

An illustration of a stack of books. The books are shown in a 3D perspective. The spines of the books are colored in shades of green and grey. A red bookmark is visible, sticking out from the top of the stack. The text is overlaid on the books.

# **Minnesota Court of Appeals**

## **Significant Decisions**

**September 2023-August 2024**

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## Part I – CIVIL CASES

### Administrative Law

***In re Partners in Nutrition*, 995 N.W.2d 631 (Minn. App. Sept. 18, 2023) (A22-0965, A22-1613, A22-1746).**

The Minnesota Department of Education may not rely on 2 Code of Federal Regulations sections 200.339-.340 (2023) to terminate an institution’s participation in the Children and Adult Care Food Program without complying with the program-specific procedural requirements of 7 Code of Federal Regulations section 226.6(c)(3) (2023).

***In re Corr. Ords. Issued to Wealshire of Bloomington*, 3 N.W.3d 284 (Minn. App. Feb. 14, 2024) (A23-0678).**

An assisted living facility, as defined under Minn. Stat. § 144G.08, subd. 7 (2022), is not relieved of its obligations to a resident under Minnesota Statutes chapter 144G when a hospice provider, as defined in Minn. Stat. § 144A.75, subd. 5 (2022), begins providing hospice services to that resident.

***City of Eden Prairie v. Serafin*, 7 N.W.3d 132 (Minn. App. Apr. 22, 2024) (A23-1024).**

An administrative-law judge does not have the statutory authority under Minn. Stat. § 299A.465, subd. 1(b) (2022), to decide whether an individual has contractually waived a claim to continued health-insurance coverage.

***Sunshine Childcare Ctr., LLC v. Ramsey County*, 7 N.W.3d 611 (Minn. App. May 20, 2024), *rev. granted* (Minn. Sept. 17, 2024) *and appeal dismissed* (Minn. Dec. 20, 2024) (A23-1595).**

A childcare provider does not possess a protected property interest in suspended Child Care Assistance Program payments or a revoked Child Care Assistance Program authorization when the agency temporarily suspends payment and authorization during a pending investigation pursuant to Minn. Stat. §§ 119B.13, subd. 6(d), 119B.161, subd. 3, 245E.02 (2022 & Supp. 2023).

### Appellate Procedure & Review

***State v. Bogonko*, 6 N.W.3d 481 (Minn. App. May 6, 2024) (A23-1342, A23-1547) (see page 14 for syllabus point 2).**

1. Error in granting a defendant’s demand to execute sentence is invited error, which is subject to plain-error review.

***In re Serbus*, 11 N.W.3d 327 (Minn. App. July 29, 2024), rev. denied (Minn. Oct. 15, 2024) (A24-0683).**

When petitioning the court of appeals for review of a denial by the Minnesota Board of Water and Soil Resources of a petition for appeal of a no-loss decision under Minn. Stat. § 103G.2242, subd. 9 (2022), the local government unit that issued the no-loss decision is a “part[y] to the contested case” that must be timely served with a petition for a writ of certiorari as provided in Minn. Stat. § 14.63 (2022).

### **Child Protection**

***In re Guardianship of Corpeno*, 2. N.W.3d 595 (Minn. App. Jan. 29, 2024) (A23-0865).**

A district court cannot deny a petition for guardianship of an at-risk juvenile under Minn. Stat. §§ 257D.01-.12 (2022), unless it makes sufficient findings justifying its rejection of the allegations in the petition asserting “abandonment,” “abuse,” and “neglect,” as defined in Minn. Stat. § 257D.01.

***In re Child of M.E.P.*, 4. N.W.3d 152 (Minn. App. Feb. 26, 2024), rev. denied (Minn. Apr. 25, 2024) (A23-1176).**

1. The district court did not err by determining that a five-year-old child with an aggressive form of cancer is in need of protection or services because his parents had rejected a physician’s recommendation that the child continue to receive a chemotherapy treatment that is widely accepted for the child’s type of cancer and likely is necessary for the child’s survival.

2. The district court’s order requiring chemotherapy treatment for a five-year old child with an aggressive form of cancer, over his parents’ objection, does not violate the parents’ constitutional rights to the care, custody, and control of their child in light of the district court’s findings that the chemotherapy treatment is well accepted in the medical community and that the child’s probability of survival is more than 90 percent with the treatment and less than 20 percent without the treatment.

***In re Welfare of Child of K.O.*, 4 N.W.3d 359 (Minn. App. Feb. 26, 2024) (A23-1199).**

Under Minnesota Statutes section 260C.181 (2022), a child who is taken into custody pursuant to Minnesota Statutes section 260C.175 (2022) and has not been alleged to be delinquent, may be held in a secure detention facility for no more than 24 hours.

***In re Welfare of Child of R.V.M.*, 8 N.W.3d 680 (Minn. App. June 10, 2024), rev. denied (Minn. July 19, 2024) (A23-1806, A23-1807).**

I. The pendency of an appeal from a district court order involuntarily terminating a parent’s parental rights to one or more children does not preclude that order

from giving rise to a presumption of palpable unfitness under Minnesota Statutes section 260C.301, subdivision 1(b)(4) (2022).

