

The background features a stylized illustration of three books. On the left, there are two grey books standing upright, with a light green spine visible on the leftmost one. To the right, a red book is leaning against the grey books. All books have white horizontal bands.

Minnesota Court of Appeals

Significant Decisions

September 2014-August 2015

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PART I – CIVIL CASES

Administrative Law

***Goerke Family P’ship v. Lac qui Parle-Yellow Bank Watershed Dist.*, 857 N.W.2d 50 (Minn. App. Dec. 15, 2014) (A14-0603).**

1. When a watershed district’s board of managers makes a permitting decision without considering a material issue, the district court hearing a declaratory judgment action challenging the permitting decision must remand the issue to the board for consideration.

2. The scope of review that applies to agency decisions applies to permit decisions by a watershed district’s board of managers.

***Save Mille Lacs Sportsfishing, Inc. v. Minn. Dep’t of Nat. Res.*, 859 N.W.2d 845 (Minn. App. Feb. 17, 2015) (A14-0679).**

The absence of a citation to or analysis of a relevant constitutional or common-law principle by an administrative agency in the rulemaking process is not grounds for declaring a rule invalid in a pre-enforcement challenge conducted under Minn. Stat. §§ 14.44, .45 (2014), so long as the legal authority authorizing the rule is identified in the notice of rulemaking.

***Minn. Env’tl. Sci. & Econ. Review Bd. v. Minn. Pollution Control Agency*, 870 N.W.2d 97 (Minn. App. Aug. 10, 2015) (A14-1694).**

As part of the rulemaking process, an agency must respond to public comments by explaining its decision and how the evidence rationally supports its action; a reviewing court will not substitute its judgment if an agency can demonstrate that it has complied with rulemaking procedures and made a considered and rational decision.

Appellate Procedure & Review

***Foster v. Jesson, Comm’r of Human Servs.*, 857 N.W.2d 545 (Minn. App. Dec. 22, 2014) (A14-1119).**

When a judicial appeal panel dismisses a civil-commitment transfer petition under Minn. R. Civ. P. 41.02(b), the standard of appellate review is clear error.

***Tipka v. Lincoln Int’l Charter Sch.*, 864 N.W.2d 371 (Minn. App. June 8, 2015) (A14-1740).**

A charter school board’s allegedly improper employment decision to discharge its principal is not subject to this court’s review by writ of certiorari under Minnesota

Statutes section 480A.06, subdivision 3, because a charter school is not a public corporation.

Child Protection

***In re Welfare of Child of D.L.D.*, 865 N.W.2d 315 (Minn. App. June 8, 2015), review denied (Minn. July 20, 2015) (A14-2106).**

A juvenile court may find that a child cannot safely return home even though the factual bases for the conditions preventing the child's return home are not identical to the factual bases for the conditions that led to the child's out-of-home placement.

Civil Procedure

***Sharkey v. City of Shoreview*, 853 N.W.2d 832 (Minn. App. Sept. 22, 2014) (A13-1989).**

1. A motion to dismiss under Minn. R. Civ. P. 12.02(e) is not a "responsive pleading" for purposes of amendment as a matter of course under Minn. R. Civ. P. 15.01.

2. Under Minn. R. Civ. P. 15.01, a party has an absolute right to amend a pleading once as a matter of course before a responsive pleading has been served.

***Boyd v. BNSF Ry. Co.*, 858 N.W.2d 797 (Minn. App. Dec. 29, 2014), rev'd, 874 N.W.2d 234 (Minn. Jan. 27, 2016) (A14-0277).**

An award of double post-offer costs to plaintiff under Minn. R. Civ. P. 68.03(b)(2), when defendant rejects plaintiff's settlement offer and plaintiff subsequently obtains a verdict more favorable than the settlement offer, is permissible in a Federal Employers' Liability Act lawsuit brought in a Minnesota state court.

***Drewitz v. Motorwerks, Inc.*, 867 N.W.2d 197 (Minn. App. June 22, 2015), review denied (Minn. Sept. 15, 2015) (A14-1351).**

(See page *Contracts Section* for additional syllabus point from this case)

2. An action against a corporate director or shareholder seeking to recover a judgment already obtained against the corporation is equivalent to a creditor's bill at equity and is subject to the ten-year statute of limitations for actions upon judgments under Minn. Stat. § 541.04 (2014).

3. The ten percent preverdict interest rate under Minn. Stat. § 549.09, subd. 1(c)(2) (2014), applies to all judgments entered on or after August 1, 2009, regardless of whether any underlying conduct or litigation occurred prior to that date.

***Gams v. Houghton*, 869 N.W.2d 60 (Minn. App. Aug. 24, 2015), review granted (Minn. Nov. 17, 2015) (A14-1747).**

1. A party whose civil action is dismissed for failure to comply with the one-year filing requirement of Minn. R. Civ. P. 5.04(a) may seek relief from the resulting judgment under Minn. R. Civ. P. 60.02.

2. The rule-60.02 factors, as articulated in *Hinz v. Northland Milk & Ice Cream Co.*, 237 Minn. 28, 30, 53 N.W.2d 454, 456 (1952), are not elements to be proved in order for a party to be entitled to relief under Minn. R. Civ. P. 60.02, but are instead factors to be weighed by the district court in the circumstances of the individual case in determining whether to grant relief from a judgment or order.

***Cole v. Wutzke*, 868 N.W.2d 925 (Minn. App. Aug. 31, 2015), review granted (Minn. Nov. 17, 2015) (A15-0060).**

A district court abuses its discretion by ordering the entry of judgment in an action deemed dismissed for noncompliance with Minn. R. Civ. P. 5.04(a) if the plaintiff has established a basis for relief under Minn. R. Civ. P. 60.02.

Contracts

***Davies v. Waterstone Capital Mgmt.*, 856 N.W.2d 711 (Minn. App. Dec. 1, 2014), review denied (Minn. Feb. 25, 2015) (A14-0017).**

A party's assertion that a contractually shortened limitations period in an arbitration agreement is unreasonable, and thus unenforceable, is a challenge to the validity of the arbitration agreement, which presents an issue of arbitrability for the court to decide.

