Minnesota Court of Appeals

Significant Decisions

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2. This court will not issue an injunction setting forth the standard of proof to be applied during permanent physician disciplinary proceedings when other administrative remedies are available, unless exhaustion of those remedies would be futile.

3. After temporarily suspending a physician's medical license, the Minnesota Board of Medical Practice may publish that physician's name and business address, the nature of the misconduct, and the action taken by the board, under both the Minnesota Government Data Practices Act and the Medical Practice Act.

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In re Molnar, (A05-2261), 720 N.W.2d 604 (Minn. App. 2006).

I. The conduct of a privately owned, state-regulated business may constitute state action for Fourteenth Amendment purposes if the nexus between the challenged conduct and the state is so close that it can fairly be said that the state is responsible for the conduct.

II. Under Minn. Stat. § 240.27, subds. 2, 5 (2004), a Minnesota Racing Commission licensee is not required to give a patron notice and a hearing before excluding the patron from its premises.

III. The vagueness doctrine applies only to legislative enactments and cannot be successfully invoked when a reasonable person would know that his or her actions risk violation of a private entity's rules of conduct.

IV. Minn. Stat. § 240.30, subd. 7(c) (2004), does not restrict a Minnesota Racing Commission licensee's authority to exclude patrons from its premises.

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Precedents establishing that a public-benefit program limited to members of Native American tribes rests on a political rather than a racial classification govern as well the implementation of state law that benefits a tribe by permitting a contractual arrangement whereby the tribe provides an administrative service to its members and the members lose the freedom to use similar programs provided for non-members.

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1. Under Minn. Stat. § 216A.036 (2004), "an entity subject to rate regulation by the commission" unambiguously includes companies or their affiliates approved by the commission under the alternative form of regulation described in Minn. Stat. § 237.762 (2004).

2. Minn. Stat. § 216A.036 (2004), when read together with Minn. Stat. §§ 237.762, .765 (2004), is not unconstitutionally vague because it provides adequate notice to those who might be subject to its terms that companies or their affiliates approved by the Minnesota Public Utilities Commission under the alternative form of regulation are companies "subject to rate regulation by the commission."

3. The Minnesota Public Utilities Commission does not abuse its discretion by imposing a penalty within the statutory maximum and after considering scienter for the violation of Minn. Stat. § 216A.036 (2004).

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Dunn v. Nat'l Beverage Corp., (A06-396, A06-397), 729 N.W.2d 637 (Minn. App. 2007), *review granted* (Minn. June 19, 2007).

A party who brings an action for violation of the franchise act pursuant to Minn. Stat. § 80C.17, subd. 1 (2006) is not entitled to attorney fees pursuant to Minn. Stat. § 80C.17, subd. 3 (2006) unless the party has obtained relief under the act.

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Milner v. Farmers Ins. Exch., (A06-178), 725 N.W.2d 138 (Minn. App. 2006), *review granted* (Minn. Mar. 20, 2007).

1. Pursuant to Minn. Stat. § 177.27, subd. 8 (2004), an employee seeking redress for a violation of the Minnesota Fair Labor Standards Act may bring a civil action and seek injunctive relief and civil penalties.

2. Civil penalties awarded under Minn. Stat. § 177.27, subd. 8 (2004), are payable to the state and not to individual litigants.

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1. Undisputed evidence that a person seeking indemnification for fines and attorney fees related to a criminal conviction acted with fraudulent intent in committing the crime conclusively establishes that the individual did not act in good faith and therefore is not entitled to indemnification under Minn. Stat. § 302A.521, subd. 2(a) (2006).

2. Unless a corporation has violated a provision of Minn. Stat. §§ 302A.001-.92 (2006), a person having any role within that corporation is not entitled to indemnification under Minn. Stat. § 302A.467 (2006).

3. When a contract provides that an appraisal be made independently by a non-party to the contract, but does not stipulate that the appraisal is binding and conclusive, a factual determination as to whether the contract's language supports a fair inference that the parties intended to be bound by the appraisal is required to determine whether the appraisal is binding and conclusive.

4. When a contract provides that an appraisal be made independently by a non-party to the contract, but does not stipulate that the appraisal is binding and conclusive, a jury deciding whether the contract was breached must be instructed to determine first whether the parties intended to be bound by the appraisal.

CIVIL PROCEDURE

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A renewed or revived judgment filed in Minnesota under the Uniform Enforcement of Foreign Judgments Act is entitled to full faith and credit, and the applicable statute-of-limitations period is that of the originating forum.

Leiendecker v. Asian Women United of Minn., (A06-959), 731 N.W.2d 836 (Minn. App. 2007), *review denied* (Minn. Aug. 7, 2007).

Because a tort claim is not a compulsory counterclaim under Minn. R. Civ. P. 13.01, a party's failure to assert a tort claim in a prior non-tort action does not preclude that party from asserting such a claim in a subsequent action involving the same parties.
Schossow v. First Nat'l Ins. Co. of America, (A06-1003), 730 N.W.2d 556 (Minn. App.

2007).

1. A person living and working in Minnesota is a Minnesota resident notwithstanding evidence that her domicile may be in another state to which she intends to return within a few years.

2. Under the Minnesota No-Fault Act, an insurer licensed to write automobile insurance in Minnesota that issues an automobile insurance policy in North Dakota that provides underinsured motorist benefits to an insured who is a Minnesota resident is obligated to pay underinsured benefits according to Minnesota law if the insured resident is involved in an accident in this state.

Jurisdiction

Moore v. Moore, (A06-1504), 734 N.W.2d 285 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

Absent a reservation, if a maintenance obligation is to be paid on the first and the fifteenth day of each month for a specified period and the obligor pays maintenance according to this schedule, the maintenance obligation expires when the last payment is made, and the district court has no authority to address a motion to modify maintenance that is made after the maintenance obligation expires.

Reed v. Albaaj, (A05-1858), 723 N.W.2d 50 (Minn. App. 2006).

A member of the armed forces who is incarcerated for crimes committed while in active duty is not in "military service" for the purposes of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. §§ 501-596 (Supp. III 2003), and is therefore not entitled to the protection of the SCRA when a civil proceeding is initiated during the servicemember's incarceration.

Thorson v. Zollinger Dental, P.A., (A06-935), 728 N.W.2d 261 (Minn. App. 2007), *review denied* (Minn. May 15, 2007).

The district court's ruling, striking the affirmative defense of insufficient service of process from the pleadings as a discovery sanction, was not an abuse of discretion when respondent was prejudiced by appellant's failure to timely disclose in answers to interrogatories its basis for the defense, instead waiting until after the statute of limitations on respondent's claims had run.

In re Commitment of Beaulieu, (A07-496), 737 N.W.2d 231 (Minn. App. 2007).

1. The State of Minnesota has personal jurisdiction over an enrolled member of the Red Lake Band of Chippewa Indians, when, despite the fact that the enrolled member was under federal supervision, he requested and was subsequently placed in residential treatment by Beltrami County Human Services.

2. The State of Minnesota's authority to exercise subject-matter jurisdiction over the civil commitment of an enrolled member of the Red Lake Band of Chippewa Indians is justified by the state's significant interest in protecting the public from and

treating sexually dangerous persons and is not preempted by the federal interest in preserving tribal self-government, self-sufficiency, and economic development.

In re Welfare of Child of L.M.L. & S.B.L., (A06-1867), 730 N.W.2d 316 (Minn. App. 2007).

When a district court assumes jurisdiction over a Child in Need of Protection or Services (CHIPS) proceeding before the subject of the CHIPS petition turns 18 years of age, unless the habitual-truant exception applies, that jurisdiction shall continue until the subject's 19th birthday if the district court determines that continuation is in the subject's best interests.

New Trial

Brodsky v. Brodsky, (A06-736), 733 N.W.2d 471 (Minn. App. 2007).

1. A party may recover attorney fees incurred in a proceeding ancillary to a dissolution proceeding if the ancillary proceeding is sufficiently related to the dissolution, the party's participation in the ancillary proceeding was necessary to protect an interest awarded in the dissolution, and the former spouse's conduct in the ancillary proceeding supports a conduct-based fee award under Minn. Stat. § 518.14, subd. 1 (2006).
2. If a party satisfies a debt that under the terms of a dissolution judgment is the nonmarital debt of the party's former spouse, the district court may award the party interest on the amount paid if necessary to fulfill the intent of the dissolution judgment.

Res judicata

Milner v. Farmers Ins. Exch., (A06-178), 725 N.W.2d 138 (Minn. App. 2006), *review granted* (Minn. Mar. 20, 2007).

1. Pursuant to Minn. Stat. § 177.27, subd. 8 (2004), an employee seeking redress for a violation of the Minnesota Fair Labor Standards Act may bring a civil action and seek injunctive relief and civil penalties.
2. Civil penalties awarded under Minn. Stat. § 177.27, subd. 8 (2004), are payable to the state and not to individual litigants.

Service

Shamrock Dev., Inc. v. Smith, (A06-1647), 737 N.W.2d 372 (Minn. App. 2007), *review granted* (Minn. Nov. 13, 2007).

1. A party may bring a civil action to renew a judgment, provided that the action is commenced within ten years after entry of the original judgment and the party complies with all the requirements for commencing a civil action.
2. An appellate court will reverse findings of fact related to the sufficiency of service by publication under Minn. R. Civ. P. 4.04 only if the findings are clearly erroneous.

3. When a summons substantially complies with all other requisites for an effective summons, the failure to include a statement providing the opposing party with information about alternative dispute resolution, as required by statute, does not create a jurisdictional defect requiring dismissal of the case.

Thorson v. Zollinger Dental, P.A., (A06-935), 728 N.W.2d 261 (Minn. App. 2007), *review denied* (Minn. May 15, 2007).