II. To meet the burden of production necessary to rebut the presumption of palpable unfitness arising from an involuntary termination of parental rights under Minnesota Statute section 260C.301, subdivision (1)(b)(4) (2022), a parent must produce evidence related to the statutory reasons identified by the district court as a basis for the involuntary termination to support a finding that the parent is suitable to be entrusted with the care of the children.

### **Civil Procedure**

***Daulton, Tr. for Daulton v. TMS Treatment Ctr., Inc.*, 2 N.W.3d 331 (Minn. App. Jan. 16, 2024) (A23-0483).**

Minn. Stat. § 573.02, subd. 1 (2022), does not require dismissal of a wrongful-death action based on medical malpractice when the expert-review affidavit is served after the wrongful-death statute of limitations has expired, so long as it was served within the 60-day safe-harbor period provided for in Minn. Stat. § 145.682, subd. 6(a) (2022).

***Rhodes v. Stockwell Homes, L.L.C.*, 4 N.W.3d 370 (Minn. App. Mar. 4, 2024) (A23-0884).**

A party's authorized attorney may sign a "mediated settlement agreement" under Minn. Stat. § 572.33, subd. 4 (2022), on behalf of that party.

***Metro. Trans. Network, Inc. v. Collaborative Student Transp. of Minn.*, 6 N.W.3d 771 (Minn. App. Apr. 15, 2024), *rev. denied* (Minn. July 23, 2024) (A23-0644) (see page 4 for syllabus point 2).**

1. A party may use allegations in a verified complaint to support or oppose a motion for summary judgment if (1) the allegations are made on personal knowledge, (2) the allegations are based on facts that would be admissible in evidence, and (3) the face of the complaint shows the competence of the verifying party to testify on the matters stated, consistent with Minn. R. Civ. P. 56.03(d).

***Energy Transfer LP v. Greenpeace Int'l*, 7 N.W.3d 153 (Minn. App. May 6, 2024), *rev. granted* (Minn. Aug. 6, 2024) (A23-1284).**

1. The protections of the Minnesota Free Flow of Information Act (MFFIA), Minn. Stat. §§ 595.021-.025 (2022), are not limited only to newsgathering information obtained by means of lawful, nontortious conduct.

2. In a proceeding to enforce a third-party subpoena, a district court may not require the third party to produce a privilege log or submit information for in camera inspection that is privileged under the MFFIA and does not fall within a statutory exception.

## **Contracts**

***First & First, LLC v. Chadco of Duluth, LLC*, 999 N.W.2d 553 (Minn. App. Dec. 11, 2023), rev. denied (Minn. Feb. 20, 2024) (A23-0598).**

A party seeking a temporary injunction to suspend cancellation of a purchase agreement for real property must demonstrate irreparable harm under the *Dahlberg* factors.

***Cent. Specialties, Inc. v. Minn. Dep't of Transp.*, 5 N.W.3d 409 (Minn. App. Apr. 1, 2024), rev. denied (Minn. July 9, 2024) (A23-0664).**

1. The district court erred by denying appellant's post-trial motion for judgment as a matter of law because the evidence is insufficient to prove that appellant breached the implied covenant of good faith and fair dealing by refusing to fulfill a contractual duty or obligation based on an ulterior motive.

2. The requirement that a state agency pay interest penalties to a vendor for untimely payments pursuant to Minnesota Statutes section 16A.124 (2022) applies to undisputed billings arising under a construction contract but does not apply to disputed claims under a construction contract.

***Metro. Trans. Network, Inc. v. Collaborative Student Transp. Of Minn.*, 6 N.W.3d 771 (Minn. App. Apr. 15, 2024), rev. denied (Minn. July 23, 2024) (A23-0644) (see page 3 for syllabus point 1).**

2. Minnesota does not recognize a cause of action for breach of an illusory contract.

***SECURA Ins. Co. v. Deere & Co.*, 12 N.W.3d 103 (Minn. App. Aug. 19, 2024), rev. denied (Minn. Dec. 17, 2024) (A23-1773).**

A warranty for defects in "material or workmanship" covers only manufacturing defects and does not include design defects such as a manufacturer's deliberate addition or omission of a challenged component.

## **Environmental Law**

***State by Smart Growth Minneapolis v. City of Minneapolis*, 7 N.W.3d 418 (Minn. App. May 13, 2024), rev. denied (Minn. Aug. 20, 2024) (A23-1382).**

A party seeking injunctive relief under the Minnesota Environmental Rights Act (MERA), Minn. Stat. §§ 116B.01-13 (2022), has the burden of demonstrating that the requested injunctive relief is necessary or appropriate to protect the environment and will not impose unnecessary hardship on the enjoined party.

## **Family Law**

***Smith v. Kessen*, 996 N.W.2d 581 (Minn. App. Oct. 9, 2023), rev. denied (Minn. Jan. 31, 2024) (A23-0151).**

1. Under Minn. Stat. § 257C.03, subd. 8(b) (2022), a district court must dismiss a grandparent’s petition for visitation if it finds that the grandparent cannot establish the factors for visitation under Minn. Stat. § 257C.08 (2022).

2. Under Minn. Stat. § 257C.08, subd. 2(b), the six-month waiting period imposed for grandparent-visitiation motions applies to all family court proceedings listed in Minn. Stat. § 257C.08, subd. 2(a), and does not apply to a grandparent-visitiation petition filed under Minn. Stat. § 257C.08, subd. 1.