***Wells v. Holiday Cos.*, 862 N.W.2d 492 (Minn. App. Apr. 20, 2015), review denied (Minn. June 30, 2015) (A14-1421).**

A car-wash code that a gas station provides on a receipt when the customer purchases a certain type of car wash does not satisfy the definition of "gift certificate" under Minn. Stat. § 325G.53, subd. 1(a) (2014).

***Wayzata Nissan, LLC v. Nissan N. Am., Inc.*, 865 N.W.2d 75 (Minn. App. June 15, 2015), *aff'd in part, rev'd in part*, 876 N.W.2d 279 (Minn. Feb. 17, 2016) (A14-1652).**

When a new motor vehicle dealership is sold and then relocated to a location less than five miles from its original location and more than five miles distant from another dealer of the same line make, the safe-harbor provision of the Minnesota Motor Vehicle Sale and Distribution Act, Minn. Stat. § 80E.14, subd. 1 (2014), is applied at the time of the relocation. Relocation of a newly-acquired dealership within the safe-harbor

provision requires neither notice to another dealer in the relevant market area nor a good-cause hearing.

***Drewitz v. Motorwerks, Inc.*, 867 N.W.2d 197 (Minn. App. June 22, 2015), review denied (Minn. Sept. 15, 2015) (A14-1351).**

(See page *Civil Procedure Section* for additional syllabus points for this case)

1. A director's self-distribution of corporate funds that renders the corporation unable to satisfy a pending claim of a corporate creditor is a breach of the director's fiduciary duty to that creditor.

***JAB, Inc. v. Naegle*, 867 N.W.2d 254 (Minn. App. July 13, 2015) (A14-1742).**

Because Minn. Stat. § 513.01 (2014) provides that a contract that cannot be performed within a year of its making must express consideration in writing either in itself or in a note or memorandum, a nonsolicitation agreement is not enforceable when it does not express such consideration and does include an integration clause.

Environmental Law

***In re Minn. Dep't of Nat. Res. Special Permit No. 16868 (Dec. 21, 2012)*, 867 N.W.2d 522 (Minn. App. July 13, 2015), review denied (Minn. Oct. 20, 2015) (A14-1741).**

Attaching a radio collar to an habituated North American black bear, with the resulting capacities to remotely track and locate the bear in the wild and to locate the den of the bear, amounts to constructive possession of the wild animal within the meaning of Minn. Stat. §§ 97A.015, subd. 36 and 97A.401, subd. 3(a) (2014).

Family Law

***Ramsey County v. X.L.*, 853 N.W.2d 813 (Minn. App. Sept. 2, 2014) (A14-0346, A14-0347).**

Minnesota Statutes section 257.75, subdivision 3 (2012), does not bar a county providing public assistance to a child from filing a parentage action to adjudicate the father-child relationship even though a minor parent has signed a "recognition of parentage" and no competing presumptions of paternity exist.

***Suleski v. Rupe*, 855 N.W.2d 330 (Minn. App. Oct. 20, 2014) (A13-2031).**

1. Absent an indication that the district court intends to modify the physical custody of a minor child or change the primary residence of the child, an order modifying parenting time, so that the non-custodial parent has more parenting time than the custodial parent during the child's summer break from school and the custodial parent

has more parenting time during the school year, is not a modification of custody or a change of the child's primary residence.

2. Where an alleged restriction arises solely from the amount of a change in parenting time, an order modifying the parenting time of the non-custodial parent so that parenting time is increased during the child's summer break from school and decreased during the school year, without a substantial modification of overall parenting time over the course of the year, is not a restriction of the custodial parent's parenting time.

3. When a modification of a parenting schedule treats holidays and other special days differently from the rest of the parenting schedule, resulting in the non-custodial parent having exclusive parenting time during all school breaks and on Thanksgiving, Christmas, and New Year's Day, the district court must make findings adequately explaining its apportionment of parenting time on those breaks, holidays and special days.

***Oberg ex rel. minor child v. Bradley*, 868 N.W.2d 62 (Minn. App. Aug. 3, 2015) (A14-1693).**

The standard of proof for a petition for an order for protection under Minn. Stat. § 518B.01 (2014) is a preponderance of the evidence.

Government & Immunity

***Yaggie v. Schmidt*, 855 N.W.2d 769 (Minn. App. Nov. 10, 2014) (A14-0490).**

Minn. Stat. § 211B.13 (2012) (defining as a felony a person's promise of anything of value to induce a voter to vote in a particular way) does not prohibit a school board from informing property owners of the effect of a referendum on their property taxes as required by Minn. Stat. § 123B.71 (2012) (directing school boards to provide information on the effect of a bond issue on local property taxes to the commissioner of education (the commissioner), and to publish a summary of the commissioner's response prior to the referendum).

***Binkley ex rel. Lloyd v. Allina Health Sys.*, 860 N.W.2d 707 (Minn. App. Feb. 9, 2015), *aff'd in part, rev'd in part*, ___ N.W.2d ___ (Minn. Apr. 6, 2016) (A14-0794).**

Decisions on whether to grant an individual's request for voluntary admission under Minn. Stat. § 253B.04, subd. 1 (2014), are immune from suit under Minn. Stat. § 253B.23, subd. 4 (2014).

***Harlow v. Minn. Dep't of Human Servs.*, 862 N.W.2d 704 (Minn. App. Apr. 27, 2015), review granted (Minn. July 21, 2015) (A14-1342, A14-1343).**

Data classified as public under one section of the Minnesota Government Data Practices Act (MGDPA) do not lose that classification when separately classified as confidential under another section as part of an ongoing investigation.

***Kariniemi v. City of Rockford*, 863 N.W.2d 430 (Minn. App. May 18, 2015), review granted (Minn. Aug. 11, 2015) (A14-0796).**

Contractors are protected by official immunity when functioning as city officials.

