

The Public Lawyer



STATE BAR OF NEVADA

Nevada Supreme Court Cases

I. Cox Constr. Co. v. CH2 Investments, 129 Nev. Adv. Op. No. 14 (March 7, 2013) – The Court affirms a district court order expunging a mechanic's lien, ruling that 1) the lien must be timely filed within 90 days of the completion of the "work of improvement," to be valid; and 2) the district court did not err in relying on Vaughn Materials v. Meadowvale Homes, 84 Nev. 227, 438 P.2d 822 (1968), to define the scope of a contract for a work of improvement and in determining a lien was untimely, even though the mechanic's lien statutes have been amended in the interim.

Stubbs v. Strickland, 129 Nev. Adv. Op. No. 15 (March 14, 2013) – The Court affirms a district court order dismissing an action for anti-SLAPP (Strategic Lawsuit Against Public Participation) relief and from a post-judgment district court order denying attorney fees and costs, ruling that if a plaintiff volun-

tarily dismisses the initial action before the defendant files either an initial responsive pleading or a special motion to dismiss pursuant to NRS 41.670, the defendant cannot file an anti-SLAPP suit against the plaintiff based on the initial action.

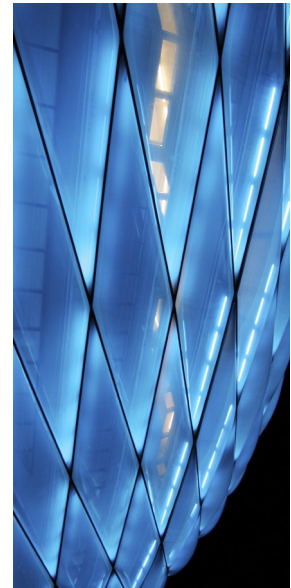
Ivey v. Dist. Ct., 129 Nev. Adv. Op. No. 16 (March 28, 2013) – The Court denies a writ petition challenging a district court order denying a request to recuse a district court judge in a divorce action, ruling that the judge was not disqualified from presiding over petitioner's motion by receiving contributions for the judge's reelection campaign from the opposing party, because doing so violated neither petitioner's due process rights nor Nevada law.

Patterson v. State, 129 Nev. Adv. Op. No. 17 (April 4, 2013) – The Court affirms a jury conviction of conspiracy to commit murder, murder

Public
Lawyers
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Brett Kandt,
Chair



Inside this issue:

Nevada Supreme Court Cases 1

9th Circuit Court of Appeals Cases 13

U.S. Supreme Court Cases 14

Nevada Supreme Court Cases

with the use of a deadly weapon, and discharging a firearm at or into a vehicle, ruling that 1) appellant's Sixth Amendment right to counsel was violated when he was denied his counsel of choice at his preliminary hearing; 2) the error was harmless since appellant has not demonstrated how having different counsel at the preliminary hearing would have produced a different result at trial when the State presented overwhelming evidence of appellant's guilt; and 3) the State did not commit a Brady violation by not providing information that the FBI never records interviews.

Holcomb Condo. HOA v. Stewart Venture, 129 Nev. Adv. Op. No. 18 (April 4, 2013) – The Court reverses a district court order dismissing a construction defect action, ruling that 1) statutory limitations periods for constructional defect claims may be contractually modified provided there is no statute to the contrary and the reduced limitations period is reasonable and does not violate public policy; 2) NRS 116.4116 expressly permits a contractual reduction of its six-year limitations period for warranty claims to not less than two years if, with respect to residential units, the reduction agreement is contained in a separate instrument; 3) since the reduction provision is within an arbitration agreement that is attached to and incorporated into a purchase contract, the reduction provision does not qualify as a "separate instrument" and the arbitration agreement provision is unenforceable for appellant's breach of warranty claims; 4) the district court improperly dismissed appellant's breach of warranty claims as contractually time-barred; and 5) the district court improperly relied upon NRS 116.4116, which

only governs warranty claims, in dismissing appellant's negligence-based claims, and in declining to allow appellant to amend its complaint to add additional claims for intentional conduct on the ground that these claims were also contractually time-barred.

Majuba Mining v. Pumpkin Copper, 129 Nev. Adv. Op. No. 19 (April 4, 2013) – The Court grants a motion to dismiss an appeal of a district court order in a quiet title action, ruling that the controversy over superior title was rendered moot when the Bureau of Land Management declared appellant's unpatented mining claims forfeit and void by operation of law.

Truesdell v. State, 129 Nev. Adv. Op. No. 20 (April 4, 2013) – The Court affirms a jury conviction of invasion of the home in violation of a temporary protection order, ruling that a party must initially challenge the validity of a temporary protective order under NRS 33.080(2) before the court that issued the order, and may not collaterally attack the order's validity in a separate criminal proceeding for violation of that order.

Rock Bay, LLC v. Dist. Ct., 129 Nev. Adv. Op. No. 21 (April 4, 2013) – The Court grants in part and denies in part a writ petition challenging district court orders refusing to quash subpoenas as to petitioner, ruling that discovery of a nonparty's assets under NRCP 69(a) [which permits post-judgment discovery in aid of execution of a judgment] is not permissible absent special circumstances, which include, without limitation, those in which the relationship between the judgment

Nevada Supreme Court Cases

debtor and the nonparty raises reasonable suspicion as to the good faith of asset transfers between the two, or in which the nonparty is the alter ego of the judgment debtor.

Gonzalez v. Dist. Ct., 129 Nev. Adv. Op. No. 22 (April 4, 2013) – The Court grants a writ petition challenging a district court order denying a motion to dismiss a criminal information, ruling that 1) the proper analysis of a Double Jeopardy Clause claim when it is based upon the doctrine of collateral estoppel is set forth in Ashe v. Swenson, 397 U.S. 436, 444 (1970); 2) the district court must examine the record of the first trial and determine whether a rational jury could have grounded its verdict on some other issue of fact; 3) in conducting this analysis, the district court may not consider the jury's inability to reach a verdict on the other counts; and 4) in this instance, the district court failed to apply the analysis required by Ashe when determining whether the jury's verdict on the lewdness count estopped the State from relitigating the issue of sexual touching in the sexual assault count.