***In re Welfare of Child of D.J.T.*, 998 N.W.2d 772 (Minn. App. Nov. 20, 2023), rev. denied (Minn. Jan. 29, 2024) (A23-0663).**

If, based on a parent’s voluntary consent to an adoption, a district court transfers custody of a child to the Minnesota Commissioner of Human Services under Minn. Stat. § 260C.515, subd. 3 (2022), a fraud-based motion to revoke that consent to adoption is governed by the 90-day deadline in Minn. R. Juv. Prot. P. 22.02, not the six-year statute of limitations for fraud under Minn. Stat. § 541.05, subd. 1(6) (2022).

***In re Welfare of Child of F.F.N.M.*, 999 N.W.2d 525 (Minn. App. Nov. 27, 2023), rev. denied (Minn. Jan. 5, 2024) (A23-0935).**

Minnesota Rule of Juvenile Protection Procedure 38.04 authorizes the district court to exclude a parent from a trial on a petition to terminate parental rights, to proceed with the trial in the parent’s absence, and to issue a decision on the petition, if the parent engages in conduct that disrupts the trial.

***Ewald v. Nedrebo*, 999 N.W.2d 546 (Minn. App. Dec. 11, 2023), rev. denied (Minn. Feb. 28, 2024) (A23-0331).**

A parent whose child is subject to a grandparent-visitiation order pursuant to Minn. Stat. § 257C.08 (2022), but not to an order awarding parenting time to the child’s other parent, is not required to satisfy the provisions of Minn. Stat. § 518.175, subd. 3 (2022), before relocating with the child out of state.

***In re Welfare of Child of T.M.A.*, 2 N.W.3d 328 (Minn. App. Jan. 8, 2024) (A23-1697).**

When a district court defers finalizing an order transferring permanent legal and physical custody of a child to a relative so that eligibility of the relative for Northstar kinship assistance can be determined, the order is not a final, appealable order under Minn. R. Juv. Prot. P. 23.02, subd. 1.



***In re Welfare of Child. of V.R.R.*, 2 N.W.3d 587 (Minn. App. Jan. 29, 2024) (A23-0877).**

When a relative or foster parent files a motion for an order for adoptive placement of a child under Minn. Stat. § 260C.607, subd. 6(a)(1) (2022), they must file either (1) a valid adoption home study<sup>1</sup> under Minn. Stat. § 259.41 or Minn. Stat. § 260C.611 approving the relative or foster parent for adoption of the child or (2) an affidavit attesting to efforts to complete an adoption home study that is signed by the relative or foster parent and the responsible social-services agency or licensed child-placing agency that will complete the adoption home study.

***In re Welfare of Child. of L.K.*, 9 N.W.3d 174 (Minn. App. June 3, 2024), *rev. granted* (Minn. July 2, 2024) (A23-1762).**

1. For purposes of a petition for third-party custody, a person is not excluded from the definition of “interested third party” in Minnesota Statutes section 257C.01, subdivision 3 (2022), on the ground that the person is a former foster parent of a child.

2. The placement preferences in Minnesota Statutes section 260.773, subdivision 3 (Supp. 2023), which favor Indian persons and other placements approved by an Indian tribe, do not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

***Wilson v. Wilson*, 11 N.W.3d 331 (Minn. App. Aug. 12, 2024), *rev. denied* (Minn. Dec. 17, 2024) (A23-1799).**

A stipulation between parties in a dissolution judgement and decree to waive “all liability, claims, and obligations of any kind against the other party, whether arising in contract, status, tort or otherwise” does not operate as a waiver of a party’s right to seek a harassment restraining order based, in part, on conduct that occurred during the marriage.

### **Government & Immunity**

***Benda for Common-sense v. Anderson*, 999 N.W.2d 893 (Minn. App. Dec. 18, 2023), *rev. granted* (Minn. Feb. 28, 2024) (A23-0302).**

A proper defendant in a civil action brought under section 13.08, subdivision 4, of the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. §§ 13.01-.90 (2022), is a “responsible authority” or “government entity,” not a “designee” of a responsible authority.

***MFK by Kendrick v. Walker-Hackensack-Akeley ISD #113*, 11 N.W.3d 618 (Minn. App. Aug. 5, 2024), *rev. denied* (Minn. Nov. 19, 2024) (A23-1918).**

A school district’s softball coach is entitled to official immunity when the coach exercises significant, independent judgment and discretion over how to supervise a softball practice.

## **Human Rights Law**

***Cooper v. USA Powerlifting*, 5 N.W.3d 689 (Minn. App. Mar. 18, 2024), *rev. granted* (Minn. July 9, 2024) (A23-0373, A23-0621).**

1. The district court erred by granting plaintiff’s motion for partial summary judgment and concluding that defendant is liable to plaintiff on her claims of discrimination based on sexual orientation in public accommodations and in business under the Minnesota Human Rights Act, Minn. Stat. §§ 363A.01-.44 (2018), because there are genuine issues of material fact as to whether defendant excluded plaintiff from the women’s division of its weightlifting competitions because of her transgender status.

