



Minnesota Court of Appeals

Significant Decisions

September 2012-August 2013

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PART I – CIVIL CASES

Administrative Law

***In re 401 Water Quality Certification*, 822 N.W.2d 676 (Minn. App. Nov. 13, 2012) (A12-1661).**

The Minnesota Pollution Control Agency did not err in issuing a certification, pursuant to section 401 of the Clean Water Act, 33 U.S.C. § 1341 (2006), of the United States Environmental Protection Agency’s proposed National Pollutant Discharge Eliminations System (NPDES) Vessel General Permit (VGP), which would allow discharges of ballast water in Minnesota waters, effective in December 2013.

***Centra Homes, LLC v. City of Norwood Young America, Minn.*, 834 N.W.2d 581 (Minn. App. July 29, 2013) (A12-2287).**

A party must exhaust administrative remedies before seeking judicial review of a municipal building official’s determination relative to the application and interpretation of the state building code.

***Constans v. Comm’r of Pub. Safety*, 835 N.W.2d 518 (Minn. App. Aug. 19, 2013) (A12-2307).**

Minnesota Statutes section 171.04, subdivision 1(10) (2012), does not require evidence of impaired driving before a license can be denied and canceled under Minnesota Statutes section 171.14(a)(4) (2012), and instead provides the commissioner of the department of public safety discretion to determine driving conduct that is “inimical to public safety or welfare.”

The commissioner of the department of public safety may rely on evidence outside of a driver’s record to support a finding of “good cause to believe” that driving conduct is inimical to public safety or welfare under Minnesota Statutes section 171.04, subdivision 1(10).

***In re Minnikka Props*, 834 N.W.2d 572 (Minn. App. July 29, 2013) (A12-2126).**

The use of waste tires in quantities that exceed accepted engineering or commercial standards, absent a case-specific determination of beneficial use, violates Minn. R. 7035.2860 (2011) and Minn. Stat. § 115A.904 (2012).

***Nat’l Council on Teacher Quality v. Minn. State Colls. & Univs.*, 837 N.W.2d 314 (Minn. App. Aug. 5, 2013) (A12-2031).**

A state agency cannot rely on the Federal Copyright Act to refuse to disclose data that is the subject of a request for disclosure under the Minnesota Government Data

Practices Act after the district court determines, without dispute, that the requestor intends only “fair use” of the data as defined by the copyright act.

***Schwanke v. Minn. Dep’t of Admin.*, 834 N.W.2d 588 (Minn. App. July 29, 2013), review granted (Minn. Oct. 15, 2013) (A12-2062).**

1. The Minnesota Department of Administration’s authority to dismiss without a contested-case hearing an appeal contesting the accuracy or completeness of government data brought under the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. § 13.04, subd. 4(a) (2012), is limited to cases in which the commissioner of administration’s efforts to resolve the dispute have succeeded, rendering the challenge moot.

2. The department of administration does not have the authority to limit the scope of a data subject’s appeal contesting the accuracy or completeness of government data brought under Minn. Stat. § 13.04, subd. 4(a), to the issues and evidence submitted to the responsible authority in the data subject’s initial data challenge.

***Williams v. Comm’r of Pub. Safety*, 830 N.W.2d 442 (Minn. App. Apr. 15, 2013), review denied (Minn. July 16, 2013) (A12-1548, A12-1576, A12-1578).**

When mailing notice of revocation and revocation of a driver’s license to a licensee for violating Minn. Stat. § 169A.52, subds. 3(a), 4(a) (2012), the Minnesota Commissioner of Public Safety does not violate the procedural due process rights of the licensee by providing that licensee with six days’ notice of revocation, notwithstanding that those who are served with notice of immediate revocation under Minn. Stat. § 169A.52, subd. 7 (2012), receive a seven-day temporary driver’s license.

Alternative Dispute Resolution

***Seagate Tech. v. W. Digital Corp.*, 834 N.W.2d 555 (Minn. App. July 22, 2013), review granted (Minn. Oct. 15, 2013) (A12-1944).**

1. A party to arbitration waives its right to object to an arbitrator’s authority to impose sanctions when that party (a) fails to raise the issue before the arbitrator and (b) seeks the imposition of sanctions against the other party to the arbitration.