Slaatte v. State, 129 Nev. Adv. Op. No. 23 (April 18, 2013) – The Court dismisses an appeal of a judgment of conviction, ruling that a judgment of conviction that imposes restitution in an uncertain amount is not an appealable final judgment and the Court therefore lacks of jurisdiction.

Newman v. State, 129 Nev. Adv. Op. No. 24 (April 18, 2013) – The Court affirms a jury conviction of battery by strangulation and willfully endangering a child as a re-

sult of child abuse, arising out of an incident in which Newman yelled at his son, Darian, in public; when Newman took off his belt to strike the boy, a witness, Thomas Carmona, tried to stop him and Newman grabbed Carmona's neck to choke him into submission. At trial, Newman admitted these facts and that he acted intentionally. His defense was justification: parental discipline privilege as to the child abuse charge and self-defense as to the battery charge. Newman's appeal challenges the district court's allowance of certain testimony to rebut Newman's testimony that he strangled Carmona in self-defense. First, the prosecution introduced evidence that Newman had struck his other son, Jacob, in public and that Newman got into a heated argument with nursing staff about Jacob while Darian was hospitalized for an appendectomy. The district court deemed this evidence admissible under NRS 48.045 (2) to show absence of mistake or accident as to the child abuse charge. Second, the prosecution presented a surprise rebuttal witness, Connie Ewing, who reported that she, too, had a heated but nonphysical exchange with Newman over his disciplining a young boy outside a local Walmart. The Court rules that 1) evidence of one of the episodes involving Jacob was properly admitted to refute Newman's claim of parental privilege; 2) the other episodes involving Jacob were not proven by clear and convincing evidence, as required by case law, and it was an abuse of discretion to admit the Ewing testimony; and 3) the erroneously admitted evidence was a miniscule and unnecessary part of the prosecution's case and merely repeated what jurors already knew based on admis-

Nevada Supreme Court Cases

sible evidence—that Newman “is an admittedly aggressive, obnoxious man who hits his children and bullies anyone who criticizes his parenting.”

Egan v. Chambers, 129 Nev. Adv. Op. No. 25 (April 25, 2013) – The Court reverses a district court order dismissing a professional negligence action, ruling that professional negligence actions are not subject to the affidavit-of-merit requirement based on the unambiguous language of NRS 41A.071 (overruling, in part, *Fierle v. Perez*, 125 Nev. 728, 219 P.3d 906 (2009)).

Carter v. State, 129 Nev. Adv. Op. No. 26 (April 25, 2013) – The Court reverses a jury conviction of eight counts of burglary while in possession of a firearm, twelve counts of robbery with the use of a deadly weapon, and one count of coercion, ruling that a suspect who asks, “Can I get an attorney?” after he has been advised of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), unambiguously invokes his right to counsel, triggering the requirement that all interrogation immediately cease, and there may be no further interrogation unless the suspect reinitiates contact with the police, there is a sufficient break in custody, or the suspect is provided the aid of the counsel that he requested.

State v. Frederick, 129 Nev. Adv. Op. No. 27 (April 25, 2013) – The Court reverses a district court order granting respondent's postconviction motion to withdraw his guilty plea, ruling that Eighth Judicial District Court Rule (EDCR) 1.48, which allows justices of the peace to serve as district court hearing masters, does not violate the

Nevada Constitution.

Falconi v. Secretary of State, 129 Nev. Adv. Op. No. 28 (April 25, 2013) – The Court denies a pro per writ petition challenging the issuance of a fictitious address under NRS 217.462-471, ruling that because the court addressing such a petition will necessarily be required to make factual determinations, the district court is the appropriate tribunal for seeking relief.

State, Dep't of Taxation v. Chrysler Grp., 129 Nev. Adv. Op. No. 29 (May 2, 2013) – The Court reverses a district court order granting a petition for judicial review in a tax action, ruling that 1) neither Nevada's lemon law [NRS 597.630] nor the tax statutes provide for sales tax refunds to vehicle manufacturers upon reimbursing a buyer pursuant to the lemon law; 2) the Department's prior policy of allowing sales tax refunds to vehicle manufacturers was an erroneous interpretation of the law; and 3) the Department did not violate the Administrative Procedure Act because it was not required to undertake the formal rulemaking process to correct its prior erroneous policy.

Sylver v. Regents Bank, N.A., 129 Nev. Adv. Op. No. 30 (May 2, 2013) – On consolidated appeals from a district court order confirming an arbitration award and an amended judgment and order of sale, the Court affirms the order and judgment, ruling that 1) whether an arbitration award is obtained through undue means under NRS 38.241 requires the challenging party to prove by clear and convincing evidence that the award was secured

Nevada Supreme Court Cases

through intentionally misleading conduct; 2) the district court correctly refused to vacate the arbitration award since the appellant did not satisfy this burden; and 3) because the arbitrator did not consciously disregard the applicable legal standard when refusing to void a loan in the underlying dispute, there was no manifest disregard of the law.

City of Las Vegas v. Evans, 129 Nev. Adv. Op. No. 31 (May 2, 2013) – The Court affirms a district court order denying a petition for judicial review in a workers' compensation action. Considering the relationship between NRS 617.440 - a statute that, in conjunction with NRS 617.358, delineates the requirements for establishing a compensable occupational disease - and NRS 617.453 - a statute that provides for a qualified, rebuttable presumption that a firefighter's cancer constitutes a compensable occupational disease, the Court rules that 1) the district court did not err in denying judicial review and upholding the appeals officer's determination that a firefighter, such as Evans, who fails to qualify for NRS 617.453's rebuttable presumption can still seek workers' compensation benefits pursuant to NRS 617.440 by proving that his or her cancer is an occupational disease that arose out of and in the course of his or her employment; and 2) the appeals officer did not abuse her discretion in determining that Evans' cancer was a compensable occupational disease.

