

2012 Nevada Supreme Court Opinion Digest

Pohlabel v. State, 128 Nev. Adv. Op. No. 1 (January 26, 2012) – The Court affirms a conviction pursuant to a guilty plea of felon in possession of a firearm, ruling that a conviction under NRS 202.360 does not violate the right to keep and bear arms secured by the Second Amendment to the United States Constitution and by Article 1, Section 11(1) of the Nevada Constitution, since the right is accorded to law-abiding responsible citizens and does not extend to felons [citing *District of Columbia v. Heller*, 554 U.S. 570 (2008)].

In re Parental Rights as to S.M.M.D., 128 Nev. Adv. Op. No. 2 (January 26, 2012) – The Court affirms a district court order denying, based on lack of subject matter jurisdiction, appellant's petition to vacate its earlier certification of her relinquishment of parental rights, ruling that under section 1919 of the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901-1963 (2006), a tribal-state agreement respecting child custody proceedings may vest a Nevada district court with subject matter jurisdiction to take a relinquishment of parental rights under circumstances where section 1911(a) of the ICWA, 25 U.S.C. § 1911(a), would otherwise lay exclusive jurisdiction with the tribal court.

Vaile v. Porsboll, 128 Nev. Adv. Op. No. 3 (January 26, 2012) – On consolidated appeals from a district court post-divorce decree order imposing statutory penalties on child support arrearages under NRS 125B.095, the Court reverses and remands, reviewing the district court's authority to enforce or modify a child support order that a Nevada district court initially entered, when neither the parties nor the children reside in Nevada and ruling that 1) under the Uniform Interstate Family Support Act, because no other jurisdiction has entered an order concerning child support, the Nevada order controls and the district court retains subject matter jurisdiction to enforce the Nevada order; 2) since the parties and children do not reside in Nevada and the parties have not consented to the district court's exercise of jurisdiction, the district court lacks subject matter jurisdiction to modify the support order; 3) in the family law context a modification occurs when the district court's order alters the parties' substantive rights, while a clarification involves the district court defining the rights that have already been awarded to the parties; and 4) because the district court in the present case impermissibly modified the child support obligation set forth in the divorce decree, the district court's order is reversed and the case remanded for further proceedings.

In re Estate of Melton, 128 Nev. Adv. Op. No. 4 (February 16, 2012) – The Court reverses a district court order in a probate action, ruling that 1) NRS 132.370 abolishes the common law rules that would otherwise render a testator's disinheritance clause unenforceable when the testator is unsuccessful at affirmatively devising his or her estate; 2) the doctrine of dependent relative revocation (a revocation made in connection with a failed dispositive objective or false assumption of law or fact should be considered ineffective when doing so is necessary to ensure that an estate is distributed in a manner that most closely

matches the testator's probable intent) is adopted in Nevada; 3) while the district court erred in determining that NRS 133.130 precludes the doctrine of dependent relative revocation, it did not err in alternatively determining that if the doctrine exists in Nevada, it is inapplicable under the particular facts of this case; 4) escheat under NRS 134.120 is triggered when, as here, a testator disinherits all of his or her heirs, and 5) as the testator disinherited all of his heirs, his estate must escheat.

Carstarphen v. Milsner, 128 Nev. Adv. Op. No. 5 (March 1, 2012) - The Court reverses a district court order dismissing a corporation's action, ruling that in resolving a motion for a preferential trial date brought to avoid dismissal under NRCP 41(e)'s five-year rule, district courts must evaluate (1) the time remaining in the five-year period when the motion is filed, and (2) the diligence of the moving party and his or her counsel in prosecuting the case [citing Monroe, Ltd. v. Central Telephone Co., 91 Nev. 450, 456, 538 P.2d 152, 156 (1975)]. The Court concludes that the district court abused its discretion in denying appellant's motion for a preferential trial date in the present case, because appellant filed his preferential trial motion with more than three months remaining in the five-year period and the record reflects that appellant diligently moved his case forward. The Court therefore reverses the district court's denial of that motion and the resulting dismissal of the underlying case pursuant to NRCP 41(e), and remands to the district court with instructions to grant appellant a preferential trial date. Finally, the Court reaffirms the holding in McGinnis v. Consolidated Casinos Corp., 97 Nev. 31, 623 P.2d 974 (1981), that on remand from an erroneous judgment or dismissal entered before trial has commenced that is reversed on appeal, the parties have three years from the date that the remittitur is filed in district court to bring the case to trial [overruling Rickard v. Montgomery Ward & Co., 120 Nev. 493, 498-99, 96 P.3d 743, 747 (2004)].

Finkel v. Cashman Professional, Inc., 128 Nev. Adv. Op. No. 6 (March 1, 2012) – The Court reviews two district court orders on consolidated appeals: one granting a preliminary injunction to enforce restrictive provisions in a consulting agreement (the Agreement) and to prevent likely violations of Nevada's Uniform Trade Secrets Act, and the other refusing to dissolve that preliminary injunction after the Agreement had been terminated. Because substantial evidence exists to support the district court's decision to issue the preliminary injunction, the Court affirms the district court's first order. However, upon termination of the Agreement, the district court should have granted appellant's motion to dissolve the injunctive provisions that were grounded on findings that appellant likely breached the Agreement. With regard to the alleged trade secret violations, NRS 600A.040(1) requires the district court to make findings as to the continued existence of a trade secret and to what constitutes a "reasonable period of time" for maintaining an injunction under Nevada's Uniform Trade Secrets Act. Because the district court failed to make these findings, the Court reverses the district court's second order and remands for further proceedings regarding the extent that the injunctive provision related to likely violations of the Trade Secrets Act should remain in effect.

Café Moda v. Palma, 128 Nev. Adv. Op. No. 7 (March 1, 2012) – The Court affirms in part and reverses in part a district court judgment on a jury verdict in a tort action, ruling that NRS 41.141, Nevada’s comparative-negligence statute, permits liability to be apportioned between a negligent tortfeasor and an intentional tortfeasor, and determining that the negligent tortfeasor, appellant Café Moda, is severally liable for 20% of respondent Donny Palma’s damages and that the intentional tortfeasor, respondent Matt Richards, is jointly and severally liable for 100% of Palma’s damages [reversing the part of the district court’s judgment imposing joint and several liability against Café Moda and remanding for entry of a modified judgment].