The district court's ruling, striking the affirmative defense of insufficient service of process from the pleadings as a discovery sanction, was not an abuse of discretion when respondent was prejudiced by appellant's failure to timely disclose in answers to interrogatories its basis for the defense, instead waiting until after the statute of limitations on respondent's claims had run.

COMMITMENT

Sexually Dangerous Person

In re Commitment of Beaulieu, (A07-496), 737 N.W.2d 231 (Minn. App. 2007).

1. The State of Minnesota has personal jurisdiction over an enrolled member of the Red Lake Band of Chippewa Indians, when, despite the fact that the enrolled member was under federal supervision, he requested and was subsequently placed in residential treatment by Beltrami County Human Services.

2. The State of Minnesota's authority to exercise subject-matter jurisdiction over the civil commitment of an enrolled member of the Red Lake Band of Chippewa Indians is justified by the state's significant interest in protecting the public from and treating sexually dangerous persons and is not preempted by the federal interest in preserving tribal self-government, self-sufficiency, and economic development.

In re Commitment of Williams, (A07-185), 735 N.W.2d 727 (Minn. App. 2007), *review denied* (Minn. Sept. 26, 2007).

I. The Commitment and Treatment Act Rules require a district court to admit all relevant evidence in a civil-commitment proceeding and to apply the Minnesota Rules of Evidence to determine relevancy.

II. A district court may at its discretion appoint additional examiners in a civil-commitment proceeding.

CONSTITUTIONAL LAW

In re Welfare of S.J.T., (A07-49), 736 N.W.2d 341 (Minn. App. 2007), *review denied* (Minn. Oct. 24, 2007).

1. The Fifth Amendment privilege against self-incrimination, which applies to all proceedings, civil or criminal, administrative or judicial, applies to a juvenile certification procedure.

2. The presumptive-certification statute does not violate a juvenile's Fifth Amendment right against self-incrimination, either facially or as applied, by providing an opportunity for the juvenile to rebut a presumption of adult certification.

3. The requirement that a juvenile submit to certification studies does not violate the Fifth Amendment because state and federal rules, statutes, and caselaw provide adequate protection against the further use of any testimony compelled from the juvenile, including compelled studies.

4. The district court has broad discretion whether to admit expert testimony and a juvenile's refusal to cooperate with an expert witness does not preclude the witness from testifying.

Torgelson v. Real Property, 17138 880th Ave., (A06-1507, A06-1757), 734 N.W.2d 279 (Minn. App. 2007), *review granted* (Minn. Sept. 26, 2007).

Pursuant to article I, section 12, of the Minnesota Constitution, homestead property is not subject to forfeiture under Minn. Stat. § 609.5311, subd. 2 (2004).

In re Welfare of D.W., (A06-2069), 731 N.W.2d 828 (Minn. App. 2007).

1. *Blakely v. Washington* does not render the presumptive-certification statute, Minn. Stat. § 260B.125, subd. 3 (2004), unconstitutional.

2. The district court's determination regarding presumptive certification was appropriate based on the charge contained in the petition and its statutory presumptive sentence.

Due Process

In re Molnar, (A05-2261), 720 N.W.2d 604 (Minn. App. 2006).

I. The conduct of a privately owned, state-regulated business may constitute state action for Fourteenth Amendment purposes if the nexus between the challenged conduct and the state is so close that it can fairly be said that the state is responsible for the conduct.

II. Under Minn. Stat. § 240.27, subds. 2, 5 (2004), a Minnesota Racing Commission licensee is not required to give a patron notice and a hearing before excluding the patron from its premises.

III. The vagueness doctrine applies only to legislative enactments and cannot be successfully invoked when a reasonable person would know that his or her actions risk violation of a private entity's rules of conduct.

IV. Minn. Stat. § 240.30, subd. 7(c) (2004), does not restrict a Minnesota Racing Commission licensee's authority to exclude patrons from its premises.

State v. Kuhlman, (A06-568), 722 N.W.2d 1 (Minn. App. 2006), *aff'd*, 729 N.W.2d 577 (Minn. 2007).

The Minnesota legislature has expressly preempted local ordinances that are "in conflict" with the Minnesota Highway Traffic Regulation Act. The Minneapolis photo-enforcement ordinance is "in conflict" with the Act for two reasons. First, it violates the Act's uniformity requirement. Second, it reduces the state's burden of proof in a prosecution for a traffic-signal violation.

Beardsley v. Garcia, (A06-922), 731 N.W.2d 843 (Minn. App. 2007), *review granted* (Minn. Aug. 7, 2007).

A district court issuing a domestic-abuse order for protection under Minn. Stat. § 518B.01 (2006) has statutory authority to award, on a basis that gives primary consideration to the safety of the victim and the child, temporary parenting time to a father whose paternity has been acknowledged in a recognition of parentage under Minn. Stat. § 257.75 (2006).

Garcia v. Alstom Signaling, Inc., (A06-660), 729 N.W.2d 30 (Minn. App. 2007).

An individual who does not file for, receive, or have any entitlement to severance pay while collecting unemployment benefits is eligible to receive unemployment benefits under Minn. Stat. § 268.085, subd. 3 (Supp. 2005).

Equal Protection

Greene v. Comm'r of Minn. Dept. of Human Servs., (A06-804), 733 N.W.2d 490 (Minn. App. 2007), *review granted* (Minn. Aug. 21, 2007).

Precedents establishing that a public-benefit program limited to members of Native American tribes rests on a political rather than a racial classification govern as well the implementation of state law that benefits a tribe by permitting a contractual arrangement whereby the tribe provides an administrative service to its members and the members lose the freedom to use similar programs provided for non-members.

Reed v. Albaaj, (A05-1858), 723 N.W.2d 50 (Minn. App. 2006).

A member of the armed forces who is incarcerated for crimes committed while in active duty is not in "military service" for the purposes of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. §§ 501-596 (Supp. III 2003), and is therefore not entitled to the protection of the SCRA when a civil proceeding is initiated during the servicemember's incarceration.

State v. Richmond, (A06-2092), 730 N.W.2d 62 (Minn. App. 2007), *review denied* (Minn. June 19, 2007).

The legislature intended that the sale of less than three grams of cocaine, a schedule II narcotic drug, be punishable as a third-degree controlled-substance crime under Minn. Stat. § 152.023, subd. 1(1) (2004), which proscribes the sale of one or more

mixtures containing a narcotic drug, rather than as a fourth-degree controlled-substance crime under Minn. Stat. § 152.024, subd. 1(1) (2004), which proscribes the sale of one or more mixtures containing a schedule I, II, or III controlled substance.

First Amendment

State v. Mauer, (A05-460), 726 N.W.2d 810 (Minn. App. 2007), *rev'd on other grounds* (Minn. Nov. 15, 2007).

A statute that criminalizes the possession of child pornography when the possessor has "reason to know" that the pornographic work uses a minor to depict actual or simulated sexual conduct requires that the possessor be in some manner aware that the performers are minors and, therefore, prescribes a scienter level sufficient to satisfy the requirements of the First Amendment.

CONTRACTS

Dunn v. Nat'l Beverage Corp., (A06-396, A06-397), 729 N.W.2d 637 (Minn. App. 2007), *review granted* (Minn. June 19, 2007).

A party who brings an action for violation of the franchise act pursuant to Minn. Stat. § 80C.17, subd. 1 (2006) is not entitled to attorney fees pursuant to Minn. Stat. § 80C.17, subd. 3 (2006) unless the party has obtained relief under the act.

In re Estate of Sullivan, (A06-171), 724 N.W.2d 532 (Minn. App. 2006).

I. A district court may not approve an agreement to settle a will contest under Minn. Stat. § 524.3-1102 (2004) if the agreement is not signed by all persons who have a beneficial interest and all persons who have a claim that will or may be affected by the agreement.

II. A district court does not abuse its discretion by concluding that an adult child who received infrequent and inconsistent loans from a decedent does not qualify for a family allowance under Minn. Stat. § 524.2-404 (2004).

Javinsky v. Comm'r of Admin., (A06-109), 725 N.W.2d 393 (Minn. App. 2007).

The time to appeal from a judgment entered pursuant to Minn. R. Civ. P. 54.02 begins to run on the entry of judgment if the district court makes an express determination that there is no just reason for delay and expressly directs the entry of judgment.

CRIMINAL

In re Risk Level Determination of S.S., (A06-36), 726 N.W.2d 121 (Minn. App. 2007), *review denied* (Minn. Mar. 28, 2007).

The department of corrections' end-of-confinement review committee failed to satisfy the requirements of Minn. Stat. § 244.052 (2004) when it did not apply a weighted risk-assessment tool to assess the risk level of a female offender convicted of criminal sexual conduct.

Forfeiture

Torgelson v. Real Property, 17138 880th Ave., (A06-1507, A06-1757), 734 N.W.2d 279 (Minn. App. 2007), *review granted* (Minn. Sept. 26, 2007).

Pursuant to article I, section 12, of the Minnesota Constitution, homestead property is not subject to forfeiture under Minn. Stat. § 609.5311, subd. 2 (2004).

Investigation

Lewis v. Comm'r of Pub. Safety, (A06-1550) 737 N.W.2d 591 (Minn. App. 2007).

Once an officer has given a driver all relevant information regarding the consequences of refusing to take a chemical test for intoxication and the driver has clearly refused for a reasonable amount of time, a change of mind is precluded.

State v. Morin, (A06-602, A06-604, A06-605, A06-606), 736 N.W.2d 691 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

A conviction for obstructing legal process under Minn. Stat. § 609.50, subd. 1(2) (2004) requires that the person intentionally commit a physical or oral act directed at the peace officer that obstructs, resists, or interferes with the officer's performance of official duties.

State v. Engle, (A05-2423), 731 N.W.2d 852 (Minn. App. 2007), *review granted* (Minn. Aug. 7, 2007).

