



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/.

***Beavor v. Tomscheck*, 138 Nev., Adv. Op. 71 (Nov. 10, 2022) – Assignments of legal malpractice proceeds.**

Proceeds from a legal malpractice claim cannot be assigned to an adversary in the underlying litigation, as any assignment would be contrary to Nevada public policy, which prohibits conduct that threatens the integrity of the attorney-client relationship by providing incentives for a client to file a legal malpractice claim against an attorney merely for use as a bargaining chip in settlement negotiations.

***Iliescu v. Reg’l Transp. Comm’n*, 138 Nev., Adv. Op. 72 (Ct. App. Nov. 17, 2022) – Summary judgment; contracts; injunctions as causes of action.**

Addressing grants of dismissal and summary judgment that occurred during completion of a construction project after condemnation proceedings, the court held that (1) a cause of action for waste requires lawful possession of property on which the alleged waste occurred; (2) an injunction is an equitable remedy, not an independent cause of action; and (3) evidence of causation is an essential element of a breach of contract claim. However, where evidence supports a trespass, an award of nominal damages is not improper.

***Seibel v. Eighth Judicial District Court*, 138 Nev., Adv. Op. 73 (Nov. 23, 2022) – Attorney/client privilege; exceptions.**

To determine whether the crime/fraud exception to the attorney/client privilege applies, the moving party has the burden of proving by the preponderance of the evidence that the client was engaged in or planning a criminal or fraudulent scheme when it sought the advice of counsel, and that the communications sought are sufficiently related to and made in further of the scheme.

***Zalyaul v. State*, 138 Nev., Adv. Op. 74 (Nov. 23, 2022) – juvenile courts; jurisdiction.**

Based on the juvenile justice statutory scheme set out in NRS Chapter 62B, a district court does not have subject matter jurisdiction over criminal charges filed against a 21-year-old for delinquent acts committed as a 14-year-old.

***Clark NMSD, LLC v. Goldstein*, 138 Nev., Adv. Op. 75 (Nov. 23, 2022) – writs of execution; standing.**

NRS 31.070 conveys standing on third-party entities that petition the district court for the return of property levied under a writ of execution, and therefore that party also has standing to appeal.

***Moroney v. Young*, 138 Nev., Adv. Op. 76 (Nov. 23, 2022) – extension of service period under NRCP4(e)(3).**

When a plaintiff timely moves for an extension under the service period under NRCP4(e)(3), the district court must consider a non-exhaustive list of factors, including: (1) difficulties in locating the defendant, (2) the defendant’s efforts at evading service or concealment of improper service until after the 120-day period has lapsed, (3) the plaintiff’s diligence in attempting to serve the defendant, and (4) any previous extensions of time for service. Any additional considerations should focus on the plaintiff’s diligence in attempting to serve defendants and/or whether the failure to effectuate service was due to reasons beyond the plaintiff’s control.