2. An arbitrator does not exceed his authority by imposing sanctions for bad-faith litigation conduct when both the arbitration agreement and the applicable arbitration rules, although silent on the issue of sanctions, provide the arbitrator with broad authority to grant relief.

3. The district court abuses its discretion by ordering a rehearing before a new arbitrator without making findings that the award was procured by fraud or corruption, or that the arbitrator exhibited partiality, or that some other basis supports beginning the arbitration anew.

Appellate Procedure

***Banal-Shepherd v. Shepherd*, 829 N.W.2d 426 (Minn. App. Mar. 25, 2013), review denied (Minn. May 21, 2013) (A12-1933).**

In a custody proceeding, an appellant must timely serve a notice of appeal on all adverse parties, and a guardian ad litem is an adverse party to such an appeal if the guardian was a party in the district court and if the guardian's position with respect to the issues in the case might be prejudiced by a reversal or modification of the district court's order.

***Phillips v. LaPlante*, 823 N.W.2d 903 (Minn. App. Dec. 3, 2012), review denied (Minn. Aug. 6, 2013) (A12-1382).**

Appellant's request for need-based attorney fees under section 518.14, subdivision 1, of the Minnesota Statutes was separate from her underlying motion to enforce respondent's spousal-maintenance obligation. Thus, the district court order ruling on the underlying spousal-maintenance motion was not final and appealable until the district court determined all aspects of appellant's request for attorney fees.

Child Protection

***In re Welfare of Children of K.S.F.*, 823 N.W.2d 656 (Minn. App. Oct. 15, 2012) (A12-0631).**

The standard of proof in a termination-of-parental-rights proceeding is clear-and-convincing evidence.

Civil Procedure

***Elbert v. Tlam*, 830 N.W.2d 448 (Minn. App. Apr. 29, 2013), review granted (Minn. July 16, 2013) and order granting review vacated (Minn. Sept. 25, 2013) (A12-1960).**

To perfect an appeal to the district court under Minn. Stat. § 394.27, subd. 9 (2012), from an order granting a variance, the appealing party must serve notice of appeal on the adverse party or parties within the 30-day time period set forth in the statute; failure to do so is an incurable jurisdictional defect.

***N. Star Int'l Trucks, Inc. v. Navistar, Inc.*, 837 N.W.2d 320 (Minn. App. Aug. 26, 2013) (A13-0304).**

Neither requesting leave to file a motion for reconsideration nor filing a motion for reconsideration tolls or extends the time to appeal an order or judgment or prevents it from becoming final.

***Phelps v. State*, 823 N.W.2d 891 (Minn. App. Nov. 19, 2012) (A12-0934).**

When a motion under Minn. R. Gen. Pract. 9.01–.07 is the only matter before the district court, a district court’s exercise of its authority to sua sponte grant summary judgment is not proper because (1) it violates the provision of rule 9 requiring the non-rule 9 aspects of the case to be stayed pending resolution of the rule 9 questions, and (2) the party against whom summary judgment is granted lacks adequate notice and a meaningful opportunity to oppose summary judgment.

***Poppler v. Wright Hennepin Coop. Electric Ass’n*, 834 N.W.2d 527 (Minn. App. July 19, 2013), review granted in part, denied in part (Minn. Sept. 15, 2013) (A12-1615).** (See page 17 for additional syllabus points for this case.)

1. A district court does not have authority under rule 49 or rule 52 of the Minnesota Rules of Civil Procedure to make additional findings on an issue that was submitted to the jury and on which the jury returned a verdict if the additional findings are unnecessary to enter a judgment.

3. If a party does not object on the record to a jury instruction pursuant to rules 51.03 and 51.04 of the Minnesota Rules of Civil Procedure, this court may review the party’s challenge to the jury instruction only for plain error.

***Safety Signs, LLC v. Niles-Wiese Constr. Co.*, 820 N.W.2d 854 (Minn. App. Sept. 17, 2012), review granted (Minn. Nov. 27, 2012) (A12-0370).**

1. Service of notice of a payment-bond claim is effective upon mailing.

2. Strict compliance with the notice requirements in Minn. Stat. § 574.31, subd. 2(a) (2010), is a condition precedent to a payment-bond claim.