1. The state's failure to investigate to uncover and preserve potentially exculpatory evidence does not implicate a defendant's right to due process and trigger a *Brady* analysis.

2. Conviction of the crime of reckless discharge of a firearm within a municipality does not require proof that the defendant intended to discharge the firearm.

State v. Werner, (A06-1378), 725 N.W.2d 767 (Minn. App. 2007).

A driver lawfully stopped, handcuffed, and taken into custody on an unrelated offense, who exhibits indicia of intoxication, and who is not subjected to any additional restraint, may be asked whether he has been drinking without first being given a Miranda

warning.

State v. Jordan, (A06-1445), 726 N.W.2d 534 (Minn. App. 2007), *review granted* (Minn. Apr. 17, 2007).

Suppression of evidence seized pursuant to a nighttime search warrant that was held to be invalid under Minn. Stat. § 626.14 (2004), was error because execution of the warrant constituted a technical violation of a statute and not a constitutional violation when respondent was not present in his home at the time the search occurred.

State v. Mohs, (A06-199), 726 N.W.2d 816 (Minn. App. 2007), *review granted* (Minn. Apr. 25, 2007).

A district court judge who issues a bench warrant for the arrest of a criminal defendant based solely on the judge's observation and knowledge that the defendant did not appear for his scheduled jury trial, rather than on a witness's oath or affirmation declaring the failure to appear, does not violate the Fourth Amendment to the United States Constitution or article I, section 10, of the Minnesota Constitution.

Postconviction Relief

Johnson v. State, (A06-1102), 733 N.W.2d 834 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

In a postconviction proceeding in which a sentence on one of two counts is successfully challenged, resulting in a reduction of that sentence, the court has the authority to increase the other sentence so as to comport with the plea agreement as to the aggregate amount of time to be imposed in the sentencing.

Munger v. State, (A06-1563), 737 N.W.2d 604 (Minn. App. 2007), *pet. for review filed* (Minn. Oct. 16, 2007).

Under Minn. Stat. § 609.582, subd. 1(a) (2004), the state must show as an element of the offense of first-degree burglary that a defendant entered a building with the intent to commit a crime within the building.

Pretrial

State v. Mohs, (A06-199), 726 N.W.2d 816 (Minn. App. 2007), *review granted* (Minn. Apr. 25, 2007).

A district court judge who issues a bench warrant for the arrest of a criminal defendant based solely on the judge's observation and knowledge that the defendant did not appear for his scheduled jury trial, rather than on a witness's oath or affirmation declaring the failure to appear, does not violate the Fourth Amendment to the United States Constitution or article I, section 10, of the Minnesota Constitution.

State v. Richmond, (A06-2092), 730 N.W.2d 62 (Minn. App. 2007), *review denied* (Minn. June 19, 2007).

The legislature intended that the sale of less than three grams of cocaine, a schedule II narcotic drug, be punishable as a third-degree controlled-substance crime under Minn. Stat. § 152.023, subd. 1(1) (2004), which proscribes the sale of one or more mixtures containing a narcotic drug, rather than as a fourth-degree controlled-substance crime under Minn. Stat. § 152.024, subd. 1(1) (2004), which proscribes the sale of one or more mixtures containing a schedule I, II, or III controlled substance.

State v. Engle, (A05-2423), 731 N.W.2d 852 (Minn. App. 2007), *review granted* (Minn. Aug. 7, 2007).

1. The state's failure to investigate to uncover and preserve potentially exculpatory evidence does not implicate a defendant's right to due process and trigger a *Brady* analysis.

2. Conviction of the crime of reckless discharge of a firearm within a municipality does not require proof that the defendant intended to discharge the firearm.

State v. Vonderharr, (A06-2421), 733 N.W.2d 847 (Minn. App. 2007).

Certified copies of Department of Public Safety records about the status of a driver's license that were not prepared for the purpose of prosecuting the driver are not testimonial evidence that implicates the Confrontation Clause of the Sixth Amendment to the United States Constitution.

Sentencing

Black v. State, (A06-166, A06-311), 725 N.W.2d 772 (Minn. App. 2007).

The threat of great bodily harm or death is not an element of first-degree witness tampering; therefore, it can be used as an aggravating factor in sentencing for first-degree witness-tampering convictions.

State v. Weaver, (A06-551), 733 N.W.2d 793 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

1. Laboratory test results that are offered to prove the cause of death in a murder trial are testimonial in nature and implicate a defendant's right to confrontation under *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004).

2. A defendant does not forfeit or waive his confrontation rights under *Crawford* by absenting himself from the state for several years, without some proof that he did so to cause the prosecution to lose the particular evidence that requires it to offer the out-of-court statement, and that his conduct caused the loss of that evidence.

3. An error in admitting laboratory test results through testimony of an assistant medical examiner who received those results and relied on them in reaching her opinion as to the cause of death was not harmless beyond a reasonable doubt.

4. When instructing a sentencing jury on aggravating factors, the district court must define the term "particular cruelty," so that the jury can assess whether the defendant's conduct is significantly more serious than that typically associated with the crime of which the defendant was convicted.

State v. Jones, (A06-1719), 733 N.W.2d 160 (Minn. App. 2007), *review granted* (Minn. Aug. 21, 2007).

Just as the district court may impose an upward sentencing departure based on a proper postconviction determination of aggravating factors, it can employ aggravating circumstances of the offense that were adjudicated by a jury in the form of a charge for a lesser offense.

State v. Anderson, (A05-1167), 720 N.W.2d 854 (Minn. App. 2006), *aff'd*, 733 N.W.2d 128 (Minn. 2007).

A conviction of felony burglary, which is later deemed a misdemeanor under Minn. Stat. § 609.13, subd. 1(2), is a "crime of violence" mandating imposition of a firearms restriction under Minn. Stat. §§ 609.165, subd. 1b, 624.712, subd. 5 (2004).

Johnson v. State, (A06-1102), 733 N.W.2d 834 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

In a postconviction proceeding in which a sentence on one of two counts is successfully challenged, resulting in a reduction of that sentence, the court has the authority to increase the other sentence so as to comport with the plea agreement as to the aggregate amount of time to be imposed in the sentencing.

State v. Turck, (A06-846), 728 N.W.2d 544 (Minn. App. 2007), *review denied* (Minn. May 30, 2007).

The mandatory-minimum sentencing provision for a repeat offender who commits a third-degree controlled-substance crime under Minn. Stat. §§ 152.023, subd. 3(b) (2004), and .026 (Supp. 2005), prohibits a district court from staying execution of the sentence.

State v. Verdon, (A06-335), 727 N.W.2d 418 (Minn. App. 2007).

A district court has jurisdiction to correct an erroneous Minnesota Offense Code on a criminal judgment and warrant of commitment.

State v. Hager, (A05-2410), 727 N.W.2d 668 (Minn. App. 2007).

1. A conviction for aiding an offender under Minn. Stat. § 609.495, subd. 1(a) (2004), requires that the predicate offense be identified and be a felony.

2. A district court's failure to instruct a jury that the crime of obstruction of legal process under Minn. Stat. § 609.50, subd. 1(2) (2004), requires physical interference with an officer's performance of his duties constitutes prejudicial error.

State v. Boehl, (A06-1643), 726 N.W.2d 831 (Minn. App. 2007), *review denied* (Minn. Apr. 17, 2007).

When the state seeks an enhanced sentence pursuant to a sentencing-enhancement statute that the legislature has amended to comply with the constitutional right to a jury determination on aggravating sentencing factors as recognized in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), but that amendment applies only to offenses committed on or after the amendment's effective date, a district court may exercise its inherent judicial authority to impanel a sentencing or resentencing jury to determine whether the aggravating factors identified in the sentencing-enhancement statute exist for those offenders to which the amendment does not apply.

Statutes

State v. Anderson, (A05-1167), 720 N.W.2d 854 (Minn. App. 2006), *aff'd*, 733 N.W.2d 128 (Minn. 2007).

A conviction of felony burglary, which is later deemed a misdemeanor under Minn. Stat. § 609.13, subd. 1(2), is a "crime of violence" mandating imposition of a firearms restriction under Minn. Stat. §§ 609.165, subd. 1b, 624.712, subd. 5 (2004).

State v. Kelley, (A06-408), 734 N.W.2d 689 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

Minn. Stat. § 609.2231, subd. 1 (2004), does not require a physical assault in addition to "intentionally throw[ing] or otherwise transfer[ing] bodily fluids or feces at or onto the officer" to constitute a felony.

State v. Kuhlman, (A06-568), 722 N.W.2d 1 (Minn. App. 2006), *aff'd*, 729 N.W.2d 577 (Minn. 2007).

The Minnesota legislature has expressly preempted local ordinances that are "in conflict" with the Minnesota Highway Traffic Regulation Act. The Minneapolis photo-enforcement ordinance is "in conflict" with the Act for two reasons. First, it violates the Act's uniformity requirement. Second, it reduces the state's burden of proof in a prosecution for a traffic-signal violation.

State v. Morin, (A06-602, A06-604, A06-605, A06-606) 736 N.W.2d 691 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

A conviction for obstructing legal process under Minn. Stat. § 609.50, subd. 1(2) (2004) requires that the person intentionally commit a physical or oral act directed at the peace officer that obstructs, resists, or interferes with the officer's performance of official duties.

State v. Richmond, (A06-2092), 730 N.W.2d 62 (Minn. App. 2007), *review denied* (Minn. June 19, 2007).

The legislature intended that the sale of less than three grams of cocaine, a schedule II narcotic drug, be punishable as a third-degree controlled-substance crime under Minn. Stat. § 152.023, subd. 1(1) (2004), which proscribes the sale of one or more mixtures containing a narcotic drug, rather than as a fourth-degree controlled-substance crime under Minn. Stat. § 152.024, subd. 1(1) (2004), which proscribes the sale of one or more mixtures containing a schedule I, II, or III controlled substance.