2. The district court erred by granting plaintiff’s motion for partial summary judgment and concluding that defendant is liable to plaintiff on her claims of discrimination based on sexual orientation and sex in business under the Minnesota Human Rights Act, Minn. Stat. §§ 363A.01-.44 (2018), because there are genuine issues of material fact as to whether defendant excluded plaintiff from the women’s division of its weightlifting competitions for a legitimate business purpose.

***Anderson v. Aitkin Pharmacy Servs., LLC*, 5 N.W.3d 123 (Minn. App. Mar. 18, 2024) (A23-0374, A23-0484).**

1. A pharmacist engages in business discrimination within the meaning of Minnesota Statutes section 363A.17(3) (2018), when the pharmacist intentionally refuses to dispense a valid prescription for emergency contraception to a customer because the medication may interfere with a pregnancy.

2. A district court errs by instructing a jury that the plaintiff must show a “material disadvantage” or “tangible change in conditions” to succeed on a public-accommodations claim under Minnesota Statutes section 363A.11 (2018).

## **Insurance Coverage**

***PSS Props., LLC v. N. Star Mut. Ins. Co.*, 999 N.W.2d 902 (Minn. App. Dec. 18, 2023) (A23-0466).**

1. For an insured to be entitled to interest under Minnesota Statutes section 60A.0811 (2022), the insured must obtain a favorable determination in a court action or an arbitration proceeding on a claim against its insurer based on the insurer’s breach or repudiation of, or failure to fulfill, a duty to provide services or make payments under an insurance policy.

2. An appraisal award is not sufficient to demonstrate that an insured prevailed in a claim against an insurer in a court action or arbitration proceeding for purposes of Minnesota Statutes section 60A.0811.

***Great Nw. Ins. Co. v. Campbell*, 3 N.W.3d 59 (Minn. App. Feb. 5, 2024), *rev. granted* (Minn. May 14, 2024) (A23-0519).**

Minnesota Statutes section 65A.10, subdivision 1 (2022), requires replacement cost insurance to cover the cost of repairing any loss or damaged property in accordance with the minimum state or local codes, which, “[i]n the case of a partial loss,” includes only “the damaged portion of the property.” When an insurance policy covers the cost of replacing damaged roof shingles, but the shingles cannot be replaced according to code unless repairs are made to roof decking that was not damaged by the insured event, section 65A.10, subdivision 1, requires the insurer to also cover the cost of repairing the roof decking.

***Schantzen v. Erdmann*, 4 N.W.3d 821 (Minn. App. Mar. 18, 2024), *rev. denied* (Minn. June 18, 2024) (A23-0495) (see page 9 for syllabus point 1).**

2. A person who has been indemnified by their individual liability insurer is not entitled to indemnification under Minn. Stat. § 302A.521, subd. 2, because an insurance company is an “organization” for purposes of Minn. Stat. § 302A.521, subd. 2(a)(1), which requires that the person seeking indemnification “has not been indemnified by another organization.”

***Galaxy Wireless, LLC v. W. Nat’l Mut. Ins. Co.*, 8 N.W.3d 698 (Minn. App. June 24, 2024) (A23-1460).**

Unless otherwise provided for in a fire-insurance policy, total-loss coverage under Minnesota Statutes section 65A.08 (2022) applies only to total loss of a building, not loss of an insured-lessee’s tenant improvements to leased premises in a building.

### **Jurisdiction & Procedure**

***State by Ellison v. Havenbrook Homes, LLC*, 996 N.W.2d 12 (Minn. App. Sept. 5, 2023), *rev. denied* (Minn. Jan. 16, 2024) (A23-0244).**

1. A motion to dismiss for lack of personal jurisdiction is properly denied on claims asserted by the state against a nonresident defendant with interests in Minnesota rental homes when the state presents prima facie evidence that the defendant held itself out as the owner of the homes and had multiple contacts with Minnesota related to maintenance of the homes that were of such a nature, quantity, and quality that the defendant could expect to be subject to suit in Minnesota.

2. When specific evidence of a nonresident defendant’s contacts with Minnesota tends to prove, if accepted as true, that the nonresident’s contacts continued the wrongful conduct alleged in the complaint, this evidence may be considered in determining specific personal jurisdiction, even if the same contacts may also be viewed as remedial.

***In re Cragg*, 998 N.W.2d 294 (Minn. App. Nov. 6, 2023), rev. denied (Minn. Feb. 20, 2024) (A23-0309).**

Disclosure of a final civil complaint before it is served or filed in district court does not result in a waiver of the attorney-client privilege or work-product protection.

***Skyberg v. Orlich*, 10 N.W.3d 303 (Minn. App. July 8, 2024) (A23-1504).**

Based on the plain meaning of Minn. Stat. § 518D.206(b) (2022), governing simultaneous proceedings between two jurisdictions, a Minnesota district court that has exclusive, continuing jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) must dismiss a child-custody proceeding when a foreign court properly exercises temporary, emergency jurisdiction under the UCCJEA.

***Jundt v. Jundt*, 12 N.W.3d 201 (Minn. App. Aug. 26, 2024), rev. denied (Minn. Dec. 31, 2024) (A24-0495).**

The procedure set forth in Minn. Stat. § 548.091, subd. 3b (2022), is not the exclusive method to renew a child-support judgment.