3. A defect in service of a notice of a payment-bond claim cannot be waived.

***Sterling State Bank v. Maas Commercial Props., LLC*, 837 N.W.2d 733 (Minn. App. Aug. 26, 2013), review denied (Minn. Nov. 12, 2013) (A13-0643).**

The district court erred by directing entry of final partial judgment pursuant to rule 54.02 of the Minnesota Rules of Civil Procedure because the benefits of interlocutory appellate review do not outweigh the general policy against piecemeal appellate review and because neither party will be prejudiced by the absence of interlocutory appellate review.

***TC/Am. Monorail, Inc. v. Custom Conveyor Corp.*, 822 N.W.2d 812 (Minn. App. Oct. 22, 2012), review granted (Minn. Jan. 15, 2013) (A11-2119).**

Because the Minnesota Rules of Civil Procedure do not distinguish between discovery depositions and those taken in order to preserve testimony for trial, a district court does not abuse its discretion by denying a party’s request to take trial depositions after the discovery deadline has passed, if the party failed to show good cause for an amendment to the court’s scheduling order.

***T & R Flooring, LLC v. O’Byrne*, 826 N.W.2d 833 (Minn. App. Feb. 14, 2013) (A12-1777).**

The district court erred by directing entry of final partial judgment on fewer than all claims pursuant to rule 54.02 of the Minnesota Rules of Civil Procedure because the benefits of interlocutory appellate review do not outweigh the general policy against piecemeal appellate review.

Constitutional Law

***Healthstar Home Health, Inc. v. Jesson*, 827 N.W.2d 444 (Minn. App. Dec. 17, 2012) (A12-0591).**

Minn. Stat. § 256B.0659, subd. 11(c) (Supp. 2011), which reduces the pay of personal care attendants who are related to recipients to 80% of the pay of nonrelative personal care attendants, creates an arbitrary distinction between similarly situated individuals in violation of the Equal Protection Clause of the Minnesota Constitution.

***State by Comm’r of Human Servs. v. Buchmann*, 830 N.W.2d 895 (Minn. App. May 6, 2013), review denied (Minn. July 16, 2013) (A12-1518).**

1. Application of Minn. Stat. § 171.30, subd. 1(j) (2012), which prohibits issuing limited commercial driver’s licenses to child support obligors whose driver’s licenses have been suspended because they are significantly in arrears and not in compliance with a payment agreement, does not violate a rural obligor’s constitutional right to substantive due process even though that obligor was formerly employed as a commercial truck driver.

2. Application of Minn. Stat. § 171.186, subd. 1 (2012), which permits suspension of a child support obligor’s driver’s license when that obligor is significantly in arrears and not in compliance with a payment agreement, does not violate an obligor’s constitutional right to equal protection even though that obligor lives isolated in rural Minnesota.

***State v. Irby*, 820 N.W.2d 30 (Minn. App. Sept. 4, 2012), review granted in part, denied in part (Minn. Nov. 20, 2012) (A11-1852).**

A district court judge does not automatically forfeit her judicial office under Minn. Stat. § 351.02(4) (2010) by residing outside of her district in violation of Minn. Const. art. VI, § 4.

***Weir v. ACCRA Care, Inc.*, 828 N.W.2d 470 (Minn. App. Feb. 25, 2013) (A12-0764).**

Minn. Stat. § 268.035, subd. 20(20) (2012), which makes personal-care assistants who provide direct care to an immediate family member ineligible for unemployment

benefits, is unconstitutional because it arbitrarily distinguishes between similarly situated individuals in violation of the Equal Protection Clause of the Minnesota Constitution.

Contracts

***Helmberger v. Johnson Controls, Inc.*, 821 N.W.2d 831 (Minn. App. Oct. 9, 2012), rev'd, ___ N.W.2d ___, 2013 WL 6087416 (Minn. Nov. 20, 2013) (A12-0327).**

A contractor who contracts with a school district to perform project management, construction, and architectural services for the school district is performing a governmental function within the meaning of the Minnesota Government Data Practices Act and, therefore, contracts relating to those services are public data under that act.