State v. Mauer, (A05-460), 726 N.W.2d 810 (Minn. App. 2007), *review granted* (Minn. Apr. 17, 2007).

A statute that criminalizes the possession of child pornography when the possessor has "reason to know" that the pornographic work uses a minor to depict actual or simulated sexual conduct requires that the possessor be in some manner aware that the performers are minors and, therefore, prescribes a scienter level sufficient to satisfy the requirements of the First Amendment.

State v. Perry, (A05-2459), 725 N.W.2d 761 (Minn. App. 2007), *review denied* (Minn. Mar. 20, 2007).

The state is not required to prove actual danger to a child's person or health as a separate element of the crime of child endangerment under Minn. Stat. § 609.378, subd. 1(b)(2) (2000).

State v. Turck, (A06-846), 728 N.W.2d 544 (Minn. App. 2007), *review denied* (Minn. May 30, 2007).

The mandatory-minimum sentencing provision for a repeat offender who commits a third-degree controlled-substance crime under Minn. Stat. §§ 152.023, subd. 3(b) (2004), and .026 (Supp. 2005), prohibits a district court from staying execution of the sentence.

State v. Boehl, (A06-1643), 726 N.W.2d 831 (Minn. App. 2007), *review denied* (Minn. Apr. 17, 2007)

When the state seeks an enhanced sentence pursuant to a sentencing-enhancement statute that the legislature has amended to comply with the constitutional right to a jury determination on aggravating sentencing factors as recognized in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), but that amendment applies only to offenses committed on or after the amendment's effective date, a district court may exercise its inherent judicial authority to impanel a sentencing or resentencing jury to determine whether the aggravating factors identified in the sentencing-enhancement statute exist for those offenders to which the amendment does not apply.

Sufficiency of Evidence

State v. Engle, (A05-2423), 731 N.W.2d 852 (Minn. App. 2007), *review granted* (Minn. Aug. 7, 2007).

1. The state's failure to investigate to uncover and preserve potentially exculpatory evidence does not implicate a defendant's right to due process and trigger a *Brady* analysis.

2. Conviction of the crime of reckless discharge of a firearm within a municipality does not require proof that the defendant intended to discharge the firearm.

State v. Kelley, (A06-408), 734 N.W.2d 689 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

Minn. Stat. § 609.2231, subd. 1 (2004), does not require a physical assault in addition to "intentionally throw[ing] or otherwise transfer[ing] bodily fluids or feces at or onto the officer" to constitute a felony.

State v. Morin, (A06-602, A06-604, A06-605, A06-606), 736 N.W.2d 691 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

A conviction for obstructing legal process under Minn. Stat. § 609.50, subd. 1(2) (2004) requires that the person intentionally commit a physical or oral act directed at the peace officer that obstructs, resists, or interferes with the officer's performance of official duties.

State v. Washington, (A05-1071), 725 N.W.2d 125 (Minn. App. 2006), *review denied* (Minn. Mar. 20, 2007).

An assault victim's statements to a 911 operator and to police in an onsite interview were nontestimonial because they were made under circumstances objectively indicating that the primary purpose was to enable police to assist in an ongoing emergency, and, therefore, the district court's admission of these statements into evidence did not deny defendant the constitutional right to confront witnesses against him.

State v. Perry, (A05-2459), 725 N.W.2d 761 (Minn. App. 2007), *review denied* (Minn. Mar. 20, 2007).

The state is not required to prove actual danger to a child's person or health as a separate element of the crime of child endangerment under Minn. Stat. § 609.378, subd. 1(b)(2) (2000).

State v. Hager, (A05-2410), 727 N.W.2d 668 (Minn. App. 2007).

1. A conviction for aiding an offender under Minn. Stat. § 609.495, subd. 1(a) (2004), requires that the predicate offense be identified and be a felony.

2. A district court's failure to instruct a jury that the crime of obstruction of legal process under Minn. Stat. § 609.50, subd. 1(2) (2004), requires physical interference with an officer's performance of his duties constitutes prejudicial error.

Trial

Munger v. State, (A06-1563), 737 N.W.2d 604 (Minn. App. 2007), *pet. for review filed* (Minn. Oct. 16, 2007).

Under Minn. Stat. § 609.582, subd. 1(a) (2004), the state must show as an element of the offense of first-degree burglary that a defendant entered a building with the intent to commit a crime within the building.

State v. Vonderharr, (A06-2421), 733 N.W.2d 847 (Minn. App. 2007).

Certified copies of Department of Public Safety records about the status of a driver's license that were not prepared for the purpose of prosecuting the driver are not testimonial evidence that implicates the Confrontation Clause of the Sixth Amendment to the United States Constitution.

State v. Weaver, (A06-551), 733 N.W.2d 793 (Minn. App. 2007), *pet. for review filed* (Minn. July 31, 2007).

1. Laboratory test results that are offered to prove the cause of death in a murder trial are testimonial in nature and implicate a defendant's right to confrontation under *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004).

2. A defendant does not forfeit or waive his confrontation rights under *Crawford* by absenting himself from the state for several years, without some proof that he did so to cause the prosecution to lose the particular evidence that requires it to offer the out-of-court statement, and that his conduct caused the loss of that evidence.

3. An error in admitting laboratory test results through testimony of an assistant medical examiner who received those results and relied on them in reaching her opinion as to the cause of death was not harmless beyond a reasonable doubt.

4. When instructing a sentencing jury on aggravating factors, the district court must define the term "particular cruelty," so that the jury can assess whether the defendant's conduct is significantly more serious than that typically associated with the crime of which the defendant was convicted.

State v. Krasky, (A04-2011), 721 N.W.2d 916 (Minn. App. 2006), *rev'd*, 736 N.W.2d 636 (Minn. 2007).

Statements made by a child victim to a medical professional are testimonial for purposes of the Confrontation Clause if they are taken as part of a police investigation into past conduct against the child and there are no steps taken or still required to protect the child's safety or welfare based on the conduct.

State v. Anderson, (A05-1167), 720 N.W.2d 854 (Minn. App. 2006), *aff'd*, 733 N.W.2d 128 (Minn. 2007).

A conviction of felony burglary, which is later deemed a misdemeanor under Minn. Stat. § 609.13, subd. 1(2), is a "crime of violence" mandating imposition of a

firearms restriction under Minn. Stat. §§ 609.165, subd. 1b, 624.712, subd. 5 (2004).

State v. Washington, (A05-1071), 725 N.W.2d 125 (Minn. App. 2006), *review denied* (Minn. Mar. 20, 2007).

An assault victim's statements to a 911 operator and to police in an onsite interview were nontestimonial because they were made under circumstances objectively indicating that the primary purpose was to enable police to assist in an ongoing emergency, and, therefore, the district court's admission of these statements into evidence did not deny defendant the constitutional right to confront witnesses against him.

State v. Flemino, (A05-1384), 721 N.W.2d 326 (Minn. App. 2006).

1. There are two categories of crimes that can be admissible for impeachment under Minn. R. Evid. 609: felonies and crimes of false statement or dishonesty.

2. To be admissible for impeachment, felonies do not need to be crimes directly implicating honesty but rather can be allowed so as to permit the trier of fact to assess the witness's general trustworthiness.

3. Felonies are not admissible for impeachment unless their probative value outweighs their prejudicial effect as assessed through the application of the factors in *State v. Jones*, 271 N.W.2d 534, 538 (Minn. 1978).

4. Prior felony convictions of burglary and drug possession may be admissible for impeachment, after application of the balancing test, on the broad issue of general trustworthiness.

State v. K.M.M., (A05-1960), 721 N.W.2d 330 (Minn. App. 2006).

When the state dismisses a grand-jury indictment and elects not to prosecute the charge further, the grand-jury proceedings are considered to be resolved in favor of the petitioner for purposes of expungement of the record

State v. Jordan, (A06-1445), 726 N.W.2d 534 (Minn. App. 2007), *review granted* (Minn. Apr. 17, 2007).

Suppression of evidence seized pursuant to a nighttime search warrant that was held to be invalid under Minn. Stat. § 626.14 (2004), was error because execution of the warrant constituted a technical violation of a statute and not a constitutional violation when respondent was not present in his home at the time the search occurred.

State v. Garibaldi, (A06-116), 726 N.W.2d 823 (Minn. App. 2007).

A defendant's waiver of trial counsel is not knowing, voluntary, and intelligent when the record does not show that he had adequate opportunity to consult with previous counsel, stand-by counsel is not appointed, and the district court fails to conduct an adequate on-the-record inquiry of the factors listed in Minn. R. Crim. P. 5.02, subd. 1(4).

State v. Hager, (A05-2410), 727 N.W.2d 668 (Minn. App. 2007).

1. A conviction for aiding an offender under Minn. Stat. § 609.495, subd. 1(a) (2004), requires that the predicate offense be identified and be a felony.

2. A district court's failure to instruct a jury that the crime of obstruction of legal process under Minn. Stat. § 609.50, subd. 1(2) (2004), requires physical interference with an officer's performance of his duties constitutes prejudicial error.

State v. Cottew, (A06-785), 728 N.W.2d 268 (Minn. App. 2007), *review granted* (Minn. June 19, 2007).

1. A district court is not required to make the findings mandated by *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980), *reaffirmed in State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005), when imposing an intermediate sanction for a probation violation.

2. Because Minn. R. Crim. P. 27.04, subd. 3(3)(b), which requires the district court to place the defendant on probation before it imposes intermediate sanctions for a probation violation, conflicts with Minn. Stat. § 609.135, subd. 1(a)(1) (2004), which permits the district court to impose intermediate sanctions without placing the defendant on probation, section 609.135, subdivision 1(a)(1), is without force or effect when imposing an intermediate sanction for a probation violation.

DEBTOR/CREDITOR

Christians v. Grant Thornton LLP, (A06-1309), 733 N.W.2d 803 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

Deepening insolvency is not a valid theory of damages in an auditor-malpractice action brought on behalf of an insolvent corporation.