Webb v. Shull, 128 Nev. Adv. Op. No. 8 (March 1, 2012) – The Court, in an appeal and cross-appeal from a district court judgment awarding appellant homebuyer treble damages against respondent seller, a limited liability company, but refusing to find the individual respondent, a former manager of the limited liability company, liable for the judgment as the company’s alter ego, affirms in part and reverses in part. The Court first considers the seller’s cross-appeal on whether the district court’s award of treble damages under NRS 113.150(4) [allowing treble damages for a seller’s delayed disclosure or nondisclosure of property defects] requires a predicate finding of willfulness, or mental culpability, ruling that no such mental state is required. The Court also rules that it is unable to review the alter ego issue because the district court failed to explain its reasoning for denying alter ego status. The Court therefore affirms the district court’s judgment, except for the portion of the judgment concerning the alter ego issue, which is vacate and remanded.

Weddell v. H2O, Inc., 128 Nev. Adv. Op. No. 9 (March 1, 2012) – The Court affirms in part and reverses in part a district court judgment following a bench trial in a breach of contract, tort, and declaratory relief action, ruling that 1) pursuant to NRS 86.401, a judgment creditor may obtain the rights of an assignee of the member’s interest, receiving only a share of the economic interests in a limited-liability company, including profits, losses, and distributions of assets; 2) due to the district court’s misinterpretation of NRS 86.401, that portion of the district court’s judgment is reversed and remanded; 3) parties should only file a notice of pendency under NRS 14.010 when the action directly involves real property—more specifically, concerning actions for the foreclosure of a mortgage upon real property or actions affecting the title of possession of real property; 4) the notice of pendency filed by appellant Weddell in this matter is unenforceable, as the action on which it is based concerned an alleged expectancy in the purchase of a membership interest in respondent Empire Geothermal Power, LLC, and, thus, did not involve a direct legal interest in real property; 5) and substantial evidence supports the district court’s findings that Weddell was merely an agent on behalf of respondent Michael B. Stewart and has never acquired an ownership interest in respondent H2O.

Bigpond v. State, 128 Nev. Adv. Op. No. 10 (March 1, 2012) – The Court affirms a jury conviction of battery constituting domestic violence, third offense within seven years, ruling that that 1) evidence of “other crimes, wrongs or acts” may be

admitted for a nonpropensity purpose other than those listed in NRS 48.045(2); 2) to the extent prior opinions indicate that NRS 48.045(2) codifies the broad rule of exclusion adopted in State v. McFarlin, 41 Nev. 486, 494, 172 P. 371, 373 (1918), those opinions are overruled; and 3) the first factor of the test set forth in Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997), for determining the admissibility of prior bad act evidence is clarified to reflect the narrow limits of the general rule of exclusion, and the prosecution must demonstrate that the evidence is relevant for a nonpropensity purpose. Applying these principles to the case, the Court holds the district court did not abuse its discretion in admitting evidence of prior acts of domestic violence involving the victim and defendant; the fact that the victim recanted her pretrial accusations against the defendant was relevant because the evidence placed their relationship in context and provided a possible explanation for the recantation, which assisted the jury in evaluating the victim's credibility. Furthermore, the prior acts were proven by clear and convincing evidence, and the district court properly weighed the probative value against the danger of unfair prejudice, giving an appropriate limiting instruction.

Wheble v. Dist. Ct., 128 Nev. Adv. Op. No. 11 (March 1, 2012) – The Court grants a writ petition challenging district court orders denying petitioners' motions to dismiss and for summary judgment in a medical malpractice matter, ruling that NRS 11.500 does not save otherwise time-barred medical malpractice claims dismissed for failure to comply with the affidavit requirements of NRS 41A.071 because these claims are void, and NRS 11.500 applies only to actions that have been "commenced."

Maestas v. State, 128 Nev. Adv. Op. No. 12 (March 29, 2012) – The Court affirms a judgment of conviction of first-degree murder with the use of a deadly weapon, attempted murder with the use of a deadly weapon, and burglary while in the possession of a deadly weapon and an order denying a motion for new penalty trial in a death penalty case based upon a guilty plea, ruling that none of appellant's claims warrant relief. First, the Court rules that although NRS 175.556 allows the district court to choose between imposing a life-without-parole sentence and impaneling a new jury to determine the sentence when a jury is unable to reach a unanimous penalty verdict, the statute does not violate the Eighth Amendment because it does not afford the district court the discretion to impose a death sentence (that determination is left to the new jury, guided by the requirements set forth in NRS 175.554). Second, the Court rules that the district court did not abuse its discretion by denying a motion for a new trial alleging that the jury foreperson committed misconduct by expressing her views on the meaning of a life sentence without the possibility of parole based on her special knowledge as a 9-1-1 dispatcher and by concealing a bias against appellant, since no misconduct or bias was proved.

Holiday Retirement Corp. v. State, DIR, 128 Nev. Adv. Op. No. 13 (April 5, 2012) – The Court affirms a district court order denying a petition for judicial review in a workers' compensation action, ruling that the district court did not err in denying judicial review because an employer is required to acquire knowledge of an

employee's permanent physical impairment before a subsequent injury occurs to qualify for reimbursement from the subsequent injury account for private carriers under NRS 616B.587(4) (adopting the view of the majority of jurisdictions).

Rodriguez v. State, 128 Nev. Adv. Op. No. 14 (April 5, 2012) – The Court affirms a jury conviction of conspiracy to commit robbery, conspiracy to commit kidnapping, conspiracy to commit sexual assault, burglary while in possession of a deadly weapon, robbery with the use of a deadly weapon, first-degree kidnapping with the use of a deadly weapon, sexual assault with the use of a deadly weapon, coercion with the use of a deadly weapon, possession of a credit or debit card without the cardholder's consent, and obtaining or using personal identifying information of another. First, the Court rules that 1) text messages are subject to the same authentication requirements under NRS 52.015(1) as other documents, including proof of authorship; 2) the district court abused its discretion in admitting 10 of the 12 text messages that the State claimed were sent by the appellant, a codefendant, or both using the victim's cell phone because the State failed to present sufficient evidence corroborating the appellant's identity as the person who sent the 10 text messages; and 3) the error was harmless. Second, the Court examines whether testimony that a defendant could not be excluded as the source of a discovered DNA sample is admissible in the absence of supporting statistical data reflecting the percentage of the population that could be excluded as the source of the discovered DNA sample and holds that 1) so long as it is relevant, DNA nonexclusion evidence is admissible because any danger of unfair prejudice or of misleading the jury is substantially outweighed by the defendant's ability to cross-examine or offer expert witness evidence as to probative value; and 2) the district court did not abuse its discretion by admitting the relevant DNA nonexclusion evidence.