Jacinto v. PennyMac Corp., 129 Nev. Adv. Op. No. 32 (May 2, 2013) – The Court affirms a district court order granting a

petition for judicial review in a Foreclosure Mediation Program (FMP) matter, ruling that 1) when the district court grants a homeowner's petition for judicial review, the homeowner may appeal from that final determination under NRAP 3A(b)(1) and challenge the nature and amount of sanctions imposed, if the type or amount of sanctions imposed adversely and substantially affects the homeowner to the extent that the homeowner is aggrieved as contemplated under NRAP 3A(a); 2) because the homeowner in this case was awarded monetary sanctions but denied the loan modification, the order adversely and substantially affects his property rights, and thus, the homeowner is aggrieved by the district court's order and has standing to challenge the order on appeal; and 3) the district court acted within its discretion in determining the sanctions.

Galardi v. Naples Polaris, LLC, 129 Nev. Adv. Op. No. 33 (May 16, 2013) – The Court affirms a district court order granting summary judgment in a contract action involving a written option contract in which Naples Polaris had the right to purchase real property from Galardi for \$8 million cash. The property was subject to a deed of trust securing approximately \$1.3 million in debt and the issue was which party was responsible for the debt. The Court ruled that the district court properly considered trade usage and industry custom in interpreting the option contract and ruling for Naples Polaris, and further ruled that requiring the optionee to take the property subject to an existing indebtedness would have to been set forth in the express terms of the contract.

Nevada Supreme Court Cases

Chapman v. Deutsche Bank Nat'l Trust Co, 129 Nev. Adv. Op. No. 34 (May 30, 2013) – The Court answers certified questions pursuant to NRAP 5 concerning whether Nevada law characterizes quiet title actions and unlawful detainer actions as proceedings in personam, in rem, or quasi in rem, responding that quiet title and unlawful detainer proceedings pertain to interests in a thing and are, thus, "in rem" or "quasi in rem" in nature. and declining the parties' invitation to expound on the federal prior-exclusive-jurisdiction doctrine, as those questions were not certified.

Cucinotta v. Deloitte & Touche, L.L.P., 129 Nev. Adv. Op. No. 35 (May 30, 2013) – The Court affirms a district court order granting summary judgment in a defamation action, albeit on different grounds, adopting the Restatement (Second) of Torts section 592A and holding that one who is required by law to publish defamatory matter is absolutely privileged to publish it when (1) the communication is made pursuant to a lawful process, and (2) the communication is made to a qualified person. The Court concludes that Deloitte's statement to GCA's Audit Committee is therefore absolutely privileged as a matter of law because Deloitte communicated information about alleged illegal acts in accordance with federal securities law.

Bisch v. Las Vegas Metro. Police Dep't, 129 Nev. Adv. Op. No. 36 (May 30, 2013) – The Court affirms a district court order denying a petition for judicial review and denying declaratory and injunctive relief in an employment matter arising from an

LVMPD internal investigation of appellant Laurie Bisch regarding allegations of insurance fraud after Bisch's dog bit her daughter's friend, and Bisch represented to medical staff that the girl was her own daughter but did not use her employer-provided health insurance. Bisch was not provided a police protective association (PPA) representative during an internal investigation meeting because she had retained a private attorney. Although the charges of insurance fraud were ultimately dropped, the LVMPD issued Bisch a formal written reprimand for a violation of "[c]onduct unbecoming an employee" under LVMPD Civil Service Rule 510.2(G) (1). The Court rules that 1) NRS 289.080 did not impose a duty on the PPA to provide representation to Bisch during an internal investigation meeting; 2) Bisch's discipline was neither based on overly broad criteria nor politically motivated, but proper because the discipline bore directly on her fitness to perform her profession; and 3) despite the fact that Bisch established a prima facie case of political motivation, substantial evidence was presented to rebut the presumption of discrimination.

Brown v. MHC Stagecoach, 129 Nev. Adv. Op. No. 37 (May 30, 2013) – The Court dismisses a pro per appeal from a district court order statistically closing a case in an employment matter, ruling that the Court lacks jurisdiction as no statute or court rule authorizes an appeal from an order statistically closing a case and the order does not constitute a final, appealable judgment, as none was entered.

Nevada Supreme Court Cases

City of Sparks v. Sparks Mun. Court, 129 Nev. Adv. Op. No. 38 (May 30, 2013) – The Court affirms in part and reverses in part a district court order granting a preliminary injunction arising out of a dispute between the City of Sparks and the Sparks Municipal Court over the City's authority to make personnel and budget decisions for the Municipal Court given Municipal Court's broad authority to manage its own affairs. The Court rules that 1) the separation of powers doctrine and the Municipal Court's inherent authority bar the City from interfering with the Municipal Court's control over personnel decisions [affirming that portion of the district court's order enjoining the City from interfering with the Municipal Court's ability to make personnel decisions]; 2) the Municipal Court's inherent power over its budget must be weighed against the City's authority over government finances; and 3) because the parties have failed to develop the record sufficiently on the budget issue, the district court's order is reversed as to this issue and the matter remanded for further proceedings.

In re Fox, 129 Nev. Adv. Op. No. 39 (May 30, 2013) – The Court answers a certified question pursuant to NRAP 5 regarding permissible exemptions under NRS 21.090 for property belonging not only to the judgment debtor but also to her non-debtor spouse, adopting the plain language rationale embraced by the United States Bankruptcy Court for the District of Idaho in *In re DeHaan*, 275 B.R. 375 (Bankr. D. Idaho 2002), and concluding that, based on NRS 21.090(1)(f) and (z)'s plain language, Nevada law does not allow

debtors to claim motor vehicle and wild-card exemptions on behalf of their non-debtor spouses.

Bergenfield v. Bank of Am., 129 Nev. Adv. Op. No. 40 (June 6, 2013) – The Court reverses a district court order denying a petition for judicial review in a Foreclosure Mediation Program (FMP) matter, ruling that 1) when the deed of trust to real property and the promissory note are held by two different entities and not reunified before mediation in the FMP, the note holder's attendance at the mediation on its own behalf is insufficient to meet the statutory requirement that the deed of trust beneficiary attend and participate in good faith; 2) in this instance Bank of America failed to satisfy NRS 107.086(4)'s attendance and participation requirement because while it was the holder of the note, it was not the beneficiary of the deed of trust; and 3) the district court therefore erred in determining that Bank of America had the authority to mediate and denying Appellant's petition for judicial review (remanded for further proceedings consistent with *Pasillas v. HSBC Bank USA*, 127 Nev. __, 255 P.3d 1281, 1287 (2011), to determine appropriate sanctions against Bank of America).

