



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 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 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/.

***Aparicio v. State*, 137 Nev., Adv. Op. 62 (Oct. 7, 2021) (en banc) – Admissibility of victim impact statements at sentencing.**

When a defendant objects to an impact statement during sentencing, the district court must first determine if the person making the statement is a “victim” as that term is defined in Marsy’s Law and NRS 176.015(5)(d). If the individual is not a victim under those definitions, the district court may consider the statement only after finding it to be “relevant and reliable.”

***Morency v. State, Dep’t of Educ.*, 137 Nev., Adv. Op. 63 (Oct. 7, 2021) (en banc) – Legislation that does not trigger Nevada Constitution’s supermajority voting provision.**

A supermajority vote is not required to pass legislation that merely reallocates funds that were previously appropriated for a specific use because such reallocation does not create, generate, or increase any public revenue in any form.

***Senjab v. Alhulaibi*, 137 Nev., Adv. Op. 64 (Oct. 21, 2021) (en banc) – Subject-matter jurisdiction for divorce complaints based on residence.**

For purposes of NRS 125.020, which establishes subject matter jurisdiction for divorce based on either party’s “residen[ce]” in the county in which the plaintiff files the complaint, the term “residen[ce]” means mere residence—not domicile—and requires physical presence in Nevada for at least six weeks before filing the complaint.

***Harrison v. Ramparts, Inc.*, 137 Nev., Adv. Op. 65 (Ct. App. Oct. 28, 2021) – Limitations on equitable offset.**

District court erred in offsetting plaintiff/debtor’s settlement funds from a third party to satisfy defendant/creditor’s judgment for attorney fees and costs because equitable offsets are only applicable where there are competing judgments between a debtor

and creditor that are mutually owed and mutually demandable.

***Zurich American Ins. Co. v. Ironshore Specialty Ins. Co.*, 137 Nev., Adv. Op. 66 (Oct. 28, 2021) (en banc) – Establishing insurer’s duty to defend and indemnify based on exceptions to exclusions of coverage.**

The burden of proving an exception to an exclusion of coverage is on the insured, not the insurer. To meet that burden, the insured may rely on any extrinsic facts that were available to the insurer at the time the insured tendered the defense.

***Panorama Towers Condo. Unit Owners’ Ass’n v. Hallier*, 137 Nev., Adv. Op. 67 (Nov. 10, 2021) (en banc) – Retroactive application of construction defect statute of repose.**

Because A.B. 421’s amendment to NRS 11.202’s statute of repose was retroactive, and the appellant’s motion to alter or amend the judgment was pending after A.B. 421 was enacted, the district court abused its discretion by denying appellant’s motion that was premised on the amendment.

***Chaparro v. State*, 137 Nev., Adv. Op. 68 (Nov. 10, 2021) (en banc) – Video sentencing hearings; inconclusive DNA results.**

District court did not violate appellant’s right to due process when it conducted his sentencing hearing over a video-conferencing service in May 2020, during the COVID-19 pandemic. District court did not abuse its discretion in admitting inconclusive DNA results because, while they may be of minimal probative value of guilt or innocence, they may be relevant to show the jury the thoroughness of the steps taken by law enforcement to investigate the victim’s account.

***Capriati Constr. Corp., Inc. v. Yahyavi*, 137 Nev., Adv. Op. 69 (Nov. 10, 2021) (en banc) – Admitting evidence of liability insurance; awards of post-offer attorney fees.**

Evidence of a defendant’s liability insurance is admissible under NRS

48.135(2) if the defendant first introduces evidence suggesting its inability to pay a judgment. A plaintiff represented on a contingency-fee basis may recover the entirety of the contingency fee as post-offer attorney fees under NRCPP 68.

***Wilson v. Las Vegas Metro. Police Dep’t*, 137 Nev., Adv. Op. 70 (Nov. 18, 2021) – Tolling statute of limitations.**

The statute of limitations for tort claims against law enforcement is not tolled during citizen review board proceedings.

***Debiparshad, M.D. v. Eighth Judicial Dist. Court*, 137 Nev., Adv. Op. 71 (Dec. 2, 2021) – Effect of motion to disqualify judge.**

Once a party files a motion to disqualify a judge pursuant to the Nevada Code of Judicial Conduct, that judge can take no further action in the case until the motion to disqualify is resolved.

***Parsons v. Colt’s Mfg. Co., LLC*, 137 Nev., Adv. Op. 72 (Dec. 2, 2021) (en banc) – Immunity for firearm manufacturers.**

NRS 41.131(1), which provides that no person has a cause of action against a manufacturer or distributor of any firearm merely because the firearm is capable of causing serious injury, damage or death, provides gun manufacturers and distributors with immunity from lawsuits based on the ease with which an AR-15 can be modified to enable full automatic fire.

***Spirtos v. Yemendjian*, 137 Nev., Adv. Op. 73 (Dec. 2, 2021) – Anti-SLAPP motions to dismiss.**

When analyzing a defendant’s motion to dismiss under Nevada’s anti-SLAPP statutes, at step one of the analysis, a district court must evaluate the communication as alleged in the plaintiff’s complaint and clarifying declarations, without considering the defendant’s denial that he or she made the statement.