



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/.

***Candelaria v. Kelly*, 139 Nev., Adv. Op. 30 (September 14, 2023) (en banc) – Retroactive recognition of same-sex marriages.**

Obergefell v. Hodges, 576 U.S. 644 (2015), requires Nevada to recognize same-sex marriages performed in other states even if, at the time of the out-of-state marriage, Nevada did not permit or recognize such marriages. *Obergefell* does not require a Nevada court to backdate a marriage to the date upon which a same-sex couple would have married but for Nevada's ban on same-sex marriages because doing so would recognize common-law marriages in violation of NRS 122.010.

***BMO Harris Bank v. Whittemore*, 139 Nev., Adv. Op. 31 (September 14, 2023) (en banc) – Strict compliance for renewed judgments.**

NRS 17.214(3)'s certified mail requirement for judgment creditors demands strict compliance and must be met to renew a judgment.

***Starr Surplus Lines Insurance Co. v. District Court*, 139 Adv. Op. 32 (Sept. 14, 2023) (en banc) – Insurance contracts; COVID-19.**

Plaintiff, which owns and operates a retail shopping mall, filed a claim with its insurance company seeking coverage for lost business income, extra expenses, and other applicable coverage stemming from losses incurred during COVID-19. The Supreme Court of Nevada reversed the lower court's denial of summary judgment, holding that the commercial property insurance policy did not provide coverage for the economic losses plaintiff suffered because it did not constitute "direct physical loss or damage" covered under the policy.

***State v. Gonzalez*, 139 Nev., Adv. Op. 33 (September 14, 2023) (en banc) – Dismissal of criminal charges; competency; due process.**

The district court abused its discretion in invoking the extreme sanction of dismissing criminal charges with prejudice when it did not consider whether the case involved misconduct by the State or prejudice to the case. Even when aggravating circumstances are present, the

district court may only dismiss a charging document with prejudice after balancing the deterrent objectives of that sanction against society's interest in prosecuting criminal acts.

***Kassebaum v. State of Nev., Dep't of Corr.*, 139 Nev., Adv. Op. 34 (Sep. 21, 2023) – Jurisdiction; dismissal.**

NAC 285.6562(2)(b), which requires a state employee to attach a copy of a written notice of discipline to an appeal form requesting a hearing to challenge the disciplinary action, is not a jurisdictional rule. However, because it is a mandatory claims-processing rule, appeal forms that do not comply with the attachment requirements can be dismissed as defective.

***Patterson v. Las Vegas Muni. Court*, 139 Nev., Adv. Op. 35 (Sep. 21, 2023) – Attorneys' fees in criminal actions.**

The authority to award attorneys' fees and litigation expenses to the prevailing party in a criminal action pursuant to NRS 41.0393 is limited to district courts and justice courts.

***El Jen Med. Hospital, Inc., et al. v. Tyler*, 139 Nev., Adv. Op. 36 (Sep. 21, 2023) – Arbitration agreements; wrongful death actions.**

NRS 41.085 creates two separate wrongful death claims: one belonging to the heirs of the decedent and the other belonging to the personal representative of the decedent. Because Nevada's wrongful death statute creates the separate cause of action in favor of a decedent's heirs, a non-signatory heir's wrongful death claim is not bound to a contractual agreement that does not implicate the viability of the underlying claim.

***Floyd v. State, Dept of Corr.*, 139 Nev., Adv. Op. 37 (en banc) – Lethal injection; separation of powers.**

NRS 176.355 requires the Department of Corrections to execute a judgment of death by way of injection of a lethal drug. The statute, combined with the U.S. Constitution's prohibition on cruel and unusual punishment, provides the Director of the Department of Corrections with suitable standards to determine the

process by which a lethal injection is to be administered and does not violate separation of powers principles.

***In re Guardianship of D.M.F.*, 139 Nev., Adv. Op. 38 (September 28, 2023) – Guardianship.**

A district court has the authority to *sua sponte* remove a guardian and terminate a guardianship in response to *ex parte* communication, even without a petition being filed. However, to preserve the protected party's procedural due process interests, that decision must be preceded by notice of its intent to consider removal and termination, and it must be supported by adequate specific findings under NSRG 10(A).

***Kelley v. Kelley*, 139 Nev., Adv. Op. 39 (September 28, 2023) (en banc) – Medical decisions in parenting.**

A district court acts as a tie-breaker when parents with joint legal custody of a child disagree on medical decisions and should consider a non-exhaustive test on how to apply the best interest of the child standard: (1) the seriousness of the harm the child is suffering or the substantial likelihood that the child will suffer serious harm; (2) the evaluation or recommendation by a medical professional; (3) the risks involved in medically treating the child; and (4) if the child is of a sufficient age and capacity to form an intelligent preference, the expressed preference of the child.

***Orbitz Worldwide, LLC v. Eighth Jud. Dist. Ct.*, 139 Nev., Adv. Op. 40 (Sep. 28, 2023) – Nevada False Claims Act.**

NRS 357.080(3)(b) bars a private action by a private plaintiff under the Nevada False Claims Act if it involves the same allegations or transactions that are the subject of a civil lawsuit to which the State or a political subdivision are a party, even if the private action is pre-existing. But this statute does not bar simultaneous, separate civil lawsuits in which different political subdivisions are parties, provided that there is no commonality of identity amongst the parties to the litigation.