



Minnesota Court of Appeals

Significant Decisions

September 2019-August 2020

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Part I – CIVIL CASES

Administrative Law

***In re License of Thompson*, 935 N.W.2d 147 (Minn. App. Sept. 23, 2019), review denied (Minn. Dec. 17, 2019) (A19-0098).**

1. The Minnesota Board of Psychology is authorized to commence and maintain a disciplinary proceeding against, and to impose discipline on, a psychologist whose license no longer is valid because it was not renewed, so long as the license has not been terminated.

2. There is no limit on the time in which the Minnesota Board of Psychology may commence a disciplinary proceeding against a licensed psychologist if the complaint alleges the type of sexual misconduct described in section 148.941, subdivision 7(b)(2), of the Minnesota Statutes. The seven-year limitation period in section 148.941, subdivision 7(a), does not apply to such a complaint.

***In re Wazwaz*, 943 N.W.2d 212 (Minn. App. Apr. 6, 2020), review denied (Minn. June 30, 2020) (A19-1170).**

A person who holds out as a residential building contractor and who does not meet any of the exemptions from licensure set forth in Minn. Stat. § 326B.805, subd. 6 (2018), must comply with the license requirements of Minn. Stat. §§ 326B.801-.885 (2018 & Supp. 2019), even if the person, or the person’s business entity, is part of a joint venture with a person or entity that holds a license.

***In re Annexation of Real Prop. to City of Bemidji from Bemidji Twp.*, 945 N.W.2d 68 (Minn. App. May 4, 2020), review denied (Minn. July 21, 2020) (A19-1740).**

Review by the Minnesota Office of Administrative Hearings (OAH) of a city’s annexation by ordinance, under Minn. Stat. § 414.033, subd. 2 (2018), is limited to satisfaction of the conditions and procedural requirements in Minn. Stat. § 414.033, subds. 2, 2b.

***Leppink v. Water Gremlin Co.*, 944 N.W.2d 493 (Minn. App. June 1, 2020) (A19-1975).**

A “public health nuisance” under Minn. Stat. § 145.075 (2018) is any activity or failure to act that adversely affects the public health. An activity or failure to act affects the public health if it affects a considerable number of persons, even if the effects are geographically dispersed.

Appellate Procedure & Review

***State v. O’Neill*, 945 N.W.2d 71 (Minn. App. May 26, 2020), review denied (Minn. Aug. 11, 2020) (A19-0803).**

The supreme court’s directive to review a district court’s finding that a defendant is competent to stand trial to “determine if the district court gave proper weight to the

evidence produced and if its finding of competency is adequately supported by the record” requires us to defer to a district court’s factual findings unless they are clearly erroneous.

Child Protection

***In re Welfare of the Child of J.R.R.*, 943 N.W.2d 661 (Minn. App. April 13, 2020) (A19-1739).**

1. If a district court orders a voluntary termination of parental rights under Minn. Stat. § 260C.301, subd. 1(a) (2018), it must make a determination regarding the child’s best interests based on a balancing of the best-interests factors listed in Minn. R. Juv. Prot. P. 58.04(c)(2)(ii), even if the termination petition is resolved without a trial.

2. A record inadequate to determine a child’s best interests is also inadequate to determine whether good cause exists for a parent to voluntarily terminate parental rights.

Civil Procedure

***Young v. Maciora*, 940 N.W. 2d 509 (Minn. App. Feb. 24, 2020), review denied (Minn. May 19, 2020) (A19-1196).**

A nonresident party’s service of process on a Minnesota resident in a prior lawsuit, standing alone, does not establish sufficient minimum contacts under the Fourteenth Amendment’s Due Process Clause to warrant a Minnesota court’s exercise of personal jurisdiction over that nonresident party in a separate and later lawsuit.

***Ward v. El Rancho Manana, Inc.*, 945 N.W.2d 439 (Minn. App. May 18, 2020), review denied (Minn. Sept. 29, 2020) (A19-1592).**

Under the doctrine of res judicata, shareholders of a closely held corporation who bring later derivative claims share privity with different shareholders of the same corporation that brought an earlier lawsuit alleging derivative claims when the two suits involve claims arising from the same set of factual circumstances.

***Safeco Ins. Co. v. Holmgren Bldg. Repair, Inc.*, 946 N.W.2d 638 (Minn. App. June 29, 2020), review denied (Minn. Sept. 15, 2020) (A19-1706).**

I. To extend the one-year deadline to file an action with the district court, a party must satisfy all five requirements contained in rule 5.04(a) of the Minnesota Rules of Civil Procedure.