***Med. Staff of Avera Marshall Reg'l Med. Ctr. v. Avera Marshall*, 836 N.W.2d 549 (Minn. App. July 22, 2013), review granted (Minn. Oct. 15, 2013) (A12-2117).**

1. A hospital medical staff is not a separate legal entity with capacity to sue or be sued.

2. The bylaws governing a hospital's medical staff do not create a contractual relationship between a medical staff and a hospital.

***Rochon Corp. v. City of St. Paul*, 831 N.W.2d 651 (Minn. App. Apr. 8, 2013), review denied (Minn. June 18, 2013) (A12-1491).**

A prospective contractor for a municipal project that successfully challenges a bid-submission process and recovers under the Minnesota Uniform Municipal Contract Law cannot circumvent the prohibition of attorney fee awards by claiming that the contract violation entitles it to attorney fees under Minnesota's private attorney general statute.

Family Law

***In re Custody of A.L.R.*, 830 N.W.2d 163 (Minn. App. Apr. 8, 2013) (A12-1602).**

1. Because the common law presumption in favor of parental custody is codified in the third-party custody statute, Minn. Stat. §§ 257C.01–.08 (2012), a district court in third-party custody proceedings is not required to separately address that common law parental presumption.

2. A parent's undocumented-immigrant status is not an extraordinary circumstance under Minn. Stat. § 257C.03, subd. 7(a)(1)(iii).

***In re D.F.*, 828 N.W.2d 138 (Minn. App. Feb. 25, 2013) (A12-2018).**

In a parentage proceeding, a court-appointed attorney's representation of a putative father is limited in scope to the issue of the establishment of parentage, as provided by Minnesota Statutes section 257.69, subdivision 1 (2012).

***In re M.O.*, 838 N.W.2d 577 (Minn. App. Aug. 26, 2013), review denied (Minn. Oct. 23, 2013) (A13-0774).**

1. In an adoption proceeding, any appeal must be taken within 30 days, as provided by rule 48.02, subdivision 2, of the Minnesota Rules of Adoption Procedure. The 60-day period in rule 104.01 of the Minnesota Rules of Civil Appellate Procedure and section 259.63 of the Minnesota Statutes does not apply.

2. The requirement in rule 10.04 of the Minnesota Rules of Adoption Procedure that the district court administrator "shall" use a notice-of-filing form developed by the state court administrator is directory rather than mandatory. If a district court administrator uses a form other than the form developed by the state court administrator pursuant to rule 10.04, the district court administrator's notice of filing nonetheless may be effective to limit the time in which a party may appeal.

***In re Welfare of Children of L.L.P.*, 836 N.W.2d 563 (Minn. App. Aug. 19, 2013), review denied (Minn. Oct. 15, 2013) (A13-0545).**

1. An order denying a motion for adoptive placement for failure to make a prima facie case of unreasonableness on the part of the county's social services agency is appealable under Minn. Stat. § 260C.607, subd. 6(g) (2012), and Minn. R. Juv. Prot. P. 47.02, subd. 1.

2. A relative or foster parent requesting an order for an adoptive placement pursuant to Minn. Stat. § 260C.607, subd. 6 (2012), must submit a motion and supporting documents establishing a prima facie showing that the county's social services agency has been unreasonable in failing to make the requested adoptive placement. In considering whether the motion for adoptive placement makes a prima facie showing and the movant is entitled to an evidentiary hearing, the district court must accept the facts as true as set forth in the movant's supporting documents, disregard contrary allegations by the agency, and consider the agency's allegations only to the extent that they explain or provide context to the movant's allegations.

3. Whether the district court properly considered a moving party's supporting documents in a motion for adoptive placement is reviewed de novo. Whether the district court erred in finding that a moving party failed to establish a prima facie case that the agency acted unreasonably in failing to make the requested adoptive placement is reviewed for an abuse of discretion. Whether the district court properly denied a moving party's request for an evidentiary hearing is reviewed de novo.

4. Under Minn. Stat. § 260C.619(b) (2012), a contact or communication agreement between adoptive parents and a relative or foster parent with a child is enforceable by the district court when the agreement's terms are contained in a written court order.

