



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/.

***Harris v. Gittere*, 140 Nev., Adv. Op. 35 (May 30, 2024) – Evidentiary hearing appearance; writs of habeas corpus.** Counsel may not waive a petitioner's statutory right to be present at an evidentiary hearing on a postconviction petition for writ of habeas corpus unless there is evidence in the record that the petitioner personally waived the right to be present.

***In re: Parametric Sound Co. Shareholders' Litig.*, 140 Nev., Adv. Op. 36 (June 6, 2024) – Derivative actions.** The court reversed its holding in *Parametric Sound Corp. v. Eighth Judicial District Court*, 133 Nev. 417, 401 P.3d 1100 (2017), (*Parametric I*) that equity expropriation claims brought by shareholders against a corporation may, in some circumstances, qualify as a direct rather than a derivative claim. Because the Delaware case the court relied upon in *Parametric I* was overruled to find that these claims are almost always derivative, and because the shareholders in this case failed to meet the test demonstrating direct harm outlined in *Parametric I*, the district court properly dismissed the shareholders' equity expropriation claims given that the shareholders were former shareholders who lack standing to pursue derivative claims.

***In re: Petition of Katherine*, 140 Nev., Adv. Op. 37 (June 6, 2024) – Family law; standing.** Grandparents are nonparties to an adoption, absent an extant legal or close personal relationship affecting the best interests of the child, and therefore lack standing to challenge an adoption under NRCP 60(b)(3).

***In re: Application for Change of Name (Lowry)*, 140 Nev., Adv. Op. 38 (June 6, 2024) – Legal name changes.** The district court improperly denied an inmate's request to change his name when it relied on statutes related to sealing criminal convictions and neglected to consider the plain language of Nevada's name-change statutes.

***In re: J.B.*, 140 Nev., Adv. Op. 39 (June 13, 2024) (En banc) – Family law; fictive kin.** In child protection cases, the term "fictive kin" required an evaluation of the relationship from the perspective of both the child and the adult. For newborns, only the perspective of the adult need be considered. Blood relatives

do not enjoy a legal placement preference over fictive kin. Placement decisions must be based on a child's best interest. A child must be meaningfully represented in all stages of a placement proceeding.

***Dignity Health v. Dist. Ct.*, 140 Nev., Adv. Op. 40 (June 20, 2024) – COVID-19 tolling.**

The plain language of Emergency Directives 009, which tolled "any specific time limit set by state statute or regulation for the commencement of any legal action" for a brief period during the COVID-19 pandemic, tolled the time limit under NRS 41A.097(5) for commencing a legal action against healthcare providers on behalf of a child for brain damage or birth defect.

***Palmer v. State*, 140 Nev., Adv. Op. 41 (Ct. App. June 27, 2024) – Public trials; courtroom closures.**

The district court violated the defendant's right to a public trial when it temporarily excluded the defendant's family during a witness's testimony without the State presenting a substantial reason for doing so, did not narrowly tailor the closure to protect the interest advanced, did not consider adequate alternatives, and did not make adequate findings to support its decision.

***Mariscal-Ochoa v. State*, 140 Nev., Adv. Op. 41 (June 27, 2024) (En banc) – Criminal law; prejudice in jury selection.**

Decisions regarding motions to strike a venire after exposure to potentially prejudicial information are reviewed for an abuse of discretion. In determining whether to strike the venire, trial courts should consider (1) whether the remark was solicited by the prosecution; (2) whether the district court immediately admonished the jury; (3) whether the statement was clearly and enduringly prejudicial; and (4) whether the evidence of guilt was convincing.

***Deutsche Bank Trust Co. Americas v. SFR Investments Pool 1, LLC*, 140 Nev., Adv. Op. 43 (June 27, 2024) (En banc) – Quiet title; superpriority liens.**

Unless expressly authorized by the homeowner, a homeowners' association may not allocate a payment in a way that results in forfeiture of the first deed of trust holder's interest and deprives the homeowner of the security in the home.