In re Parental Rights as to C.C.A., 128 Nev. Adv. Op. No. 15 (April 5, 2012) – The Court reverses a district court order terminating appellant's parental rights as to the minor child, ruling that because the district court failed to identify, in writing or on the record, the factual bases that support its termination order, the Court cannot determine whether substantial evidence supports the district court's decision, and thus, the district court's order must be reversed and the case remanded to the district court to enter its findings [citing Robison v. Robison, 100 Nev. 668, 673, 691 P.2d 451, 455 (1984) (remanding the case to the lower court because the court's findings failed to indicate the factual basis for its final conclusions)].

Haley v. Dist. Ct., 128 Nev. Adv. Op. No. 16 (April 5, 2012) – The Court grants in part and denies on part a writ petition challenging a district court order approving the compromise of a minor's claim in a medical malpractice action but directing a different distribution of the settlement proceeds than that agreed to by the parties. The Court notes that NRS 41.200, Nevada's statute governing the compromise of a minor's claim, leaves the allocation of fees and costs to the district court's discretion, and rules that the district court may adjust the terms of the settlement in accordance with the minor's best interest. However, because the district court in this case provided no explanation for the allocation of fees

between the attorney and the guardian ad litem, the Court grants the issuance of a writ instructing the district court to provide a distribution of the settlement proceeds that fairly and reasonably accounts for duties performed by those individuals.

MountainView Hospital v. Dist. Ct., 128 Nev. Adv. Op. No. 17 (April 5, 2012) – The Court grants in part a writ petition challenging the district court’s denial of a motion to dismiss a medical malpractice action, ruling that the absence of a properly executed jurat does not render a medical expert’s written statement insufficient to meet the affidavit requirement of NRS 41A.071, and instructing the district court to conduct an evidentiary hearing for the limited purpose of determining whether the expert’s written statement was made under oath.

Jones v. SunTrust Mortgage, Inc., 128 Nev. Adv. Op. No. 18 (April 26, 2012) – The Court affirms a district court order denying judicial review in a foreclosure mediation matter, ruling that when an agreement is reached as a result of a mediation in Nevada’s Foreclosure Mediation Program (FMP), the parties sign the agreement, and it otherwise comports with contract law principles, the agreement is enforceable under District Court Rule 16. The Joneses had sought sanctions against SunTrust on the basis that SunTrust violated NRS 107.086 and the Foreclosure Mediation Rules (FMRs) by failing not providing copies of any assignments at the foreclosure mediation. The Court found that 1) substantial evidence supported the district court’s finding that the mediator’s statement containing the written short-sale terms, signed by all parties, constitutes an enforceable settlement agreement; 2) the short-sale agreement was supported by consideration, since SunTrust agreed to suspend the foreclosure proceedings against the Joneses for two months in exchange for the Joneses’ agreement to a short sale; and 3) the parties expressly agreed to foreclosure in the event that the short sale did not take place.

State v. Huebler, 128 Nev. Adv. Op. No. 19 (April 26, 2012) – The Court reverses an order of the district court granting relief on a post-conviction petition for a writ of habeas corpus, ruling that 1) the State is required under Brady v. Maryland, 373 U.S. 83 (1963), to disclose material exculpatory evidence within its possession to the defense before the entry of a guilty plea; 2) when the State fails to make the required disclosure, the defendant may challenge the validity of the guilty plea on that basis; 3) to succeed, the defendant must demonstrate the three components of a Brady violation in the context of a guilty plea: that the evidence at issue is exculpatory, that the State withheld the evidence, and that the evidence was material; 4) as to the materiality component, the test is whether there is a reasonable probability or possibility (depending on whether there was a specific discovery request) that but for the State’s failure to disclose the evidence the defendant would have refused to plead guilty and would have gone to trial; and 5) Huebler failed to demonstrate that he would have refused to plead guilty and would have gone to trial had the evidence been disclosed before the plea.

Schettler v. RalRon Capital Corporation, 128 Nev. Adv. Op. No. 20 (May 3, 2012) – The Court reverses a district court summary judgment in a contract action involving analysis of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. § 1821 (2006), an act that governs the disposition of failed financial institutions’ assets. The Court rules that 1) FIRREA divests a court of jurisdiction to consider any defense or affirmative defense not first adjudicated through FIRREA’s claims process; 2) while FIRREA’s jurisdictional bar divests a district court of jurisdiction to consider claims and counterclaims asserted against a successor in interest to the Federal Deposit Insurance Corporation (FDIC not first adjudicated through FIRREA’s claims process; 3) the jurisdictional bar does not apply to defenses or affirmative defenses raised by a debtor in response to the successor in interest’s complaint for collection; 4) in this case, an affirmative defense raised unresolved questions of material fact, and because affirmative defenses are not barred by FIRREA, the district court erred in granting summary judgment in favor of RalRon on its breach of contract and breach of personal guaranty claims.

Club Vista Financial Servs. v. Dist. Ct., 128 Nev. Adv. Op. No. 21 (May 17, 2012) – The Court grants in part a writ petition challenging a district court order permitting real parties in interest to depose petitioners’ trial attorney, ruling that a party to a lawsuit seeking to depose an opposing party’s former attorney must demonstrate that the information sought cannot be obtained by other means, is relevant and nonprivileged, and is crucial to the preparation of the case [citing Shelton v. American Motors Corp., 805 F.2d 1323 (8th Cir. 1986)], and directing the district court to evaluate the underlying facts and circumstances of the request for a protective order in light of the three-factor test set forth in Shelton.

In re State Engineer Ruling No. 5823, 128 Nev. Adv. Op. No. 22 (May 31, 2012) – The Court vacates a district court order dismissing a petition for judicial review of the State Engineer’s ruling in a water rights action, on the basis that the district court read NRS 533.450(1) too restrictively, and remands for further proceedings consistent with the Court’s opinion. The statute affords judicial review “in the nature of an appeal” to “[a]ny person feeling aggrieved by any order or decision of the State [Water] Engineer . . . affecting the person’s interests” and requires that any such appeal “must be initiated in the proper court of the county in which the matters affected or a portion thereof are situated” Specifically, the district court was incorrect in holding that 1) “matters affected” refers only to the point of diversion of the applicants’ existing or proposed water rights; and 2) filing for review in an improper county does not just misplace venue, a defect that may be cured or waived, but defeats subject matter jurisdiction, requiring dismissal.