***Blaine v. City of Sartell*, 865 N.W.2d 723 (Minn. App. June 15, 2015) (A14-1697).**

(See page *tort section* for an additional syllabus point for this case)

A municipality is not entitled to statutory immunity against a claim based on municipal policy-making conduct that is patently unlawful, unless the plaintiff reasonably can be charged with knowledge that the municipality's conduct is unlawful.

***Briggs ex rel. Briggs v. Rasicot*, 867 N.W.2d 217 (Minn. App. June 29, 2015), review denied (Minn. Sept. 15, 2015) (A14-2022).**

A police officer is not entitled to official immunity from liability for the decision to leave his unattended squad vehicle unlocked with its engine running, in violation of city ordinance and police department policy.

***In re Gillette Children's Specialty Healthcare*, 867 N.W.2d 513 (Minn. App. July 6, 2015), review granted (Minn. Sept. 29, 2015) (A14-1462).**

Minnesota Statutes section 256.9657, subdivision 2, which directs the Minnesota Department of Human Services to assess and collect from hospitals a 1.56-percent surcharge on net patient revenues, is not preempted by the Federal Employee Health Benefits Act or by the federal statute authorizing the TRICARE program.

***KSTP-TV v. Metro Transit*, 868 N.W.2d 920 (Minn. App. Aug. 24, 2015), review granted (Minn. Nov. 17, 2015) (A14-1957).**

Data recorded by an on-board video system in public buses and maintained by a government entity for several reasons, and not solely because the bus driver is a government employee, are public data under the Minnesota Government Data Practices Act.

Insurance Coverage

***Commerce Bank v. West Bend Mut. Ins. Co.*, 853 N.W.2d 836 (Minn. App. Sept. 22, 2014), *rev'd*, 870 N.W.2d 770 (Minn. Oct. 28, 2015) (A14-0247).**

Respondent insurer's denial of coverage for property damage that resulted from the non-party mortgagor allowing the property to remain vacant for more than 60 days does not apply to appellant mortgagee because, under a standard mortgage clause, the insurance covering the mortgagee is not invalidated by the mortgagor's acts or neglect.

***State Farm Mut. Auto. Ins. Co. v. Metro. Council*, 854 N.W.2d 249 (Minn. App. Sept. 22, 2014), *review denied* (Minn. Dec. 16, 2014) (A13-2176, A14-0167, A14-0245).**

Buses operated by the Metropolitan Council are "motor vehicles" for purposes of the Minnesota No-Fault Automobile Insurance Act, and the Metropolitan Council is therefore required to provide basic-economic-loss benefits for bus passengers without their own auto insurance who are injured in bus accidents.

***State Farm Mut. Auto. Ins. Co. v. Lennartson*, 857 N.W.2d 713 (Minn. App. Dec. 1, 2014), *aff'd*, 872 N.W.2d 524 (Minn. Dec. 16, 2015) (A14-0132, A14-0224).**

The plain language of the Minnesota No-Fault Insurance Act and the doctrine of collateral estoppel do not prevent an insured from seeking economic-loss benefits in a no-fault arbitration proceeding after the insured has litigated economic-loss damages in a negligence action.

***Terminal Transp., Inc. v. Minn. Ins. Guar. Ass'n*, 862 N.W.2d 487 (Minn. App. Apr. 20, 2015), *review denied* (Minn. June 30, 2015) (A14-1284).**

The Minnesota Insurance Guaranty Association (MIGA) is prohibited from covering any claims made against an insolvent insurer's policy that has a deductible in excess of \$300,000. Minn. Stat. § 60C.09, subd. 2(4) (2014).

***Hanbury ex rel. Hanbury v. Am. Family Mut. Ins. Co.*, 865 N.W.2d 83 (Minn. App. June 15, 2015), *review denied* (Minn. Aug. 25, 2015) (A14-1746).**

An insurance policy that provides underinsured motorist coverage only to insured persons who sustain bodily injury in a motor-vehicle accident complies with the Minnesota No-Fault Automobile Insurance Act.

***Twin Cities Metro-Certified Dev. Co. v. Stewart Title Guar. Co.*, 868 N.W.2d 713 (Minn. App. Aug. 10, 2015) (A14-1714).**

In order to sustain actual loss under a lender's policy of title insurance, an insured junior mortgagee must establish that, given the existence of a senior mortgage, equity remained in the property that secured its loan.

Jurisdiction & Procedure

***Rilley v. MoneyMutual, LLC*, 863 N.W.2d 789 (Minn. App. May 18, 2015), review granted (Minn. Aug. 11, 2015) (A14-1307).**

A nonresident defendant creates sufficient contacts to establish personal jurisdiction in Minnesota when it solicits Minnesota residents via television advertising and e-mails and generates revenue from known Minnesota residents through its website.

***Nagel v. Westen*, 865 N.W.2d 325 (Minn. App. June 15, 2015), review denied (Minn. Sept. 15, 2015) (A14-1776).**

A debt owed by a garnishee to an out-of-state garnishment debtor may be attached in Minnesota so long as (1) the garnishment debtor could sue the garnishee in an action on the debt in Minnesota, (2) Minnesota garnishment law authorizes the attachment, (3) a Minnesota court acquires jurisdiction over the garnishee, and (4) the exercise of jurisdiction comports with due process.

***McCullough & Sons, Inc. v. City of Vadnais Heights*, 868 N.W.2d 721 (Minn. App. Aug. 17, 2015), review granted (Minn. Oct. 20, 2015) (A14-1992, A15-0064).**

When read in conjunction, the plain language of Minn. Stat. § 429.061 (2014) and Minn. Stat. § 429.081 (2014) provides that the right to appeal a special assessment to the district court is forfeited unless the assessment is objected to in writing and signed by the taxpayer before or at the special-assessment hearing.

Labor & Employment

***Ford v. Minneapolis Pub. Schs.*, 857 N.W.2d 725 (Minn. App. Dec. 15, 2014), *aff'd*, 874 N.W.2d 231 (Minn. Jan. 20, 2016) (A13-1072).**

The six-year statute of limitations under Minn. Stat. § 541.05, subd. 1(2) (2012), applies to a whistleblower action under Minn. Stat. § 181.932, subd. 1(1) (2012).

