



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/.

***U.S. Bank, N.A. v. Thunder Props., Inc.*, 138 Nev., Adv. Op. 3 (Feb. 3, 2022) (en banc) – Certified questions; statutes of limitations for declaratory relief actions.**

Declaratory relief actions are not categorically exempt from statutes of limitations under *City of Fernley v. State, Department of Taxation*, absent an alleged ongoing violation of a party's constitutional rights. A declaratory relief action to determine the validity of a lien under NRS 40.010 is subject to the four-year catch-all statute of limitations set forth in NRS 11.220, which does not begin to run until the titleholder affirmatively repudiates the lien.

***Porchia v. City of Las Vegas*, 138 Nev., Adv. Op. 4 (Feb. 17, 2022) (en banc) – Torts; affirmative action exception to public duty doctrine; Good Samaritan statute.**

The public duty doctrine and Good Samaritan statute generally preclude liability for the negligent acts or omissions of public officers called to assist in an emergency. However, a failure to render medical assistance or transport a patient to the hospital based solely on the patient's socioeconomic status may qualify as an affirmative act exempted from the public duty doctrine and as gross negligence, which would render the Good Samaritan statute inapplicable.

***Southwest Gas Corp. v. Pub. Utils. Comm'n*, 138 Nev., Adv. Op. 5 (Feb. 17, 2022) (en banc) – Challenges to PUC determinations and rate settings.**

The court declined to adopt the constitutional-fact doctrine, which would require courts to review petitions

arising from Public Utilities Commission (PUC) rate setting determinations de novo, holding that these petitions will continue to be reviewed de novo only as to questions of law, with deference given to questions of fact supported by substantial evidence. The court also held that a utility company, in a rate-setting proceeding, is not entitled to a rebuttable presumption of prudent spending but must instead demonstrate that its expenses are prudently incurred.

***In re Guardianship of Jones*, 138 Nev., Adv. Op. 6 (Ct. App. Feb. 24, 2022) – Award of attorney fees to former temporary guardians.**

In guardianship cases, a district court may grant a guardian's request to have the protected person's estate pay attorney fees pursuant to NRS 159.344 if the guardian makes a persuasive showing under the statute's 14-factor framework. The amount of the award is subject to the considerations set forth in *Brunzell v. Golden Gate National Bank*.

***Monahan v. Hogan*, 138 Nev., Adv. Op. 7 (Ct. App. Feb. 24, 2022) – Best interests provision of Nevada's child relocation statute.**

The court interpreted for the first time the 2015 child relocation statute, NRS 125C.006-0075, establishing: (1) a preponderance of the evidence standard in determining whether a child should be permitted to relocate with a parent over the other's objection, (2) that the trial court must make specific findings as to the child's best interest when considering the request for relocation, and (3) that the court should review the best interest factors found in NRS 125C.0035(4) in its analysis and expressly tie those findings to its conclusion.

***Keolis Transit Servs. v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 8 (Ct. App. Feb. 24, 2022) – Work product privilege for insurance company surveillance videos.**

Surveillance videos created by insurance company investigators are protected work product only when they are created at the direction of counsel under circumstances demonstrating that counsel's involvement was reasonable and not for the mere strategic purpose of obtaining work-product protection. To the extent such videos constitute work product, a court may not order their disclosure under NRCP 26(b)(3)(A) absent a showing of substantial need and undue hardship, and the court's order must protect against disclosure of counsel's mental impressions, conclusions, opinions, and legal theories under NRCP 26(b)(3)(B).

***Maide, LLC v. DiLeo*, 138 Nev., Adv. Op. 9 (February 24, 2022) – FAA preemption.**

Under the Federal Arbitration Act (FAA), state laws may not impose rules that single out and disfavor arbitration. Reversing a district court order denying a motion to compel arbitration in a dispute involving a nursing home admission agreement, the court found that a nursing home admission agreement implicates interstate commerce. Thus, NRS 597.995, which requires any agreement that includes an arbitration provision to also include a specific authorization for that provision, is preempted by the FAA.