



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/.

***Airbnb, Inc. v. Rice*, 138 Nev., Adv. Op. 65 (Sept. 29, 2022) (en banc) – Motions to compel arbitration; contractual delegation of arbitrability.**

The U.S. Supreme Court held in *Henry Schein, Inc. v. Archer & White Sales, Inc.* that, under the Federal Arbitration Act (“FAA”), a court has no power to determine the arbitrability of a dispute where a contract between the parties delegates the arbitrability question to an arbitrator, even if the argument that the arbitration agreement applies to the dispute is “wholly groundless.” Because the parties’ agreement in this case was governed by the FAA and included a delegation provision, the district court erred when it refused to submit the arbitrability determination to the arbitrator.

***Uber Techs., Inc. v. Royz*, 138 Nev., Adv. Op. 66 (Sept. 29, 2022) (en banc) – Motions to compel arbitration; contractual delegation of arbitrability.**

Under the U.S. Supreme Court’s decision in *Henry Schein*, when a contract governed by the FAA delegates the threshold question of arbitrability to the arbitrator, a district court may not decline to refer the case to arbitration on the ground that the arbitration agreement does not cover the dispute. The district court may determine whether the arbitration agreement is a valid contract before referring the case to arbitration. And, under certain

circumstances, the district court may determine whether the delegation clause itself is a valid agreement. But in either situation, the district court may not bypass the contract language delegating arbitrability to the arbitrator.

***Johnston v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 67 (Oct. 6, 2022) – Violations of pretrial release conditions; due process.**

A defendant who is taken into custody for an alleged violation of pretrial release conditions is constitutionally entitled to a prompt hearing at which State bears the burden of demonstrating probable cause that a violation occurred. Further, a violation of a condition of house arrest may lead to statutory sanctions, and there is no distinction between “technical” and “substantive” violations. The district court must also make findings of fact on the record to ensure that each condition of pretrial release is the least restrictive means of ensuring public safety and the defendant’s return to court.

***In re Estate of Sweet*, 138 Nev., Adv. Op. 68 (Ct. App. Oct. 20, 2022) – Probate of will executed in foreign country under NRS Chapters 133 and 133A.**

When determining if a will signed in another country should be admitted to probate in Nevada as an “international will” under NRS Chapter 133A, the district court must first consider if the will complied with the requirements

of the Uniform International Wills Act (UIWA) before turning to the laws of the signatory country to determine if it was signed by an “authorized person.” However, even if such a will is invalid under the UIWA, it may nevertheless be probated in Nevada as a “foreign will” under NRS 133.080(1), so long as it complied with the requirements of NRS Chapter 133. Additionally, NRS 137.010(1) requires that a citation be issued as formal notice before the district court has jurisdiction over a will contest in either situation.

***In re Change of Name: Salazar*, 138 Nev., Adv. Op. 69 (Oct. 20, 2022) – Adult name-change petitions.**

A district court abuses its discretion when it denies a petition for a name change without providing any substantial basis for doing so.

***Yafchak v. S. Las Vegas Med. Inv’rs*, 138 Nev., Adv. Op. 70 (Oct. 27, 2022) (en banc) – Professional negligence; elder abuse.**

Claims under NRS Chapter 41A (professional negligence) and NRS 41.1395 (elder abuse) are separate and distinct. When a claim is alleged against a nursing home facility, courts must consider whether the gravamen of the claim sounds in professional negligence or elder abuse, giving particular consideration to the underlying facts and how they are alleged in the complaint.