***Toyota-Lift of Minn., Inc. v. Am. Warehouse Sys., LLC*, 868 N.W.2d 689 (Minn. App. July 13, 2015), review granted (Minn. Oct. 20, 2015) (A14-1159).**

To calculate whether the employee “recovers a greater sum than the amount [] tendered [in good faith],” within the meaning of Minn. Stat. § 181.14, subd. 3 (2014), a court should compare only (1) the amount of wages and commissions that the employer tendered in good faith and (2) the amount of wages and commissions the court found that an employee was actually due pursuant to a claim under Minn. Stat. § 181.14, subd. 1

(2014). If the amount due is greater than the amount tendered, then the employer remains liable for penalties under Minn. Stat. § 181.14, subd. 2 (2014).

Liens & Foreclosures

***CitiMortgage, Inc. v. Akers*, 858 N.W.2d 788 (Minn. App. Dec. 22, 2014) (A14-0193).**

If a married person forges a spouse's signature on a power-of-attorney document that purports to authorize the forger to take action on behalf of the spouse, and if the forger uses the forged power of attorney to execute a mortgage on the marital homestead on the spouse's behalf without the spouse's knowledge, the mortgage is void pursuant to section 507.02 of the Minnesota Statutes because the forger is not the spouse's "duly appointed attorney-in-fact." Furthermore, the forged power-of-attorney document is not entitled to the presumption of validity created by section 523.04 of the Minnesota Statutes because the power-of-attorney document was not "validly executed" by the spouse.

***Twait v. MidFirst Bank*, 870 N.W.2d 394 (Minn. App. Jan. 26, 2015) (A14-0877).**

For the purposes of Minn. Stat. § 580.02 (2012) (providing that any assignments of a mortgage must be recorded before foreclosure by advertisement may begin), foreclosure begins with the first publication of the notice of sale.

***Fed. Home Loan Mortg. Corp. v. Mitchell*, 862 N.W.2d 67 (Minn. App. Mar. 30, 2015), review denied (Minn. June 30, 2015) (A14-1037).**

1. Holder of sheriff's certificate of sale suffers injury-in-fact when former owners of the property sold at the sheriff's sale remain in possession of the property after expiration of the redemption period, giving holder of sheriff's certificate of sale standing to bring an eviction action.

2. Former owners remaining in possession of property after a foreclosure and sheriff's sale are not "tenants" within the meaning of Minn. Stat. § 504B.121 (2014) in the absence of a lease agreement with new owner.

3. A district court's discretion to grant a stay in an eviction action pending resolution of a related parallel civil action is only guided by *Bjorklund v. Bjorklund Trucking, Inc.*, 753 N.W.2d 312 (Minn. App. 2008), review denied (Minn. Sept. 23, 2008), when the parallel action involves a claim of a breach of the agreement that gave the present possessor the right of possession.

***Bank of N.Y. Mellon v. Keiran*, 863 N.W.2d 83 (Minn. App. Apr. 6, 2015) (A14-0304, A14-0620).**

A district court may not grant summary judgment based on a party's failure to satisfy the conditions of a court-ordered bond required to stay foreclosure proceedings unless the court first determines that no genuine issue of material fact exists.

***Roseland v. Wentzell*, 864 N.W.2d 356 (Minn. App. May 18, 2015), review denied (Minn. Aug. 11, 2015) (A14-1254).**

An equitable mortgage created during the foreclosure process does not constitute a foreclosure reconveyance under Minn. Stat. § 325N.10, subd. 3 (2014), when the mortgage does not allow the mortgagee to acquire title to the property by redeeming the property as a junior lienholder.

A district court may order that mortgaged premises, including agricultural land, be sold as one parcel under Minn. Stat. § 581.04 (2014), if the court determines that a sale as one parcel is most beneficial to the interests of the parties and the mortgagor does not request that tracts be sold separately under Minn. Stat. § 582.042, subd. 3 (2014).

***Ryan Contracting Co. v. O'Neill & Murphy, LLP*, 868 N.W.2d 473 (Minn. App. July 27, 2015), review granted (Minn. Oct. 20, 2015) (A14-1472).**

When determining whether a mechanic's lien is exempt under Minn. Stat. § 514.011, subd. 4c (2014) from the pre-lien notice requirement in Minn. Stat. § 514.011, subd. 1 (2014), the focus is whether the intended improvement to real property is "wholly or partially nonresidential in use" and not the existing use at the time the improvement is commenced.

Local Government

***Great W. Indus. Park, LLC v. Randolph Township*, 853 N.W.2d 155 (Minn. App. Sept. 8, 2014) (A13-2142).**

Minn. Stat. § 366.012 (2012) does not authorize a town to impose a service charge for a governmental service provided by the town; it provides a method for collecting a service charge that a town is otherwise authorized to impose.

***110 Wyman, LLC v. City of Minneapolis*, 861 N.W.2d 358 (Minn. App. Mar. 30, 2015), review denied (Minn. June 16, 2015) (A14-1176, A14-1177).**

Service charges that a city imposes under chapter 428A of the Minnesota Statutes are not subject to the common law special-benefit standard; rather, they are subject to the standard set forth in Minn. Stat. § 428A.02, subd. 3 (2014), that requires service charges to be "reasonably related to the special services provided" and proportionate to the cost of providing the service.

***Minn. Voters All. v. Anoka-Hennepin Sch. Dist.*, 868 N.W.2d 703 (Minn. App. July 27, 2015) (A14-1601).**

A school district's act of placing a levy question on the ballot is not an act to "promote" the levy question within the meaning of Minn. Stat. § 211A.01, subd. 4 (2014). A school district acts to "promote" a levy ballot question within the meaning of Minn. Stat. § 211A.01, subd. 4, only when it urges the adoption of the levy ballot question by express advocacy or by statements that, viewed as a whole, are the functional equivalent of express advocacy.