Williams v. United Parcel Servs., 129 Nev. Adv. Op. No. 41 (June 6, 2013) – The Court reverses a district court order denying a petition for judicial review in a workers' compensation action arising when Appellant suffered a workplace injury in the course of his employment with respondent UPS and, after receiving medical treatment, missed the remainder of his scheduled work shift pursuant to his treating

Nevada Supreme Court Cases

physician's orders. Appellant sought to reopen his workers' compensation claim more than one year after closure, UPS denied that request, and its decision was affirmed by an appeals officer. The Court rules that 1) NRS 616C.390(5) bars an employee from applying to reopen his or her workers' compensation claim after a year from its closure if the employee was not off work as a result of the injury; 2) In reaching her conclusion, the appeals officer interpreted NRS 616C.390(5) as requiring that an injured employee miss five days of work as a result of the injury to be considered "off work" within the bounds of that statute; 3) NRS 616C.390(5) does not include any such requirement for an employee to be considered off work and the appeals officer erred in reading a minimum-time-off-work requirement into the statute; and 4) since Williams missed the remainder of his shift on the day of his injury, he was off work as a result of his injury and was therefore not subject to the one-year limit on the reopening of claims (remanded directing the district court to remand this matter to the appeals officer to reexamine in light of NRS 616C.390(1)).

Halcrow, Inc. v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. No. 42 (June 27, 2013) – The Court grants a writ petition challenging a district court order granting real parties in interest's motions for leave to amend their third- and fourth-party complaints in order to plead claims for negligent misrepresentation, indemnity, contribution, and apportionment, ruling that that the economic loss doctrine bars negligent misrepresentation claims against commercial construction design profession-

als where the recovery sought is solely for economic losses.

Frei v. Goodsell, 129 Nev. Adv. Op. No. 43 (July 3, 2013) – The Court affirms a district court judgment on a jury verdict in a legal malpractice action following Frei's lawsuit against the trustee of his deceased wife's estate, claiming that the trustee had improperly transferred Frei's assets into the trust; in that action Frei successfully sought to disqualify Goodsell, the attorney who prepared the trust documents, from representing the trustee based on the district court's conclusion that a prior attorney-client relationship existed between Frei and Goodsell, which created a conflict of interest. The Court rules that the district court 1) properly refused to apply the doctrine of issue preclusion insofar as the issue of an attorney-client relationship between Frei and Goodsell was not necessarily litigated in the previous trust action; and 2) did not abuse its discretion in applying the parol evidence rule to preclude evidence of Frei's intent in executing a number of unambiguous documents prepared by Goodsell.

County of Clark v. Howard Hughes Co., 129 Nev. Adv. Op. No. 44 (July 3, 2013) – The Court affirms a district court order denying a motion for change of venue, ruling that 1) the First Judicial District Court is an appropriate venue for filing a petition for judicial review from a State Board of Equalization property tax valuation, irrespective of the physical location of the property, because it is a "court of competent jurisdiction in the State of Nevada" as required by NRS

Nevada Supreme Court Cases

361.420(2); and 2) the statutory language provides that a property owner with property located in any Nevada county may file a property tax valuation action in any district court in the state.

Mountain View Rec. v. Imperial Commercial, 129 Nev. Adv. Op. No. 45 (July 3, 2013) – The Court reverses a district court order granting a motion to change venue from Nye County to Clark County based on the doctrine of forum non conveniens and its findings that existing courtroom facilities in Pahrump were inadequate to accommodate a trial in the underlying matter, ruling that the district court abused its discretion by granting the motion because it 1) failed to cite sufficient evidence supporting a change of venue pursuant to the doctrine of forum non conveniens; 2) failed to conduct a proper analysis, under NRS 3.100(2) and Angell v. Eighth Judicial District Court, 108 Nev. 923, 839 P.2d 1329 (1992), regarding the adequacy of courtroom facilities in a county; and 3) failed to consider the docket congestion in Clark County before reaching its decision.

Rugamas v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. No. 46 (July 3, 2013) – The Court grants a writ petition challenging a district court order denying a pretrial petition for a writ of habeas corpus based on alleged deficiencies in grand jury proceedings in which the State sought an indictment against Rugamas on charges of sexual assault and lewdness involving a child who was under 10 years of age. During the grand jury proceedings, the State presented testimony about out-of-court state-

ments made by the child victim describing the alleged sexual conduct. The Court rules that the statements were not properly before the grand jury: 1) NRS 172.135 (2) prohibits a grand jury from receiving hearsay; 2) because the victim was not subject to cross-examination concerning the out-of-court statements, those statements were not excluded from the definition of hearsay under NRS 51.035(2)(a); 3) the exception in NRS 51.385 for trustworthy statements by a child-victim of sexual assault does not apply to grand jury proceedings; 4) because the statements were hearsay and did not fall within an exception that makes hearsay admissible, the grand jury could not consider the statements; and 5) absent the hearsay evidence, there was not sufficient legal evidence to support a finding of probable cause and the indictment cannot stand.

Nevada Power Co. v. 3 Kids, L.L.C., 129 Nev. Adv. Op. No. 47 (July 3, 2013) – The Court affirms a district court judgment on a jury verdict in an eminent domain action, reviews a jury instruction regarding the determination of fair market value, and rules that 1) although the jury instruction at issue provided an overbroad reading of City of North Las Vegas v. Robinson, 122 Nev. 527, 134 P.3d 705 (2006), no prejudice was established because a separate jury instruction remedied the error; and 2) the district court did not abuse its discretion by allowing testimony provided by respondent 3 Kids, LLC's expert regarding her paired sales analysis.