Winn v. Sunrise Hospital & Medical Center, 128 Nev. Adv. Op. No. 23 (May 31, 2012) – The Court affirms in part and vacates in part a district court summary judgment in a medical malpractice action, ruling that 1) the accrual date for NRS 41A.097(2)’s one-year discovery period ordinarily presents a question of fact to be decided by the jury; 2) only when the evidence irrefutably demonstrates that a plaintiff was put on inquiry notice of a cause of action should the district court determine this discovery date as a matter of law; 3) because questions of fact

remain as to whether subsection 2's one-year discovery period was tolled for concealment against respondent Sunrise Hospital and Medical Center, the district court's summary judgment in this regard is vacated and remanded for further proceedings; and 4) however, because subsection 3's tolling-for-concealment provision does not apply against respondents Michael Ciccolo, M.D.; Clinical Technician Associates, LLC; Robert Twells, CCP; and Lee P. Steffen, CCP, the district court's summary judgment in their favor is affirmed.

Whitehead v. State, 128 Nev. Adv. Op. No. 24 (May 31, 2012) – The Court grants a petition for en banc reconsideration of an appeal from an order dismissing a post-conviction petition for writ of habeas corpus arising from a case in which petitioner pleaded guilty to DUI causing death and DUI causing substantial bodily harm. Petitioner contends that a panel of the Court overlooked NRS 176.105(1) and whether a judgment of conviction that imposes restitution but leaves the amount of restitution to be determined is final for purposes of triggering the one-year period under NRS 34.726 for filing a post-conviction petition for a writ of habeas corpus. The Court reverses the order of dismissal on the basis that a judgment of conviction that imposes restitution but does not set an amount of restitution, in violation of Nevada statutes, is not final and therefore does not trigger the one-year time limit for filing a post-conviction petition for a writ of habeas corpus, and the post-conviction petition is therefore timely.

Pack v. LaTourette, 128 Nev. Adv. Op. No. 25 (May 31, 2012) – The Court affirms in part and reverses in part a district court order dismissing a third-party complaint, certified as final under NRCP 54(b), in a tort action, ruling that 1) the claim for equitable indemnity fails as a matter of law based on the lack of any preexisting relationship between the third parties and the third-party plaintiffs' active negligence; 2) a party need not pay toward a judgment before bringing a claim for contribution and the third-party contribution claim was not properly dismissed on that ground; 3) when a claim for contribution is contingent upon a successful showing of medical malpractice, a claimant must satisfy the expert affidavit requirement of NRS 41A.071; and 4) the third-party plaintiffs' failure to attach an expert affidavit warranted dismissal of their complaint, but such dismissal should have been without prejudice.

FGA, Inc. v. Giglio, 128 Nev. Adv. Op. No. 26 (June 14, 2012) – The Court reverses a district court judgment in a tort action, ruling that the “mode of operation” approach to premises liability, under which the plaintiff does not have to prove the defendant's knowledge of a particular hazardous condition if the plaintiff can prove that the nature of the defendant's business tends to create a substantial risk of the type of harm the plaintiff suffered, does not extend beyond the self-service context to “sit-down” restaurants, because the mode of operation approach is premised on the idea that business owners should be held responsible for the risks that their choice to have customers serve themselves creates [citing *Sheehan v. Roche Bros. Supermarkets, Inc.*, 863 N.E.2d 1276, 1283 (Mass. 2007)]. The Court concludes that the district court abused its

discretion by giving a mode of operation instruction in this case and by excluding certain evidence.

Ryan's Express v. Amador Stage Lines, 128 Nev. Adv. Op. No. 27 (June 14, 2012) – In an appeal involving a motion to disqualify a law firm, the Court defers ruling on the motion pending a limited remand. The case involves as a matter of first impression the issues of whether screening to avoid imputed disqualification of a law firm is appropriate with regard to a settlement judge acting under the Court's settlement conference program, and how to determine the sufficiency of any screening measures utilized. The Court concludes that more facts are necessary to consider the sufficiency of the screening measures in the case, and defers ruling on the motion to disqualify and remands the matter to the district court for the limited purpose of conducting an evidentiary hearing and entering written findings of fact and conclusions of law regarding the adequacy of the screening.

Davis v. Beling, 128 Nev. Adv. Op. No. 28 (June 14, 2012) – The Court affirms in part and reverses in part a district court judgment in a real property contract action, ruling that 1) under NRS 48.105, evidence of compromise offers is not admissible for the purpose of demonstrating a failure to mitigate damages because evidence demonstrating a failure to mitigate necessarily goes to the "amount" of a claim; 2) while NRS 645.251 does not, in all instances, shield real estate licensees from common law forms of liability, it precludes such liability when the type of conduct complained of is covered by NRS 645.252, 645.253, or 645.254; 3) although punitive damages may not be recovered under NRS 645.257, compensatory damages are recoverable under the statute in accordance with the measure of damages that appropriately compensates the injured party for the losses sustained as a result of the real estate licensee's violations; and 4) because the Doughertys successfully defended against the breach of contract claims brought against them under the listing and purchase agreements for the properties at issue, they are entitled to an award of attorney fees under the terms of these agreements.

Choy v. Ameristar Casinos, Inc., 128 Nev. Adv. Op. No. 29 (June 28, 2012) – The Court denies a petition for en banc reconsideration of a panel opinion affirming a district court's order granting summary judgment and denying Choy's NRCP 56(f) request on the basis that Choy failed to substantially comply with NRCP 56(f)'s requirement that the party opposing a motion for summary judgment and seeking a denial or continuance of the motion in order to conduct further discovery must provide an affidavit giving the reasons why the party cannot present "facts essential to justify the party's opposition." Choy v. Ameristar Casinos, 127 Nev. ___, 265 P.3d 698, 700 (2011). In response to Choy's contention that the Court's precedent in Halimi v. Blacketer, 105 Nev. 105, 106, 770 P.2d 531, 531 (1989), did not require parties to comply with NRCP 56(f)'s affidavit requirement, the Court ruled that parties must substantially comply with NRCP 56(f)'s affidavit requirement, and to the extent that Halimi is inconsistent with the text of NRCP 56(f) and Choy, Halimi is disapproved.