II. A stipulation that does not contain explicit language extending the one-year filing deadline is inadequate under rule 5.04(a) of the Minnesota Rules of Civil Procedure.

***Berthiaume v. Allianz Life Ins. Co. of N. Am.*, 946 N.W.2d 423 (Minn. App. June 1, 2020) (A19-1422).**

An attorney whom one party in litigation has identified to serve as an expert witness to testify against the attorney’s former client should be disqualified from serving as an expert witness if it was objectively reasonable for the former client to believe that a

confidential relationship existed between it and the attorney and if the client disclosed to the attorney confidential information that either regards the same subject matter or is directly related to the subject matter about which the attorney proposes to testify.

***Cnty. Cares v. Faulkner*, 949 N.W.2d 296 (Minn. App. Aug. 24, 2020), review denied (Minn. Nov. 17, 2020) (A19-1859).**

Agents are authorized to appear in designated housing courts on behalf of business-entity landlords under Minn. R. Gen. Prac. 603.

Civil Commitment

***In re Civil Commitment of Breault*, 942 N.W.2d 368 (Minn. App. Mar. 9, 2020) (A19-1484).**

A patient's recent, inconsistent compliance with taking prescribed neuroleptic medication as treatment for a mental illness provides a district court with a sufficient basis to conclude that the patient "refuses to consent to treatment with neuroleptic medications" under Minnesota Statutes section 253B.092, subdivision 8(a) (2018).

***In re Civil Commitment of Opiacha*, 943 N.W.2d 220 (Minn. App. April 13, 2020) (A19-1693).**

1. If a person who has been civilly committed as mentally ill and dangerous petitions for discharge and seeks reconsideration of the denial of the petition, and if the person asserts his or her rights under the Due-Process Clause, the commitment appeal panel must consider the committed person's due-process rights when ruling on a motion to dismiss pursuant to rule 41.02(b).

2. A person who has been civilly committed as mentally ill and dangerous has a right under the Due-Process Clause to be discharged if the person does not have serious difficulty in controlling his or her behavior due to a mental illness or mental abnormality.

Contracts

***Stern 1011 First St. S., LLC v. Gere*, 937 N.W.2d 173 (Minn. App. Jan. 6, 2020), review denied (Minn. March 25, 2020) (A19-0338).**

Defendants in a civil suit may waive their contractual right to compel arbitration by filing a motion to dismiss even if they purport to reserve the right to later seek arbitration.

***TMT Mgmt. Grp., LLC v. U.S. Bank Nat. Ass'n.*, 940 N.W.2d 239 (Minn. App. Feb. 10, 2020), review denied (Minn. Apr. 28, 2020) (A19-0915).**

An allegation of commercial bribery does not relieve a litigant of the need to show targeting and market foreclosure in order to state an antitrust refusal-to-deal claim under Minn. Stat. § 325D.53, subd. 1(3) (2018).

Environmental Law

***Friends to Restore St. Mary's, LLC v. Church of Saint Mary, Melrose*, 934 N.W.2d 130 (Minn. App. Sept. 3, 2019), review denied (Minn. Nov. 19, 2019) (A18-2107).**

The ecclesiastical abstention doctrine bars adjudication of claims under the Minnesota Environmental Rights Act (MERA), Minn. Stat. §§ 116B.01-.13 (2018), if an affirmative defense cannot be resolved without disturbing the ruling of a governing ecclesiastical body with respect to issues of doctrine and without interfering with an internal church decision that affects the faith and mission of the church itself.

Family Law

***Wiel v. Wahlgren*, 934 N.W.2d 125 (Minn. App. Sept. 3, 2019) (A18-1865).**

When an adverse party requests the appointment of a guardian ad litem for a party who is not an infant and has never been adjudicated as incompetent, rule 17.02 of the Minnesota Rules of Civil Procedure entitles the party to notice and an opportunity for a hearing before a guardian ad litem is appointed.

***Bedner v. Bedner*, 946 N.W.2d 921 (Minn. App. June 15, 2020) (A19-1535).**

When an appeal is taken from a nonappealable order, it may not be construed to be from an appealable order or judgment if appellant served and filed the notice of appeal after the deadline to appeal from the appealable order or judgment.

***In re M.J.R.*, 948 N.W.2d 147 (Minn. App. July 20, 2020) (A20-0202).**

If the biological parents of a child execute a valid recognition of parentage under Minn. Stat. § 257.75 (2018), and it has not been revoked or vacated, then both parents are entitled to receive notice of an adoption of the child and must consent to any adoption, under Minn. Stat. §§ 259.24, subd. 1(a), .49, subd. 1(b)(7) (2018), even if mother irrevocably consented to the child's adoption under Minn. Stat. § 259.24, subd. 6a (2018).