Allete, Inc. v. GEC Eng'g, Inc., (A06-881), 726 N.W.2d 520 (Minn. App. 2007).

A subsequently filed financing statement does not amend a security agreement to establish a security interest in property.

DITCH LAW

Minch v. Buffalo-Red River Watershed Dist., (A05-2339), 723 N.W.2d 483 (Minn. App. 2006), *review denied* (Minn. Jan. 24, 2007).

A watershed district lacks authority under chapter 103D of the Minnesota Statutes to order a landowner to clean a private ditch subject to the watershed district's public right-of-way easement. But a watershed district has authority to determine whether a blockage of its easement constitutes an obstruction within the meaning of Minn. Stat. § 103E.075 (2004) that a landowner may be obligated to remove.

ECONOMIC SECURITY

Discharge/Misconduct

Lamah v. Doherty Employment Group, Inc., (A06-1680) 737 N.W.2d 595 (Minn. App. 2007).

A person performing 32 or more hours a week of service in employment, covered employment, noncovered employment, self-employment, or volunteer work is presumptively employed full time for purposes of qualifying for unemployment benefits. This presumption may be rebutted.

Pierce v. DiMa Corp., (A05-2470), 721 N.W.2d 627 (Minn. App. 2006).

A single violation of an employer's cash-register policy that does not involve theft or the mishandling of funds is within the single-incident exception to the definition of employment misconduct in Minn. Stat. § 268.095, subd. 6 (2004).

Scheeler v. Sartell Water Controls, Inc., (A06-715), 730 N.W.2d 285 (Minn. App. 2007).

1. Under Minn. Stat. § 268.085, subd. 13a(a) (2004), an employee who chooses not to perform work available with the employer for a period of time is not eligible for unemployment benefits during that time.

2. Minn. Stat. § 268.069, subd. 2 (2004), voids an employer's agreement that an employee who chooses not to perform work available with the employer for a period of time will be eligible for unemployment benefits during that time.

Wichmann v. Travalia & U.S. Directives, Inc., (A06-677), 729 N.W.2d 23 (Minn. App. 2007).

When the credibility of a party or witness who testifies at an unemployment-benefits evidentiary hearing significantly affects the outcome of the proceeding, Minn. Stat. § 268.105, subd. 1(c) (Supp. 2005) requires the unemployment law judge to make findings that explain why the judge credited or discredited testimony. When an unemployment law judge fails to make any statutorily required findings addressing credibility, we will remand for additional findings.

Eligibility

Garcia v. Alstom Signaling, Inc., (A06-660), 729 N.W.2d 30 (Minn. App. 2007).

An individual who does not file for, receive, or have any entitlement to severance pay while collecting unemployment benefits is eligible to receive unemployment benefits under Minn. Stat. § 268.085, subd. 3 (Supp. 2005).

Taxes

Enter. Commc'ns, Inc. v. Department of Employment and Economic Development, (A05-2513), 724 N.W.2d 758 (Minn. App. 2006).

1. A decision of this court that an employee qualifies for unemployment benefits does not preclude future consideration by the Department of Employment and Economic Development of that employee's eligibility for ongoing benefits.

2. Employers may not protest the payment of unemployment benefits to individual employees in proceedings to review computed unemployment tax rates pursuant to Minn. Stat. § 268.051, subd. 6(c) (Supp. 2005).

3. The Department of Employment and Economic Development must act on an employer's timely and properly filed objections regarding employee eligibility for unemployment benefits.

4. The court of appeals may decline to consider employer assertions that an employee was not eligible for continuing benefits until the Department of Employment and Economic Development has considered the controversy.

EMPLOYMENT

Leiendecker v. Asian Women United of Minn., (A06-959), 731 N.W.2d 836 (Minn. App. 2007), *review denied* (Minn. Aug. 7, 2007).

Because a tort claim is not a compulsory counterclaim under Minn. R. Civ. P. 13.01, a party's failure to assert a tort claim in a prior non-tort action does not preclude that party from asserting such a claim in a subsequent action involving the same parties.

Phillips v. State, (A06-627), 725 N.W.2d 778 (Minn. App. 2007), *review denied* (Minn. Mar. 28, 2007).

The doctrine of compelled self-publication as it relates to separation from employment is limited to defamation actions and does not apply to a claim alleging a constitutional violation of a liberty interest.

Gagliardi v. Ortho-Midwest, Inc., (A06-1318), 733 N.W.2d 171 (Minn. App. 2007).

A report of alleged incidents of sexual harassment made by a third-party nonemployee will not establish a prima facie case of retaliation against an employee under the Minnesota Human Rights Act.

Discrimination

Meads v. Best Oil Co., (A06-966), 725 N.W.2d 538 (Minn. App. 2006), *review denied* (Minn. Feb. 20, 2007).

1. Summary judgment on an employment discrimination claim is error if there is a dispute of material fact whether the employer's refusal to hire was based on a legitimate, nondiscriminatory reason or whether that reason was a pretext for racial discrimination.

2. If, after a prospective employee initiates an action against an employer for discriminatory refusal to hire because of race, the employer discovers that the prospective employee failed to disclose a criminal conviction in his application, the discrimination action is not barred by that failure to disclose.

3. Discovery of improperly withheld information on a job application may limit remedies for discriminatory refusal to hire.

Public Employee

Minn. Ass'n of Prof'l Employees v. Anderson, (A06-1826), 736 N.W.2d 699 (Minn. App. 2007).

Minnesota Statutes section 43A.01, subdivision 3 (2006), imposes no duty on the Commissioner of the Minnesota Department of Employee Relations to ensure that executive-branch employees are compensated equitably according to the "Hay points" system.

Minn. Teamsters, Local No. 320 v. County of St. Louis, (A06-841), 726 N.W.2d 843 (Minn. App. 2007), *review denied* (Minn. Apr. 25, 2007).

1. An executed collective bargaining agreement supersedes prior negotiations and preliminary agreements between the parties.

2. Disputes regarding the meaning of generally applicable, unambiguous terms of collective bargaining agreements are not subject to the mandatory grievance procedure.

3. It is not an unfair labor practice for a party to refuse to negotiate or participate in a grievance procedure during a contract term over disputed healthcare benefits when the collective bargaining agreement clearly states that the benefits are governed by the insurance policy.

In re Claim for Benefits by Hagert, (A06-1141), 730 N.W.2d 546 (Minn. App. 2007).

Under Minn. Stat. § 299A.465 (2004 & Supp. 2005), a retired peace officer who receives a duty-related disability pension is entitled to receive continued health-insurance benefits until age 65 if the peace officer's retirement resulted from a disabling injury that occurred while acting in the course and scope of duties as a peace officer and those occupational duties or professional responsibilities put the officer at risk for the type of injury actually sustained, even if those duties or responsibilities are not unique to the job of

a peace officer.

ENVIRONMENTAL LAW

Watab Twp. Citizen Alliance v. Benton County Bd. of Comm'rs, (A06-378, A06-1069), 728 N.W.2d 82 (Minn. App. 2007), *review denied* (Minn. May 15, 2007).

Under Minn. Stat. § 116D.04, subd. 2a(c) (2006), "material evidence" means evidence that is admissible in an administrative proceeding before a state agency and is relevant and consequential to whether a project may have the potential for significant environmental effects.

EQUITABLE RELIEF

Brodsky v. Brodsky, (A06-736), 733 N.W.2d 471 (Minn. App. 2007).

1. A party may recover attorney fees incurred in a proceeding ancillary to a dissolution proceeding if the ancillary proceeding is sufficiently related to the dissolution, the party's participation in the ancillary proceeding was necessary to protect an interest awarded in the dissolution, and the former spouse's conduct in the ancillary proceeding supports a conduct-based fee award under Minn. Stat. § 518.14, subd. 1 (2006).

2. If a party satisfies a debt that under the terms of a dissolution judgment is the nonmarital debt of the party's former spouse, the district court may award the party interest on the amount paid if necessary to fulfill the intent of the dissolution judgment.

Christians v. Grant Thornton LLP, (A06-1309), 733 N.W.2d 803 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

Deepening insolvency is not a valid theory of damages in an auditor-malpractice action brought on behalf of an insolvent corporation.

City of Wyoming v. Minn. Office of Admin. Hearings, (A06-1594), 735 N.W.2d 746 (Minn. App. 2007), *review denied* (Minn. Sept. 26, 2007).

Under Minn. Stat. ch. 414, the director of the Office of Strategic and Long-Range Planning has the discretion to determine which of two competing petitions for annexation, namely, a joint petition under Minn. Stat. § 414.0325 (2006) and a petition for annexation under Minn. Stat. § 414.031 (2006), should proceed first.

Injunctions

Milner v. Farmers Ins. Exch., (A06-178), 725 N.W.2d 138 (Minn. App. 2006), *review granted* (Minn. Mar. 20, 2007).

1. Pursuant to Minn. Stat. § 177.27, subd. 8 (2004), an employee seeking redress for a violation of the Minnesota Fair Labor Standards Act may bring a civil action

and seek injunctive relief and civil penalties.

2. Civil penalties awarded under Minn. Stat. § 177.27, subd. 8 (2004), are payable to the state and not to individual litigants.

Writs

Javinsky v. Comm'r of Admin., (A06-109), 725 N.W.2d 393 (Minn. App. 2007).

The time to appeal from a judgment entered pursuant to Minn. R. Civ. P. 54.02 begins to run on the entry of judgment if the district court makes an express determination that there is no just reason for delay and expressly directs the entry of judgment.

EVIDENCE

Danielson v. Danielson, (A05-2569), 721 N.W.2d 335 (Minn. App. 2006).

