



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/.

***DeBecker v. UHS of Del.*, 140 Nev., Adv. Op. 58 (September 19, 2024) – Professional negligence; affidavit requirement.**

NRS 41.017(3) requires that an affidavit identifying the specific acts of negligence by each allegedly negligent professional be attached to any complaint asserting claims of professional negligence. Here, the attached affidavit did not separately identify the specific acts of negligence committed by each defendant doctor and was thus insufficient. The appellants' remaining claim against the hospital was barred by the Public Readiness and Emergency Preparedness Act, which limits legal liability for medical actions taken during a time of public health emergencies if the treatment is related to the public health emergency.

***Hi-Tech Aggregate, LLC v. Pavestone, LLC*, 140 Nev., Adv. Op. 59 (Sep. 19, 2024) – Products liability.**

Adopting the reasoning of official comment 1 to UCC Section 2-315, the court held that the implied warranty of fitness for a particular purpose will apply in cases where the seller has actual knowledge of the buyer's intended purpose or has reason to know of the purpose. Adopting the reasoning of comment 8 to UCC Section 2-316, the court held that a warranty will not be excluded in cases where a simple examination would not detect the existence of a latent defect. Finally, when damages only occur to the product itself, the economic loss doctrine precludes torts claims for that damage.

***Griffith v. Rivera*, 140 Nev., Adv. Op. No. 60 (September 19, 2024) – Short trials.**

Effective January 1, 2023, the Nevada Short Trial Rules (NSTR) increased the maximum attorney fees that a judge could award from \$3,000 to \$15,000. Here, the trial court entered final judgment

consistent with the increase, awarding each plaintiff the maximum attorney fee, as opposed to interpreting the fee cap as a per-side limitation. The court affirmed, holding that the parties had notice of the rule change and that the amendment governing the available remedy was procedural and not substantive.

***Amtrust N. AM. v. Vasquez, Jr.* 140 Nev., Adv. Op. 61 (September 19, 2024) (En banc) – Workers' compensation liens.**

The court held that the *Breen* formula, which requires workers' compensation insurers to bear a portion of litigation costs to recover a lien against an award in a tort action, conflicts with NRS 616C.215(5). The court overruled the *Breen* formula and *Poremba* to the extent they conflicted with the statute, stating that an insurer's lien applies to the total proceeds of any recovery, including noneconomic damages. The court held that there is no requirement for an insurer to intervene or participate in the third-party claim to recover on its lien.

***In re: Parental Rights as to L.R.S., J.M.S., and J.L.S.*, 140 Nev., Adv. Op. 62 (September 19, 2024) – Family law; parental neglect.**

The court limited application of NRS 128.107 to cases where a child is not in the physical care of either parent. The court also precluded the application of NRS 129.109 in domestic cases as the statute was written to apply in NRS 432B (dependency) cases only. A district court must make specific findings as to each ground of parental fault and provide a nexus with parental ability; however, the court precluded the application of the presumption of abandonment when a child is placed with one parent. The court held that under NRS 128.106(1)(e), parental neglect only occurs when a parent is physically and financially able to provide

adequate care of the child but elects not to, and that clear and convincing evidence must be provided to support each finding of parental fault.

***Chasing Horse v. Eighth Judicial Dist. Ct.*, 140 Nev., Adv. Op. 63 (Sep. 26, 2024) (En banc) – Criminal law; grand jury proceedings.**

The state improperly instructed the grand jury on the concept of "grooming" without offering expert testimony to place the instruction in context. In doing so, the state turned an evidentiary issue into a legal instruction. Because the instruction improperly suggested that the grand jury could find the defendant "groomed" the alleged victims to cultivate submission to sexual acts, it implied the grand jury could find an element of the underlying offense without the state presenting evidence on that point. This tainted the grand jury's deliberative process, undermining confidence in the true bill. Lack of confidence in the outcome was compounded when the state failed to turn over exculpatory statements made to investigators and on social media related to one of the alleged victim's consent to sexual acts. Therefore, the district court manifestly abused its discretion when it failed to dismiss the indictment without prejudice.

***State, Sec'y of State v. Wendland*, 140 Nev., Adv. Op. 64 (Ct. App., September 26, 2024) – Disciplinary proceedings.**

A classified state employee appealing a workplace disciplinary action must provide a copy of the written notification of discipline, but the employee substantially complies with that requirement by accurately filling out the appeal form and attaching a copy of the written notification in an opposition to a motion to dismiss. Classified state employees in Nevada have a procedural due process right that includes notice of the charges, explanation of the evidence, and an opportunity to respond. The Secretary of State satisfied those

requirements in this case, and the hearing officer erred in concluding that the employee was entitled to additional protections.

***The Heights of Summerlin, LLC v. Eighth Judicial Court (Crupi)*, 140 Nev. Adv. Op. 65 (October 3, 2024) – COVID-19 immunity.**

The Public Readiness and Emergency Preparedness Act, which limits legal liability for medical actions taken during a time of public health emergencies, does not provide *per se* immunity to facilities that fail to have a COVID-19 safety policy because a policy is not a covered medical treatment under the act. Directive 011 issued by Governor Sisolak during the COVID-19 pandemic does not provide immunity to health facilities because it does not list health care facilities as a covered medical provider to whom the Governor granted immunity.

***Nevins, M.D. v. Martyn*, 140 Nev., Adv. Op. 66 (October 17, 2024) (En banc) – Professional negligence; costs & fees.**

The 2015 amendments to NRS 41A.100(3), which precludes the rebuttable presumption of negligence where the plaintiff designates an expert witness to establish standard of care, do not apply retroactively. Professional entities are subject to the NRS 41A.035(1) cap on noneconomic damages when they are vicariously liable for an individual practitioner's negligence. Additionally, the district court erred when it failed to apply NRS 7.095 to the professional entity defendants.

***Mass Land Acquisition, LLC v. Dist. Ct. (Sierra Pac. Power Co.)* – 140 Nev. Adv. Op. No. 67 (October 17, 2024); Government & Administrative/Utilities.**

Nev. Const. art. 1 § 22(1), as amended, provides procedural protections for landowners, including the right to have a jury determine whether the taking is actually for a public use before occupancy is granted. However, Nevada statutes delegate the government's eminent domain power to regulated public utilities for certain specified public uses, including pipelines for the transportation of natural gas. Here, the court concluded that the regulated public utility was exercising delegated eminent domain powers consistent with statutory and constitutional provisions.



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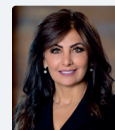
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