

The background features a stylized illustration of three books. On the left, two books are stacked vertically, both with green covers and white pages. To the right, a single book with a red cover and white pages is positioned diagonally, leaning against the other books. The books are rendered with simple outlines and flat colors.

# **Minnesota Court of Appeals**

## **Significant Decisions**

**September 2009-August 2010**

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## PART I – CIVIL CASES

### Administrative Law

*In re Admin. Order Issued to Wright Cnty.*, 784 N.W.2d 398 (Minn. App. 2010).

After a township has adopted and begun to enforce the Minnesota State Building Code, the Minnesota Department of Labor and Industry may order a county to cease and desist enforcing the code within that township.

*In re Application of N. States Power Co. d/b/a Xcel Energy for Approval of a Mercury Emissions Reduction Plan for the Sherburne Cnty. Generating Facility's Unit 3*, 775 N.W.2d 652 (Minn. App. 2009).

The Mercury Emissions Reduction Act (the act), Minn. Stat. §§ 216B.68–.688 (2008), requires public utilities that own targeted units at qualifying facilities to submit a mercury-emissions-reduction plan. The Minnesota Public Utilities Commission has jurisdiction to review and approve plans submitted by a public utility despite its co-ownership of the qualifying facility with a municipal utility.

*Fischer Sand & Aggregate, Inc. v. Cnty. of Dakota*, 771 N.W.2d 890 (Minn. App. 2009).

The eight-year period for expiration of agricultural-preserve status, under Minn. Stat. § 473H.08, subd. 2 (2008), commences when the landowner delivers the form provided by the Commissioner of Agriculture to the relevant authority under the statute.

*Little v. Arrowhead Reg'l Corr.*, 773 N.W.2d 344 (Minn. App. 2009).

1. An agency loses jurisdiction over a petition for reconsideration if, before the agency has issued a written decision on the petition, a timely certiorari appeal is taken and perfected pursuant to Minn. Stat. § 14.64 (2008) and this court thereby acquires jurisdiction in the matter.

2. This court's remand of a matter on which a petition for reconsideration is pending reestablishes the agency's jurisdiction over the petition for reconsideration.

*Opheim v. Cnty. of Norman*, 784 N.W.2d 90 (Minn. App. 2010), *review denied* (Minn. Sept. 29, 2010).

A county board has a duty to designate the salary of an assistant county attorney under Minn. Stat. § 388.10 (2008) and to provide a budget for salaries of county attorney's office employees and additional office expenses under Minn. Stat. § 388.18, subd. 5 (2008).

*In re Petitions for Enlargement of the Valley Branch Watershed District and Enlargement and Increase in Number of Managers of the S. Washington Watershed Dist.*, 781 N.W.2d 417 (Minn. App. 2010).

When addressing a petition to enlarge an existing watershed district pursuant to Minn. Stat. § 103D.261 (2008), the Minnesota Board of Water and Soil Resources may either order the proposed enlargement or dismiss the petition for failure to satisfy the statutory criteria for enlargement. The Minnesota Board of Water and Soil Resources is without statutory authority to modify the boundary specified in a watershed-district enlargement petition.

*In re Qwest's Performance Assurance Plan*, 783 N.W.2d 571 (Minn. App. 2010).

Money deposited in the Tier 2 Special Fund under Qwest Corporation's Performance Assurance Plan does not constitute money recovered by a state official in litigation or in settlement of a matter that could have resulted in litigation within the meaning of Minn. Stat. § 16A.151 (2008), and therefore need not be deposited in the state's general fund.

*Swenson v. Holsten*, 783 N.W.2d 580 (Minn. App. 2010).

Because Minn. Stat. § 97A.015, subd. 55 (2008), defines "wild animals" for purposes of the game and fish laws as "living creatures," the provisions of the game and fish laws regulating a private individual's possession and acquisition of property interests in "wild animals" do not apply to a bear carcass when the animal's death was not caused by human conduct regulated under the game and fish laws.

*In re Temp. Immediate Suspension of Family Child Care License of Strecker*, 777 N.W.2d 41 (Minn. App. 2010).

To continue a temporary suspension of a daycare license under Minn. Stat. § 245A.07, subd. 2a(a) (2008), the Commissioner of Human Services must demonstrate the existence of circumstances sufficient to warrant a cautious person to reasonably believe that the licensee poses an imminent risk of harm to the health or safety of those served by the program.

## **Business Organizations**

*301 Clifton Place L.L.C. v. 301 Clifton Place Condo. Ass'n*, 783 N.W.2d 551 (Minn. App. 2010).

1. Limited-liability companies (LLCs) are required to be represented by counsel in pleadings and practice in Minnesota courts.

(See page 12 for second syllabus point for this case.)

*Faegre & Benson, LLP, v. R & R Investors*, 772 N.W.2d 846 (Minn. App. 2009), *review denied* (Minn. Dec. 23, 2009).

Under the former Uniform Partnership Act, Minn. Stat. §§ 323.01-.49 (1996), a partnership could continue business with new partners following dissolution if all of the original partners agreed. Although a separate partnership, the partnership continuing the business, absent agreement to the contrary, succeeded to ownership of all partnership property without need for separate devise of that property.

*PeopleNet Commc'ns Corp. v. Baillon Ventures, LLC*, 781 N.W.2d 584 (Minn. App. 2010).

After a proceeding to determine the fair value of corporate shares held by a dissenting shareholder, Minn. Stat. § 302A.473, subd. 8(a) (2008), requires the district court to assess against the corporation the costs of any court-appointed appraisers, unless the dissenting shareholder acted in bad faith by demanding additional payment for the corporate shares. But Minn. Stat. § 302A.473, subd. 8(a), does not provide for assessment against the corporation costs associated with the dissenting shareholder's privately retained appraiser. Such fees and costs are assessable against the corporation under subdivision 8(b), but only when the corporation has failed to comply substantially with Minn. Stat. § 302A.473 (2008).