Nevada Supreme Court Cases

Clay v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. No. 48 (July 11, 2013) – The Court grants in part a writ petition challenging an order of the district court denying a pretrial petition for a writ of habeas corpus; at issue is whether a district attorney violates NRS 172.095(2) when he or she seeks an indictment for child abuse or neglect under NRS 200.508(1) based on a nonaccidental physical injury but fails to inform the grand jurors of the definition of "physical injury" set forth in NRS 200.508(4)(d). The Court rules that 1) regardless of the theory pursued under NRS 200.508(1), "abuse or neglect" is an element of the offense; 2) when the alleged "abuse or neglect" is based on a nonaccidental physical injury, the district attorney must inform the grand jurors of the statutory definition of "physical injury" because that definition is more limited than the meaning that a layperson would attribute to the term; and 3) because the failure to inform the grand jurors of the statutory definition of "physical injury" likely caused the grand jury to return an indictment on less than probable cause for one of the two counts of child abuse, the petition is granted as to that count.

Bielar v. Washoe Health Sys., Inc., 129 Nev. Adv. Op. No. 49 (July 11, 2013) – The Court affirms in part and reverses in part a district court judgment in a contract action in which the predominant issue for determination on appeal is whether a settlement agreement with a third-party tortfeasor who allegedly caused the injuries necessitating the medical services is another "contractual provision for the payment of the charge by a third party" ren-

dering the inpatient ineligible for the statutory billing discount under NRS 439B.260(1)(a); the Court rules that because a patient's eligibility for the statutory discount is determined at the commencement of hospital services, a later settlement agreement with a third party for the payment of such services does not disqualify the patient for the discount.

Leventhal v. Black & LoBello, 129 Nev. Adv. Op. No. 50 (July 11, 2013) – The Court reverses an order adjudicating a law firm's charging lien for fees against its former client under NRS 18.015, ruling that 1) the firm did not serve the statutory notices required to perfect its lien until the case was over; 2) under NRS 18.015(3), a charging lien only attaches from the time of service of the notices required by the statute; and 3) since the decree became final months before the lien was perfected—and no prospect of post-perfection recovery appeared—the lien should not have been adjudicated under NRS 18.015(4).

State v. Beckman, 129 Nev. Adv. Op. No. 51 (July 11, 2013) – The Court affirms a district court order granting a motion to suppress evidence of contraband in a prosecution for drug trafficking and possession arising from a traffic stop for speeding and the driver's subsequent detention until the arrival of a drug-sniffing dog. The Court holds that, although the district court appropriately suppressed the evidence since exigent circumstances did not justify the warrantless search, its conclusion is far more compelling based on an illegal seizure because the highway patrol officer

Nevada Supreme Court Cases

unreasonably prolonged the traffic stop. A traffic stop that is legitimate when initiated becomes illegitimate when the officer detains the car and driver beyond the time required to process the traffic offense, unless the extended detention is consensual, de minimis, or justified by a reasonable articulable suspicion of criminal activity. The prolonged stop in this case met none of these exceptions and violated the United States and Nevada Constitutions, warranting exclusion of the subsequently discovered evidence.

State v. Eighth Jud. Dist. Ct. (Logan D.), 129 Nev. Adv. Op. No. 52 (July 25, 2013) – The Court grants the State’s writ petition challenging an order of the juvenile court granting the real party in interest’s motion to declare Assembly Bill 579 unconstitutional as applied to juvenile sex offenders. A.B. 579, enacted by the 2007 Nevada Legislature, removed the juvenile court’s discretion to determine whether a juvenile sex offender should be subject to registration and community notification as an adult and mandated that all juveniles aged 14 and older who are adjudicated for certain sex offenses register as adult sex offenders and be subject to community notification; the law prohibited the imposition of these requirements on juvenile offenders under the age of 14. The Court rules that 1) retroactive application of A.B. 579 to juvenile sex offenders does not violate the Due Process or Ex Post Facto Clauses of the United States and Nevada Constitutions; and 2) mandatory sex offender registration and community notification for juvenile sex offenders are not “punishments” implicating the right to

a jury trial.

Brass v. State, 129 Nev. Adv. Op. No. 53 (July 25, 2013) – The Court denies a motion for abatement of conviction and remands a criminal matter arising from a prosecution in which Brass timely appealed his convictions [of conspiracy to commit kidnapping and murder, first-degree kidnapping, and first-degree murder with the use of a deadly weapon] but died before his appeal was decided. Brass’s attorney filed a suggestion of death and a motion for abatement arguing that the Court should abate the conviction and remand the case to the district court with instructions to dismiss the charging document; however, no party was properly substituted as Brass’s personal representative. The Court rules that an attorney lacks authority to act on the deceased client’s behalf in such circumstances, denies counsel’s motion for abatement, and further concludes that if a party dies pending a review of his appeal, the appeal will be dismissed unless the decedent’s personal representative is substituted in as a party to the appeal within 90 days of the decedent’s death.

Armenta-Carpio v. State, 129 Nev. Adv. Op. No. 54 (July 25, 2013) – The Court affirms a jury conviction of five counts of lewdness with a child under the age of 14 years, attempted lewdness with a child under the age of 14 years, and one count of child abuse and neglect; at trial defense counsel made a strategic decision to concede that there had been sexual contact between Armenta-Carpio and the victim and to concentrate on the extent of the

Nevada Supreme Court Cases

contact and whether the State had charged Armenta-Carpio with more offenses than the evidence could support. The trial court sua sponte inquired whether defense counsel had discussed the concession strategy with Armenta-Carpio and whether Armenta-Carpio had agreed to the strategy, and received affirmative responses to both questions. The Court rules that 1) consistent with Florida v. Nixon, 543 U.S. 175, 188 (2004), a concession-of-guilt strategy is not the equivalent of a guilty plea and therefore the trial judge has no obligation to canvass a defendant concerning a concession-of-guilt strategy; 2) instead, the reasonableness of counsel's performance is to be determined based on the inquiry that generally applies to ineffective-assistance-of-counsel claims; and 3) because canvassing a defendant to determine whether he knowingly and voluntarily consented to a concession strategy is unnecessary, Armenta-Carpio is not entitled to relief on the ground that the district court's canvass was inadequate [overruling Hernandez v. State, 124 Nev. 978, 194 P.3d 1235 (2008)].

