



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/.

***The Redevelopment Agency of the City of Sparks v. Nev. Labor Comm’r*, 140 Nev., Adv. Op. 44 (June 27, 2024).**

NRS 279.500(2) provides that where a redevelopment agency transfers property to a developer for less than fair market value or provides financial incentives worth more than \$100,000, then the development project is subject to prevailing wage provisions. Here, the redevelopment agency transferred the developer property in exchange for a deed restriction obligating the developer to maintain free public parking on the property for 50 years. The labor commissioner improperly assessed a penalty against the redevelopment agency for not requiring the developer to pay prevailing wages because transferring property in exchange for future services does not, without more, automatically provide a “financial incentive” under the meaning of NRS 279.500(2)(c). Without evidence of a financial incentive more than \$100,000 or a finding that the present value of parking obligation was less than fair market value, the project was not subject to prevailing wage provisions.

***Limprasert v. Pam Specialty Hosp. of Las Vegas LLC*, 140 Nev., Adv. Op. 45 (June 27, 2024) (En banc) – Professional negligence; ordinary negligence.**

Sua sponte overruling *Estate of Curtis v. South Las Vegas Medical Investors, LLC*, 136 Nev. 350 (2020), the court held that a portion of test for determining whether a claim constituted professional negligence was unworkable and not supported by the statute’s plain language. Thus, the relevant question for distinguishing whether a claim constitutes ordinary or professional language is whether the claim arises from services rendered in the course of a professional relationship. Only the circumstances of *res ipsa loquitur* enumerated in NRS 41A.100 are exceptions to the statute’s affidavit requirement.

***B.S. v. District Court*, 140 Nev., Adv. Op. 46 (June 27, 2024) – Family law; temporary guardianships; minors.**

When a temporary guardianship is needed prior to deciding a petition for general guardianship, the district court must consider both a temporary guardianship under NRS 159A.052 (for minors needing immediate medical care) and NRS 159A.053 (for other good cause).

***Rodriguez v. State*, 140 Nev., Adv. Op. 47 (July 3, 2024) – Rule of completeness; party misconduct.**

The rule of completeness allows an adverse party to introduce additional statements to complete portions of a written or recorded statement. In closing argument, a party may ask jurors to draw common-sense inferences from the evidence and argue its interpretation of the evidence.

***Adkins v. Union Pac. R.R. Co.*, 140 Nev., Adv. Op. 48 (Aug. 15, 2024); Statutes of limitation; tolling.**

The discovery rule may toll the two-year limitations period in NRS 11.190(4)(e) where the plaintiff is not aware of the cause of action due to the defendant’s concealment of the facts or where the “occurrence and the manifestation of damage are not contemporaneous” such that plaintiff could not reasonably be expected to have discovered the facts to support a cause of action, despite reasonable diligence.

***Kragen v. Eighth Jud. Dist. Ct.*, 140 Nev. Adv. Op. 49 (Ct. App., Aug. 15, 2024) – Family law; residency.**

A mother moved her children from Nevada to California four days short of the six-month residency period for Nevada to exercise jurisdiction under the Uniform Child Custody Jurisdiction

and Enforcement Act. Applying a totality of the circumstances standard, the Court of Appeals concluded that the removal of the children was a “temporary absence” that did not interrupt their Nevada residency and that the Nevada court had jurisdiction.

***Dayani v. Eighth Judicial Dist. Ct., et al.*, 140 Nev. Adv. Op. No. 50 (Aug. 22, 2024) – Grand jury; pretrial petitions.**

Challenges alleging violations of NRS 172.145(2) involving exculpatory evidence not presented to the grand jury are not confined by the 21-day time limit for pretrial habeas petitions and may be properly brought via a motion to dismiss and must be considered on the merits.

***Thomas Labs, LLC v. Dukes*, 140 Nev., Adv. Op. 51 (Aug. 22, 2024) – Civil law; death of a party.**

When a party dies, the decedent’s attorney must file a notice of death with the court and serve the notice on both the other parties and on the decedent’s successors or representatives under NRS 7.075 and NRCP 25(a). If the successor or representatives are not readily known, the attorney must look to Nevada law on succession to ascertain who to serve. Although NRCP 25(e) contains a 180-day deadline to substitute a proper party, a decedent’s attorney must abide by the shorter, 90-day deadline to substitute a property party set forth in NRS 7.075.

***Cardenas-Garcia v. Eighth Judicial Dist. Ct.*, 140 Nev., Adv. Op. 52 (August 22, 2024) – Family law; prior convictions.**

Petitioner pleaded no contest to a felony charge of child abuse, neglect, or endangerment after her child was removed from her residence. After successfully completing probation, petitioner was permitted to withdraw her guilty plea and enter a plea to a misdemeanor charge for contributing to

the delinquency of a minor. Petitioner then moved the district court in the protective custody action to determine whether she had rebutted NRS 432B.555’s presumption against reunification for parents who have “ever been convicted” of felony child abuse, neglect, or endangerment. Relying on NRS 432B.555’s use of the word “ever,” the Supreme Court held that the statute applies to anyone who has ever been convicted of felony child abuse, regardless of the legal status of that conviction.

***PHWL, LLC v. House of CB USA, LLC*, 140 Nev., Adv. Op. 5 (August 22, 2024) – Commercial property; duty and breach.**

A commercial landlord who leases property has a duty to its tenants to exercise reasonable care to avoid damaging their property, but whether a commercial landlord violated that duty is a question for the jury.

***In re Discipline of Hardeep Sull*, 140 Nev., Adv. Op. 54 (Aug. 22, 2024) – Attorney discipline; client funds.**

When a lawyer receives an advance of fees, including “flat” or “fixed” fees, those fees must be placed in a trust account that complies with RPC 1.15 and withdrawn only as the fees are earned or expenses are incurred. Fees paid in advance of legal service are not earned upon receipt but are an advance for services to be rendered. Furthermore, when a client retains an attorney for multiple matters, and each matter has a separate fee agreement, if the client terminates representation for one matter, the attorney must comply with the surrender and refund mandates of RPC 1.16(d) even if the other matters remain pending.

***Hayes v. Watson*, 140 Nev. Adv. Op. 55 (Ct. App., Aug. 29, 2024) – Civil law; cumulative error.**

The cumulative error doctrine applicable in criminal cases may be applied in civil cases to resolve whether a litigant was deprived of a fair trial. In applying the cumulative error doctrine, the court considers whether there were too many errors that relate to relevant matters which, in the aggregate, rendered the trial unfair.

***Wynn v. The Associated Press, et al.*, 140 Nev. Adv. Op. No. 56 (Sept. 5, 2024) (En banc) – Defamation; anti-SLAPP.**

Anti-SLAPP framework demands a two-prong analysis when considering a special motion to dismiss. The first prong requires the court to determine whether the moving party has established the right to petition or the right to free speech in direct connection with a public concern. If the moving party makes this initial showing, then the burden shifts under the second prong to the plaintiff to show with *prima facie* evidence a probability of prevailing on the defamation claim. The court held for a public figure defamation claim, the plaintiff must show clear and convincing evidence sufficient for a jury to reasonably infer the publication was made with actual malice.

***Litchfield v. Tucson Ridge Homeowners Assoc.* 140 Nev., Adv. Op. 57 (Sept. 5, 2024) – Law of the case; successor judges.**

Under the law of the case doctrine, which applies to interlocutory orders, a successor judge may not revisit an issue previously decided by a different judge in the same proceeding unless (1) subsequent proceedings produce substantially new or different evidence, (2) there has been an intervening change in controlling law, or (3) the prior decision was clearly erroneous and would result in manifest injustice if enforced.