***August v. Chisago Cty. Bd. of Comm'rs*, 868 N.W.2d 741 (Minn. App. Aug. 17, 2015), review denied (Minn. Dec. 15, 2015) (A14-1475).**

In determining whether to grant a conditional-use permit, the responsible government unit may consider the resulting noise from the proposed use even if the noise levels do not exceed the sound level limits promulgated by the responsible state entity.

Probate

***In re Estate of Sullivan*, 868 N.W.2d 750 (Minn. App. Aug. 17, 2015) (A14-2112).**

A "revocatory act on the will" under Minn. Stat. § 524.2-507 (2014) must be performed on a will executed according to statutory formalities.

Real Estate & Property Rights

***Swanson v. Swanson*, 856 N.W.2d 705 (Minn. App. Dec. 1, 2014) (A14-0719).**

Under the doctrine of merger, a life estate in real property is extinguished when title to the life estate and title to a remainder interest in the property are united in one owner. The life estate, the lesser estate, merges into the remainder interest, the greater estate, resulting in title to a fee simple interest in the property.

The owner of a fee simple interest in real property is not a tenant in common with the owner of a remainder interest under Minn. Stat. § 558.01 (2012).

***Persigehl v. Ridgebrook Invs. Ltd. P'ship*, 858 N.W.2d 824 (Minn. App. Feb. 2, 2015) (A14-0027, A14-0123).**

Minnesota Statute section 504B.215 (2014) does not prohibit a landlord from billing tenants for fees charged in connection with tenants' utility bills and does not impose a requirement that those fees be equitable in comparison to the costs of the utilities services apportioned among tenants.

***Apitz v. Hopkins*, 863 N.W.2d 437 (Minn. App. May 18, 2015) (A14-1166).**

A deed that grants an “exclusive easement for ingress, egress, and utility purposes” is ambiguous, and the interpretation of the easement grant is a question of fact.

***Cityscapes Dev., LLC v. Scheffler*, 866 N.W.2d 66 (Minn. App. June 15, 2015) (A14-1719).**

Real estate licensees must strictly comply with Minn. Stat. § 82.66, subd. 1(d)(1) (2014) by providing a protective list to the seller within 72 hours of the listing agreement’s expiration to enforce an override clause in a listing agreement.

***Knight v. McGinity*, 868 N.W.2d 298 (Minn. App. Aug. 10, 2015) (A14-1667).**

In a month-to-month residential lease with no definite term and a right of both parties to terminate the lease with 45 days’ written notice, a clause prohibiting the parties from giving notice that would result in a lease termination during specified months each year does not constitute an automatic renewal clause subject to Minn. Stat. § 504B.145 (2014).

Remedies

***In re Distribution of Attorney’s Fees*, 855 N.W.2d 760 (Minn. App. Nov. 3, 2014), *aff’d*, 870 N.W.2d 755 (Minn. Oct. 28, 2015) (A13-2225).**

A client’s refusal to accept a settlement offer, on its own, is not a justifiable reason for an attorney to withdraw from representation in a contingent-fee case; thus, an attorney who withdraws solely for that reason is not entitled to recover attorney fees on the basis of quantum meruit.

***Sprinkler Warehouse, Inc. v. Systematic Rain, Inc.*, 859 N.W.2d 527 (Minn. App. Feb. 2, 2015), *aff’d*, ___N.W.2d ___ (Minn. Mar. 23, 2016) (A14-1121).**

Under Minn. Stat. § 571.73, subd. 3 (2014) domain names and the copyright-protected material contained in websites are subject to garnishment. To effect garnishment of these types of property, a court shall compel transfer of the website and domain name to a receiver for sale and application of the proceeds against the judgment debt.

***Brown v. Lee*, 859 N.W.2d 836, (Minn. App. Feb. 17, 2015), *review denied* (Minn. May 19, 2015) (A14-1031).**

A district court does not abuse its discretion by granting equitable relief to a party with unclean hands if the party has purged herself of her adverse equity.

***AVR Commc'ns, Ltd. v. Am. Hearing Sys., Inc.*, 868 N.W.2d 290 (Minn. App. Aug. 10, 2015) (A14-1808).**

A district court docketing a foreign judgment containing an award denominated in a foreign currency must state the judgment in United States dollars.

***Kroona v. Dunbar*, 868 N.W.2d 728 (Minn. App. Aug. 17, 2015) (A14-2152).**

When determining whether a co-obligor has paid more than his fair share of a common liability for the purpose of contribution, co-obligors who are insolvent or beyond the court's jurisdiction must be excluded from the fair-share calculation.

Torts

***Monson v. Suck*, 855 N.W.2d 323 (Minn. App. Oct. 14, 2014), review denied (Minn. Dec. 30, 2014) (A14-0461).**

If a person constructs an improvement to real property and continues to own or possess the property, the person potentially may be subject to two different bases of tort liability. If the person is sued for negligent construction of an improvement that was completed more than ten years before a plaintiff's injury, the claim is barred by the statute of repose in section 541.051, subdivision 1(a), of the Minnesota Statutes. But if the person is sued for negligent failure to use reasonable care to ensure the safety of persons who enter the property, the claim is not barred by the statute of repose in section 541.051, subdivision 1(a), because of the exception in subdivision 1(d) of the statute.

***Doe v. Liebsch*, 856 N.W.2d 699 (Minn. App. Dec. 1, 2014), aff'd, 872 N.W.2d 875 (Minn. Dec. 30, 2015) (A14-0275).**

In the jury trial in this civil case, the district court did not abuse its discretion by excluding evidence that the defendant previously pleaded guilty pursuant to *North Carolina v. Alford* in a criminal case that was based on the same alleged underlying conduct.

***Angeles v. Medtronic, Inc.*, 863 N.W.2d 404 (Minn. App. Apr. 20, 2015), pet. for review filed (Minn. May 20, 2015) consideration of pet. for review stayed (Minn. June 9, 2015) (A14-1149, A14-1150, A14-1151, A14-1152, A14-1153, A14-1154).**

1. Minnesota state law failure-to-warn patients and physicians claims and design-defect claims impose general requirements that are different from federal device-specific requirements and are therefore preempted by 21 U.S.C. § 360k(a) (2014).

