



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/.

***RUAG Ammotec GmbH v. Archon Firearms*, 139 Nev., Adv. Op. 48 (November 16, 2023) (En Banc) – Arbitration agreements; enforcement by nonsignatories.**

Where a nonsignatory to a contract containing an arbitration provision moves to compel another nonsignatory to arbitrate, the nonsignatory seeking to compel arbitration must demonstrate the right to enforce the arbitration agreement and show that compelling the other nonsignatory to arbitration is warranted. In determining whether a nonsignatory has the right to enforce an arbitration agreement against another nonsignatory, courts must consider the five factors outlined in *Truck Insurance Exchange v. Palmer J. Swanson, Inc.*, 124 Nev. 629, 189 P.3d 656 (2008): (1) incorporation by reference; (2) assumption; (3) agency; (4) veil-piercing/alter ego; and (5) estoppel.

***Holland v. Barney*, 139 Nev. Adv. Op. No. 49 (Court of Appeals, November 22, 2023) – Bankruptcy; real estate & property law; liens.**

An equitable lien placed on a property to satisfy a debt permits a lienholder to enforce the value of the equitable lien even where the property has been subsequently transferred to a non-debtor spouse during divorce proceedings.

***Sabater v. Razmy*, 139 Nev., Adv. Op. 50 (November 22, 2023) – Service; timeliness; good cause.**

When a plaintiff fails to demonstrate good cause for failing to seek an extension of time to serve the summons and complaint within the 120-day period

prescribed by NRCP 4(e), the district court may properly deny an untimely motion for an extension of time. A motion to dismiss for failure to timely serve may be filed at any time, so long as a default has not been entered and defendant did not file an answer.

***Highroller Transp., LLC v. Nev. Transp. Auth.*, 139 Nev., Adv. Op. 51 (Court of Appeals, November 30, 2023) – Administrative Law; waiver.**

A party in a contested case before the Nevada Transportation Authority (NTA) must raise any arguments at the administrative hearing to preserve those arguments for subsequent review. Moreover, when a party to a contested case stipulates to informally dispose of the case and waive the findings of fact and conclusions of law otherwise required by NRS 233B.125, that party is bound by the terms of the stipulation and may not subsequently challenge the legal or factual underpinnings of the NTA’s decision on judicial review.

***Willard v. Berry-Hinckley Indus.*, 139 Nev., Adv. Op. 52 (Nov. 30, 2023) (En Banc) – Civil procedure; orders of dismissal.**

The district court dismissed the case with prejudice for failure to prosecute. Citing his attorney’s mental health concerns and voluntary admissions in attorney disciplinary proceedings, Appellant sought relief from judgment pursuant to NRCP 60(b)(1), 60(b)(5), and 60(b)(6). The court found that substantial evidence supported the order denying relief from judgment pursuant to NRCP 60(b)(1). As a matter

of first impression, the court held that an order of dismissal does not apply “prospectively” within the meaning of NRCP 60(b)(5). Finally, because appellant could, and did, seek relief under NRCP 60(b)(1), he could not also seek relief pursuant to 60(b)(6), which is only available under extraordinary circumstances.

***Panik v. TMM, Inc.*, 139 Nev., Adv. Op. 53 (November 30, 2023) – Anti-SLAPP**

Nevada’s anti-SLAPP statute does not preclude particular claims for relief, but will instead apply to any communication that qualifies as a statutorily protected communication under NRS 41.660 irrespective of the claim for relief asserted as to that communication.

***Lopez v. Lopez*, 139 Nev., Adv. Op. 54 (Court of Appeals, November 30, 2023) – Family Law; divorce; trusts.**

Because parties to divorce are materially interested parties, and because divorce revokes every devise given by a settlor to their former spouse, where the parties are co-settlers, co-trustees, and beneficiaries, the parties are not required to name their revocable inter vivos trust as a necessary party to preserve the court’s jurisdiction to distribute marital assets.

***Sims v. State*, 139 Nev., Adv. Op. 55 (Court of Appeals, December 7, 2023) – Self-representation; abandonment.**

A district court does not err when it does not conduct a *Faretta* canvass, so long as the totality of the circumstances unambiguously demonstrate that a defendant abandoned his self-representation request.