***Sinda v. Sinda*, 949 N.W.2d 170 (Minn. App. Aug. 10, 2020) (A19-1291).**

A spousal-maintenance obligee's "cohabitation" with another adult constitutes a substantial change in circumstances that justifies modifying maintenance if consideration of the four factors enumerated in Minn. Stat. § 518.552, subd. 6 (2018), indicates that cohabitation makes the existing maintenance obligation unreasonable and unfair.

Government & Immunity

***Adams v. Harpstead*, 947 N.W.2d 838 (Minn. App. July 6, 2020), review denied (Minn. Sept. 29, 2020) (A19-1514).**

To sustain a claim for emotional-distress damages under the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. §§ 13.01-.90 (2018), a plaintiff must produce

evidence to establish that emotional harm has occurred under circumstances tending to guarantee its genuineness.

Local Government

***Hayden v. City of Minneapolis*, 937 N.W.2d 790 (Minn. App. Jan. 21, 2020), review denied (Minn. Apr. 14, 2020) (A19-0346, A19-0355).**

The Minneapolis City Council lacks authority to operate and manage a park because the Minneapolis City Charter reserves the authority to establish, govern, administer, and maintain parks to the Minneapolis Park and Recreation Board.

Probate

***In re Estate of Nelson*, 936 N.W.2d 897 (Minn. App. Nov. 25, 2019) (A19-0503, A19-0507).**

The plain and unambiguous language of Minn. Stat. § 524.3-721 (2018), allows a district court, upon a proper motion, to review the reasonableness of compensation received by a specialized agent employed by the estate, to order appropriate refunds if the compensation received is determined to be excessive, and to fashion interim injunctive relief if warranted after analysis of the factors set forth in *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 137 N.W.2d 314 (1965).

Real Estate & Property Rights

***Metro. Council v. Ziegler Inc.*, 937 N.W.2d 481 (Minn. App. Jan. 13, 2020) (A19-0646).**

The Metropolitan Council—insofar as it performs its public-wastewater-management services—is a “public service corporation” for purposes of Minn. Stat. § 117.189(a) (2018).

Remedies

***State by Comm’r of Transp. v. Schneider*, 934 N.W.2d 140 (Minn. App. Sept. 9, 2019) (A19-0343).**

In eminent-domain proceedings, interest accrued under Minn. Stat. § 117.195, subd. 1 (2018), is not included in the final judgment or award of damages to determine eligibility for reimbursement of attorney fees under the plain meaning of Minn. Stat. § 117.031(a) (2018).

Torts

***MacDonald v. Brodkorb*, 939 N.W.2d 468 (Minn. App. Feb. 24, 2020) (A19-0665).**

I. A candidate for public office is a limited-purpose public figure whose claims for defamation require proof of actual malice.

II. A candidate for public office may remain a public figure after an election loss by repeatedly seeking elective office.

III. A public-figure candidate for public office cannot maintain a claim of defamation by implication.

PART II – CRIMINAL CASES AND CASES ON RELATED SUBJECTS

Constitutional Law

***State v. Peterson*, 936 N.W.2d 912 (Minn. App. Dec. 9, 2019), review denied (Minn. Feb. 26, 2020) (A18-2105).**

Minnesota Statutes § 609.749, subd. 2(4) (2016), which criminalizes stalking by telephone, violates the First Amendment to the United States Constitution because it is facially overbroad, proscribes a substantial amount of protected speech, and cannot be remedied by narrowing its construction or severing language.

DWI & Implied Consent

***Jensen v. Comm’r of Pub. Safety*, 932 N.W.2d 844 (Minn. App. Sept. 3, 2019) (A19-0243).**

The commissioner of public safety may not revoke a driver’s license based on blood test results exceeding the statutory alcohol-concentration limit without a hearing under Minnesota Statutes section 171.177, subdivision 5 (2018), unless the officer directing the test gives the driver the refusal-is-a-crime warning required by subdivision 1 of the statute.

***Birkland v. Comm’r of Pub. Safety*, 940 N.W.2d 822 (Minn. App. Feb. 18, 2020) (A19-0937).**

Minnesota Statutes section 169.19, subdivision 1(b) (2018) does not mandate that a driver turning left from a single left-turn lane must turn into the innermost lane of the roadway being entered.

***McCormick v. Comm’r of Pub. Safety*, 945 N.W.2d 55 (Minn. App. May 4, 2020) (A19-1466).**

Whether an officer gave a breath-test advisory that informed a person that refusal to submit to a breath test is a crime depends on whether the given advisory, considered in its context as a whole, is misleading or confusing.