2. Claims based on a failure to warn the FDA of adverse effects impose parallel requirements to federal device-specific requirements and are not preempted by 21 U.S.C. § 360k(a).

3. Minnesota state law express-warranty claims impose parallel requirements to federal device-specific requirements and are not expressly preempted by 21 U.S.C. § 360k(a).

***Expose v. Thad Wilderson & Assocs., P.A.*, 863 N.W.2d 95 (Minn. App. May 4, 2015), review granted but stayed (Minn. July 21, 2015), stay vacated and review granted (Minn. Jan. 19, 2016) (A14-0413).**

1. The immunity conferred by Minnesota Statutes section 148.975, subdivisions 4 and 8, does not apply to a mental-health therapist who is not licensed by the Board of Psychology.

2. The common-law doctrine of absolute privilege, which, in certain circumstances, protects persons from liability for statements made in judicial proceedings, cannot be invoked by a mental-health therapist who is alleged to have breached the duty of confidentiality imposed by the psychologist-patient privilege in Minnesota Statutes section 595.02, subdivision 1(g), except to the extent that the therapist was specifically required by a trial court's evidentiary ruling to give testimony.

3. A claim of invasion of privacy by publication of private facts may not be dismissed on the ground that the plaintiff did not serve an affidavit of expert review pursuant to Minnesota Statutes section 145.682 because expert testimony is not necessary to establish a *prima facie* case.

***Blaine v. City of Sartell*, 865 N.W.2d 723 (Minn. App. June 15, 2015) (A14-1697).**

(See page *Government and Immunity Section* for an additional syllabus point for this case)

The public-duty doctrine does not defeat a negligence claim based on a municipality's breach of its common-law duty of reasonable care arising from its status as the owner or operator of a real-property improvement.

Unemployment Benefits

***Fay v. Dep't of Emp't & Econ. Dev.*, 860 N.W.2d 385 (Minn. App. Mar. 2, 2015) (A14-1487).**

"Good cause" for failing to participate in reemployment assistance services under Minn. Stat. § 268.085, subd. 1(7) (2014), is defined as a reason that would have prevented a reasonable person acting with due diligence from participating in those services.

PART II – CRIMINAL CASES AND CASES ON RELATED SUBJECTS

Constitutional Law

***Bedell v. Roy*, 853 N.W.2d 827 (Minn. App. Sept. 15, 2014), review denied (Minn. Oct. 28, 2014) (A14-1077).**

A prison inmate's Fifth Amendment right against compelled self-incrimination is violated when he is required, as a condition of participation in a prison-based chemical-dependency-treatment program, to discuss a conviction offense that is on appeal.

***State v. Ziegler*, 855 N.W.2d 551 (Minn. App. Nov. 3, 2014) (A13-2233).**

Machine-generated data that do not contain the statements of human witnesses are not testimonial statements that implicate a defendant's right to confrontation under the Sixth Amendment.

***State v. Ware*, 856 N.W.2d 719 (Minn. App. Dec. 8, 2014) (A13-1948).**

In the absence of egregious state conduct or a violation of Minnesota Rule of Professional Conduct 4.2, police, consistent with the Sixth Amendment, may interview a represented defendant outside the presence of counsel so long as the defendant, after being given his Miranda rights, provides a knowing, intelligent, and voluntary waiver of his rights, including the right to have counsel present during the interview.

***State v. Turner*, 864 N.W.2d 204 (Minn. App. May 26, 2015) (A14-1408).**

Minnesota Statutes section 609.765 (2012), which criminalizes defamation, is unconstitutionally overbroad.

***State v. Washington-Davis*, 867 N.W.2d 222 (Minn. App. July 13, 2015), review granted (Minn. Sept. 29, 2015) (A14-0460).**

Minnesota Statutes section 609.322, subdivision 1a(1)–(2) (2010), which criminalizes the solicitation, inducement, and promotion of prostitution, is not facially overbroad under the First Amendment to the United States Constitution or article I, section 3, of the Minnesota Constitution.

DWI & Implied Consent

***O’Connell v. State*, 858 N.W.2d 161 (Minn. App. Jan. 12, 2015), review granted (Minn. Mar. 25, 2015), stay vacated and review denied (Minn. Oct. 20, 2015) (A14-1296).**

The rule announced in *Missouri v. McNeely*, 133 S. Ct 1552 (2013), that natural dissipation of alcohol in the blood does not constitute a per se exigency justifying a warrantless search, does not retroactively apply on collateral review of a final conviction.

***Dornbusch v. Comm’r of Pub. Safety*, 860 N.W.2d 381 (Minn. App. Mar. 2, 2015), review denied (Minn. May 27, 2015) (A14-1236).**

When a district court reviews the commissioner of public safety’s decision under the implied-consent statute to revoke the license of a driver whose chemical-test results indicated the presence of a Schedule II controlled substance, the district court may not rescind the revocation on the ground that the drug’s presence resulted from the driver’s lawful use of the drug under a physician’s prescription.

***State v. Fichtner*, 867 N.W.2d 242 (Minn. App. July 13, 2015), review denied (Minn. Sept. 29, 2015) (A14-1234).**

The Minnesota Impaired Driving Code provides that the presence of a child under the age of 16 in a motor vehicle at the time of an impaired-driving offense is an aggravating factor and the statute makes no provision permitting multiple children to represent separate, and stacked, aggravating factors. The presence of either one or more children in a vehicle at the time of an impaired-driving offense may constitute only a single aggravating factor.

***State v. Bennett*, 867 N.W.2d 539 (Minn. App. July 27, 2015), review denied (Minn. Oct. 28, 2015), petition for certiorari filed (U.S. Dec. 3, 2015) (A14-1813).**

Minnesota’s test-refusal statute does not violate the unconstitutional-conditions doctrine by imposing a criminal penalty on a person who has been arrested for driving while impaired and has refused to submit to a breath test.