Physicians Insurance Co. v. Williams, 128 Nev. Adv. Op. No. 30 (June 28, 2012) – The Court reverses a district court summary judgment for declaratory relief in an insurance action involving the interpretation of a claims-made professional liability insurance policy that appellant Physicians Insurance Company of Wisconsin, Inc., d.b.a. PIC Wisconsin (PIC), issued to nonparty dentist Hamid Ahmadi, D.D.S., covering dental malpractice claims made against Dr. Ahmadi and reported to PIC during the policy period. On cross-motions for summary judgment, the district court determined that PIC received constructive notice of respondent Glenn Williams’s malpractice claim against Dr. Ahmadi while the policy was in force and held that this was enough to trigger coverage; the Court reversed, ruling that for a “report” of a potential demand for damages to qualify as a “claim” requires sufficient specificity to alert the insurer’s claim department to the existence of a potential demand for damages arising out of an identifiable incident, involving an identified or identifiable claimant or claimants, with actual or anticipated injuries.

State v. Barren, 128 Nev. Adv. Op. No. 31 (June 28, 2012) – The Court reverses a district court order granting a petition for a writ of mandamus and directing the justice court to dismiss a criminal complaint for lack of jurisdiction, ruling that 1) NRS 62B.330(3)(e)(2) [a statutory provision that divests a juvenile court of jurisdiction over a person who commits a class A or B felony between 16 and 18 years of age but is not identified until after reaching 21 years of age] governs jurisdiction over any proceedings initiated after the provision went into effect on October 1, 2009, regardless of when the offense was committed; 2) respondent Gregory Barren allegedly committed class A and B felonies at 17 years of age but was not identified until after reaching 21 years of age; and 3) because NRS 62B.330(3)(e)(2) was in effect when the State initiated proceedings against Barren, the district court, not the juvenile court, has jurisdiction over his criminal case.

In re George J., 128 Nev. Adv. Op. No. 32 (June 28, 2012) – The Court affirms a district court order transferring a juvenile case for adult criminal proceedings, analyzing the relationship between NRS 62B.330(3)(e)(1) and NRS 62B.335, two statutory provisions that govern the extent of the juvenile court’s jurisdiction when a person who has been charged with committing an offense when the person was between 16 and 18 years of age that would be a category A or B felony if committed by an adult. In those circumstances, NRS 62B.330(3)(e)(1) provides that the act is not a “delinquent act” and divests the juvenile court of jurisdiction if the person is identified and charged between the ages of 20 years, 3 months and 21 years. Pursuant to NRS 62B.335, if a person charged with a delinquent act that would have been a category A or B felony if committed by an adult is identified before reaching 21 years of age but is not apprehended until after reaching 21 years of age, then the juvenile court retains jurisdiction to conduct a hearing to determine whether to dismiss the charges or transfer the case to district court for criminal proceedings. The Court rules that 1) NRS 62B.335 only applies to delinquent acts and therefore does not apply to acts that are “deemed not to be a delinquent act” under NRS 62B.330(3); 2) thus, if the case is excluded from the juvenile court’s jurisdiction under NRS 62B.330(3), then the

juvenile court does not obtain jurisdiction by virtue of NRS 62B.335; 3) here, the juvenile court lacked jurisdiction under NRS 62B.330(3)(e)(1); and 4) the juvenile court nevertheless reached the correct result by transferring the case to the district court for adult criminal proceedings.

Tri-County Equipment & Leasing v. Klinke, 128 Nev. Adv. Op. No. 33 (June 28, 2012) – The Court reverses a district court judgment entered on a jury verdict in a tort action involving the issue of whether proof of California workers' compensation payments can be admitted into evidence in a personal injury action in Nevada, ruling that 1) nothing in NRS 616C.215(10) precludes its applicability to cases in which workers' compensation payments were made under another state's similar system; 2) in a trial governed by Nevada law, the workers' compensation payments made to an injured employee must be admitted as evidence and the proper instruction regarding the jury's consideration of those payments must be given; 3) the benefits received by both parties in Nevada courts under Nevada law remain the same whether the payments were made under this state's or another state's statutes; and 4) pursuant to NRS 616C.215(10), the evidence of the amounts actually paid should have been admitted and the clarifying instruction given.

State, Bus. & Indus. v. Nev. Ass'n Servs., 128 Nev. Adv. Op. No. 34 (August 2, 2012) – The Court affirms a district court order granting a preliminary injunction prohibiting the Nevada Financial Institutions Division (FID) from enforcing its declaratory order and advisory opinion regarding the appropriate amount of homeowners' association lien fees respondents can collect, ruling that the FID does not have jurisdiction to issue an advisory opinion regarding NRS Chapter 116, since the Nevada Real Estate Division and the Commission for Common Interest Communities and Condominium Hotels have exclusive jurisdiction to interpret and administer the provisions of NRS Chapter 116, and that respondents would suffer irreparable harm if the FID enforced its opinion.

Certified Fire Prot. v. Precision Constr., 128 Nev. Adv. Op. No. 35 (August 9, 2012) – On a consolidated appeal from a district court judgment on partial findings and an appeal and cross-appeal from a post-judgment order awarding costs and denying a motion for attorney fees, the Court affirms, ruling that, to recover in quantum meruit, a party must establish legal liability on either an implied-in-fact contract or unjust enrichment basis, and appellant/cross-respondent Certified Fire Protection, Inc. did not provide sufficient evidence to establish either an implied-in-fact contract or unjust enrichment (the Court also affirms on cross-appeal the district court's order denying attorney fees).

Road & Highway Builders v. N. Nev. Rebar, 128 Nev. Adv. Op. No. 36 (August 9, 2012) – On consolidated appeals from a district court judgment on a jury verdict in a contract action and a post-judgment order denying a new trial motion, the Court affirms in part and reverses in part, ruling that 1) when a fraudulent inducement claim contradicts the express terms of the parties' integrated contract, it fails as a matter of law; 2) the compensatory damages awarded by the jury under a separate claim for breach of contract are affirmed; and 3)

because the fraudulent inducement claim fails as a matter of law, the award for punitive damages cannot stand.

Bonnell v. Lawrence, 128 Nev. Adv. Op. No. 37 (August 9, 2012) – The Court affirms a district court order dismissing a complaint seeking relief from a judgment by independent action pursuant to NRCP 60(b)'s savings clause, ruling that an independent action to obtain relief from an otherwise unreviewable final judgment will lie only when needed to prevent a grave miscarriage of justice, and the allegations and record in this case do not meet that standard.