### **Civil Rights**

*Cannon v. Minneapolis Police Dep't*, 783 N.W.2d 182 (Minn. App. 2010).

1. Minneapolis, Minn., Code of Ordinances § 141.50(m) (2010), which permits a panel of the Minneapolis Commission on Civil Rights to award mental-anguish damages to an individual who successfully demonstrates injury due to discrimination, does not authorize the panel to apply the compensatory-damages multiplier to a mental-anguish damages award.

2. The \$8,500 cap on damages imposed by Minneapolis, Minn., Code of Ordinances § 141.50(m), applies only to punitive damages and does not apply to mental-anguish damages or attorney fees.

*Edwards v. Hopkins Plaza Ltd. P'ship*, 783 N.W.2d 171 (Minn. App. 2010).

1. A property owner's business decision to end participation in a Section 8 housing choice voucher program and to consequently stop renting to a Section 8 tenant does not constitute discrimination based on the tenant's status with regard to public assistance under Minn. Stat. § 363A.09, subd. 1(1) (2008).

2. A disabled tenant cannot require a property owner to participate in the Section 8 housing choice voucher program as a reasonable accommodation under Minn. Stat. § 363A.10, subd. 1(2) (2008).

*Minneapolis Police Dep't v. Kelly*, 776 N.W.2d 760 (Minn. App. 2010), *review denied* (Minn. Mar. 30, 2010).

The test for determining unfair racial discrimination under the public-services provision of the Minneapolis human-rights ordinance is set forth in *City of Minneapolis v. Richardson*, 307 Minn. 80, 239 N.W.2d 197 (1976) (applying state human-rights act) and *State by Beaulieu v. City of Mounds View*, 518 N.W.2d 567 (Minn. 1994) (same). Based on that caselaw, unfair discrimination can be inferred without direct evidence of racial motivation when circumstances show the government's conduct was "so at variance with what would reasonably be anticipated absent discrimination that discrimination is the probable explanation." *Richardson*, 307 Minn. at 87, 239 N.W.2d at 202; *accord Beaulieu*, 518 N.W.2d at 572. Under this "so-at-variance" test, the Minneapolis Commission on Civil Rights can conclude, on the basis of adequate indirect or circumstantial evidence, that unfair discrimination by police officers has been established without evidence of overt, explicit racist activity.

### **Constitutional Law**

*Christopher v. Windom Area Sch. Bd.*, 781 N.W.2d 904 (Minn. App. 2010), *review denied* (Minn. June 29, 2010).

3. Consistent with constitutional due process principles, a high school coach has no property interest in an expired annual coaching contract.

(See pages 9 and 13 for first, second, and fourth syllabus points for this case.)

*Nexus v. Swift*, 785 N.W.2d 771 (Minn. App. 2010).

Minnesota's statute prohibiting strategic lawsuits against public participation (anti-SLAPP statute), Minn. Stat. §§ 554.01-.05 (2008), does not violate a party's constitutional right to due process of law, U.S. Const. amend. XIV; Minn. Const. art. I, § 7, or right to a jury trial, U.S. Const. amend. VII; Minn. Const. art. I, § 4.

*Studor, Inc. v. State*, 781 N.W.2d 403 (Minn. App. 2010), *review denied* (Minn. July 20, 2010).

Minn. Stat. § 326B.43, subd. 6 (2008), which prohibits the installation of air-admittance valves in plumbing systems, does not violate the Equal Protection or Due Process Clauses of the state and federal constitutions or the Commerce Clause of the federal constitution.

*Thompson v. Comm'r of Health*, 778 N.W.2d 401 (Minn. App. 2010).

An individual disqualified from a position based on a preponderance of the evidence that the individual committed a disqualifying act under Minn. Stat. § 245C.14, subd. 1(a)(2) (2008), has a due-process right to a hearing to challenge the disqualification.

## Contracts

*Am. Bank of St. Paul v. Coating Specialties, Inc.*, 787 N.W.2d 202 (Minn. App. 2010), *review denied* (Minn. Oct. 27, 2010).

When a party agrees to subordinate to a lender that party's interest in loans made to a borrower, but does not specify either any particular loans or an expiration date, and the borrower's loans are later consolidated into a new loan, the subordination agreement applies to the new loan.

*BankCherokee v. Insignia Dev., LLC*, 779 N.W.2d 896 (Minn. App. 2010), *review denied* (Minn. May 18, 2010).

1. Fraud in the execution is a statement or conduct that misrepresents the character or essential terms of a proposed contract, and that induces an apparent manifestation of assent by one who neither knows nor has reasonable opportunity to know of the character or essential terms of the proposed contract.

2. Summary judgment is appropriate on a claim of fraud in the execution if undisputed evidence establishes that the party claiming fraud had a reasonable opportunity to know the character or essential terms of the proposed contract.

(See page 6 for third syllabus point for this case.)

*C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528 (Minn. App. 2009), *review denied* (Minn. Nov. 24, 2009).

Nonparties to a contract may be bound by a contractual forum-selection clause if they are closely related to the dispute such that it is foreseeable they could be bound by the clause.

*DeRosier v. Util. Sys. of Am., Inc.*, 780 N.W.2d 1 (Minn. App. 2010).

If the party breaching a contract demands new consideration to correct the breach, the nonbreaching party is generally not required to mitigate damages by hiring and paying the breaching party to undertake that task.

*Nordin v. Retzlaff*, 786 N.W.2d 880 (Minn. App. 2010).

No particular provision of the Uniform Commercial Code displaces the principles of law and equity applicable to a determination of whether a maker of a promissory note authorized or ratified a third-party's partial payment on the note. Consequently, pursuant to Minn. Stat. § 336.1-103(b) (2008), principles of law and equity must be applied to determine whether a third-party's partial payment on a promissory note tolls the statute of limitations applicable to an action to enforce a promissory note.