Evidence

***State v. Gruber*, 864 N.W.2d 628 (Minn. App. June 8, 2015) (A14-0260).**

Evidence in the form of scientific drug-identification laboratory testing is not necessary to prove the identity of commercially manufactured pharmaceutical drugs beyond a reasonable doubt in a prosecution for unlawful possession of legend drugs under Minnesota Statutes section 151.37, subdivision 1.

Guilty Pleas

***Kubrom v. State*, 863 N.W.2d 88 (Minn. App. Apr. 6, 2015) (A14-0823).**

Where a defendant pleads guilty as part of a plea agreement for a definite-term sentence and is informed of a statutorily mandated conditional-release term only by reference to an undefined conditional-release term in the complaint, the defendant is entitled to withdraw his guilty plea after the bargained-for definite sentence has been executed and served in full.

***State v. Johnson*, 867 N.W.2d 210 (Minn. App. June 29, 2015), review denied (Minn. Sept. 29, 2015) (A14-1605).**

When accepting a *Norgaard* guilty plea, a district court should assure itself that there is a strong probability that the defendant would be found guilty of the crime to which he is pleading guilty but need not make an express finding on the record to that effect.

***Sanchez v. State*, 868 N.W.2d 282 (Minn. App. Aug. 3, 2015), review granted (Minn. Oct. 28, 2015) (A14-1679).**

The deportation consequences of a plea of guilty to third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(b) (2012), are not “truly clear” as that term is used in *Padilla v. Kentucky*, 130 S. Ct. 1473, 1483 (2010), and therefore counsel is required to advise a noncitizen client pleading to that charge only that a conviction “could” or “may” result in deportation.

Juvenile Delinquency

***In re Welfare of C.J.H.*, 864 N.W.2d 194 (Minn. App. May 18, 2015), rev’d, ___ N.W.2d ___, 2016 WL 1660625 (Minn. App. Apr. 27, 2016) (A14-1810).**

The juvenile court’s continuance of a delinquency proceeding after receiving the child’s admission of a charged offense and waiver of trial rights constitutes a continuance without adjudication within the meaning of Minn. R. Juv. Delinq. P. 15.05, subds. 1(B), 4. This rule governs the case despite the juvenile court’s initial withholding of a finding that the allegations of the charging document have been proved and the court’s designation of its order as a continuance for dismissal under Minn. R. Juv. Delinq. P. 14. Accordingly, the duration of the court’s subject-matter jurisdiction over the continued proceedings is limited as provided in rule 15 and the corresponding provision of the juvenile code.

Postconviction

***Dupey v. State*, 855 N.W.2d 544 (Minn. App. Oct. 27, 2014), rev'd, 868 N.W.2d 36 (Minn. Aug. 5, 2015) (A13-2317).**

A stay of adjudication on a felony offense constitutes a sentence under Minn. Stat. § 590.01, subd. 4(a)(1), which triggers the two-year time limit for postconviction petitions.

***Roberts v. State*, 856 N.W.2d 287 (Minn. App. Nov. 17, 2014), review denied (Minn. Jan. 28, 2015) (A14-0169).**

The newly-discovered-evidence exception to the statutory time bar to postconviction relief does not apply to an untimely petition seeking plea withdrawal based on allegedly deficient controlled-substance testing when the alleged deficiencies could have been ascertained by the exercise of due diligence within the time for filing a timely petition and the new evidence does not clearly and convincingly establish that the petitioner is innocent.

***Weitzel v. State*, 868 N.W.2d 276 (Minn. App. July 20, 2015), review granted (Minn. Oct. 20, 2015) (A14-1186).**

A postconviction court may deny a petition for postconviction relief on the ground that the petition is untimely, even if the state did not assert the defense of untimeliness, so long as the district court gives the parties notice of its intention to consider the issue of untimeliness and an opportunity to present their respective positions on the issue.

Pretrial Procedure

***State v. Farah*, 855 N.W.2d 317 (Minn. App. Sept. 29, 2014), review denied (Minn. Dec. 30, 2014) (A14-0541).**

When a party gives proper notice of a motion to exclude evidence because the chain of custody is lacking, the district court, in its discretion, may determine the admissibility of the evidence prior to trial.

***State v. Olson*, 867 N.W.2d 258 (Minn. App. July 13, 2015), review granted (Minn. Sept. 29, 2015) (A14-1482).**

A prosecutor abuses the state's voluntary dismissal authority under rule 30.01 of the Minnesota Rules of Criminal Procedure and engages in an act of bad faith by dismissing and refileing a criminal complaint to circumvent the district court's refusal to continue the criminal trial.

Search & Seizure

***State v. Stavish*, 852 N.W.2d 906 (Minn. App. Sept. 2, 2014), *aff'd*, 868 N.W.2d 670 (Minn. Aug. 19, 2015) (A14-0771).**

When a police officer is responsible for procuring a blood sample from an individual who has stated that he was the driver of a vehicle involved in a probable criminal vehicular homicide and who has already been transported to a hospital, exigent circumstances exist that justify the police officer's procuring the blood sample without a search warrant.

***State v. McClain*, 862 N.W.2d 717 (Minn. App. May 4, 2015) (A14-0432).**

The inevitable-discovery exception to the exclusionary rule is limited to physical evidence and does not apply to statements obtained after an unlawful search.

Sentencing & Restitution

***State v. Meyers*, 853 N.W.2d 819 (Minn. App. Sept. 15, 2014), *aff'd*, 869 N.W.2d 893 (Minn. Sept. 30, 2015) (A13-1313).**

Departure from a presumptive sentence is properly based on the aggravating factor articulated in Minn. Sent. Guidelines II.D.2.b.(3) (2010) when the underlying conviction involves injury, even if injury is an essential element of the conviction. The category of offenses subject to an upward departure under this factor includes those current convictions that involve harm or criminal sexual conduct; the basis for departure is that the offender has a prior conviction of an offense involving harm or criminal sexual conduct.

***State v. Alexander*, 855 N.W.2d 340 (Minn. App. Oct. 20, 2014) (A14-0409).**

Under the plain language of Minn. Stat. §§ 611A.04, .045 (2012), the district court is not authorized to order a defendant to sell personal property to satisfy a restitution order.

