



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/.

Platte River Ins. Co. v. Jackson, 137 Nev., Adv. Op. 82 (Dec. 23, 2021) – Property exemptions from monetary judgments. A judgment debtor may claim the so-called “wildcard exemption” from execution under NRS 21.090(1)(z) to protect up to \$10,000 of the debtor’s disposable earnings not already excepted by the earnings exemption under NRS 21.090(1)(g).

Chappell v. State, 137 Nev., Adv. Op. No. 83 (Dec. 30, 2021) (en banc) – Post-conviction petitions in capital cases. When the Nevada Supreme Court affirms a post-conviction petitioner’s claims relating to the guilt phase of his capital trial, but reverses for a new penalty hearing, the petitioner must challenge post-conviction counsel’s performance relating to the guilt phase within one year after remittitur issues.

A Cab, LLC v. Murray, 137 Nev., Adv. Op. No. 84 (Dec. 30, 2021) (en banc) – Jurisdiction over class actions; notice and recordkeeping requirements under the Minimum Wage Amendment; severance under NRCP 21; Series LLCs. The court overruled *Castillo v. United Fed. Credit Union* and held, in accordance with amended NRCP 23, that district courts have original jurisdiction over class actions when the aggregate value of total damages sought by the class exceeds the monetary threshold of NRS 4.370. An employer may comply with the Minimum Wage Amendment’s (MWA) notice requirement by posting written notice of the minimum wage rate adjustments in a common, conspicuous area to which each employee has access. Where NRS 608.115 requires employers to maintain and produce, upon request, records showing each employee’s wage and number of hours worked per day,

appellant did not fulfill its statutory burden by producing trip sheets and computerized data in a form that required respondent to calculate the hours worked from the information provided.

District court decisions to sever claims under NRCP 21 are reviewed for abuse of discretion and in accordance with the *Parchman* factors, which include: “(1) whether the claims arise out of the same transaction or occurrence; (2) whether the claims present some common questions of law or fact; (3) whether settlement of the claims or judicial economy would be facilitated; (4) whether prejudice would be avoided if severance were granted; and (5) whether different witnesses and documentary proof are required for separate claims.”

Finally, the court interpreted the statutory scheme for the creation of “Series LLCs” under NRS 86.296 and held that the district court erred in denying appellant’s motion to quash a writ of execution without conducting an evidentiary hearing on whether the statutory requirements had been met and the separate series liability shield had been created.

Lakes v. U.S. Bank Tr., 137 Nev., Adv. Op. 85 (Dec. 30, 2021) (en banc) – Quiet title actions; subsequent purchaser under NRS 111.325.

The purpose of the recording statute, NRS 111.325, is to protect subsequent purchasers who believe they are acquiring good title to property. Where appellant purchased property subject to a recorded first deed-of-trust lien, and where that recorded lien was subsequently assigned to respondent, appellant could not avoid the recorded first deed-of-trust lien as a subsequent purchaser under NRS 111.325 by recording his deed before respondent recorded its assignment of the first deed-of-trust lien.

Lyft, Inc. v. Eighth Judicial Dist. Court, 137 Nev., Adv. Op. 86 (Dec. 30, 2021) (en banc) – Mental and physical examinations of parties during civil litigation.

NRS 52.380, a procedural statute that allowed an attorney to attend and make audio recordings of a client’s mental and physical examination in the context of a pending civil claim, was unconstitutional in violation of the separation of powers doctrine because it conflicted with a preexisting procedural court rule, NRCP 35.

Romano v. Romano, 138 Nev., Adv. Op. 1 (Jan. 13, 2022) (en banc) – Modifying joint or primary physical custody arrangements.

The court unified the prior tests for modifying joint physical custody arrangements and primary physical custody arrangements, requiring the moving party in both types of cases to satisfy the two-pronged standard of *Ellis v. Carucci* by showing: (1) a substantial change in circumstance affecting the welfare of the child, and (2) the modification serves the best interest of the child, abrogating the single-pronged “best interest” standard for modifying joint physical custody arrangements under *Truax v. Truax*.

Dean v. Sheriff, 138 Nev., Adv. Op. 2 (Jan. 13, 2022) – Ineffective assistance of counsel during voir dire.

Defense counsel rendered ineffective assistance of counsel when he impermissibly tainted the jury pool by introducing offensive racial stereotypes during voir dire that directly implicated the defendant and compromised the charges against him.