## **Debtor-Creditor**

*BankCherokee v. Insignia Dev., LLC*, 779 N.W.2d 896 (Minn. App. 2010), *review denied* (Minn. May 18, 2010).

3. The provision in Minn. Stat. § 513.33 (2008) that a debtor may not maintain an action on a credit agreement unless the agreement is in writing applies to affirmative defenses.

(See page 5 for first and second syllabus points for this case.)

*Mountain Peaks Fin. Servs., Inc. v. Roth-Steffen*, 778 N.W.2d 380 (Minn. App. 2010), *review denied* (Minn. Apr. 28, 2010).

The exemption from statutes of limitation granted to certain lenders by the Higher Education Act, 20 U.S.C. § 1091a (2008), preempts Minnesota statutes of limitation in collection actions brought by assignees of lenders named in the act.

*Russell's AmericInn, LLC v. Eagle Gen. Contractors, LLC*, 772 N.W.2d 81 (Minn. App. 2009).

Under Minn. Stat. § 550.37, subd. 24(a) (2008), a debtor's individual retirement account is exempt from garnishment, levy, and collector attachment up to the indexed present value limit plus any sums reasonably necessary for the support of the debtor and the debtor's spouse or dependents, and the exemption is not conditioned on whether the funds are employment-related.

*Shakopee Mdewakanton Sioux (Dakota) Gaming Enter. v. Prescott*, 779 N.W.2d 320 (Minn. App. 2010).

1. Minn. R. Gen. Pract. 10.02, with guidance from the Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA), Minn. Stat. § 548.35 (2008), governs the recognition and enforcement of tribal court money judgments.

2. Grounds for nonrecognition of a foreign money judgment do not exist under the conflicting-judgments provision of the UFCMJRA when the judgment sought to be enforced allegedly conflicts with a prior judgment from the same jurisdiction.

## **Evidence**

*In re Guardianship of Doyle*, 778 N.W.2d 342 (Minn. App. 2010).

It is error for a district court to take judicial notice of non-record documents that the parties have not had an opportunity to challenge or address.



## **Family Law**

*Culver v. Culver*, 771 N.W.2d 547 (Minn. App. 2009).

Minn. Stat. § 484.65, subd. 9 (2008), precludes district-court review of a Fourth Judicial District Family Court Division referee's ruling that has been confirmed by the district court.

*Hagen v. Schirmers*, 783 N.W.2d 212 (Minn. App. 2010).

A court determining a noncustodial parent's parenting time must address application of the statutory presumption for 25% parenting time when the statutory presumption is raised by a party and the court awards less than the presumed amount. Minn. Stat. § 518.175, subd. 1(e) (2008).

*Hennepin Cnty. v. Hill*, 777 N.W.2d 252 (Minn. App. 2010).

If a court of another state has issued an order requiring the payment of child support for a specified period of time, and if, in light of the facts of the case, the law of the issuing state would not allow the duration of the child-support obligation to be modified, a district court of this state may not modify the duration of the child-support obligation pursuant to Minnesota law.

*Maiers v. Maiers*, 775 N.W.2d 666 (Minn. App. 2009).

A district court does not abuse its discretion by awarding temporary spousal maintenance and reserving jurisdiction after finding that the recipient of maintenance will become self-supporting.

*Rooney v. Rooney*, 782 N.W.2d 572 (Minn. App. 2010).

If a third party is a "payor of funds" to a child-support obligor and has an obligation to withhold funds for the benefit of the child-support obligee, and if the payor is held liable to the obligee for amounts that the payor failed to withhold, the payor also is liable under Minn. Stat. § 518A.53, subd. 5(c) (2008), for the reasonable attorney fees incurred by the obligee in enforcing the withholding liability, regardless whether the fees were incurred before or after an arrearages judgment is entered against the payor.

*Welsh v. Welsh*, 775 N.W.2d 364 (Minn. App. 2009).

Because the conditions for imputing potential income to a parent that are listed in Minn. Stat. § 518A.32, subd. 1 (2008), are disjunctive, satisfaction of either condition requires the district court to consider a parent's potential income.

## **Governmental Immunity**

*Rodenwald v. State, Dep't of Natural Res.*, 777 N.W.2d 535 (Minn. App. 2010), *review denied* (Minn. Mar. 30, 2010).

The mere-slipperiness rule, which frequently precludes a finding of negligence based on the failure to prevent or remove ice from sidewalks or walkways, applies to claims against the state as well as against municipalities.

## **Insurance Coverage**

*Kasid v. Country Mut. Ins. Co.*, 776 N.W.2d 181 (Minn. App. 2009).

An individual who has not been denied the opportunity to obtain identifying information from another driver involved in an automobile collision fails to show that the collision involved the operation of a hit-and-run vehicle and is not entitled to uninsured-motorist benefits.

*Master Blaster, Inc. v. Dammann*, 781 N.W.2d 19 (Minn. App. 2010), *review denied* (Minn. June 29, 2010).

1. An indemnitor who is “vouched,” by means of a tender of defense, into an action asserting damages against the indemnitee solely on the basis of the indemnitee’s vicarious liability for the indemnitor’s acts, may be bound by the findings in that action on any issue where (1) there is no conflict of interest between indemnitor and indemnitee; (2) the indemnitee adequately represented the indemnitor’s interests in the action; and (3) procedural differences between the forums of the underlying and indemnity actions do not prejudice the indemnitor.

2. Appropriate vouching does not violate an indemnitor’s due-process rights, even when the forum state of the underlying action lacks personal jurisdiction over the indemnitor.

*QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass’n*, 778 N.W.2d 393 (Minn. App. 2010).