***State v. Hutchins*, 856 N.W.2d 281 (Minn. App. Oct. 20, 2014), *review granted* (Minn. Dec. 30, 2014), *order granting review vacated* (Minn. July 20, 2015) (A14-0750).**

When a defendant's sentence is based on multiple related convictions, a district court does not err when modifying the length of an unchallenged sentence on remand following a successful appeal, because the sentencing package doctrine applies.

***State v. Abdi*, 855 N.W.2d 546 (Minn. App. Oct. 27, 2014), review denied (Minn. Jan. 20, 2015) (A13-2401).**

Because Minn. Stat. § 609.1055 (2012) gives the district court discretion to make a dispositional departure from the sentencing guidelines by placing an offender with a serious and persistent mental illness on probation with the condition that the offender successfully complete an appropriate supervised alternative-living program having a mental-health treatment component, an appellate court reviews the decision to make or not make such a departure for an abuse of discretion.

***State v. Rodriguez*, 863 N.W.2d 424 (Minn. App. May 11, 2015), review denied (Minn. July 21, 2015) (A14-0940).**

(See page *Substantive Criminal Law Section* for additional syllabus point for this case)

2. Monetary losses, including moving expenses, directly linked to psychological trauma caused by an offender's criminal acts are compensable and within a district court's broad discretion to include in a restitution award.

***State v. Jerry*, 864 N.W.2d 365 (Minn. App. May 26, 2015), review denied (Minn. Sept. 15, 2015) (A14-1086).**

1. When imposing consecutive sentences, the district court must sentence the offenses in the order in which they occurred.

2. Because the offense of burglary is defined in terms of entry and is complete upon entry, it necessarily occurs before a crime committed in the building and, therefore, must be sentenced first in compliance with the sentencing guidelines.

***State v. Solberg*, 869 N.W.2d 66 (Minn. App. Aug. 24, 2015), review granted (Minn. Nov. 17, 2015) (A15-0242).**

Remorse that does not relate to the seriousness of the crime, standing alone, is an insufficient basis to support a downward durational departure.

Sex Offender Commitment

***In re Civil Commitment of Nielsen*, 863 N.W.2d 399 (Minn. App. Jan. 20, 2015), review denied (Minn. Apr. 14, 2015) (A14-1546).**

A county attorney has authority under Minn. Stat. § 253D.09(b) (2014) to file a petition for the civil commitment of a proposed patient as a sexually dangerous person and as a sexual psychopathic personality even when the proposed patient is serving a life sentence with an indeterminate release date, as long as the county attorney determines that there is good cause to do so under Minn. Stat. § 253D.07 (2014).

Substantive Criminal Law

***State v. Crockson*, 854 N.W.2d 244 (Minn. App. Sept. 22, 2014), review denied (Minn. Dec. 16, 2014) (A13-1971).**

A person who enters or remains in an apartment, after being asked to leave by a person who has been granted lawful possession of the apartment by the legal occupant, is guilty of first-degree burglary.

***State v. Hunter*, 857 N.W.2d 537 (Minn. App. Dec. 22, 2014) (A12-1850).**

A person constructively possesses a controlled substance when the person knowingly exercises dominion and control over the controlled substance. It is not sufficient that the person knowingly exercises dominion and control over the place in which the substance was found when others had access to that place.

***State v. Jones*, 857 N.W.2d 550 (Minn. App. Dec. 29, 2014), *aff'd*, 869 N.W.2d 24 (Minn. Aug. 26, 2015) (A14-1399).**

A district court properly dismisses a criminal-contempt-of-court charge for violating a condition of probation when the violation does not hinder administration of the legal process and other remedies exist to address the probation violation.

***State v. Munger*, 858 N.W.2d 814 (Minn. App. Jan. 12, 2015), review denied (Minn. Mar. 25, 2015) (A13-1215).**

Under the plain language of Minn. Stat. § 243.166, subd. 4a(b), persons required to register as predatory offenders are not required to provide written notification of changes in employment.

***State v. Rodriguez*, 863 N.W.2d 424 (Minn. App. May 11, 2015), review denied (Minn. July 21, 2015) (A14-0940).**

(See page *Sentencing and Restitution Section* for additional syllabus point for this case)

1. When the predicate offense for second-degree burglary is criminal damage to property, the entry of any part of the offender's body into the premises satisfies the statutory requirement that the offender committed a crime while in the building.

***State v. Anderson*, 865 N.W.2d 712 (Minn. App. June 8, 2015) (A13-2359).**

Subpart 1(3) of the first-degree controlled-substance-crime statute, Minnesota Statutes section 152.021, subdivision 1, prohibits only the sale of a controlled substance containing amphetamine, phencyclidine, or a hallucinogen, even when the sold controlled substance is packaged in dosage units.

***State v. Burnett*, 867 N.W.2d 534 (Minn. App. July 20, 2015), review denied (Minn. Oct. 20, 2015) (A14-1770).**

A false statement is “material,” within the meaning of Minn. Stat. § 609.48, subd. 1 (2010), if the statement has a natural tendency to influence, or is capable of influencing, the decision of the decision-making body to which it is made.

Trial Procedure

***State v. Sam*, 859 N.W.2d 825 (Minn. App. Feb. 17, 2015) (A14-0096).**

Where proof of an element of a charged offense depends entirely on circumstantial evidence, the district court must apply the two-step *Al-Naseer/Silvernail* analysis in deciding a motion for judgment of acquittal based on a claim of insufficiency of the evidence to support a conviction.

***State v. Moore*, 863 N.W.2d 111 (Minn. App. May 11, 2015), review denied (Minn. July 21, 2015) (A14-0358).**

A district court must instruct the jury on the statutory definition of “force” in Minnesota Statutes section 609.341, subdivision 3, if a defendant is charged with third-degree criminal sexual conduct in violation of Minnesota Statutes section 609.344, subdivision 1(c), which requires evidence that the defendant used “force or coercion to accomplish [sexual] penetration,” and if the state seeks to prove that the defendant used force to accomplish the penetration.