State v. Robles-Nieves, 129 Nev. Adv. Op. No. 55 (July 25, 2013) – The Court grants the State's motion for a stay of trial court proceedings on Robles-Nieves' prosecution for murder with the use of a deadly weapon, pending resolution of the State's appeal from an order granting Robles-Nieves' motion to suppress his incriminating statement to police based on a claim that his statement was procured through the use of extrinsic falsehoods. The Court rules that the four factors that govern its exercise of discretion in ruling on a stay

motion in a civil proceeding under NRAP 8(c) are relevant to its exercise of discretion to grant a stay of a criminal proceeding pending resolution of an interlocutory suppression appeal: 1) whether the object of the appeal will be defeated if the stay is denied; 2) whether the appellant will suffer irreparable or serious injury if the stay is denied; 3) whether the respondent will suffer irreparable injury if the stay is granted; and 4) whether the appellant is likely to prevail on the merits in the appeal. The Court concludes that the first factor is most significant in this case insofar as there has not been a sufficient showing of irreparable harm to Robles-Nieves or that there is not a likelihood of success on the merits to counterbalance the fact that if a stay is denied and the trial commences, the object of the appeal will be defeated, as will the purpose of NRS 177.015(2). The Court also notes that, due to concerns with disrupting a criminal proceeding wherein a defendant has a constitutional and statutory right to a speedy trial, it will expedite appeals from orders granting motions to suppress evidence to the extent its docket permits.



Ninth Circuit Court of Appeals Cases

Jones v. McDaniel, __ F.3d __, No. 11-16183 (9th Cir. 2013) – In a case analyzing the preclusive effect of an accord and satisfaction reached after a verdict, the panel dismissed a prisoner’s civil rights appeal. Jones filed an action under 42 U.S.C. § 1983 against Nevada prison officials alleging violations of his First and Fourteenth Amendment rights arising from discipline for a letter encouraging fellow inmates to support Jones’ class action lawsuit against prison officials that purportedly violated a prison regulation that prohibited encouraging disruption. The district court granted Jones summary judgment on the due process claim, but granted defendants summary judgment as to the First Amendment claims. Following a jury trial on damages in which Jones was awarded both nominal and punitive damages, the parties entered into a settlement agreement, according to which Jones received \$11,000 plus costs and attorney’s fees, as well as expungement of the record of the violation, “in full satisfaction of the judgment entered herein.” Jones then filed this appeal seeking review of the district court’s adverse partial summary judgment order regarding his First Amendment claims; the panel dismissed after finding that it was rendered moot by the parties’ post-trial settlement agreement.

Townley v. Miller, __ F.3d __, No. 12-16881 (9th Cir. 2013) - A panel vacated the district court’s preliminary injunction and remanded with instructions to dismiss for lack of standing an action challenging a provision of Nevada election law, NRS

293.269, which allows voters the ability to register their disapproval of all the named candidates running for a particular office in statewide and presidential elections by voting for “None of these candidates” (“NOTC”). Pursuant to the law, the Secretary of State must count and report to the public the number of NOTC ballots cast for each office, but they cannot be counted in determining the winner among the named candidates in those races. Plaintiffs alleged that the law disenfranchises voters by disregarding ballots cast for NOTC in determining the winner of elections and moved for a preliminary injunction prohibiting the state from allowing the NOTC option to appear on any ballot. The panel held that 1) seven of the plaintiffs, who expressed an intent to vote but did not assert an intent to cast a ballot for NOTC in the November 2012 election or any subsequent election, lacked standing because they had not suffered an injury-in-fact that was actual or imminent; 2) the two plaintiffs who asserted a concrete intent to cast ballots for NOTC, nevertheless failed to establish that the relief they sought, removing the NOTC option from the ballot, would redress their injury; and 3) the remaining plaintiffs, two Republican presidential elector designees and the Nevada Republican Party, lacked competitive standing because they failed to establish that their alleged injury, that NOTC would potentially siphon votes from the Republican Party’s nominee, was fairly traceable to the conduct being challenged.

United States Supreme Court Cases

Florida v. Jardines, 569 U.S. __, No. 11-564 (March 26, 2013) – By a 5-4 vote, the Court held that using a drug-sniffing dog on a homeowner’s porch to investigate the contents of a home is a ‘search’ within the meaning of the Fourth Amendment. Applying its reasoning from *United States v. Jones*, 565 U.S. ___ (2012), the Court held that the officer’s actions constituted a search because they were “an unlicensed physical intrusion” of a “constitutionally protected area” (the curtilage of a home) done for the purpose of gathering information. In reaching that conclusion, the Court found that the physical invasion was not implicitly authorized by the homeowner because, while homeowners implicitly license a visitor to approach, and knock on, a home’s front door, “[t]here is no customary invitation” to “introduc[e] a trained police dog to explore the area around the home in hopes of discovering incriminating evidence.”

Marshall v. Rodgers, 569 U.S. __, No. 12-382 (April 1, 2013) – Through a unanimous *per curiam* opinion, the Court summarily reversed a Ninth Circuit decision that had granted habeas relief based on a purported violation of a defendant’s Sixth Amendment right to counsel. The state trial court denied Rodgers’ request for counsel to assist in filing a new trial motion after he was convicted at a trial in which he elected to represent himself. The Ninth Circuit held that the California Court of Appeal, in affirming the conviction and the trial judge’s denial of Rodgers’ post-trial request for counsel, unreasonably applied “clearly established Federal law, as determined by the Su-

preme Court of the United States.” 28 U.S.C. §2254(d)(1). Reversing, the Court explained that *it* has not yet resolved “whether, after a defendant’s valid waiver of counsel, a trial judge has discretion to deny the defendant’s later request for re-appointment of counsel,” and that the answer involves resolving tension between two competing principles (the right to counsel and the right to proceed without counsel). That the Ninth Circuit had resolved the issue in its own precedents does not create the necessary “clearly established” law.

Missouri v. McNeely, 569 U.S. __, No. 11-1425 (April 17, 2013) - The Court held “that in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant.” Instead, the Court will continue to look at the totality of the circumstances to determine whether the facts of the case merit an exception to the warrant requirement, although the “metabolization of alcohol in the bloodstream and ensuing loss of evidence are among the factors” that should be considered.

