



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/.

***Flangas v. Perfekt Mktg., LLC*, 138 Nev., Adv. Op. 26 (April 14, 2022) (en banc) – Enforceability of foreign judgments under UEFJA.**

Under the Uniform Enforcement of Foreign Judgments Act (UEFJA), NRS 17.330-400, a foreign judgment is enforceable in Nevada if the judgment creditor domesticates the judgment as required by the UEFJA within the rendering state’s limitations period and complies with the statutory notice provisions of the UEFJA. The UEFJA’s statutory notice provisions satisfy due process.

***Cox v. MGM Grand Hotel, LLC*, 138 Nev., Adv. Op. 27 (April 14, 2022) (en banc) – Impeachment-by-conduct evidence.**

A district court does not abuse its discretion by allowing video evidence of a plaintiff, who needed assistance to walk during the trial, walking without assistance at other times because this is proper impeachment-by-conduct evidence. Impeachment evidence is not limited to words and may include conduct; evidence of a person walking unassisted does not inherently pertain to credibility or honesty so as to implicate NRS 50.085(3)’s prohibition against character evidence, and the evidence properly pertained to the question of liability.

***Nev. Policy Research Inst. v. Cannizzaro*, 138 Nev., Adv. Op. 28 (April 21, 2022) (en banc) – Standing to challenge public official’s compliance with Separation-of-Powers Clause.**

Traditional standing requirements may not apply when an appropriate party seeks to

enforce a public official’s compliance with Nevada’s Separation-of-Powers Clause (even if it does not involve an expenditure or appropriation), provided that the issue is likely to recur and there is a need for future guidance.

***Bennett v. State*, 138 Nev., Adv. Op. 29 (Apr. 28, 2022) – Factual innocence petitions.**

When a defendant files a petition to establish factual innocence under NRS 34.960(2)(b), the petition can only rely upon a witness’s recantation of trial testimony as newly discovered evidence if the recantation is not the sole evidence supporting the petition. Additionally, the petition can only rely upon newly discovered evidence which conflicts with a trial witness’s testimony if the evidence is substantive and exculpatory, and not mere impeachment evidence. Finally, a district court cannot deny a petition to establish factual innocence that otherwise complies with the pleading requirements under NRS 34.960 without first holding an evidentiary hearing.

***Nied v. State*, 138 Nev., Adv. Op. 30 (May 5, 2022) – Restitution in criminal cases.**

A defendant’s restitution obligation for a victim’s medical costs must be limited to the amount that the medical provider accepts as payment in full rather than the amount initially billed. The defendant’s restitution obligation must be offset by any amount the defendant’s insurer paid to the victim.

***APCO Constr., Inc. v. Helix Elec. of Nev., LLC*, 138 Nev., Adv. Op. 31 (May 5, 2022) – Statutory limitations on requiring release or waiver of right to receive retention payment.**

A subcontractor does not waive its right to delay damages by signing a waiver and release to receive its retention payment because the plain language of NRS 338.490 limits any release or waiver of payments on construction work to the claimed costs that are the subject of a progress or retainage bill.

***Aguirre v. Elko Cty. Sheriff’s Office*, 138 Nev., Adv. Op. 32 (May 5, 2022) – Homestead exemption; civil forfeiture proceedings.**

A valid recorded homestead declaration protects real property from civil forfeiture proceedings. Incarcerated individuals may still be deemed residents for purpose of the homestead exemption under NRS 115.020 because incarceration is a temporary absence.

***Harper v. Copperpoint Mut. Ins. Holding Co.*, 138 Nev., Adv. Op. 33 (May 5, 2022) – Scope of NRS 42.021, the collateral source rule for medical malpractice lawsuits.**

The plain language of NRS 42.021(1) and (2), which prohibits a payer of collateral source benefits in an action for injury or death against a health care provider from seeking reimbursement from the medical malpractice plaintiff, applies when the medical malpractice defendant introduces evidence of those payments at trial, and does not apply when a case is settled pretrial.