



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

As a service to the members of the State Bar of Nevada, each month *Nevada Lawyer* magazine now provides brief case summaries for the published decisions issued by the Nevada Supreme Court and the Nevada Court of Appeals after September 1, 2021. If more decisions have been published in a given month than space is allotted for these summaries, the additional published decisions will be summarized in chronological order in the following month's edition.

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 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/](https://nvcourts.gov/Supreme/Decisions/Advance_Opinions/).

***Superpumper, Inc. v. Leonard*, 137 Nev., Adv. Op. 43 (Sept. 16, 2021) (en banc) – Concurrent jurisdiction with bankruptcy court.**

State and federal courts share concurrent subject matter jurisdiction over fraudulent conveyance actions. In rem jurisdiction is distinct from subject matter jurisdiction and is therefore waivable.

***Williams v. Lazer*, 137 Nev., Adv. Op. 44 (Sept. 16, 2021) (en banc) – Absolute litigation privilege relevant to anti-SLAPP statute analysis.**

In the context of an anti-SLAPP motion to dismiss under NRS 41.660(3), the Supreme Court held that the absolute litigation privilege is relevant to the second prong of the anti-SLAPP analysis because a plaintiff cannot show a probability of prevailing on a claim if a privilege precludes defendant's liability. A proceeding before the Nevada Real Estate Division is quasi-judicial, such that the privilege may apply to statements made during those proceedings.

***News+Media Capital Grp. LLC v. Las Vegas Sun, Inc.*, 137 Nev., Adv. Op. 45 (Sept. 16, 2021) (en banc) – Private arbitration - standard of review.**

When parties contract to have claims heard by a private arbitrator, the arbitrator's decision is generally binding. Vacatur of an arbitrator's decision is not warranted under NRS 38.241(1)(d) if the arbitrator's interpretation of the contract was an arguable construction of the contract that

was at least minimally plausible. Vacatur of an arbitrator's decision is not warranted under common law unless it is arbitrary or capricious, or the arbitrator manifestly disregards the law.

***Clarke v. Serv. Employees Int'l Union*, 137 Nev., Adv. Op. 46 (Sept. 16, 2021) (en banc) – Wrongful termination not conflict-preempted by LMRDA.**

Appellant's wrongful termination claims against union respondents were not conflict-preempted by the Labor Management Reporting and Disclosure Act (LMRDA), because permitting such claims would not frustrate the purpose of the LMRDA.

***White-Hughley v. State*, 137 Nev., Adv. Op. 47 (Sept. 16, 2021) (en banc) – Applying credit for time served to concurrent sentences.**

Where a defendant simultaneously serves time in presentence confinement for multiple cases and the resulting sentences are imposed concurrently, credit for time served must be applied to each corresponding sentence pursuant to NRS 176.055(1).

***Howard v. State*, 137 Nev., Adv. Op. 48 (Sept. 16, 2021) (en banc) – Death penalty habeas petition.**

Appellant was actually innocent of the death penalty such that he overcame the procedural bars that applied to his postconviction habeas petition where the sole aggravator making him death-

eligible under a former version of NRS 200.033(2) was a violent felony conviction from New York, and New York vacated that conviction.

***Echeverria v. State*, 137 Nev., Adv. Op. 49 (Sept. 16, 2021) (en banc) – Waiver of sovereign immunity under FLSA.**

Based on the plain language of NRS 41.031(1), Nevada has waived the defense of sovereign immunity to liability under the Fair Labor Standards Act (FLSA).

***Burns v. State*, 137 Nev., Adv. Op. 50 (Sept. 23, 2021) – Appeal waiver in criminal trial.**

A party who stipulates mid-trial to waive appellate rights in exchange for a particular sentence cannot litigate the waived claims or challenge the sentence, and the scope of the waiver is governed by contract law principles.

***Eggleston v. Stuart*, 137 Nev., Adv. Op. 51 (Sept. 23, 2021) – Administrative exhaustion before filing §1983 claims.**

A party is not required to exhaust administrative remedies before filing a §1983 claim alleging violations of fundamental rights or substantive due process; however, exhaustion is required if the §1983 claim involves violations of procedural due process. Administrative exhaustion is not required to assert tort claims that do not implicate any administrative process.