1. An insurance appraisal panel does not exceed its authority by applying an insurance policy’s replacement loss formula to measure the value of roof hail damage by determining the amount actually and necessarily expended to repair or replace the roofing shingles.

(See page 9 for second syllabus point for this case.)

## **Jurisdiction and Procedure**

*Anderson v. Cnty. of Lyon*, 784 N.W.2d 77 (Minn. App. 2010), *review denied* (Minn. Aug. 24, 2010).

A district court's broad subject-matter jurisdiction includes the power to determine in a declaratory-judgment action a contract claim asserted against an administrative agency, unless the claim implicates a quasi-judicial decision of the administrative agency.

*Christopher v. Windom Area Sch. Bd.*, 781 N.W.2d 904 (Minn. App. 2010), *review denied* (Minn. June 29, 2010).

1. A timely certiorari appeal from a final decision of a school board affords the appellate court jurisdiction to hear the case.

4. The claim of a high school teacher regarding a school board's decision not to renew his annual coaching contract is not moot, even though the teacher resigned during the pendency of proceedings involving his challenge to the school board's decision.

(See pages 4 and 13 for second and third syllabus points for this case.)

*Geist-Miller v. Mitchell*, 783 N.W.2d 197 (Minn. App. 2010).

1. The district court errs by weighing evidence or making credibility determinations in deciding a summary-judgment motion. The defendant is not entitled to summary judgment when the plaintiff's evidence, if fully believed, would support a claim for relief.

(See page 10 for second syllabus point for this case.)

*Kilcher v. Dale*, 784 N.W.2d 866 (Minn. App. 2010).

Under Financial Industry Regulatory Authority (FINRA) Code of Arbitration Proc. § 12206(b) (2009) (Rule 12206(b)), when a party successfully moves to dismiss a claim as time-barred by the rule's six-year limitation period, the non-moving party may withdraw any remaining related claims brought against the moving party without prejudice and may pursue all the claims in district court. The arbitrability of related claims against a non-moving respondent party in the same action is an issue for determination by the arbitration panel.

*QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393 (Minn. App. 2010).

2. A district court does not abuse its discretion in denying a motion for a continuance to conduct additional discovery when the issue before the court concerns interpretation of an insurance contract and the moving party does not identify possible additional facts that would be material to the issue to be decided by the district court.

(See page 8 for first syllabus point for this case.)

*Schmitz v. Rinke Noonan*, 783 N.W.2d 733 (Minn. App. 2010), *review denied* (Minn. Sept. 21, 2010).

On appeal from the grant of judgment as a matter of law at the close of the plaintiff's case in chief, a district court's denial of a pretrial motion for summary judgment is within the scope of appellate review when the denial of summary judgment was based on a question of law.

*Singelman v. St. Francis Med. Ctr.*, 777 N.W.2d 540 (Minn. App. 2010).

Minn. R. Civ. P. 3.01(c), which provides that an action is commenced when the summons is “delivered to the sheriff in the county where the defendant resides,” requires personal delivery to the sheriff. Transmittal by mail to the sheriff does not commence an action.

*Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416 (Minn. App. 2010).

A party whose midtrial motions for a continuance or for a new trial were denied by the district court is estopped from arguing on appeal that the denial constituted prejudicial error when the party reacted by refusing to participate meaningfully in the remainder of the trial and the refusal prejudiced the party's chance to succeed at trial.

## **Labor and Employment**

*Geist-Miller v. Mitchell*, 783 N.W.2d 197 (Minn. App. 2010).

2. The fourth element of a hostile-work-environment claim requires proof that harassment affected a term, condition, or privilege of employment. Absent other evidence that a defendant's harassing conduct interfered with a plaintiff's ability to perform her job, that plaintiff's allegations that a defendant's conduct made her “uncomfortable,” “embarrassed,” and “upset” are insufficient to create a genuine issue of material fact on this element of the claim.

(See page 9 for first syllabus point for this case.)

*Roberts v. Brunswick Corp.*, 783 N.W.2d 226 (Minn. App. 2010), *review denied* (Minn. Aug. 24, 2010).

A unilateral employment contract is not created by an employee handbook that includes a clause specifically precluding the formation of a contract.

## **Liens**

*Bakken v. Helgeson*, 785 N.W.2d 791 (Minn. App. 2010).

Foreclosure of a lien awarded by a dissolution judgment is subject to the 15-year statute of limitations in Minn. Stat. § 541.03, subd. 1 (2008), unless the judgment provides an alternative means of enforcement.

*First Minn. Bank v. Overby Dev., Inc.*, 783 N.W.2d 405 (Minn. App. 2010).

1. Where a mortgagee agrees to foreclose against only a portion of the lots subject to its mortgage and to allocate a portion of the outstanding mortgage debt to those foreclosed lots, the phrase “mortgage debt” as used in Minn. Stat. § 581.06 (2008) refers only to that portion of the debt that was so allocated to the foreclosed lots, not to the entire mortgage debt. As a result, if the mortgagee’s bid at the sheriff’s public auction exceeds the portion of the mortgage debt so allocated, the excess amount bid constitutes surplus which is payable as provided by law.

2. The mortgage language granting the mortgagee a security interest in “all rights and interests related to the mortgage premises” does not include the mortgagor’s statutory right to the surplus generated by the foreclosure sale.

*Gores v. Schultz*, 777 N.W.2d 522 (Minn. App. 2009), *review denied* (Minn. Mar. 16, 2010).

1. A mortgagee may claim that a competing mortgage against the same property is void under Minn. Stat. § 507.02 (2008).

2. A purported mortgage on a homestead owned by a husband and wife is presumptively void if not signed by both.

*Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36 (Minn. App. 2010).

If an attorney conducting a foreclosure by advertisement pursuant to section 580.05 of the Minnesota Statutes is the attorney-in-fact of the mortgagee or an assignee of the mortgagee, the document establishing the powers of the attorney-in-fact must be recorded but need not be recorded in the tract index.