### **Labor & Employment**

***Aldean v. City of Woodbury*, 2 N.W.3d 918 (Minn. App. Feb. 5, 2024) (A23-0359).**

A public employer’s obligation, under Minnesota Statutes section 299A.465, subdivision 1(c) (2022), to “continue to provide health coverage for” a qualifying duty-disabled peace officer or firefighter requires that the public employer make health-insurance coverage available for the officer or firefighter until the officer or firefighter reaches the age of 65. The public employer’s obligation to make coverage available continues even if the officer or firefighter elects not to participate in the employer’s health-insurance plan for a period of time and later seeks to reinstate coverage.

***Schantzen v. Erdmann*, 4 N.W.3d 821 (Minn. App. Mar. 18, 2024), rev. denied (Minn. June 18, 2024) (A23-0495) (see page 7 for syllabus point 2).**

1. A claim for indemnification by an employee of a Minnesota corporation is governed by Minn. Stat. § 302A.521 (2022). Minn. Stat. § 181.970 (2022) does not apply to such a claim.

### **Local Government**

***In re Stock*, 4 N.W.3d 502 (Minn. App. Mar. 11, 2024) (A23-0642).**

Minnesota Statutes section 103G.2374 (2022) authorizes a local government unit to electronically transmit notices of decisions pursuant to Minnesota Statutes

sections 103G.2212-.2372 (2022), unless the recipient has provided a mailing address and specified that mailing is preferred. Section 103G.2374 supersedes Minnesota Rule 8420.0255, subpart 5 (2021), to the extent that the rule requires a local government unit to physically mail all notices of such decisions to affected parties.

***Fletcher Props., Inc. v. City of Minneapolis*, 2 N.W.3d 544 (Minn. App. Jan. 16, 2024), *rev. granted* (Minn. May 14, 2024) (A23-0191) (see page 10 for syllabus point 1).**

2. The Minneapolis city ordinance addressing housing discrimination based on public assistance is not preempted by the state’s anti-discrimination statute because the ordinance does not conflict with the statute, and the statute does not occupy the field of housing discrimination based on public assistance.

### **Probate**

***Will of Mackey*, 7 N.W.3d 137 (Minn. App. Apr. 29, 2024) (A23-1675).**

I. A personal representative may be removed for cause under Minn. Stat. § 524.3-611 (2022), but such removal does not discharge the personal representative from liability for transactions or omissions occurring before removal.

II. Unless a claim against a personal representative for breach of fiduciary duty has previously been barred by adjudication, or excepted as provided in the closing statement, the statute of limitations for such claims, as set forth in Minnesota Statutes section 524.3-1005 (2022), is six months after the filing of the closing statement.

### **Real Estate & Property Rights**

***In re Est. of Ecklund*, 998 N.W.2d 308 (Minn. App. Nov. 20, 2023), *rev. granted* (Minn. Mar. 26, 2024) (A23-0210).**

The unambiguous language of Minn. Stat. § 256B.15, subd. 2(a) (2022), limits a claim to recover from the estate of a person who received medical assistance to amounts paid for the cost of long-term-care services actually provided to that person.

***Lagoon Partners, LLC v. Silver Cinemas Acquisition Co.*, 999 N.W.2d. 113 (Minn. App. Dec. 11, 2023), *rev. denied* (Minn. Mar. 19, 2024) (A23-0194).**

The liquidated-damages clause in the parties’ lease agreement is unenforceable because actual damages caused by the tenant’s breach are capable of accurate estimation and because the amount of liquidated damages, which does not account for the landlord’s duty to mitigate damages, is not a reasonable forecast of actual damages.

***In re Stoick Creek, LLC*, 999 N.W.2d 915 (Minn. App. Dec. 18, 2023) (A23-0372).**

The town board of supervisors erred by denying a property owner’s application for direct private access to a public road because the town board’s reasons for its decision are not within the regulatory purposes specified in Minnesota Statutes section 160.18, subdivision 3 (2022), which gives property owners a right of direct private access to an abutting public highway, subject to reasonable regulation as necessary to achieve certain regulatory purposes, or are not supported by evidence in the record.

***Starbeck v. Gibson*, 2 N.W.3d 535 (Minn. App. Jan. 8, 2024), *rev. denied* (Minn. App. Apr. 24, 2024) (A23-0619).**

1. On a claim for adverse possession, the boundary-line exemption from the property-tax-payment requirement in Minn. Stat. § 541.02 (2022) requires the existence of genuine confusion over the true location of the boundary line between adjoining properties.

2. The uses of land to establish a prescriptive-easement claim are not limited to using another’s land for access purposes.

***Fletcher Props., Inc. v. City of Minneapolis*, 2 N.W.3d 544 (Minn. App. Jan. 16, 2024), *rev. granted* (Minn. May 14, 2024) (A23-0191) (see page 9 for syllabus point 2).**

1. On its face, the Minneapolis city ordinance addressing housing discrimination based on public assistance does not appropriate private property or a landlord’s right to exclude others from private property, and therefore does not constitute a per se physical taking in all applications.

***Willenberg v. Frye*, 3 N.W.3d 23 (Minn. App. Feb. 5, 2024) (A23-0441).**

The scope and extent of an express easement is determined by the instrument that created the easement. If the scope and extent of an easement is capable of exact interpretation, the easement may not be relocated in a way that is contrary to the express terms of the instrument that created the easement.