Boyer v. Louisiana, 569 U.S. __, No. 11-9953. (April 29, 2013) - By a 5-4 vote, the Court dismissed the writ of certiorari as improvidently granted. The Court had granted certiorari to address “[w]hether a state’s failure to fund counsel for an indigent defendant for five years, particularly where the failure was the direct result of the prosecution’s choice to seek the death penalty, should be weighed against the

United States Supreme Court Cases

state for speedy trial purposes.” An opinion concurring in the dismissal of the writ explained, however, that the record showed that the delay was not caused by Louisiana’s failure to provide funding. Rather, it was primarily caused by defense requests for continuances of hearings on the issue of funding. “Having taken up the case on the basis of a mistaken premise,” the Court dismissed the writ.

Metrish v. Lancaster, 569 U.S. __, No. 12-547 (May 20, 2013) - In *People v. Carpenter*, 627 N.W.2d 276 (2001), the Michigan Supreme Court construed a state statute as not authorizing a “diminished capacity” defense — even though the state intermediate appellate court had consistently recognized the defense. Here, the Michigan Court of Appeals held that *Carpenter* applied retroactively to respondent, and that such retroactive application did not violate due process. The Sixth Circuit granted habeas relief on the ground that the Michigan Court of Appeals’ ruling was objectively unreasonable. The U.S. Supreme Court unanimously reversed, explaining that it “has never found a due process violation in circumstances remotely resembling [this] case — *i.e.*, where a state supreme court, squarely addressing a particular issue for the first time, rejected a consistent line of lower court decisions based on the supreme court’s reasonable interpretation of the language of a controlling statute.” AEDPA therefore foreclosed habeas relief.

City of Arlington, Texas v. FCC, 569 U.S. __, No. 11-1545 (May 20, 2013) - By a 6-3 vote, the Court held that “an agency’s

interpretation of a statutory ambiguity that concerns the scope of its regulatory authority (that is, its jurisdiction) is entitled to deference under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).” The Court reasoned that “the distinction between ‘jurisdictional’ and ‘nonjurisdictional’ interpretations is a mirage” and that “the question — whether framed as an incorrect application of agency authority or an assertion of authority not conferred — is always whether the agency has gone beyond what Congress has permitted it to do.”

McQuiggin v. Perkins, 569 U.S. __, No. 12-126 (May 28, 2013) — By a 5-4 vote, the Court held that a claim of actual innocence, if proved, can excuse a habeas petitioner’s failure to meet AEDPA’s one-year statute of limitations for filing a federal habeas petition. A prisoner can meet this “actual-innocence gateway” only by showing “that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.” The Court further held that a habeas petition does not have to prove diligence to invoke the exception, though an “[u]nexplained delay in presenting new evidence bears on the determination whether the petitioner has made the requisite showing [of innocence].”

Trevino v. Thaler, 569 U.S. __, No. 11-10189 (May 28, 2013) — In *Martinez v. Ryan*, 566 U.S. __ (2012), the Court held that when a state inmate is not permitted by state law to pursue an ineffective-assistance-of-trial-counsel claim on direct review, the ineffectiveness of the inmate’s

United States Supreme Court Cases

counsel on state collateral review may constitute cause that would excuse his state-court default of his ineffective-assistance-of-trial-counsel claim and therefore permit him to assert that claim on federal habeas. Here, by a 5-4 vote, the Court extended that rule to states that technically permit defendants to raise an ineffective-assistance-of-trial-counsel claim on direct review, “but, as a matter of procedural design and systemic operation, denies a meaningful opportunity to do so.” The Court found that Texas’ procedural system fits that definition.

Maryland v. King, 569 U.S. ___, No. 2–207 (June 3, 2013) – By a 5-4 vote, the Court held that when officers make an arrest supported by probable cause to hold for a serious offense and bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee’s DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment.

American Trucking Ass’ns v. City of Los Angeles, Cal., 569 U.S. ___, No. 11-798 (June 13, 2013) - The Court unanimously held that the Federal Aviation Administration Authorization Act of 1994 (FAAAA) preempts two provisions of the contract that trucking companies must sign before they can transport cargo at the Port of Los Angeles — provisions requiring them to develop an off-street parking plan and to display designated placards on their vehicles. The FAAAA provides that a state or local government “may not enact or enforce a law, regulation, or other pro-

vision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property.” The Court rejected the Port’s contention that the requirements did not have “the force and effect of law” because they are akin to “a private agreement” made to advance the Port’s commercial and “proprietary interests.” Although the Court agreed that an everyday contractual arrangement between the government and a private party (such as an agreement to ship goods for the government) would not have “the force and effect of law” and so not be preempted, the Court found the two requirements at issue to be exercises of “classic regulatory authority — complete with the use of criminal penalties.”

Tarrant Regional Water Dist. v. Herrmann, 569 U.S. ___, No. 11-889 (June 13, 2013) - The Red River Compact apportions water in the Red River basin between Oklahoma, Texas, Arkansas, and Louisiana. Tarrant Regional Water District, a Texas state agency, wishes to acquire Basin water that is located in Oklahoma, but Oklahoma statutes prohibit Texas water users from accessing that water. The Court unanimously held that the Compact does not preempt the Oklahoma statutes and that those statutes do not violate the dormant Commerce Clause. The Court found three reasons why the Compact is best read as not granting cross-border rights to water: “the well-established principle that States do not easily cede their sovereign powers, including their control over waters within their own territory; the fact that other inter-

United States Supreme Court Cases

state water compacts have treated cross-border rights explicitly; and the parties' course of dealing."

Maracich v. Spears, 570 U.S. __, No. 12-25 (June 17, 2013) - The Driver's Privacy Protection Act of 1994 prohibits the disclosure and use of "personal information" maintained in state motor vehicle department databases unless the use of that information falls within several enumerated exceptions. One of those exceptions is when the information would be used in connection with judicial and administrative proceedings, including "investigation in anticipation of litigation." By a 5-4 vote, the Court held that "an attorney's solicitation of clients for a lawsuit" is not covered by that exception, meaning the exception does not authorize persons to use state DMV records for that purpose.