*Palladium Holdings, LLC v. Zuni Mortg. Loan Trust 2006-OA1*, 775 N.W.2d 168 (Minn. App. 2009).

A five-week redemption order granted under the 2008 amendment to Minn. Stat. § 582.032, subd. 7, is subject to relief under Minn. R. Civ. P. 60.02.

*State Bank of Delano v. CenterPoint Energy Res. Corp.*, 779 N.W.2d 582 (Minn. App. 2010), *review denied* (Minn. May 26, 2010).

1. Minn. Stat. § 576.01, subd. 2 (2008), does not require a receiver that is appointed for a mortgaged premises to pay the debts of a mortgagor unless those debts are specifically included in the statute or required by the receivership order.

2. A receiver is not required to pay a mortgagor’s utility debt as an expense related to the “normal maintenance of the mortgaged premises,” required by Minn. Stat. § 576.01, subd. 2, because pursuant to Minn. R. 7820.1300(A) (2007), a receiver is a new customer of a utility service and the utility may not disconnect that service for a mortgagor’s delinquent payments.

## **Probate**

*Nelson v. Holland*, 776 N.W.2d 446 (Minn. App. 2009).

A conservator's failure to assert claims on behalf of a conservatee prior to death does not preclude standing for a personal representative to assert those surviving claims on behalf of the decedent's estate.

## **Property**

*301 Clifton Place L.L.C. v. 301 Clifton Place Condo. Ass'n*, 783 N.W.2d 651 (Minn. App. 2010).

2. Minn. Stat. § 515B.4-115(b) (2008) requires that an agreement to modify the statute-of-limitations period for certain statutory warranties under that section be "evidenced by an instrument separate from the purchase agreement." When the purchase agreement expressly incorporates an attached modification agreement into and states that it is part of the purchase agreement, the modification is not expressed in a separate instrument and is ineffective under the statute.

(See page 2 for first syllabus point for this case.)

*Hebert v. City of Fifty Lakes*, 784 N.W.2d 848 (Minn. App. 2010).

Statutory dedication of a roadway under Minn. Stat. § 160.05, subd. 1, is a form of adverse possession and therefore may not be applied to Torrens properties.

*Nat'l City Bank v. Engler*, 777 N.W.2d 762 (Minn. App. 2010), *review denied* (Minn. Apr. 20, 2010).

The purpose of Minn. Stat. § 507.02 (2008), which requires the signatures of both spouses to validly convey homestead property, is satisfied when the non-signing spouse participates in the mortgage application process, is present at the closing, benefits from the mortgage, and waives his or her homestead rights.

*Phillips v. Dolphin*, 776 N.W.2d 755 (Minn. App. 2009), *review denied* (Minn. Mar. 16, 2010).

The procedures specified in Minnesota Statutes Chapter 508 (2008) govern the resolution of title questions affecting registered land, including determination of boundaries.

*Rosckes v. Cnty. of Carver*, 783 N.W.2d 220 (Minn. App. 2010).

Under Minn. Stat. § 256B.056, subd. 3b(b) (2008), assets in a trust satisfying the requirements of 42 U.S.C. § 1396p(d) (2006) may be considered available for the purpose of determining medical-assistance eligibility, regardless of whether the trust is a discretionary trust.

## **School Law**

*Christopher v. Windom Area Sch. Bd.*, 781 N.W.2d 904 (Minn. App. 2010), *review denied* (Minn. June 29, 2010).

2. When a school board exercises its broad discretion not to renew a one-year coaching contract of a high school teacher and provides the teacher proper notice of its decision and reasons, and the opportunity to respond to its decision, the school board has satisfied its statutory requirements under Minn. Stat. § 122A.33, subd. 2 (2008).

(See pages 4 and 9 for first, third, and fourth syllabus points for this case.)

*Montplaisir v. Indep. Sch. Dist. No. 23*, 779 N.W.2d 880 (Minn. App. 2010).

A teacher who resigns his continuing-contract position with a school district not in a city of the first class, and is later rehired in the same school district, must complete an additional one-year probationary period under Minn. Stat. § 122A.40, subd. 5(a) (2008), before regaining eligibility for continuing-contract status.

## **Torts**

*Freeman v. Swift*, 776 N.W.2d 485 (Minn. App. 2009), *review denied* (Minn. Mar. 16, 2010).

Allegedly defamatory speech is not immune from liability under Minn. Stat. § 554.03 (2008) if the nature, purpose and intended audience of the speech demonstrate that the speech is not genuinely aimed in whole or in part at procuring favorable government action.

*Jane Doe 43C v. Diocese of New Ulm*, 787 N.W.2d 680 (Minn. App. 2010).

When an intentional-misrepresentation claim is based solely on nondisclosure, the nondisclosure does not constitute fraud in the absence of a duty to disclose.

*Juetten v. LCA-Vision, Inc.*, 777 N.W.2d 772 (Minn. App. 2010).

A medical malpractice plaintiff who misses the deadline for serving a defendant corporation with expert witness affidavits required by Minnesota Statutes section 145.682, subdivisions 2(2) and 4 may not avoid dismissal of her suit by amending her complaint to add a physician defendant whose alleged negligence constitutes the same cause of action as her claim against the original corporate defendant.

## **Unemployment Benefits**

*Halvorson v. Cnty. of Anoka*, 780 N.W.2d 385 (Minn. App. 2010).

1. An employee works “with [an] educational institution” under Minn. Stat. § 268.085, subd. 7(a) (2008), if the employee’s workplace and position is managed by an educational entity. A school that is a part of a correctional institution but has its own

building, teachers, and administrators, and provides state-mandated educational programs is such an entity.