1. Parol evidence is not admissible to contradict, alter, or explain a quitclaim deed that is unambiguous on its face.

2. In a dissolution proceeding, a district court lacks personal jurisdiction over a nonparty to the matter being litigated and cannot adjudicate the property rights of the nonparty. When a nonparty is alleged to have an interest in a marital asset and where the existence or extent of that interest is disputed by a party, the district court may (a) exclude the asset from the property division and, after resolution of any third-party disputes regarding the various interests in the asset, later divide the marital portion of the asset as omitted property; or (b) include the asset in the property division by awarding each party a percentage interest in whatever may later be determined to be the marital interest in the asset; or (c) divide the asset as if there is no nonparty interest in it, subject to the judgment being reopened and adjusted under Minn. Stat. § 518.145, subd. 2 (2004).

In re Commitment of Williams, (A07-185), 735 N.W.2d 727 (Minn. App. 2007), *review denied* (Minn. Sept. 26, 2007).

I. The Commitment and Treatment Act Rules require a district court to admit all relevant evidence in a civil-commitment proceeding and to apply the Minnesota Rules of Evidence to determine relevancy.

II. A district court may at its discretion appoint additional examiners in a civil-commitment proceeding.

FAMILY LAW

Reed v. Albaaj, (A05-1858), 723 N.W.2d 50 (Minn. App. 2006).

A member of the armed forces who is incarcerated for crimes committed while in active duty is not in "military service" for the purposes of the Servicemembers Civil Relief

Act (SCRA), 50 U.S.C. app. §§ 501-596 (Supp. III 2003), and is therefore not entitled to the protection of the SCRA when a civil proceeding is initiated during the servicemember's incarceration.

Attorney Fees

Brodsky v. Brodsky, (A06-736), 733 N.W.2d 471 (Minn. App. 2007).

1. A party may recover attorney fees incurred in a proceeding ancillary to a dissolution proceeding if the ancillary proceeding is sufficiently related to the dissolution, the party's participation in the ancillary proceeding was necessary to protect an interest awarded in the dissolution, and the former spouse's conduct in the ancillary proceeding supports a conduct-based fee award under Minn. Stat. § 518.14, subd. 1 (2006).

2. If a party satisfies a debt that under the terms of a dissolution judgment is the nonmarital debt of the party's former spouse, the district court may award the party interest on the amount paid if necessary to fulfill the intent of the dissolution judgment.

Child Custody

In re Child of Evenson, (A06-1217), 729 N.W.2d 632 (Minn. App. 2007), *review denied* (Minn. June 19, 2007).

After a parent's presumption of parental fitness has been overcome in child-protection adjudication that transfers legal and physical custody from the parent because of neglect, the presumption cannot support the parent's motion to modify the custody-transfer order.

Goldman v. Greenwood, (A06-1110), 725 N.W.2d 747 (Minn. App. 2007), *review granted* (Minn. Mar. 20, 2007).

1. When a sole physical custodian proposes to remove the child from Minnesota to another state, and the noncustodial parent has parenting time with the child and opposes the move, Minn. Stat. § 518.175, subd. 3, as amended by 2006 Minn. Laws ch. 280, § 13 (effective August 1, 2006), determines the sole physical custodian's burden to show that removal is in the child's best interests.

2. The foregoing conclusion remains appropriate even if a prior judgment conditions an award of sole physical custody on both alternative parenting time and non-removal from the state. The amended removal statute, Minn. Stat. 518.175, subd. 3(b) (2006), not the amended modification statute, Minn. Stat. § 518.18(d) (2006), governs the sole physical custodian's burden in the event of a later removal motion.

3. The district court, on a motion for removal, must consider the factors stated in Minn. Stat. § 518.175, subd. 3(b) (2006), to determine the best interests of the child. In a determination to deny removal, absent court findings that the purpose of the proposed move is to interfere with the noncustodial parent's parenting time—normally implicating minimal merit in the physical custodian's reason for relocation—the court must make findings on the severity of detriment to the child associated with separating

the child and the sole custodian.

Domestic Abuse

Braend ex rel. Minor Children v. Braend, (A05-2522), 721 N.W.2d 924 (Minn. App. 2006).

The Domestic Abuse Act, Minn. Stat. § 518B.01 (2004), does not require specific duration-related findings of fact to support an order for protection with a fixed period of more than one year.

Elmasry v. Verdin, (A06-655), 727 N.W.2d 163 (Minn. App. 2007).

A person residing in one residence with another may obtain relief under the Domestic Abuse Act, Minn. Stat. § 518B.01 (2006), despite the absence of a marital, familial, sexual, or romantic relationship.

Beardsley v. Garcia, (A06-922), 731 N.W.2d 843 (Minn. App. 2007), *review granted* (Minn. Aug. 7, 2007).

A district court issuing a domestic-abuse order for protection under Minn. Stat. § 518B.01 (2006) has statutory authority to award, on a basis that gives primary consideration to the safety of the victim and the child, temporary parenting time to a father whose paternity has been acknowledged in a recognition of parentage under Minn. Stat. § 257.75 (2006).

Property Division

Brodsky v. Brodsky, (A06-736), 733 N.W.2d 471 (Minn. App. 2007).

1. A party may recover attorney fees incurred in a proceeding ancillary to a dissolution proceeding if the ancillary proceeding is sufficiently related to the dissolution, the party's participation in the ancillary proceeding was necessary to protect an interest awarded in the dissolution, and the former spouse's conduct in the ancillary proceeding supports a conduct-based fee award under Minn. Stat. § 518.14, subd. 1 (2006).

2. If a party satisfies a debt that under the terms of a dissolution judgment is the nonmarital debt of the party's former spouse, the district court may award the party interest on the amount paid if necessary to fulfill the intent of the dissolution judgment.

Danielson v. Danielson, (A05-2569), 721 N.W.2d 335 (Minn. App. 2006).

1. Parol evidence is not admissible to contradict, alter, or explain a quitclaim deed that is unambiguous on its face.

2. In a dissolution proceeding, a district court lacks personal jurisdiction over a nonparty to the matter being litigated and cannot adjudicate the property rights of the nonparty. When a nonparty is alleged to have an interest in a marital asset and where the existence or extent of that interest is disputed by a party, the district court may (a) exclude the asset from the property division and, after resolution of any third-party

disputes regarding the various interests in the asset, later divide the marital portion of the asset as omitted property; or (b) include the asset in the property division by awarding each party a percentage interest in whatever may later be determined to be the marital interest in the asset; or (c) divide the asset as if there is no nonparty interest in it, subject to the judgment being reopened and adjusted under Minn. Stat. § 518.145, subd. 2 (2004).

Baker v. Baker, (A06-1252), 733 N.W.2d 815 (Minn. App. 2007), *review granted* (Minn. Sept. 18, 2007).

1. That a spouse hires a financial advisor to manage premarital property does not preclude a finding that the appreciation of that property is active appreciation, the value of which is marital property.

2. The portion of the value of a noncompetition agreement that is attributable to the institutional goodwill accumulated in the business during the parties' marriage, rather than a requirement that the spouse restrict his or her future employment, is marital property.

3. The use of marital property to pay the attorney fees incurred by one party during marital-dissolution proceedings without the consent of the other party constitutes an improper disposal of marital property for which the other party must be compensated.

Spousal Maintenance

Moore v. Moore, (A06-1504), 734 N.W.2d 285 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

Absent a reservation, if a maintenance obligation is to be paid on the first and the fifteenth day of each month for a specified period and the obligor pays maintenance according to this schedule, the maintenance obligation expires when the last payment is made, and the district court has no authority to address a motion to modify maintenance that is made after the maintenance obligation expires.

Rauenhorst v. Rauenhorst, (A06-459), 724 N.W.2d 541 (Minn. App. 2006).

In a dissolution action, finding bad faith in a party seeking maintenance is not a prerequisite to finding that the party has the ability to earn more income and to meet the party's needs independently by full-time employment under Minn. Stat. § 518.552, subd. 2(a) (2004).

Visitation

Goldman v. Greenwood, (A06-1110), 725 N.W.2d 747 (Minn. App. 2007), *review granted* (Minn. Mar. 20, 2007).

1. When a sole physical custodian proposes to remove the child from Minnesota to another state, and the noncustodial parent has parenting time with the child and opposes the move, Minn. Stat. § 518.175, subd. 3, as amended by 2006 Minn. Laws ch. 280, § 13 (effective August 1, 2006), determines the sole physical custodian's burden

to show that removal is in the child's best interests.

2. The foregoing conclusion remains appropriate even if a prior judgment conditions an award of sole physical custody on both alternative parenting time and non-removal from the state. The amended removal statute, Minn. Stat. 518.175, subd. 3(b) (2006), not the amended modification statute, Minn. Stat. § 518.18(d) (2006), governs the sole physical custodian's burden in the event of a later removal motion.

3. The district court, on a motion for removal, must consider the factors stated in Minn. Stat. § 518.175, subd. 3(b) (2006), to determine the best interests of the child. In a determination to deny removal, absent court findings that the purpose of the proposed move is to interfere with the noncustodial parent's parenting time—normally implicating minimal merit in the physical custodian's reason for relocation—the court must make findings on the severity of detriment to the child associated with separating the child and the sole custodian.

Beardsley v. Garcia, (A06-922), 731 N.W.2d 843 (Minn. App. 2007), *review granted* (Minn. Aug. 7, 2007).

A district court issuing a domestic-abuse order for protection under Minn. Stat. § 518B.01 (2006) has statutory authority to award, on a basis that gives primary consideration to the safety of the victim and the child, temporary parenting time to a father whose paternity has been acknowledged in a recognition of parentage under Minn. Stat. § 257.75 (2006).

IMMUNITY

Official

Pahnke v. Anderson Moving & Storage, (A05-2401), 720 N.W.2d 875 (Minn. App. 2006), *review denied* (Minn. Nov. 22, 2006).