Alleyne v. United States, 570 U.S. __, No. 11-9335 (June 17, 2013) - By a 5-4 vote, the Court overruled Harris v. United States, 536 U.S. 545 (2002), and held that a jury must find beyond a reasonable doubt any fact that increases the mandatory minimum sentence for a crime. In Apprendi v. New Jersey, 530 U.S. 466 (2000), the Court held that "[o]ther than the fact of prior conviction, any fact that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt." The Court here concluded that mandatory minimums increase the penalty for a crime and are therefore subject to the Apprendi rule.

Salinas v. Texas, 570 U.S. __, No. 12-246 (June 17, 2013) - During a voluntary interview with a police officer regarding a murder, petitioner answered many questions but declined to answer a specific accusatory question; the prosecution argued at trial that petitioner's failure to answer suggested he was guilty. The Court held that the Fifth Amendment's Self-Incrimination Clause did not bar the prosecution from using petitioner's silence against him. A three-Justice plurality reasoned that, as a general matter, a person who wishes to rely on the privilege against self-incrimination must expressly invoke it; and neither of the exceptions to that general rule applied here. Two Justices (Scalia and Thomas) concurred in the judgment based on their view that Griffin v. California, 380 U.S. 609 (1965), was wrongly decided and that prosecutors and judges are entitled to comment on defendants' exercise of their Fifth Amendment privilege.

Arizona v. Inter Tribal Council of Arizona, Inc., 570 U.S. __, No. 12-71 (June 17, 2013) - By a 7-2 vote, the Court held that the National Voter Registration Act (NVRA) preempts an Arizona law that requires prospective voters to provide evidence of U.S. citizenship to register to vote. The NVRA requires states to "accept and use" a uniform federal form whose contents are prescribed by a federal agency. The Court concluded that the Arizona law's requirement the voter-registration officials "reject" an application for registration, including a federal form, that is not accompanied by concrete evidence of citizenship conflicts with, and is therefore

United States Supreme Court Cases

preempted by, the NVRA's mandate that states "accept and use" the federal form. (In the course of its opinion, the Court ruled that the presumption against preemption does not apply to federal statutes enacted under the Elections Clause.)

United States v. Kebodeaux, 570 U.S. __, No. 12-418 (June 24, 2013) - By a 7-2 vote, the Court held that Congress had the power under the Necessary and Proper Clause to enact the Sex Offender Registration and Notification Act (SORNA) and apply it to a federal offender who completed his sentence prior to SORNA's enactment. The Court found that the federal government has a special relationship with federal prisoners and that "Congress could reasonably conclude that registration requirements applied to federal sex offenders after their release can help protect the public from those federal sex offenders and alleviate public safety concerns." In the course of its opinion, the Court rejected the Fifth Circuit's conclusion that the federal government no longer had a special relationship with respondent once he completed his prior sentence; even then respondent was subject to registration requirements similar to those imposed by SORNA.

Ryan v. Schad, 570 U.S. __, No. 12-1084 (June 24, 2013) - Through a unanimous *per curiam* opinion, the Court summarily held that the Ninth Circuit abused its discretion when it withheld the mandate in a capital case after the Court had denied the habeas petitioner, Schad's, certiorari petition. After the Court denied certiorari, the Ninth Circuit *sua sponte* construed

Schad's motion to stay the mandate as a motion to reconsider a motion the court had denied six months earlier; the court then remanded the case to the district court to determine whether Schad could establish a claim of ineffective assistance of post-conviction counsel under *Martinez v. Ryan*. In reversing the Ninth Circuit, the Court held that the Federal Rules of Appellate Procedure permit a court of appeals to stay the mandate after a denial a certiorari only in extraordinary circumstances, if ever. And the Court found no extraordinary circumstances here.

University of Texas Southwestern Medical Center v. Nassar, 570 U.S. __, No. 12-484 (June 24, 2013) - By a 5-4 vote, the Court held that a plaintiff in a Title VII retaliation case "must establish that his or her protected activity was a but-for cause of the alleged adverse action by the employer." The Court explained that under 1991 amendments to Title VII, a plaintiff alleging status-based discrimination need only show that the motive to discriminate was one of the employer's motives, even if the employer also had other, lawful motives that ultimately caused the employer's decision. The Court found, however, that the statutory scheme shows that Congress intended a different causation rule for retaliation claims, which are addressed in a different provision of the statute than status-based discrimination.

Vance v. Ball State University, 570 U.S. __, No. 11-556 (June 24, 2013) - Under Title VII, an employer is strictly liable for workplace harassment by a "supervisor" when the harassment culminates in tangi-

United States Supreme Court Cases

ble employment action. By contrast, the employer is liable for workplace harassment by a co-worker only if the employer was negligent in controlling workplace conditions. By a 5-4 vote, the Court held that an employee is a “supervisor” for purposes of vicarious liability under Title VII only “if he or she is empowered by the employer to take tangible employment actions against the victim,” such as hiring, firing, demoting, promoting, transferring, or disciplining. The Court rejected the EEOC’s broader definition of supervisor as including an employee who has the authority to direct another employee’s daily activities.

Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. ___, No. 11-1447 (June 24, 2013) - In *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), the Court held that “a unit of government may not condition the approval of a land-use permit on the owner’s relinquishment of a portion of his property unless there is a ‘nexus’ and ‘rough proportionality’ between the government’s demand and the effects of the proposed land use.” The Court here held that the *Nollan/Dolan* requirements apply (1) when the government denies a permit because the applicant refuses to turn over property; and (2) when the government’s demand is for money, not property (the former holding was unanimous; the latter holding was by a 5-4 vote).

Shelby County, Ala. v. Holder, 570 U.S. ___, No. 12-96 (June 24, 2013) - By a 5-4 vote, the Court held that the formula that

determines which states are covered by §5 of the Voting Rights Act — which “captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s” — is disconnected to current voting discrimination and is therefore unconstitutional. The Court added that it “issue[s] no holding on §5 itself, only on the coverage formula. Congress may draft another formula based on current conditions. Such a formula is an initial prerequisite to a determination that” §5 itself is still constitutional.

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