2. An educational entity's summer term is "between academic years" under Minn. Stat. § 268.085, subd. 7, if the entity's academic calendar follows a typical school calendar, advances students by grade levels upon completion of academic years, offers a summer program with reduced enrollment for remedial classes, provides breaks before and after the summer term, and offers continuing full-time employment in the fall.

*Hanson v. Crestliner Inc.*, 772 N.W.2d 539 (Minn. App. 2009).

An employee's absence from employment without notice to his employer due to the unexpected hospitalization of an immediate family member is not employment misconduct, because it does not display clearly a serious violation of the standards of behavior the employer has the right to reasonably expect or display clearly a substantial lack of concern for employment; such conduct is that in which the average reasonable employee would engage under the circumstances.

*Lawrence v. Ratzlaff Motor Express Inc.*, 785 N.W.2d 819 (Minn. App. 2010), *review denied* (Minn. Sept. 29, 2010).

When an employee's child-support obligation is unpaid due to the employee's intentional, negligent, or indifferent conduct and the employee's driver's license that was necessary for employment is therefore suspended, the employee commits employment misconduct within the meaning of Minn. Stat. § 268.095, subd. 6(a) (2008).

*McNeilly v. Dep't of Emp't and Econ. Dev.*, 778 N.W.2d 707 (Minn. App. 2010).

A seasonal employee who is laid off for lack of work must meet the statutory requirements outlined in Minn. Stat. § 268.085, subd. 1 (2008), in order to be eligible for unemployment benefits. This includes the requirement that the applicant be actively seeking employment during the off-season when he maintains a benefit account with the Minnesota Department of Employment and Economic Development.

*Meder v. Rapid Sports Ctr. Inc.*, 773 N.W.2d 341 (Minn. App. 2009).

When a recipient of unemployment benefits is paid a sales commission that was not earned until after the recipient's discharge from employment, Minn. Stat. § 268.085, subd. 5 (2008), requires that these earnings affect the amount of the benefit for the week in which they are received.

*Soderquist v. Universal Servs. Telecom Tech, Inc.*, 774 N.W.2d 729 (Minn. App. 2009).

Under Minn. Stat. § 268.085, subd. 9 (2008), a petitioner who is the parent of an individual who owns the business in which the petitioner is employed and who has not received the minimum amount of pay required by statute in each of the 16 quarters preceding the petitioner's discharge is ineligible to receive unemployment compensation benefits.



## PART II – CRIMINAL CASES AND CASES ON RELATED SUBJECTS

### Constitutional Law

*State v. Burkland*, 775 N.W.2d 372 (Minn. App. 2009), *review denied* (Minn. Jan. 27, 2010).

When government conduct is sufficiently outrageous that it is repugnant to the criminal justice system and shocking to a universal sense of justice, it violates the constitutional right to due process. A police officer investigating prostitution engages in outrageous government conduct that violates a defendant's constitutional right to due process when the officer initiates sexual contact by fondling the breasts of the target of the investigation and permits the escalation of that sexual contact by allowing the target to rub the officer's penis while he continues to fondle her bare breasts.

*State v. Cross*, 771 N.W.2d 879 (Minn. App. 2009), *review denied* (Minn. Nov. 24, 2009).

A requirement that persons attending a hearing in a criminal case identify themselves before being admitted to the courtroom does not implicate a defendant's Sixth Amendment right to a public trial.

*State v. Roeschelein*, 776 N.W.2d 480 (Minn. App. 2009).

When a court declares a mistrial sua sponte without the defendant's consent and without considering less drastic alternatives, the double-jeopardy clauses of the United States and Minnesota Constitutions prohibit retrial of the defendant.

*State v. Strok*, 786 N.W.2d 297 (Minn. App. 2010).

2. A district court may not order a continuance for dismissal over the state's objection unless the prosecutor has committed a clear abuse of the prosecutorial discretion in the exercise of the charging function.

(See page 18 for first syllabus point for this case.)

### Evidence

*State v. Ahmed*, 782 N.W.2d 253 (Minn. App. 2010).

1. The circumstances to be considered when evaluating the "equivalent guarantees of trustworthiness," required for admission of out-of-court statements under Minn. R. Evid. 807, do not include the credibility of the testifying witness.

(See page 20 for second syllabus point for this case.)

*State v. Maldonado-Arreaga*, 772 N.W.2d 74 (Minn. App. 2009).

Biographical information obtained in violation of constitutional protection is subject to the exclusionary rule.

*State v. Utter*, 773 N.W.2d 127 (Minn. App. 2009).

Evidence of an unspecified prior felony conviction offered for impeachment purposes under Minn. R. Evid. 609(a)(1) is inadmissible because it is more prejudicial than probative.

*State v. Valentine*, 787 N.W.2d 630 (Minn. App. Aug. 24, 2010), *review denied* (Minn. Nov. 16, 2010).

Minn. Stat. § 634.20 (2008) authorizes the admission of evidence of domestic abuse committed by the accused against the accused's family or household members, not the victim's family or household members.

### **Expungement**

*State v. M.L.A.*, 785 N.W.2d 763 (Minn. App. 2010), *review denied* (Minn. Sept. 21, 2010).

A district court may not order the expungement of records maintained outside of the judicial branch pursuant to its inherent authority when the sole basis for doing so is to help an individual achieve his or her employment goals.

### **Forfeiture**

*Mycka v. 2003 GMC Envoy*, 783 N.W.2d 234 (Minn. App. 2010).

The city did not seize appellant's vehicle "incident to a lawful arrest," as that phrase is used in Minn. Stat. § 169A.63, subd. 2(b)(1) (2006), because the city seized the vehicle after appellant was released from jail and after appellant retrieved his vehicle from a private towing company.

### **Implied Consent**

*Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918 (Minn. App. 2010).

