme Court’s website at: https://nvcourts.gov/Supreme/Decisions/Advance_Opinions/.

***Parsons v. Colt’s Mfg. Co., LLC*, 137 Nev., Adv. Op. 72 (Dec. 2, 2021) (en banc) – Immunity for firearm manufacturers.**

NRS 41.131(1), which provides that no person has a cause of action against a manufacturer or distributor of any firearm merely because the firearm is capable of causing serious injury, damage or death, provides gun manufacturers and distributors with immunity from lawsuits based on the ease with which an AR-15 can be modified to enable fully automatic fire.

***Spirtos v. Yemendijan*, 137 Nev., Adv. Op. 73 (Dec. 2, 2021) – Anti-SLAPP motions to dismiss.**

When analyzing a defendant’s motion to dismiss under Nevada’s anti-SLAPP statutes, at step one of the analysis, a district court must evaluate the communication as alleged in the plaintiff’s complaint and clarifying declarations, without considering the defendant’s denial that he or she made the statement.

***Ramos v. State*, 137 Nev., Adv. Op. 74 (Dec. 9, 2021) – Statute of limitations for sexual assault.**

Sexual assault prosecution was not time-barred because NRS 171.083(1) removed the statute of limitations for commencing a prosecution where the persons who discovered the victim’s body reported it to police and where law enforcement filed a written report concerning the sexual assault within the limitations period.

***Petsmart, Inc. v. Eighth Judicial Dist. Court*, 137 Nev., Adv. Op. 75 (Dec. 9, 2021) – Tort liability for pet stores.**

A pet store that holds an adoption event with an independent charitable organization is not liable for injuries caused by an adopted pet under tort law unless the store assumed a duty of care or had an agency relationship with the charitable organization.

***Aerogrow Int’l, Inc. v. Eighth Judicial Dist. Court*, 137 Nev., Adv. Op. 76 (Dec. 9, 2021) – Procedure for beneficial stockholders to dissent from corporate action.**

To dissent from a merger and seek fair value of shares, a beneficial stockholder must obtain the stockholder of record’s consent prior to a merger vote, at step two of the four-step process outlined in NRS 92A.410-.440.

***Montanez v. Sparks Family Hosp., Inc.*, 137 Nev., Adv. Op. 77 (Dec. 9, 2021) – Medical expert affidavit requirement for medical malpractice claims.**

Bacteria is not a “foreign substance” within the meaning of NRS 41A.100(1)(A), and, therefore, the district court properly dismissed plaintiff’s medical malpractice complaint for failure to include a medical expert affidavit under NRS 41A.100(1)(A). Because the gravamen of plaintiff’s remaining premises liability claim sounded in malpractice, plaintiff was also required to provide a medical expert affidavit under NRS 41A.100(1)(A).

***Miles v. State*, 137 Nev., Adv. Op. 78 (Dec. 23, 2021) (en banc) – Proper *Faretta* canvas procedure.**

Although no specific questions are constitutionally required during a *Faretta* canvas, the district court’s *Faretta* canvas was insufficient where it failed to address the defendant’s apparent lack of understanding about the elements of the charges and the potential aggregate sentence for those charges.

***City of Henderson v. Wolfgram*, 137 Nev., Adv. Op. 79 (Dec. 23, 2021) – Reopening workers’ compensation claims.**

The term “full wages” as used in NRS 616C.400(1) can include overtime pay.

Substantial evidence supported appeals officer’s conclusion that respondent’s inability to earn overtime due to an industrial injury incapacitated him from earning “full wages,” allowing him to reopen his workers’ compensation claim more than one year after its closing.

***Oella Ridge Tr. v. Silver State Sch. Credit Union*, 137 Nev., Adv. Op. 80 (Dec. 23, 2021) – Attorney fees imposed pursuant to a deed of trust.**

A lender may use a deed of trust to secure any attorney costs incurred in protecting the lender’s interest, even against one who is not the “borrower,” when a nonborrower seeks to pay off the loan balance. Where appellant purchased real property at an HOA foreclosure sale and took that property subject to a deed of trust which permitted respondent/lender to add reasonable expenses incurred protecting its interest in the property (including attorney fees) to the secured debt, NRCPC 54 did not require respondent/lender to move for attorney fees before adding those fees to the secured debt when appellant sought to pay off the loan balance.

***Las Vegas Review-Journal v. City of Henderson*, 137 Nev., Adv. Op. 81 (Dec. 23, 2021) – Attorney fees in public records cases.**

When applying the catalyst theory to determine whether a requester of public records is entitled to reasonable attorney fees and costs as the “prevailing party” in litigation against a governmental body, a district court must closely scrutinize the facts specific to the circumstances and enter findings showing that the court has duly considered all five mandatory catalyst theory factors.