Vicarious immunity protects a governmental employer from civil liability when its employee is immune from liability by virtue of the employee's executing a court order by its exact terms.

IMPLIED CONSENT

Probable Cause

State v. Werner, (A06-1378), 725 N.W.2d 767 (Minn. App. 2007).

A driver lawfully stopped, handcuffed, and taken into custody on an unrelated offense, who exhibits indicia of intoxication, and who is not subjected to any additional restraint, may be asked whether he has been drinking without first being given a Miranda warning.

Stop

Lewis v. Comm'r of Pub. Safety, (A06-1550), 737 N.W.2d 591 (Minn. App. 2007).

Once an officer has given a driver all relevant information regarding the consequences of refusing to take a chemical test for intoxication and the driver has clearly refused for a reasonable amount of time, a change of mind is precluded.

Testing

Lewis v. Comm'r of Pub. Safety, (A06-1550), 737 N.W.2d 591 (Minn. App. 2007).

Once an officer has given a driver all relevant information regarding the consequences of refusing to take a chemical test for intoxication and the driver has clearly refused for a reasonable amount of time, a change of mind is precluded.

INDIAN LAW

Greene v. Comm'r of Minn. Dept. of Human Servs., (A06-804), 733 N.W.2d 490 (Minn. App. 2007), *review granted* (Minn. Aug. 21, 2007).

Precedents establishing that a public-benefit program limited to members of Native American tribes rests on a political rather than a racial classification govern as well the implementation of state law that benefits a tribe by permitting a contractual arrangement whereby the tribe provides an administrative service to its members and the members lose the freedom to use similar programs provided for non-members.

In re Welfare of Children of S.W., (A06-1175), 727 N.W.2d 144 (Minn. App. 2007), *review denied* (Minn. Mar. 28, 2007).

Violations of the Indian Child Welfare Act during child in need of protection proceedings do not necessarily require the district court to invalidate subsequent termination of parental rights proceedings conducted pursuant to the Act.

In re Welfare of Children of R.M.B., (A07-18), 735 N.W.2d 348 (Minn. App. 2007), *review denied* (Minn. Sept. 26, 2007).

The "good cause" necessary to deny a petition filed under the Indian Child Welfare Act (ICWA) to transfer jurisdiction of a child-protection proceeding from state court to tribal court may be present if the proceeding sought to be transferred is at an "advanced stage." ICWA distinguishes between temporary-placement proceedings and permanent-placement proceedings. Therefore, when addressing whether, under ICWA, a proceeding is at an "advanced stage," the district court must assess the stage of the proceeding that was pending when the petition to transfer jurisdiction to the tribal court was filed.

INSURANCE

Arbitration

In re Claims for No-Fault Benefits against Progressive Ins. Co., (A05-2020, A06-58, A06-59), 720 N.W.2d 865 (Minn. App. 2006), *review denied* (Minn. Nov. 22, 2006).

Under the Minnesota No-Fault Automobile Insurance Act, an arbitrator's subject-matter jurisdiction derives from the amount in controversy, not from an insurer's denial of a claim for benefits.

Contract Construction

Stewart v. Illinois Farmers Ins. Co., (A06-759), 727 N.W.2d 679 (Minn. App. 2007).

When an individual, who owns and is operating a vehicle that is insured by his employer, is injured in a motor-vehicle accident with an uninsured driver, Minn. Stat. § 65B.49, subd. 3a(7) (2006), does not bar the individual from recovering excess uninsured-motorist benefits from an insurer that provides coverage on a different family vehicle.

No-Fault

Stewart v. Illinois Farmers Ins. Co., (A06-759), 727 N.W.2d 679 (Minn. App. 2007).

When an individual, who owns and is operating a vehicle that is insured by his employer, is injured in a motor-vehicle accident with an uninsured driver, Minn. Stat. § 65B.49, subd. 3a(7) (2006), does not bar the individual from recovering excess uninsured-motorist benefits from an insurer that provides coverage on a different family vehicle.

UIM

Schossow v. First Nat'l Ins. Co. of America, (A06-1003), 730 N.W.2d 556 (Minn. App. 2007).

1. A person living and working in Minnesota is a Minnesota resident notwithstanding evidence that her domicile may be in another state to which she intends to return within a few years.

2. Under the Minnesota No-Fault Act, an insurer licensed to write automobile insurance in Minnesota that issues an automobile insurance policy in North Dakota that provides underinsured motorist benefits to an insured who is a Minnesota resident is obligated to pay underinsured benefits according to Minnesota law if the insured resident is involved in an accident in this state.

Mitsch v. Am. Nat'l Prop. & Cas. Co., (A06-1626), 736 N.W.2d 355 (Minn. App. 2007), *review denied* (Minn. Oct. 24, 2007).

An insurance policy "reducing clause" that seeks to reduce the amount payable for underinsured-motorist benefits for liability payments made by an insurer on behalf of another at-fault, underinsured driver, violates Minn. Stat. § 65B.49, subd. 4a (2006), and is unenforceable.

UM

Stewart v. Illinois Farmers Ins. Co., (A06-759), 727 N.W.2d 679 (Minn. App. 2007).

When an individual, who owns and is operating a vehicle that is insured by his employer, is injured in a motor-vehicle accident with an uninsured driver, Minn. Stat. § 65B.49, subd. 3a(7) (2006), does not bar the individual from recovering excess uninsured-motorist benefits from an insurer that provides coverage on a different family vehicle.

JUVENILE

In re Welfare of Children of M.L.A., (A06-2018), 730 N.W.2d 54 (Minn. App. 2007).

1. Coercion of a parent's admission to a termination-of-parental-rights petition by use of threats to place a child with strangers contrary to the child's best interests constitutes a manifest injustice warranting withdrawal of the admission.

2. If a parent produces evidence that an admission to a petition to terminate parental rights was coerced, the district court should conduct an evidentiary hearing to determine whether the admission was coerced.

3. A party who establishes that his or her admission to a termination-of-parental-rights petition was coerced is not required to establish a reasonable case on the merits to obtain relief from judgment under Minn. R. Juv. Prot. P. 46.02.

4. In a termination-of-parental-rights proceeding, a district court abuses its discretion by discharging a party's appointed counsel without cause before conclusion of the proceeding in district court.

In re Welfare of the Child of T.D., (A06-2109), 731 N.W.2d 548 (Minn. App. 2007), *review denied* (Minn. July 17, 2007).

I. To overcome the presumption of palpable unfitness in a termination-of-parental-rights proceeding, the parent must introduce evidence that would permit a factfinder to find parental fitness.

II. The fact that a party appeals the termination of parental rights does not create an exception to allow this court to consider material on appeal that is outside the record.

Certification/Reference

In re Welfare of S.J.T., (A07-49), 736 N.W.2d 341 (Minn. App. 2007), *review denied* (Minn. Oct. 24, 2007).

1. The Fifth Amendment privilege against self-incrimination, which applies to all proceedings, civil or criminal, administrative or judicial, applies to a juvenile certification procedure.

2. The presumptive-certification statute does not violate a juvenile's Fifth Amendment right against self-incrimination, either facially or as applied, by providing an opportunity for the juvenile to rebut a presumption of adult certification.

3. The requirement that a juvenile submit to certification studies does not violate the Fifth Amendment because state and federal rules, statutes, and caselaw provide adequate protection against the further use of any testimony compelled from the juvenile, including compelled studies.

4. The district court has broad discretion whether to admit expert testimony and a juvenile's refusal to cooperate with an expert witness does not preclude the witness from testifying.

In re Welfare of D.W., (A06-2069), 731 N.W.2d 828 (Minn. App. 2007).

1. *Blakely v. Washington* does not render the presumptive-certification statute, Minn. Stat. § 260B.125, subd. 3 (2004), unconstitutional.

2. The district court's determination regarding presumptive certification was appropriate based on the charge contained in the petition and its statutory presumptive sentence.

CHIPS

In re Welfare of the Children of N.F., (A07-152), 735 N.W.2d 735 (Minn. App. 2007), *review granted* (Minn. Sept. 26, 2007).

1. For purposes of determining whether a child is in need of protection or services under Minn. Stat. § 260C.007, subd. 6(2) (2006), the term "physical abuse" requires the use of unreasonable force or cruel discipline that is excessive under the circumstances.

2. In determining whether physical abuse occurred within the meaning of Minn. Stat. § 260C.007, subd. 6(2) (2006), the court must examine all the relevant circumstances.

In re Welfare of Child of L.M.L., (A06-1867), 730 N.W.2d 316 (Minn. App. 2007).

When a district court assumes jurisdiction over a Child in Need of Protection or Services (CHIPS) proceeding before the subject of the CHIPS petition turns 18 years of age, unless the habitual-truant exception applies, that jurisdiction shall continue until the subject's 19th birthday if the district court determines that continuation is in the subject's best interests.

Delinquency

In re Welfare of D.W., (A06-2069), 731 N.W.2d 828 (Minn. App. 2007).

1. *Blakely v. Washington* does not render the presumptive-certification statute, Minn. Stat. § 260B.125, subd. 3 (2004), unconstitutional.

2. The district court's determination regarding presumptive certification was appropriate based on the charge contained in the petition and its statutory presumptive sentence.

Extended Juvenile Jurisdiction

In re Welfare of D.W., (A06-2069), 731 N.W.2d 828 (Minn. App. 2007).

1. *Blakely v. Washington* does not render the presumptive-certification statute, Minn. Stat. § 260B.125, subd. 3 (2004), unconstitutional.

2. The district court's determination regarding presumptive certification was appropriate based on the charge contained in the petition and its statutory presumptive sentence.

Termination of Parental Rights

In re Welfare of Children of R.M.B., (A07-18), 735 N.W.2d 348 (Minn. App. 2007), *review denied* (Minn. Sept. 26, 2007).