A person whose blood sample is lawfully obtained and preserved in connection with a valid request under the implied-consent law has no reasonable expectation of privacy in the amount of alcohol contained in the sample and, therefore, subsequent testing of the sample to determine the alcohol concentration does not constitute a search that implicates constitutional protection.

*Hayes v. Comm'r of Pub. Safety*, 773 N.W.2d 134 (Minn. App. 2009), *review denied* (Minn. Dec. 23, 2009).

1. The district court did not err by excluding expert testimony concerning the validity and reliability of appellant's urine test, which was based on a urine sample obtained without allowing or requiring him to void his bladder between the time of his arrest and the time he provided the sample.

2. The commissioner does not violate a person's right to equal protection under the Minnesota Constitution by revoking his driver's license based on a chemical test of a urine sample if the person did not void his bladder between the time of his arrest and the time he provided the sample.

*Nelson v. Comm'r of Pub. Safety*, 779 N.W.2d 571 (Minn. App. 2010).

If a driver consents to a blood test following an arrest for driving while impaired and provides a blood sample that is drawn using an expired blood-test kit, an officer may request the driver to provide another blood sample.

*Pallas v. Comm'r of Pub. Safety*, 781 N.W.2d 163 (Minn. App. 2010).

The Driver License Compact, Minn. Stat. § 171.50 (2008), which allows the Minnesota Commissioner of Public Safety to refuse to issue a Minnesota license to an individual whose out-of-state license has been revoked for more than one year by a partner state if the commissioner's investigation indicates that issuing a Minnesota license will be unsafe, does not vest the commissioner with the authority instead to condition issuance on the applicant's obtaining a "clearance letter" from the revoking state.

*Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239 (Minn. App. 2010).

Whether to grant or deny a request to view the scene of a traffic stop is within the sound discretion of the district court when reviewing a license revocation in an implied-consent proceeding under Minn. Stat. § 169A.53, subd. 3 (2006).

### **Pretrial Procedure**

*State v. Briard*, 784 N.W.2d 421 (Minn. App. 2010).

A criminal defendant is not a person of suitable discretion to accept substitute service of process of a subpoena under Minn. R. Crim. P. 22.03 for a witness whose testimony is compelled in a criminal case involving that defendant.

*Chang v. State*, 778 N.W.2d 388 (Minn. App. 2010), *review denied* (Minn. Apr. 28, 2010), *petition for cert. filed* (U.S. Nov. 5, 2010) (No. 7257).

To be timely filed, a postconviction petition must be actually received by the district court before the expiration of the statute of limitations. This requirement applies to all postconviction petitioners, regardless whether they are represented by counsel or *pro se* and regardless whether they are incarcerated.

*State v. Dickerson*, 777 N.W.2d 529 (Minn. App. 2010), *review denied* (Minn. Mar. 30, 2010).

A writ of habeas corpus ad prosequendum does not constitute a detainer for purposes of the Interstate Agreement on Detainers, and the Interstate Agreement on Detainers does not apply in the absence of a detainer.

*State v. Dorcy*, 778 N.W.2d 374 (Minn. App. 2010).

1. Under Minn. R. Crim. P. 28.04, subd. 2(2), as construed in *State v. Barrett*, 694 N.W.2d 783 (Minn. 2005), a prosecution pretrial appeal must be dismissed if the prosecuting attorney has not served the state public defender's office within the time provided to file the appeal.

2. The jurisdictional requirement of timely service on the state public defender's office applies whether the defendant is represented in the district court by a public defender or by private counsel.

*State v. Knoch*, 781 N.W.2d 170 (Minn. App. 2010), *review denied* (Minn. June 29, 2010).

In a prosecution for possession of a controlled substance, the state may, depending on the facts and circumstances of a particular case, establish probable cause based on evidence of a positive field test of a substance alleged to be a controlled substance, without evidence of a confirmatory test of the substance.

*State v. Nelson*, 773 N.W.2d 330 (Minn. App. 2009).

Minnesota Rule of General Practice 702(f) does not require that a petition and affidavit filed in support of a motion for reinstatement of a forfeited bond be personally served on the principal of the bond.

*State v. Rodriguez*, 775 N.W.2d 907 (Minn. App. 2009), *review denied* (Minn. Feb. 16, 2010).

1. A bail bond is a surety contract to which principles of contract law apply.

2. A contract, including a bail bond, can be rendered unenforceable for a mutual but not a unilateral mistake of a material fact.

*State v. Strok*, 786 N.W.2d 297 (Minn. App. 2010).

1. Minn. R. Crim. P. 28.04, subd. 1(1) (2009), authorizes the state to pursue a pretrial appeal from a district court's continuance for dismissal.

(See page 15 for second syllabus point for this case.)

*State v. Vonbehren*, 777 N.W.2d 48 (Minn. App. 2010), *review denied* (Minn. Mar. 16, 2010).

1. The Uniform Mandatory Disposition of Detainers Act (UMDDA), Minn. Stat. § 629.292 (2006), does not apply to a defendant who has been released from physical custody.

2 The UMDDA’s speedy-trial requirement may be waived by a defendant’s conduct.

### **Sentencing**

*Dillon v. State*, 781 N.W.2d 588 (Minn. App. 2010), *review denied* (Minn. July 20, 2010).

1. We review upward durational sentencing departures that more than double the presumptive sentence for an abuse of discretion.

2. The particularly cruel conduct of a defendant convicted of assault can be inferred from the nature and extent of injuries inflicted on the victim, supporting an upward durational departure from the presumptive sentence.

*State v. Eller*, 780 N.W.2d 375 (Minn. App. 2010), *review denied* (Minn. June 15, 2010).

In a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 3, when a party stipulates to the admission of a criminal complaint without any restriction as to its use, the district court may make factual findings to support its decision based on the factual portion of the probable-cause section of the complaint.