***Jensen v. 1985 Ferrari*, 949 N.W.2d 729 (Minn. App. Aug. 31, 2020) (A19-1927).**

A driver participating in the ignition-interlock program under Minnesota Statutes section 171.306 (2018) must be enrolled in the program with the vehicle that is the subject of the forfeiture proceedings in order to stay forfeiture of that vehicle under Minnesota Statutes section 169A.63, subdivision 13 (Supp. 2019).

Evidence

***Moore v. State*, 945 N.W.2d 421 (Minn. App. May 18, 2020), review denied (Minn. Aug. 11, 2020) (A19-1522).**

A violation of the rule announced in *State v. Dexter*, 269 N.W.2d 721 (Minn. 1978), which prevents the misuse of impeachment evidence, does not occur unless the party who called the witness was aware that the witness would recant before the witness took the stand.

Juvenile Delinquency

***In re Welfare of: C.A.R.*, 941 N.W.2d 420 (Minn. App. Mar. 2, 2020), review denied (Minn. May 19, 2020) (A19-1022).**

A district court may exercise its broad discretion to adjudicate a child as delinquent in a felony-level delinquency case while continuing a stay of adjudication in a prior gross-misdemeanor delinquency case and is not required to adjudicate only the least-severe delinquency offense.

Pretrial Procedure

***In re Program to Aid Victims of Sexual Assault*, 943 N.W.2d 673 (Minn. App. April 13, 2020) (A20-0196).**

To obtain privileged or confidential records in the possession of a third party for in-camera review by the district court, a criminal defendant must comply with the requirements of Minn. R. Crim. P. 22.01, subd. 2(c), and obtain a court order for a subpoena.

Probation

***State v. Hoskins*, 943 N.W.2d 203 (Minn. App. Apr. 6, 2020) (A19-0959).**

When a district court imposes an intermediate sanction of incarceration for a probation violation, the defendant is entitled to the statutory good-conduct allowance under Minn. Stat. § 643.29 (2018) and shall not be prospectively deprived of that good-conduct allowance.

Search & Seizure

***State v. Sexter*, 935 N.W.2d 157 (Minn. App. Oct. 14, 2019), review denied (Minn. Dec. 17, 2019) (A19-0586).**

A law-enforcement officer may seize an item pursuant to a search warrant if the item is described in the search warrant, if there is a strong relationship between the seized item and the things described in the search warrant, or if the seized item clearly and

definitely relates to the suspected criminal conduct that gave rise to the issuance of the search warrant.

***State v. Bellcourt*, 937 N.W.2d 160 (Minn. App. Dec. 16, 2019), review denied (Minn. Feb. 26, 2020) (A19-0100).**

A state-licensed peace officer employed by a federally recognized Indian tribe is authorized to seize and arrest a person outside the boundaries of the tribe's reservation for an offense that occurred outside the boundaries of the reservation if the officer is within the course and scope of employment, as provided by section 629.40, subdivision 3, of the Minnesota Statutes.

***State v. Wilde*, 947 N.W.2d 473 (Minn. App. July 13, 2020), review denied (Minn. Sept. 29, 2020) (A19-1509).**

A search warrant that mistakenly misidentifies the person to be searched does not lack sufficient particularity when the warrant and its supporting documents provide sufficient information to identify the intended person, the circumstances of the case present no reasonable possibility that any other person would be searched, and the intended person was searched.

Sentencing & Restitution

***State v. Selseth*, 933 N.W.2d 541 (Minn. App. Sept. 3, 2019) (A18-1426).**

When a criminal defendant pays a fine for an offense listed on the Statewide Payables List established pursuant to Minn. R. Crim. P. 23.03, subd. 2, in an amount that results in a petty-misdemeanor conviction, that conviction may not be used to enhance a subsequent offense to a gross misdemeanor by operation of Minn. Stat. § 609.131, subd. 3 (2016).

***State v. Rabold*, 935 N.W.2d 902 (Minn. App. Oct. 7, 2019) (A19-0278).**

An upward sentencing departure based on a victim's particular vulnerability may be imposed when the victim is forced at gunpoint to disrobe during the commission of a crime.

***State v. Brown*, 937 N.W.2d 146 (Minn. App. Dec. 2, 2019), review denied (Minn. Feb. 18, 2020) (A18-1880).**

When an offender is convicted simultaneously of multiple sex offenses in the same hearing, the offender does not have a prior sex-offense conviction under Minn. Stat. § 609.3455, subd. 1(g) (2016), and is not subject to lifetime conditional release under Minn. Stat. § 609.3455, subd. 7(b) (2016), absent another qualifying conviction.