DeBoer v. Sr. Bridges of Sparks Fam. Hosp., 128 Nev. Adv. Op. No. 38 (August 9, 2012) – The Court reverses a district court order dismissing a tort action, ruling that 1) while a medical facility has a duty to provide competent medical care, when a medical facility performs a nonmedical function, general negligence standards apply, such that the medical facility has a duty to exercise reasonable care to avoid foreseeable harm as a result of its actions; and 2) in this instance, the district court erred when it found that the medical facility owed the patient no duty beyond the duty to provide competent medical care and dismissed the complaint for failure to state a claim.

Liapis v. Dist. Ct., 128 Nev. Adv. Op. No. 39 (August 9, 2012) – The Court grants a writ petition challenging a district court order disqualifying counsel, ruling that an attorney who represents one of his parents in a divorce action between both parents is not subject to disqualification 1) on the basis of an appearance of impropriety because appearance of impropriety is not a basis for disqualifying counsel except in the limited circumstance of a public lawyer; nor 2) under the concurrent-conflict-of-interest rule because, absent an ethical breach by the attorney that affects the fairness of the entire litigation or a proven confidential relationship between the nonclient parent and the attorney, the nonclient parent lacks standing to seek disqualification under RPC 1.7.

Washoe County v. Otto, 128 Nev. Adv. Op. No. 40 (August 9, 2012) – The Court affirms a district court order dismissing a petition for judicial review of a State Board of Equalization tax decision, ruling that 1) under the Nevada Administrative Procedure Act (APA), NRS 233B.130(2)(a) requires that a petitioner name as respondents to a petition for judicial review of an administrative decision “all parties of record”; 2) a party must strictly comply with the APA naming requirement as a prerequisite to invoking the district court’s special statutory jurisdiction to review an administrative decision; 3) when a petitioner fails to name in its petition each party of record to the underlying administrative proceedings, the petition is jurisdictionally defective and must be dismissed; and 4) if the petitioner fails to invoke the district court’s jurisdiction by naming the proper parties within the statutory time limit, the petition may not subsequently be amended to cure the jurisdictional defect.

In re Contested Election of Mallory, 128 Nev. Adv. Op. No. 41 (August 9, 2012) - The Court affirms a district court order denying a petition to set aside the election of the Churchill County District Attorney, ruling that the office of district attorney is not a “state office” subject to term limits under Article 15, Section 3(2) of the

Nevada Constitution, since Article 4, Section 32 of the Nevada Constitution declares district attorneys to be “county officers.”

Rolf Jensen & Associates v. Dist. Ct., 128 Nev. Adv. Op. No. 42 (August 9, 2012) – The Court grants a writ petition challenging a district court order denying petitioner’s motion for summary judgment in a tort action, ruling that the Americans with Disabilities Act of 1990 (ADA) preempts state law claims for indemnification brought by an admitted violator of the ADA.

Consipio Holding, BV v. Carlberg, 128 Nev. Adv. Op. No. 43 (August 9, 2012) – The Court vacates a district court order, certified as final pursuant to NRCP 54(b), that dismissed a complaint as to several defendants for lack of personal jurisdiction, ruling that 1) Nevada courts can properly exercise personal jurisdiction over nonresident officers and directors who directly harm a Nevada corporation; and 2) the district court failed to conduct an adequate factual analysis to determine whether there existed sufficient minimum contacts between the defendant and the forum state such that the district court could properly exercise personal jurisdiction over the respondents before dismissing the complaint against them.

In re Parental Rights as to J.D.N., 125 Nev. Adv. Op. No. 44 (August 31, 2012) - The Court affirms a district court order terminating parental rights to minor children, ruling that 1) certain hearsay arguments were waived by failing to lodge specific objections at trial; 2) after it is determined that a presumption of parental-fault or child’s-best-interest under NRS 128.109 applies, a parent can rebut that presumption by a preponderance of the evidence; and 3) substantial evidence supports the order terminating parental rights in this case.

Sierra Nevada Administrators v. Negriev, 125 Nev. Adv. Op. No. 45 (September 13, 2012) - The Court affirms a district court order denying a petition for judicial review in a workers’ compensation action, ruling that NRS 616B.227 requires an average monthly wage calculation to include untaxed tip income when an injured employee reported the tip income to his or her employer.

State of Nevada v. Reliant Energy, Inc., 125 Nev. Adv. Op. No. 46 (September 27, 2012) - The Court affirms a district court order dismissing appellants’ complaint as preempted under federal law, in an action alleging that respondents conspired with now-defunct Enron to drive up the price of natural gas in Southern Nevada in violation of Nevada’s antitrust laws.

Gold Ridge Partners v. Sierra Pac. Power, 125 Nev. Adv. Op. No. 47 (September 27, 2012) - The Court denies as moot a motion for remand in an appeal and cross-appeal from a district court judgment in an eminent domain action, ruling that a public agency may abandon an eminent domain action pursuant to NRS 37.180 after it has paid just compensation and the district court has issued a final order of condemnation, but before the resolution of issues pending on appeal, in which case the district retains jurisdiction to address a notice of abandonment and motion to dismiss even while the appeal is pending.

Edelstein v. Bank of New York Mellon, 125 Nev. Adv. Op. No. 48 (September 27, 2012) - The Court affirms a district court order denying a petition for judicial review under the foreclosure medication program (FMP), ruling that 1) to participate in the FMP and obtain an FMP certificate to proceed with the nonjudicial foreclosure of an owner-occupied residence, the party seeking to foreclosure must demonstrate that it is both the beneficiary of the deed of trust and the current holder of the promissory note; and 2) when MERS is the named beneficiary on the deed of trust and a different entity holds the promissory note, the note and the deed of trust are split, making nonjudicial foreclosure by either party improper.

Busefink v. State, 125 Nev. Adv. Op. No. 49 (October 4, 2012) - The Court affirms a judgment of conviction pursuant to an Alford plea of 2 counts of conspiracy to commit the crime of compensation for registration of voters, ruling that NRS 293.805's prohibition on providing compensation to voter registration canvassers based upon the number of voters that a canvasser registers neither violates the First Amendment nor is unconstitutionally vague.

State v. Javier C., 125 Nev. Adv. Op. No. 50 (October 4, 2012) - The Court affirms a district court order dismissing a charge of battery committed by a prisoner under NRS 200.481(2)(f), ruling that the statute applies to criminal custodial confinements and a juvenile detained for delinquency in a state facility is not a "prisoner" (as defined in NRS 193.022) for purposes of the statute.

