



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 areas 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/.

***Rosie M. v. Ignacio A.*, 138 Nev., Adv. Op. 49 (June 30, 2022) (en banc) – Rebutting presumptions of paternity with genetic testing.**

The court clarified that presumptions of paternity under NRS 126.051(1) when parties are married or cohabitating during gestation may be rebutted by genetic testing that proves the paternity of another father. The court confirmed the rule in NRS 126.051(3) that when presumptions for paternity are in conflict, the genetic tests are conclusive under NRS 126.051(2) and rebut the rebuttable presumptions of NRS 126.051(1) regarding marriage, cohabitation, or a party's holding the child out as their child.

***Hung v. Berhad*, 138 Nev., Adv. Op. 50 (Ct. App. June 30, 2022) – Waiver of appellate challenges.**

When a district court provides alternative bases to support its ultimate ruling, and an appellant fails to challenge the validity of each alternative basis on appeal, the court will generally deem that failure a waiver of each such challenge and affirm the district court's judgment.

***Myers v. Haskins*, 138 Nev., Adv. Op. 51 (Ct. App. June 30, 2022) – Entitlement to evidentiary hearing on motion to modify child custody.**

When determining if a movant has demonstrated a prima facie case for modification of child custody sufficient to require an evidentiary hearing under *Rooney v. Rooney*, district courts must generally consider only the properly alleged facts in the movant's verified pleadings, affidavits, or

declarations. Generally, district courts must not consider the alleged facts or offers of proof the nonmovant provides. However, district courts may look to the nonmovant's evidentiary support when it "conclusively establishes" the falsity of the movant's allegations. District courts must also provide an adequate explanation when denying a motion to modify custody without holding an evidentiary hearing.

***Blount v. Blount*, 138 Nev., Adv. Op. 52 (July 7, 2022) – Registration of foreign child custody orders.**

A challenge to a properly registered foreign child custody order under NRS 125A.465 must be made within 20 days of receiving notice of the request to register, as set forth in NRS 125A.465(6). Otherwise, the foreign custody order is deemed confirmed, precluding further contest of the registered order with respect to any matter that could have been asserted.

***Artmor Invs., LLC v. Nye County*, 138 Nev., Adv. Op. 53 (July 7, 2022) – Claims for excess proceeds from tax sales.**

If a former property owner wants its share of the excess proceeds from a tax sale, that property owner must file its claim for the excess proceeds within the one-year deadline established by NRS 361.610.

***Torremoro v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 54 (July 7, 2022) – Substituting expert witnesses after close of discovery.**

When a party seeks to substitute an expert witness after the close of discovery, the district court must consider

the motion under NRCP 16(b)(4)'s "good cause" standard and any applicable local rules of practice.

***R.J. Reynolds Tobacco Co., v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 55 (July 28, 2022) – Standing to assert consumer fraud claims under NRS 41.600.**

A "victim of consumer fraud" under NRS 41.600 does not need to be a consumer of the defendant's goods or services. NRS 598.0915(5) provides for liability if the seller "[k]nowingly makes a false representation as to the product for sale." "Sale" includes an "attempt to sell," which contemplates a failure to sell the product.

***Martel v. HG Staffing, LLC*, 138 Nev., Adv. Op. 56 (Aug. 11, 2022) – Employment matter concerning unpaid wages.**

This opinion clarifies several matters of employment law. First, a two-year limitations period applies to wage claims commenced before the 2021 amendatory provisions of NRS 11.220. Second, a collective bargaining agreement (CBA) is valid so long as the employer and the union objectively manifest their assent to the agreement. Third, claims under NRS 608.040 cannot be utilized to recover wages that are time-barred under other statutes. Fourth, an employer that is a party to a CBA is exempt from Nevada's overtime statute when the CBA provides overtime in a different manner from the statute.