The "good cause" necessary to deny a petition filed under the Indian Child Welfare Act (ICWA) to transfer jurisdiction of a child-protection proceeding from state court to tribal court may be present if the proceeding sought to be transferred is at an "advanced stage." ICWA distinguishes between temporary-placement proceedings and permanent-placement proceedings. Therefore, when addressing whether, under ICWA, a proceeding is at an "advanced stage," the district court must assess the stage of the proceeding that was pending when the petition to transfer jurisdiction to the tribal court was filed.

In re Welfare of Children of S.W., M.M. and J.A., Parents, (A06-1175), 727 N.W.2d 144 (Minn. App. 2007), *review denied* (Minn. Mar. 28, 2007).

Violations of the Indian Child Welfare Act during child in need of protection proceedings do not necessarily require the district court to invalidate subsequent termination of parental rights proceedings conducted pursuant to the Act.

LOCAL GOVERNMENT/MUNICIPAL LAW

Silver v. Ridgeway, (A06-1600), 733 N.W.2d 165 (Minn. App. 2007).

1. Establishment of a cartway under Minn. Stat. § 164.08, subd. 2(a) (2006), is an exercise of eminent domain.

2. A county board, acting as the town board under town-road laws,[1] does not have express or implied authority under Minn. Stat. § 164.08, subd. 2(a), to establish a cartway over state-owned land that is designated as a wildlife-management area.

City of Wyoming v. Minn. Office of Admin. Hearings, (A06-1594), 735 N.W.2d 746 (Minn. App. 2007), *review denied* (Minn. Sept. 26, 2007).

Under Minn. Stat. ch. 414, the director of the Office of Strategic and Long-Range Planning has the discretion to determine which of two competing petitions for annexation, namely, a joint petition under Minn. Stat. § 414.0325 (2006) and a petition for annexation under Minn. Stat. § 414.031 (2006), should proceed first.

MALPRACTICE

Christians v. Grant Thornton LLP, (A06-1309), 733 N.W.2d 803 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

Deepening insolvency is not a valid theory of damages in an auditor-malpractice action brought on behalf of an insolvent corporation.

Carlson v. Sala Architects, Inc., (A06-691), 732 N.W.2d 324 (Minn. App. 2007), r*eview denied* (Minn. Aug. 21, 2007).

No per se fiduciary relationship exists between architect and client, and whether the facts of the case give rise to such a relationship is not an issue for resolution by summary judgment.

PROBATE

Conservatorship

In re Guardianship of Wells, (A06-1500), 733 N.W.2d 506 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

The presumption in Minn. Stat. § 145C.10(c) that, absent clear and convincing evidence to the contrary, a health care agent acts in good faith when acting pursuant to a health care directive, does not limit the discretion of the district court to decline to appoint the person nominated in the health care directive as guardian, if the court determines under Minn. Stat. § 524.5-309 that appointment of another is in the best interests of the ward.

[1] Minn. Stat. § 164.08, subd. 2(b) (stating that "[i]n an unorganized territory, the board of the county commissioners of the county in which the tract is located shall act as the town board").

Trusts

In re Revocable Trust of Margolis, (A06-1018), 731 N.W.2d 539 (Minn. App. 2007).

Unless the trust agreement explicitly states that Minn. Stat. § 501B.14, subd. 1(2) (2006), does not apply or the trustee has certain unlimited powers, that statute prohibits a trustee from using trust funds to discharge any legal support obligation owed by the trustee to any person.

Wills

In re Estate of Sullivan, (A06-171), 724 N.W.2d 532 (Minn. App. 2006).

I. A district court may not approve an agreement to settle a will contest under Minn. Stat. § 524.3-1102 (2004) if the agreement is not signed by all persons who have a beneficial interest and all persons who have a claim that will or may be affected by the agreement.

II. A district court does not abuse its discretion by concluding that an adult child who received infrequent and inconsistent loans from a decedent does not qualify for a family allowance under Minn. Stat. § 524.2-404 (2004).

REAL PROPERTY

City of Morris v. Sax Invs., Inc., (A06-1188), 730 N.W.2d 551 (Minn. App. 2007), *review granted* (Minn. July 17, 2007).

The Minnesota State Building Code, Minn. Stat. §§ 16B.59-.76 (2004), preempts local authorities from enacting building codes or otherwise regulating the construction, remodeling, restoration, or alteration of residential structures, but does not preempt local authorities from creating and enforcing standards of habitability in the business of rental housing.

Danielson v. Danielson, (A05-2569), 721 N.W.2d 335 (Minn. App. 2006).

1. Parol evidence is not admissible to contradict, alter, or explain a quitclaim deed that is unambiguous on its face.

2. In a dissolution proceeding, a district court lacks personal jurisdiction over a nonparty to the matter being litigated and cannot adjudicate the property rights of the nonparty. When a nonparty is alleged to have an interest in a marital asset and where the existence or extent of that interest is disputed by a party, the district court may (a) exclude the asset from the property division and, after resolution of any third-party disputes regarding the various interests in the asset, later divide the marital portion of the asset as omitted property; or (b) include the asset in the property division by awarding each party a percentage interest in whatever may later be determined to be the marital interest in the asset; or (c) divide the asset as if there is no nonparty interest in it, subject to the judgment being reopened and adjusted under Minn. Stat. § 518.145, subd. 2 (2004).

Peterson v. Johnson, (A06-1830), 733 N.W.2d 502 (Minn. App. 2007).

1. A vendee-homeowner complies with the home-warranty notice requirement in Minn. Stat. § 327A.03(a) (2006), by serving a detailed summons and complaint on the homebuilder.

2. A vendee-homeowner retains standing to sue the homebuilder for construction defects under Minn. Stat. § 327A.02 (2006) during the statutory redemption period following a mortgage foreclosure sale.

Sletto v. Wesley Constr., Inc., (A06-1413), 733 N.W.2d 838 (Minn. App. 2007).

I. A statute can be applied retroactively only if the text of the statute clearly and manifestly indicates the legislature's retroactive intent. Because the text of the 2004 amendment to Minn. Stat. § 541.051 does not indicate the legislature's retroactive intent, the amendment cannot be applied retroactively.

II. In determining whether a particular application of a statute is retroactive, we first examine the conduct regulated by the statute. If the conduct regulated by the statute occurred before the effective date of the statute, then the application of the statute to that conduct would be retroactive. Because the 2004 amendment to Minn. Stat. § 541.051 regulates accrual of claims and the commencement of claims following accrual, the amendment cannot be applied to claims that accrued before the effective date of the amendment.

Torgelson v. Real Property, 17138 880th Ave., (A06-1507, A06-1757), 734 N.W.2d 279 (Minn. App. 2007), *review granted* (Minn. Sept. 26, 2007).

Pursuant to article I, section 12, of the Minnesota Constitution, homestead property is not subject to forfeiture under Minn. Stat. § 609.5311, subd. 2 (2004).

STATUTES OF LIMITATION

Real estate

Sletto v. Wesley Constr. Inc., (A06-1413), 733 N.W.2d 838 (Minn. App. 2007).

I. A statute can be applied retroactively only if the text of the statute clearly and manifestly indicates the legislature's retroactive intent. Because the text of the 2004 amendment to Minn. Stat. § 541.051 does not indicate the legislature's retroactive intent, the amendment cannot be applied retroactively.

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of the amendment.

TORTS

Johnson v. Peterson, (A06-1403), 734 N.W.2d 275 (Minn. App. 2007).

1. To set forth a legally sufficient claim of negligent hiring, the complaint must allege actual physical injury or that the employee posed a threat of physical injury.

2. Absent actual physical injury or a threat of physical injury posed by the employee, an allegation that employee misconduct caused emotional harm to another is insufficient to satisfy the physical-injury requirement of a negligent-hiring or negligent-supervision claim.

Damages

Carlson v. Sala Architects, Inc., (A06-691), 732 N.W.2d 324 (Minn. App. 2007), r*eview denied* (Minn. Aug. 21, 2007).

No per se fiduciary relationship exists between architect and client, and whether the facts of the case give rise to such a relationship is not an issue for resolution by summary judgment.

Christians v. Grant Thornton, LLP, (A06-1309), 733 N.W.2d 803 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

Deepening insolvency is not a valid theory of damages in an auditor-malpractice action brought on behalf of an insolvent corporation.

Defamation

Dunn v. Nat'l Beverage Corp., (A06-396, A06-397), 729 N.W.2d 637 (Minn. App. 2007), *review granted* (Minn. June 19, 2007).

A party who brings an action for violation of the franchise act pursuant to Minn. Stat. § 80C.17, subd. 1 (2006) is not entitled to attorney fees pursuant to Minn. Stat. § 80C.17, subd. 3 (2006) unless the party has obtained relief under the act.

Dram Shop

Osborne v. Twin Town Bowl, Inc., (A06-1007), 730 N.W.2d 307 (Minn. App. 2007), *review granted* (Minn. July 17, 2007).

In a civil-damage action under Minn. Stat. § 340A.801, subd. 1 (2006), summary judgment dismissing the action is appropriate when the record contains insufficient probative evidence that the intoxication proximately caused the injury.

Fraud

Sletto v. Wesley Constr. Inc., (A06-1413), 733 N.W.2d 838 (Minn. App. 2007).

I. A statute can be applied retroactively only if the text of the statute clearly and manifestly indicates the legislature's retroactive intent. Because the text of the 2004 amendment to Minn. Stat. § 541.051 does not indicate the legislature's retroactive intent, the amendment cannot be applied retroactively.

II. In determining whether a particular application of a statute is retroactive, we first examine the conduct regulated by the statute. If the conduct regulated by the statute occurred before the effective date of the statute, then the application of the statute to that conduct would be retroactive. Because the 2004 amendment to Minn. Stat. § 541.051 regulates accrual of claims and the commencement of claims following accrual, the amendment cannot be applied to claims that accrued before the effective date of the amendment.