***State v. Nowels*, 911 N.W.2d 750 (Minn. App. Mar. 30, 2020), review denied (Minn. June 16, 2020) (A19-0415).**

Under Minnesota Statutes section 609.035, subdivisions 1, 3 (2016), a district court cannot convict and sentence a defendant for being an ineligible person in possession of

both a firearm and ammunition in violation of Minnesota Statutes section 624.713, subdivision 1(2) (2016), when the defendant possesses a single loaded firearm.

***State v. Woods*, 945 N.W.2d 414 (Minn. App. May 18, 2020) (A19-1061).**

The amelioration doctrine applies to the 2019 sentencing guidelines provision altering the determination of when a prior conviction has decayed for calculating criminal history, which requires that a current offense date be established by the fact-finder or through an admission by the defendant.

Substantive Criminal Law

***State v. Suspitsyn*, 941 N.W.2d 423 (Minn. App. Mar. 16, 2020), review denied (Minn. May 27, 2020) (A19-1112, A19-1113, A19-1115, A19-1116).**

A person violates Minnesota Statutes section 609.324, subdivision 2(2) (2018), only if, while in a public place, the person hires, offers to hire, or agrees to hire another person to engage in sexual penetration or sexual contact.

***Freeman v. State*, 944 N.W.2d 488 (Minn. App. Apr. 27, 2020) (A19-1247).**

For a petitioner seeking exoneration compensation, the phrase “any evidence of factual innocence” in Minn. Stat. § 590.11, subd. 1(c)(2) (Supp. 2019), does not include impeachment evidence about a victim’s prior acts of dishonesty unrelated to the petitioner’s alleged commission of the underlying crime.

***State v. Andersen*, 946 N.W.2d 627 (Minn. App. June 8, 2020) (A19-0923).**

Section 609.748, subdivision 6, of the Minnesota Statutes, which sets forth the crime of violating a harassment restraining order, does not expressly provide for strict liability and is not a public-welfare offense. Thus, in a prosecution for violating a harassment restraining order, the state must prove that the defendant knew all the facts that would cause him or her to be in violation of the harassment restraining order.

***State v. Davenport*, 948 N.W.2d 176 (Minn. App. July 27, 2020) (A19-1476).**

A person charged—prior to the effective date of the 2005 amendment to Minnesota Statutes section 243.166, subdivision 1(1), 2005 Minn. Laws ch. 136, art. 3, § 8, at 939—with aiding and abetting criminal sexual conduct is required to register as a predatory offender only if they were subject to predatory-offender registration on or after the effective date of the amendment.

***State v. Li*, 948 N.W.2d 151 (Minn. App. July 27, 2020) (A19-1970).**

The offense of failing to yield to an emergency vehicle under Minnesota Statutes section 169.20, subdivision 5(a) (2018), requires proof that the emergency-vehicle driver gave an audible signal by siren, except in the case of an emergency vehicle escorting an oversize or overweight vehicle.

***State v. Jonsgaard*, 949 N.W.2d 161 (Minn. App. Aug. 10, 2020) (A19-1612).**

A forged signature on the front of a personal check, purporting to be that of the check's maker, is not a false endorsement as contemplated by Minn. Stat. § 609.631, subd. 2(2) (2016)

Trial Procedure

***State v. Petersen*, 933 N.W.2d 545 (Minn. App. Sept. 3, 2019) (A18-1431).**

A criminal defendant's constitutional right to a public trial applies throughout voir dire proceedings. If a district court closes the courtroom without making adequate findings concerning the reasons for the closure, the necessary breadth of the closure, and the existence or absence of reasonable alternatives to closure, as required by *Waller v. Georgia*, 467 U.S. 39, 104 S. Ct. 2210, 81 L.Ed.2d 31 (1984), the appropriate initial remedy is a remand to the district court for an evidentiary hearing and findings concerning whether the closure was justified.

***State v. Flah*, 933 N.W.2d 807 (Minn. App. Sept. 9, 2019), review denied (Minn. Nov. 27, 2019) (A18-1758).**

If a defendant is voluntarily absent from his or her jury trial and has not personally consented to or requested a no-adverse-inference jury instruction, a district court does not err by denying defense counsel's request for a no-adverse-inference jury instruction.

***State v. Tomlinson*, 938 N.W.2d 279 (Minn. App. Dec. 23, 2019), review denied (Minn. Feb. 26, 2020) (A18-1522).**

In cases where criminal charges are severed for trial and result in multiple final judgments, each final judgment is appealable and subject to the timelines in Minnesota Rule of Criminal Procedure 28.02.