Sheriff v. Andrews, 125 Nev. Adv. Op. No. 51 (October 4, 2012) - The Court affirms a district court order granting a pretrial petition for writ of habeas corpus and dismissing a charge of possession of an item commonly used to escape, declining to address the constitutionality of NRS 212.093(1) and instead ruling that the statute, which makes it unlawful to possess such items, applies to items used forcibly break out of or physically flee from a jail cell, and does not prohibit the possession of cell phones.

Goudge v. State, 125 Nev. Adv. Op. No. 52 (October 25, 2012) - The Court reverses a district court order denying a post-conviction petition for release from lifetime supervision, ruling that under the statutory provision governing such petitions (NRS 276.0931(3)), the district court has discretion to determine whether a petitioner has met the statutory requirements, but lacks discretion to deny a petition if the courts determines the statutory requirements are met. In this instance, the court denied the petition based upon victim impact testimony and made no findings as to whether the appellant had met the statutory requirements.

In re Fontainebleau Las Vegas Holdings, 125 Nev. Adv. Op. No. 53 (October 25, 2012) - The Court answers in part questions certified pursuant to NRAP 5 regarding equitable subrogation and contractual subordination in a mechanics' lien context, ruling that 1) under the express language of NRS 108.225 equitable subrogation does not apply against mechanics' lien claimants; and 2) pursuant to NRS 108.2453 and 108.2457, subordination agreements purporting to subordinate mechanics' liens prospectively are not enforceable; however,

mechanics' lien claimants may waive their statutory protections under NRS 108.2457.

Hernandez v. Bennett-Haron, 125 Nev. Adv. Op. No. 54 (October 25, 2012) - The Court reverses a district court order in consolidated cases granting in part and denying in part declaratory relief and denying an injunction challenging the constitutionality of the Clark County ordinance code provisions establishing coroner's inquests into officer-involved deaths, ruling that, while appellants' due process arguments fail, the code provision requiring a justice of the peace to preside over coroner's inquest proceedings regarding officer-involved deaths intrudes on the Legislature's authority, and because the offending provision cannot be severed, the entire inquest scheme for officer-involved deaths must be struck down.

Jackson v. State, 125 Nev. Adv. Op. No. 55 (December 6, 2012) - On consolidated appeals from district court judgments of conviction based on similar questions regarding double jeopardy and redundancy, the Court affirms, rejecting the appellants' arguments that their multiple convictions violate Nevada's unique redundancy doctrine, even if they do not offend double jeopardy, reaffirming that multiple convictions factually based on the same act or course of conduct can stand if each crime contains an element the other does not (Barton v. State, 117 Nev. 686, 692, 30 P.3d 1103, 1107 (2001), citing Blockburger v. United States, 284 U.S. 299, 304 (1932), wherein the Court rejected the fact-driven "same conduct" approach in favor of Blockburger's "same elements" approach).

Holcomb v. Georgia Pacific, 125 Nev. Adv. Op. No. 56 (December 6, 2012) - The Court affirms in part and reverses in part a district court summary judgment in a torts action, adopting the test set forth in Lohrmann v. Pittsburgh Corning Corp., 782 F.2d 1156 (4th Cir. 1986), for use in cases where a plaintiff's mesothelioma is alleged to have been caused by exposure to products containing asbestos, and, based on the adoption and application of that test, ruling that appellants raised inferences of probable exposure to Kelly-Moore, Kaiser Gypsum, and Georgia Pacific's products sufficient to defeat summary judgment as to those respondents, but not as to Union Carbide.

Aspen Financial Services v. Dist. Ct., 125 Nev. Adv. Op. No. 57 (December 6, 2012) - The Court denies a writ petition challenging a district court order denying petitioners' motion to stay certain testimonial discovery, ruling that 1) although parties facing a civil proceeding and a simultaneous criminal investigation often confront unpleasant choices with regard to testifying, and although the district court has the power to stay the civil proceeding in the interest of fairness, it is constitutionally permissible for both matters to proceed concurrently; 2) the district court's determination regarding whether a stay is warranted is a discretionary decision that comes at the end of a careful balancing of the interests involved; and 3) in this instance, the district court did not abuse its discretion in denying petitioners' motion to stay.

Clark County v. S. Nevada Health Dist., 125 Nev. Adv. Op. No. 58 (December 6, 2012) - The Court affirms in part and reverses in part a district court order granting writs of mandamus and prohibition in a local government action, ruling that, while NRS 439.365 is ambiguous, the legislative history demonstrates that NRS 439.365 was designed to provide health districts with a dedicated funding source that would not be subject to the unabated discretion of the county, and the statute must be interpreted as requiring a county to adopt a health district's budget as submitted and without modification, so long as the requested amount does not exceed the statutory maximum set forth in NRS 439.365(2).

United Rentals Hwy. Techs. v. Wells Cargo, 125 Nev. Adv. Op. No. 59 (December 6, 2012) – On consolidated appeals from district court orders and a judgment in a negligence and indemnity action, the Court reverses, in a case involving consideration of what effect specific contract language has on an indemnitor's duty to indemnify and defend an indemnitee in a personal injury action, where that language provides that indemnification will occur "to the extent" that any injury or damage is "caused" by the indemnitor. Appellant United Rentals Highway Technologies, Inc., contracted to provide traffic control on a road improvement project coordinated by respondent Wells Cargo, Inc. The parties' contract required United Rentals to indemnify, defend, and hold harmless Wells Cargo to the extent that United Rentals caused any injury or damage. A woman was injured in connection with the project and sued both parties for negligence; Wells Cargo sought indemnification and defense from United Rentals. Ruling that a plain reading of the contractual indemnity language imposes a causal limitation on United Rentals' duty to indemnify and defend Wells Cargo, and because the jury found that United Rentals did not proximately cause the underlying accident, United Rentals did not have a duty to indemnify or defend Wells Cargo.

Grisham v. Grisham, 125 Nev. Adv. Op. No. 60 (December 6, 2012) – On consolidated appeals from a district court divorce decree and a judgment adjudicating an attorney's lien, the Court affirms, finding that the district court incorporated into its decree a written but unsigned property settlement agreement based on the parties' testimony in open court that they stipulated to its terms, and admitted the draft as a hearing exhibit and approved the oral stipulation by minute order. This procedure complied with applicable district court rules, which obviates any issue as to the statute of frauds, and the draft otherwise met the requirements for an enforceable contract.

Einhorn v. BAC Homes Loans Servicing, 125 Nev. Adv. Op. No. 61 (December 6, 2012) – The Court affirms a district court order denying sanctions for alleged violations of the foreclosure mediation statute and rules, ruling that district court's findings that BAC provided all documents needed to determine BAC's entitlement to enforce the note and to foreclose and that BAC participated in good faith had substantial evidentiary support.