***Reed v. Westgate Invs., Inc.*, 8 N.W.3d 651 (Minn. App. May 28, 2024) (A23-1518).**

The 15-year limitation period for commencing a mortgage-foreclosure action or proceeding “shall not be extended . . . by reason of any disability of any party interested in the mortgage.” Minn. Stat. § 541.03, subd. 1 (2022). This prohibition supersedes the disability-related tolling provisions of section 541.15 of the Minnesota Statutes. Minn. Stat. § 541.15 (2022).

## **Remedies**

***Scheurer v. Shrewsbury*, 11 N.W.3d 832 (Minn. App. Aug. 19, 2024), *rev. granted* (Minn. Dec. 17, 2024) (A24-0106).**

1. Under Minnesota Statutes section 549.09 (2022), a district court must calculate preverdict interest on jury verdicts for past medical expenses and past wage loss before reducing the jury award by collateral-source payments.

2. Under Minnesota Statutes section 549.09, subdivision 1(b), if an offer of settlement is made and it is closer to the judgment than the opposing party's offer, preverdict interest shall accrue from the time of the written notice of claim to the time of the jury award only if the plaintiff commenced the action within two years of the written notice of claim.

## **Torts**

***Mattingly v. Am. Fam. Ins.*, 6 N.W.3d 787 (Minn. App. Apr. 22, 2024) (A23-1080).**

A plaintiff asserting a personal-injury claim based on the allegedly tortious conduct of a deceased person must sue the personal representative of the deceased person's estate, as authorized by Minnesota Statutes section 573.01 (Supp. 2023). A plaintiff does not properly commence such a personal-injury action by suing a person appointed trustee to pursue a wrongful-death claim for the benefit of the deceased person's surviving spouse and next of kin pursuant to Minnesota Statutes section 573.02, subdivision 3 (2022).

## **Unemployment Benefits**

***McBee v. Team Indus., Inc.*, 9 N.W.3d 592 (Minn. App. July 1, 2024), *rev. granted* (Minn. Dec. 17, 2024) (A23-1879).**

Minnesota Statutes section 268.19 (2022) bars the admission of any documents created by an employer for submission to Minnesota Department of Employment and Economic Development for the purpose of evaluating an unemployment-benefits claim in later civil, administrative, or judicial proceedings.

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

### **Constitutional Law**

***State v. Vagle*, 999 N.W.2d 909 (Minn. App. Dec. 18, 2023), *rev. granted* (Minn. Mar. 19, 2024) (A23-0863).**

Minnesota Statutes section 609.667(3) (2020), which prohibits the possession of a firearm that is not identified by a serial number, is not unconstitutionally vague as applied to respondent's possession of a privately made firearm without a serial number.

***Underwood v. State*, 8 N.W.3d 655 (Minn. App. June 10, 2024), *rev. granted* (Minn. Oct. 15, 2024) (A23-1524).**

When a district court's order accurately informs a defendant of their legal obligations under the then-existing version of Minn. Stat. § 624.713, and the legislature later modifies those obligations by amending section 624.713, the state does not violate a defendant's due-process rights by charging the defendant for a violation of the amended statute.

***State v. Butze*, 9 N.W.3d 582 (Minn. App. June 24, 2024) (A23-1368).**

In a prosecution for driving after suspension of driving privileges, the admission of a Minnesota Department of Public Safety "certificate of order sent" that is created after the prosecution has begun for the purpose of proving the element that the defendant was served notice of the suspension by mail violates a criminal defendant's Sixth Amendment right to confrontation to the extent that the certificate of order sent contains information about mailing that is not in the underlying notice of suspension or other nontestimonial agency record.

### **DWI & Implied Consent**

***State v. Torrez*, 8 N.W.3d 674 (Minn. App. June 10, 2024), *rev. granted* (Minn. Sept. 25, 2024) (A23-0902).**

At a trial for refusal to submit to chemical testing pursuant to Minn. Stat. § 169A.20, subd. 2(2) (2018), the state does not have to prove beyond a reasonable doubt that law enforcement had probable cause to believe the defendant was driving while impaired if there was a valid search warrant for a blood or urine test supported by probable cause.

***Derksen v. Comm'r of Pub. Safety*, 11 N.W.3d 340 (Minn. App. Aug. 19, 2024) (A24-0249).**

When the record lacks any evidence of a prior written or oral order to produce additional discovery by a specific deadline, a district court abuses its discretion by rescinding a driver's license revocation as a sanction to the commissioner of public safety for failing to provide discovery beyond that required under Minn. Stat. § 169A.53, subd. 2(d) (2022).

### **Evidence**

***State v. Smeby*, 4 N.W.3d 165 (Minn. App. Mar. 4, 2024), *rev. granted* (Minn. June 18, 2024) (A23-0516).**

Under Minn. Stat. § 595.02, subd. 1(d) (2020), the physician-patient evidentiary privilege does not apply to communications between paramedics and patients.



## **Guilty Pleas**

***State v. Arola Johnson*, 999 N.W.2d 103 (Minn. App. Dec. 4, 2023) (A23-0134).**

If a defendant argues on direct appeal that a guilty plea is invalid on the ground that it was induced by an unfulfilled promise in a plea agreement, and if the record does not clearly reveal the terms of the plea agreement, the defendant is not entitled to reversal of the conviction but retains the right to assert the claim in a post-conviction petition.

