



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/.

***Young v. State*, 139 Nev., Adv. Op. 20 (Court of Appeals, July 20, 2023) – Waiver; forfeiture; juror bias; instructions.**

The district court did not abuse its discretion in refusing to remove a juror or grant a mistrial when the juror, who had offered to give money to the alleged theft victims in the case, maintained that he had not formed a belief on the defendant's guilt and could remain impartial. The appellant failed to allege that the juror demonstrated "actual bias," instead arguing "inferable bias," and therefore waiving a claim of actual bias. Because the issue was not preserved, the court could only review for plain error, finding none. Additionally, district courts in criminal cases should use the newly adopted Nevada Pattern Jury Instructions: Criminal.

***Roe v. Roe*, 139 Nev., Adv. Op. 21 (Court of Appeals, July 27, 2023) – Family law; custody; attorney's fees.**

The district court's custody order contained three fundamental errors. First, a court may not restrict a parent's time with a child so much as to infringe upon that parent's fundamental rights without a clear legal basis to do so. Second, a court may not delegate its substantive authority to a third party. Third, a court may not incorporate by reference an oral temporary order as a final order. When a district court significantly restricts a parent's time with their child, it must (a) impose the least restrictive parenting time arrangement, (b) adequately explain why the greater restriction was necessary, (c) make findings how primary or joint physical custody was not in the child's best interest, and (d) implement a plan consistent with Nevada jurisprudence and the parent's fundamental parental rights. The final order must contain all the terms necessary to assure it is unambiguous and enforceable. The court also defined "sole physical custody" as an arrangement where the child resides with only one parent and the other parent's time is restricted to no significant in-person parenting time. Finally, the court vacated the attorney's fees award as unsupported under NRS 18.010(2)(b) and remanded with instructions to reassign the case to another judge to avoid any apparent or possible bias.

***Valley Health Sys., LLC v. Murray*, 139 Nev., Adv. Op. 22 (Aug. 17, 2023) (en banc) – Justice disqualification; constitutional authority.**

Both the governor and the chief justice of the Nevada Supreme Court have the authority to replace a disqualified justice with a qualified member of the judiciary under the Nevada Constitution.

***In re Search Warrant re Seizure of Docs.*, 139 Nev. Adv. Op., 23 (Court of Appeals, Aug. 24, 2023) – Search warrants; privilege.**

The district court did not err in denying appellants' motion to quash and unseal search warrants, but did err when it denied appellants' request under NRS 179.085 to return the entirety of the seized property without first affording appellants an opportunity to access the property to demonstrate privilege under NRCPC 26(b)(5). The search protocol proposed by the Las Vegas Metropolitan Police Department violated NRS 49.095 because it would allow LVMPD's forensic lab to disclose potentially confidential communications to its investigatory arm based on its own unilateral determination of privilege.

***Alfaro v. State*, 139 Nev., Adv. Op. 24 (Aug. 24, 2023) – Criminal law; harmless error; sentencing.**

While the district court erred in admitting two uncharged bad acts and in issuing a jury instruction defining "lewdness" separate from the statutory definition provided by NRS 201.230, the gravity of those errors was harmless. Further, the sentence imposed was within statutory limits and not constitutionally disproportionate.

***LV Debt Collect, LLC v. The Bank of New York Mellon*, 139 Nev., Adv. Op. 30 (Aug. 24, 2023) – Real property; quiet title; liens; foreclosure.**

The recording of a Notice of Default does not render a debt "wholly due" for purposes of NRS 106.240 (providing that a lien created by a mortgage or deed of trust on real property is conclusively presumed to be discharged 10 years after the debt becomes "wholly due"), even where the recorded notice declares all sums secured by the deed of trust immediately due and payable. Additionally, the foreclosure by the HOA for unpaid dues was in violation of a bankruptcy stay and void, so the sale to a purported bona fide purchaser was also void.

***Lucky Lucy D LLC v. LGS Casino LLC*, 139 Nev., Adv. Op. 26 (Aug. 24, 2023) – Contracts; material breach.**

Seller Lucky Lucy did not materially breach its contractual obligation to buyer LGS to maintain its property and conduct its business in the manner generally consistent with which it had maintained the property and business when it temporarily closed during the COVID-19 pandemic. Nevada's governor ordered casinos to temporarily close and Lucky Lucy was required to comply with that directive. Similarly, LGS did not breach when it was unable to obtain the necessary gaming licenses when the pandemic delayed issuance of those licenses.



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Sarah Guindy
Senior Director, Commercial Banking
Bank of Nevada
(702) 252-6452
sguindy@bankofnevada.com



Kara Harris
Assistant Vice President, Business Banking
First Independent Bank
(775) 544-2510
kara.harris@firstindependentnv.com



Southern Nevada:
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***Davitian-Kostanian v. Kostanian*, 139 Nev., Adv. Op. 27 (Aug. 31, 2023) – Family law; jurisdiction; child support; alimony.**

Child support for an adult child who was disabled during childhood may be established pursuant to NRS 125C.0045(1) (a) even after the child emancipates. The movant must show that the disability existed prior to emancipation and that the adult child is currently unable to support themselves, therefore requiring ongoing support from the parents. The reviewing court must make adequate findings supporting the award. Additionally, a substantial change requires a district court to review an alimony award, but it remains within the district court's discretion whether to modify that award.

***State, Dep't of Health v. Dist. Ct.*, 139 Nev., Adv. Op. 28 (Aug. 31, 2023) (en banc) – Jurisdiction; contempt.**

The district court has jurisdiction to hold the Department of Public Health in civil contempt for failure to fulfill its statutory obligation under NRS 178.425(1) and its constitutional obligation to accept incompetent criminal defendants for restorative treatment, within the time set by court order for such acceptance of the criminal defendant into treatment, given that there are no express statutory or constitutional time limits imposed upon the department for such acceptance and the potential harm to inmates caused by the delay outweighs the burdens faced by the department.

***Jorrin v. State, Employment Security Division*, 139 Nev. Adv. Op. 29 (Sept. 7, 2023) – Statutes of limitation; civil procedure.**

NRCP 6(d)'s three-day mailing rule does not apply to extend the time period for filing a petition for judicial review under NRS 612.531(1), overruling *Kane v. Emp't Sec. Dep't*, 105 Nev. 22, 769 P.2d 66 (1989) to the extent it holds otherwise.