



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/.

***Taylor v. Brill*, 139 Nev., Adv. Op. 56 (Dec. 21, 2023) – Professional negligence; medical malpractice.**

Informed consent and assumption of the risk evidence are not admissible in medical malpractice cases in which the plaintiff does not challenge consent. While expert evidence as to the reasonableness of billing amounts for special damages is relevant and admissible in some circumstances, it is not required. And evidence of insurance write-downs does not fall within NRS 42.021(1)’s exceptions for admissibility of collateral source payments in medical malpractice actions. A party may also ask the jury to send a message with its verdict so long as it does not ask the jury to disregard the evidence.

***Guardianship of Jones*, 139 Nev., Adv. Op. 57 (Dec. 21, 2023) – Guardians Ad Litem; protected persons.**

A guardian ad litem (GAL) appointed to represent the interests of a protected person is a fiduciary. A district court may appoint a GAL from a court-approved volunteer advocate program, an attorney, or any other non-attorney with appropriate training and experience. A GAL seeking compensation must conform to NRS 159.344, and their fees are to be analyzed according to their role as an “officer of the court” or whether they performed services as an attorney, considering: (1) the experience and qualifications of the GAL, (2) the nature and complexity of the work

asked of the GAL, (3) the work actually performed, (4) the result of the GAL’s work, and (5) any other factors the court finds to be relevant in a particular case.

***Engelson v. Dignity Health*, 139 Nev., Adv. Op. 58 (Nev. Ct. App. Dec. 28, 2023) Motions to dismiss; professional negligence.**

The district court’s consideration of documents attached to the affidavit of merit did not convert the motion to one for summary judgment because the affidavit was incorporated into the complaint and therefore it and the attached documents were not outside of the pleading. The district court did not have irrefutable evidence that the plaintiff estate had, or should have had, access to and knowledge from medical records such that the accrual date for the statute of limitations occurred prior to the death of the decedent. Therefore, the court erred in its conclusion that the complaint was time-barred. The plaintiff estate’s complaint adequately stated a claim for wrongful death based on professional negligence, and the district court erred when it found the affidavit of merit insufficient. An affidavit of merit filed in support of a professional negligence-based wrongful death claim is not required to address causation.

***McCord v. State*, 139 Nev., Adv. Op. 59 (Dec. 28, 2023) – Pretextual searches; traffic stops.**

NRS 482.275 requires motor vehicles to bear a license plate that is free from foreign materials and is clearly legible. A license plate frame does not in and of itself constitute a “foreign material” and a license plate is “clearly legible” when the statutorily required information remains readily identifiable. Thus, law enforcement’s reliance on NRS 482.275 to initiate a traffic stop was pretextual, requiring suppression of the evidence derived from the resulting search.

***Blige v. Terry*, 139 Nev., Adv. Op 60 (Dec. 28, 2023) (en banc) – Default judgments; conversion.**

Plaintiff filed a complaint alleging conversion, unjust enrichment, and intentional infliction of emotional distress due to payments he made to prevent Defendant from publishing embarrassing personal information. Defendant’s answer was stricken due to discovery abuses. At a prove-up hearing, the district court concluded that Plaintiff had proven a prima facie case for all his claims for relief and a claim of extortion, which had not been pleaded in the complaint. The Nevada Supreme Court held that conversion includes takings induced by duress. It further held that under NRCP 15(b)(2), a defaulting party cannot be found to have impliedly consented to try claims that were not pleaded in the complaint, and reversed as to extortion.