## **Juvenile Delinquency**

***In re Welfare of M.A.B.*, 2 N.W.3d 562 (Minn. App. Jan. 22, 2024) (A23-0752).**

When the state moves to terminate a continuance for dismissal within the time frame specified under Minnesota Rule of Juvenile Delinquent Procedure 14.04, the district court retains subject-matter jurisdiction over an adult defendant’s termination hearing under Minn. Stat. § 260B.193, subd. 5(c) (2022), to “conduct a trial” until the defendant turns 21 years old.

## **Postconviction**

***Aery v. State*, 7 N.W.3d 833 (Minn. App. May 20, 2024), *rev. denied* (Minn. Nov. 27, 2024) (A23-1329).**

A petitioner is not exonerated for the purpose of seeking exoneration compensation under the Minnesota Imprisonment and Exoneration Remedies Act (MIERA), Minn. Stat. §§ 611.362-.368 (2022), when the petitioner’s conviction for actual possession of an unlawful item was reversed on the ground that an unconstitutional search required suppression of the evidence.

***Raisch v. State*, 8 N.W.3d 237 (Minn. App. June 3, 2024), *rev. denied* (Minn. Nov. 19, 2024) (A24-0267).**

A reviewing judge’s denial of a “preliminary application” under 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 5, at 865-66, determining that there is not a “reasonable probability” that the applicant is entitled to relief from a conviction of aiding and abetting felony murder, is an appealable order as from a denial of postconviction relief under Minn. R. Crim. P. 28.02, subd. 2(1), and Minn. Stat. § 590.06 (2022).

## Search & Seizure

***State v. Hansen*, 4 N.W.3d 510 (Minn. App. Mar. 18, 2024), rev. denied (Minn. May 29, 2024) (A23-0428).**

A police search of garbage set out for collection does not violate the Fourth Amendment to the United States Constitution or article I, section 10 of the Minnesota Constitution even if a local municipal ordinance prohibits the inspection or removal of items from a private waste receptacle.

***State v. Contreras-Sanchez*, 5 N.W.3d 151 (Minn. App. Apr. 1, 2024), rev. granted (Minn. May 29, 2024) (A22-1579).**

Geofence warrants, which authorize law enforcement to obtain location-history data of cellular devices that were within a defined area during a specified time frame, are not categorically prohibited by the United States and Minnesota Constitutions as general warrants, but instead are to be evaluated on a case-by-case basis according to established constitutional principles.

***State v. McNeal*, 7 N.W.3d 387 (Minn. App. June 10, 2024) (A23-1037).**

Because appellant's apartment door handle and lock were within the home's curtilage for purposes of the Fourth Amendment of the United States Constitution and article I, section 10, of the Minnesota Constitution, law-enforcement officers were required to obtain a search warrant supported by probable cause to swab those areas for the purpose of detecting trace amounts of controlled substances.

## Sentencing & Restitution

***State v. Williams*, 3 N.W.3d 68 (Minn. App. Feb. 5, 2024), rev. denied (Minn. Apr. 16, 2024) (A23-0200) (see pages 15-16 for syllabus point 1).**

2. The exception to multiple convictions and sentences in Minn. Stat. § 609.035, subdivision 6, does not apply when the state charges alternative theories for committing a single act of criminal sexual conduct.

***State v. Seeman*, 5 N.W.3d 171 (Minn. App. Apr. 8, 2024), rev. granted (Minn. June 26, 2024) (A23-0571).**

Before the state has a duty to bring forward evidence to prove the amount of loss for an item of restitution at a hearing on an offender's challenge under Minn. Stat. § 611A.045, subd. 3 (2022), the offender's sworn affidavit submitted in support of the

challenge must, at a minimum, be sufficiently detailed to put the state on notice that the offender is challenging the amount of loss for that item.

***State v. Bogonko*, 6 N.W. 3d 481 (Minn. App. May 6, 2024) (A23-1342, A23-1547) (see page 1 for syllabus point 1).**

2. A district court may grant a defendant’s demand to execute sentence even if the conditions of probation are less onerous than the conditions of the executed sentence.

***State v. Johnson*, 8 N.W.3d 243 (Minn. App. June 3, 2024), *rev. granted* (Minn. Oct. 15, 2024) (A24-0245).**

The authority for the state to appeal from a district court’s award of jail credit arises by necessary implication from its express authority to appeal “from any sentence imposed or stayed” in a felony case pursuant to Minnesota Rule of Criminal Procedure 28.04, subdivision 1(2).

### **Sex Offender Commitment**

***State v. Martens*, 996 N.W.2d 249 (Minn. App. Sept. 18, 2023), *rev. granted* (Minn. Dec. 27, 2023) (A22-1349).**

Pursuant to Minn. Stat. § 260E.06, subd. 1(a) (2022), a mandated reporter must submit a maltreatment report if the mandated reporter knows or has reason to believe that a child has been maltreated within the preceding three years regardless of whether the child has reached the age of majority before the time of the report.