Nevada v. Tricas, 125 Nev. Adv. Op. No. 62 (December 13, 2012) - The Court affirms a district court order granting respondent's motion to withdraw her guilty plea and dismiss the case, ruling that 1) Nevada's prosecutorial immunity

statutes, NRS 178.572 and NRS 178.574, confer transactional immunity, and 2) when this immunity is granted to a defendant who has already pleaded guilty to, but has not yet been sentenced for, offenses implicated by the compelled testimony, the immunity bars the defendant's punishment in the pending criminal prosecution.

DeVries v. Gallio, 125 Nev. Adv. Op. No. 63 (December 13, 2012) - The Court affirms in part and reverses in part a district court divorce decree, ruling that while the district court's separate property decisions are supported by substantial evidence, the court failed to conduct an evidentiary hearing on the spousal support issue or expressly analyze the factors for determining spousal support set forth in *Sprenger v. Sprenger*, 110 Nev. 855, 878 P.2d 284 (1994), and NRS 125.150(8), before declining to award spousal support to either party.

Casey v. Wells Fargo Bank, N.A., 125 Nev. Adv. Op. No. 64 (December 13, 2012) - The Court reverses a district court order confirming an arbitration award and entering judgment under the Uniform Arbitration Act of 2000, codified in NRS 38.206 to 38.248, ruling that the district court summarily granted the motion of respondent Wells Fargo Bank, N.A., to confirm its arbitration award against appellant Inger Casey, without giving Casey the opportunity to be heard in opposition to the motion to confirm, even though the 90-day period for Casey to move to vacate, modify, or correct the award had yet to run.

Butwinick v. Hepner, 125 Nev. Adv. Op. No. 65 (December 27, 2012) - The Court denies a motion to substitute in as real parties in interest and to dismiss proper person appeal from a district court judgment in a contract and tort action, ruling that, although Nevada's judgment execution statutes permit a judgment creditor to execute on a debtor's personal property, including the right to bring an action to recover a debt, money, or thing, a "thing in action" subject to execution under NRS 21.080 and NRS 10.045 does not include a party's defenses to an action, and permitting a judgment creditor to execute on a judgment in such a way would cut off a debtor's defensive appellate rights in a manner inconsistent with due process principles.

Beazer Homes Holding Corp. v. Dist. Ct., 125 Nev. Adv. Op. No. 66 (December 27, 2012) - The Court grants in part a writ petition challenging a district court order determining that, under NRS 116.3102(1)(d), a homeowners' association could litigate, on behalf of its members, construction-defect without meeting NRCP 23's class action prerequisites, ruling that while purely representative actions brought by homeowners' associations are not necessarily precluded by failure to meet NRCP 23's class action prerequisites, the district court is required, if requested by the parties, to thoroughly analyze and document its findings to support alternatives to class action for the case to proceed [petition granted in part to permit the district court to conduct the appropriate analysis].

Howard v. State, 128 Nev. Adv. Op. 67 (December 27, 2012) – In a capital post-conviction appeal related to sealing documents, the Court grants the State's motion for reconsideration of order sealing documents and denies the appellant's competing motions, addressing the procedures and requirements for sealing

documents and records in criminal cases pending in the Nevada Supreme Court and ruling that 1) filed documents are presumptively open to the public unless the Court grants a motion to file specific documents under seal based on a showing that such action is required by law or an identified significant competing interest; 2) a party who seeks to have documents filed under seal must file a motion that identifies the information that the party seeks to have sealed, sets forth the reasons that such action is necessary, and specifies the duration of the sealing order; and 3) in this instance, the documents that appellant's counsel sought to have sealed do not meet the requirements for sealing since the manner in which appellant attempted to seal the documents initially was improper and the information he sought to protect from public disclosure is not appropriate for sealing.

Brass v. State, 128 Nev. Adv. Op. 68 (December 27, 2012) – The Court reverses a jury conviction of burglary, grand larceny, conspiracy to commit kidnapping, first degree kidnapping, conspiracy to commit murder, and first-degree murder with the use of a deadly weapon, ruling that the district court committed reversible error by dismissing a prospective juror before conducting a hearing pursuant to Batson v. Kentucky, 476 U.S. 79 (1986); when a defendant asserts a Batson violation, it is a structural error to dismiss the challenged juror prior to conducting the Batson hearing because it shows that the district court predetermined the challenge before actually hearing it.

Dynamic Transit v. Trans Pac. Ventures, 128 Nev. Adv. Op. 69 (December 27, 2012) – On an appeal and cross-appeal from a district court amended judgment, certified as final pursuant to NRC 54(b), in a contract and torts action, the Court affirms the district court's judgment in respondents' favor, ruling that a shipper's state-law claim for conversion is not preempted by the Carmack Amendment's federal liability limitation for interstate carriers, where the carrier was not authorized to take possession of the shipper's property but did so for its own gain, since the Carmack Amendment does not apply in cases of true conversion and sufficient evidence supports the district court's findings and award of damages.

In re A.B., 128 Nev. Adv. Op. 70 (December 27, 2012) – The Court denies a writ petition challenging a district court order that rejected a dependency master's findings of fact, recommendation, and order of approval in an NRS Chapter 432B proceeding and dismissed the abuse and neglect petition, ruling that the record supports the juvenile court's decision and there was no abuse of discretion in sustaining the objection to the dependency master's findings and dismissing the NRS Chapter 432B petition.

Foster v. Costco Wholesale Corporation, 128 Nev. Adv. Op. 71 (December 27, 2012) – The Court reverses a district court summary judgment in favor of respondent Costco against appellant in a tort action arising from appellant's injuries from falling over a wooden pallet positioned in an aisle of a Costco warehouse by an employee. The district court ruled that Costco had not breached its duty of care because the hazard created by the pallet was open and obvious to appellant. Adopting the rule set forth in the Restatement (Third) of

Torts: Physical and Emotional Harm section 51, the Court holds that 1) a landowner owes a duty of reasonable care to entrants for risks that exist on the landowner's property; 2) the open and obvious nature of a dangerous condition does not automatically relieve a landowner from the general duty of reasonable care; 3) and the fact that a dangerous condition may be open and obvious bears on the assessment of whether reasonable care was exercised by the landowner and whether reasonable self-protection was exercised by the injured party [remanded to the district court to conduct the appropriate analysis].