*State ex rel. Peterson v. Fabian*, 784 N.W.2d 843 (Minn. App. 2010).

1. For the purposes of Minn. Stat. § 243.166, subd. 5a (2008), a person has completed the sentence imposed when the person has completed both the term of imprisonment and the term of supervised release.

2. Because Minn. Stat. § 243.166, subd. 5a, requires the court to “provide that after the person has completed the sentence imposed, the commissioner of corrections shall place the person on conditional release for ten years,” the ten-year term of conditional release is consecutive to the term of supervised release.

3. A defendant may not be sanctioned for a supervised-release violation by extending a defendant’s imprisonment beyond the completion date of the sentence imposed.

4. A defendant may be sanctioned for a conditional-release violation only if the violation occurs while the defendant is on conditional release.

*State v. Rivers*, 787 N.W.2d 206 (Minn. App. 2010), *review denied* (Minn. Oct. 19, 2010).

2. The provisions of Minn. Sent. Guidelines II.F.2 (2008) for use of a criminal-history score of zero in consecutive sentencing do not apply to a felony sentence for crimes against one victim that is consecutive to a gross-misdemeanor sentence for a crime against a separate victim.

(See page 21 for first syllabus point for this case.)

## **Substantive Criminal Law**

*State v. Ahmed*, 782 N.W.2d 253 (Minn. App. 2010).

2. Minn. Stat. § 609.314, subd. 11(b)(i) (2006), which defines “sexual contact” as touching intimate parts “with sexual or aggressive intent,” permits a conviction based on touching committed solely with aggressive intent.

(See page 15 for first syllabus point for this case.)

*State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009), *review denied* (Minn. Feb. 16, 2010).

In a prosecution under Minnesota Statutes section 152.025, subdivision 2 for possession of cathinone based on possession of khat, the state need not prove that the defendant knew the scientific description of the drug in his possession; proof that he knew that he possessed a controlled substance is sufficient to satisfy the actual-knowledge requirement to convict.

*Carter v. State*, 787 N.W.2d 675 (Minn. App. 2010).

The ten-day grace period referred to in Minn. Stat. § 168.09, subd. 4 (2006), for displaying license-plate tabs on a vehicle does not extend the 12-month registration period in Minn. Stat. § 168.017, subd. 2 (2006), by ten days.

*State v. Holmes*, 787 N.W.2d 617 (Minn. App. 2010).

Criminal liability for theft by nonpayment for real-estate improvements under Minn. Stat. § 514.02, subd. 1(b) (2006), requires proof of failure to use payment proceeds to pay others who contributed labor, skills, material, or machinery to the improvement, knowing that these contributors remain unpaid. Proof of failure only to use contract proceeds for the improvement itself does not prove a violation of the statute.

*State v. Johnson*, 775 N.W.2d 377 (Minn. App. 2009), *review denied* (Minn. Feb. 16, 2010).

The term “sexual conduct,” as used in Minn. Stat. § 617.246, subd. 1(e)(5) (2006), to define the offense of possession of child pornography, requires the depicted conduct to be an act of apparent sexual stimulation or gratification. This objective standard is not met by proof of the subjective reaction of the possessor of the depiction.

*State v. McClenton*, 781 N.W.2d 181 (Minn. App. 2010), *review denied* (Minn. June 29, 2010), *cert. denied* (U.S. Nov. 1, 2010) (No. 10-6327).

A defendant is not entitled to invoke the defense of involuntary intoxication when he voluntarily uses an illegal controlled substance which, unbeknownst to him, has been mixed with another illegal controlled substance and causes an unanticipated reaction.

*State v. Sterling*, 782 N.W.2d 579 (Minn. App. 2010).

1. When an Intoxilyzer measures a suspect's alcohol concentration but does not provide a printout of the alcohol concentration, the attending officer may request the suspect to provide a blood or a urine sample for another type of test.

2. When the result of an Intoxilyzer test does not become available until after an alternative blood test or urine test has provided an alcohol concentration, the results of the blood test or the urine test are admissible as evidence.

*State v. Vasquez*, 776 N.W.2d 452 (Minn. App. 2009).

One who plays an active role in the manufacture and distribution of a controlled substance may be considered an accomplice to, and therefore be convicted of, third-degree felony murder under Minn. Stat. § 609.195(b) (2006), which criminalizes the unintentional murder caused, directly or indirectly, by unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering a schedule I or II controlled substance.

*State v. Wenz*, 779 N.W.2d 878 (Minn. App. 2010), *review denied* (Minn. May 18, 2010).

Under Minn. Stat. § 169.01, subd. 4c (2006) (defining motorized foot scooter), the term *wheel* encompasses the rim and affixed tire. A vehicle with wheels that exceed ten inches in diameter is not a motorized foot scooter.

### **Trial Procedure**

*State v. Berrios*, 788 N.W.2d 135 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010).

When the district court determines during trial that a seated juror has not understood portions of the testimony because of a language barrier, it is not an abuse of discretion for the district court to remove the juror and replace the juror with an alternate.

*Carse v. State*, 778 N.W.2d 361 (Minn. App. 2010), *review denied* (Minn. Apr. 20, 2010).

A district court may accept a defendant's knowing, voluntary, and express waiver of the right to be present at trial, so long as the waiver is made after commencement of trial.

*State v. Fluker*, 781 N.W.2d 397 (Minn. App. 2010).

The absence of a defendant's personal waiver of his right to a jury trial when stipulating to elements of an offense is error that may be subject to the harmless-error analysis.

*State v. Rivers*, 787 N.W.2d 206 (Minn. App. 2010), *review denied* (Minn. Oct. 19, 2010).

1. A district court's failure to strictly follow the process for analyzing a *Batson* challenge set out in Minn. R. Crim. P. 26.02, subd. 7(3), is not per se reversible error.

(See page 19 for second syllabus point for this case.)