### **Substantive Criminal Law**

***State v. Lyons*, 997 N.W.2d 771 (Minn. App. Oct. 23, 2023), *rev. denied* (Minn. Feb. 28, 2024) (A22-1744).**

To prove that a defendant is guilty of being an ineligible person in possession of ammunition under Minn. Stat. § 609.165, subd. 1b(a) (2020), the state must prove that the defendant knowingly possessed the ammunition but does not have to prove that the defendant knew the ammunition was operable.

***State v. Ickler*, 2 N.W.3d 577 (Minn. App. Jan. 29, 2024) (A22-0079).**

The evidence is insufficient to prove that appellant violated a harassment restraining order because the temporary *ex parte* harassment restraining order that was served on appellant was not in effect nine days after the hearing on the harassment petition and

because the state did not introduce any evidence that another harassment restraining order was issued at or after that hearing.

***State v. Garza*, 3 N.W.3d 18 (Minn. App. Feb. 5, 2024) (A23-0128, A23-0129).**

A defendant on trial for escape from custody for having failed to return following a temporary leave granted for a limited period under Minnesota Statutes section 609.485, subdivisions 1 and 2(1) (2020), is entitled to have the district court instruct the jury that the state has the burden to prove that his failure to return was intentional and voluntary.

***State v. Williams*, 3 N.W.3d 68 (Minn. App. Feb. 5, 2024), *rev. denied* (Minn. Apr. 16, 2024) (A23-0200) (see page 14 for syllabus point 2).**

1. Under Minn. Stat. § 609.341, subd. 3 (2016), the infliction of bodily harm alone constitutes “force;” the factfinder need not find that the infliction of bodily harm caused a victim to submit to penetration to meet the statutory definition.

***State v. Plancarte*, 3 N.W.3d 34 (Minn. App. Feb. 5, 2024), *rev. granted* (Minn. May 14, 2024) (A23-0158).**

A woman’s intentional display of her fully exposed breasts in the parking lot of a convenience store during routine business hours constitutes willful and lewd exposure of her private parts under Minnesota Statutes section 617.23, subdivision 1(1) (2020).

***State v. Bee*, 5 N.W.3d 713 (Minn. App. Apr. 15, 2024), *rev. granted* (Minn. July 23, 2024) (A23-1257).**

The interior of a motor vehicle that is on a public road is a “public place” for purposes of Minnesota Statutes section 624.7181 (2020), which makes it unlawful for a person to carry a BB gun, rifle, or shotgun in a public place.

***State v. Borgquist*, 7 N.W.3d 145 (Minn. App. May 6, 2024) (A23-0685).**

1. Subdivision 1 of the Minnesota Good Samaritan overdose medical assistance act, Minn. Stat. § 604A.05 (2022), provides for immunity from prosecution, not an affirmative defense, and eligibility for immunity under the statute is therefore properly determined by the district court.

2. The phrase “[a] person acting in good faith who seeks medical assistance” in the first sentence of Minn. Stat. § 604A.05, subd. 1, means a person acting with an honesty in belief or purpose who tries to locate medical assistance.

3. The phrase “acting in good faith” in the first sentence of Minn. Stat. § 604A.05, subd. 1, modifies the phrase that immediately follows: “who seeks medical assistance”; it does not modify the requirement to “cooperate[] with the authorities,” which

is set out in subparagraph (2) of subdivision 1. Whether the criteria set out in subparagraphs (1) and (2) are satisfied is to be judged objectively, independent of the phrase “acting in good faith.”

***Heard v. State*, 8 N.W.3d 662 (Minn. App. June 10, 2024), *rev. granted* (Minn. Sept. 25, 2024) (A23-1511).**

Assuming the *Teague* standard applies to state statutory and substantive law, neither *State v. Coleman*, 957 N.W.2d 72 (Minn. 2021), nor *State v. Noor*, 964 N.W.2d 424 (Minn. 2021), announced new rules of law concerning the mental-state element of third-degree depraved-mind murder under Minn. Stat. § 609.195(a) (2020), and thus, they do not apply retroactively to convictions that were final when *Coleman* and *Noor* were announced.

***State v. Bear*, 9 N.W.3d 865 (Minn. App. July 1, 2024) (A23-1657).**

Minnesota Statutes section 609.045 (2020) does not bar the state from prosecuting the offense of fleeing a peace officer committed while in Minnesota when the defendant has been convicted of a similar offense committed while in North Dakota arising from the same course of conduct because the elements of both law and fact between the two offenses are not identical.

***State v. Oliver*, 11 N.W.3d 817 (Minn. App. Aug. 19, 2024), *rev. granted* (Minn. Nov. 27, 2024) (A23-1062).**

Because attempted first-degree assault-harm, without a finding that the victim suffered great bodily harm, is inconsistent with the statutory scheme for assault, and the specific-intent required for an attempt crime conflicts with the general-intent required first-degree assault (great bodily harm) under Minnesota Statutes section 609.221, subdivision 1 (2022), appellant may not be convicted of attempted first-degree assault-harm.

### **Trial Procedure**

***State v. Seivers*, 2 N.W.3d 568 (Minn. App. Jan. 29, 2024), *rev. granted* (Minn. Apr. 24, 2024) (A22-0054).**

The residence of a runaway child’s custodial parent rather than the place the child intends to reside determines venue under Minnesota Statutes section 627.15 (2020) for prosecuting a criminal action for alleged abuse of a child, including criminal sexual conduct.