***Kremer v. Kremer*, 827 N.W.2d 454 (Minn. App. Feb. 19, 2013), review denied (Minn. Apr. 16, 2013) (A12-0699).**

When one parent relocates to another state before the district court has made a final custody determination, and where that relocation was necessarily addressed in the district court's custody decree, the district court is not required to determine whether the parent's relocation is in the child's best interests under Minn. Stat. § 518.175, subd. 3 (2012), because (1) that statute only applies when a parent decides to relocate after the final decree has been filed, and (2) the impact of the parent's relocation on the child is implicit in the best-interests factors that the district court is required to apply in making a custody determination under Minn. Stat. § 518.17, subd. 1(a) (2012).

***Leifur v. Leifur*, 820 N.W.2d 40 (Minn. App. Sept. 4, 2012), review dismissed (Minn. Nov. 1, 2012) (A11-1475).**

Under Minn. Stat. § 518A.39, subd. 2(e) (2010), the district court may not make a maintenance modification retroactive to a time before the moving party served notice of the modification motion even though the parties agreed to an earlier retroactive date in a mediated agreement.

***Limberg v. Mitchell*, 834 N.W.2d 211 (Minn. App. July 15, 2013) (A12-2315).**

In determining whether a presumed father's evidence is sufficient to withstand a summary judgment motion in a paternity action, the court shall consider such evidence in light of the clear and convincing evidentiary burden of proof set forth in Minn. Stat. § 257.62, subd. 5(b) (2012).

***VanGelder v. Johnson*, 827 N.W.2d 430 (Minn. App. Oct. 22, 2012), review denied (Minn. Jan. 15, 2013) (A12-0216).**

When a marriage dissolution decree requires divorcing parents to engage a parenting consultant to resolve parenting disputes, the parenting consultant is entitled to quasi-judicial immunity against either parent's claim for civil damages arising from the parenting consultant's decisions resolving those disputes.

Harassment Restraining Orders and Orders for Protection

***Fiduciary Found., LLC v. Brown*, 834 N.W.2d 756 (Minn. App. July 1, 2013), review denied (Minn. Sept. 17, 2013) (A12-1911).**

When a respondent does not request a hearing after issuance of an ex parte temporary harassment restraining order under Minn. Stat. § 609.748, subd. 4 (2012), the temporary harassment restraining order becomes an ex parte harassment restraining order under Minn. Stat. § 609.748, subd. 5 (2012), effective for the period set forth in the ex parte temporary harassment restraining order.

Insurance Coverage

***Farmers Ins. Exch. v. Letellier*, 820 N.W.2d 597 (Minn. App. Sept. 4, 2012) (A12-0155).**

A provision in an automobile-insurance policy that provides coverage for damages that an insured person is legally liable to pay because of bodily injury arising out of the ownership, maintenance, or use of a vehicle, does not provide coverage for damages that an insured person is legally liable to pay under the social-host-liability statute because of bodily injury caused by an intoxicated driver under 21 years of age who was not insured under the policy and who was driving a vehicle that was not insured under the policy.

***Kastning v. State Farm Ins. Cos.*, 821 N.W.2d 621 (Minn. App. Sept. 24, 2012), review denied (Minn. Nov. 20, 2012) (A12-0584).**

An uninsured farm tractor is not a “motor vehicle” for purposes of the Minnesota No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41–.71 (2010), because a farm tractor is neither subject to registration under chapter 168 of the Minnesota Statutes nor designed “for use primarily upon public roads, highways or streets.” Neither is an uninsured farm tractor a “motor vehicle” under the uninsured motorist coverage of an insurance policy that defines “motor vehicle,” in part, as subject to registration under chapter 168 of the Minnesota Statutes and “designed for use on public highways.”

***Russell v. Haji-Ali*, 826 N.W.2d 216 (Minn. App. Jan. 14, 2013), review denied (Minn. Mar. 27, 2013) (A12-1213).**

An injured claimant’s receipt of underinsured-motorist benefits prior to trial of the claimant’s direct tort action constitutes a collateral source for purposes of a motion to reduce damages pursuant to Minn. Stat. § 548.251 (2012).

***Schupp v. United Fire & Cas. Co.*, 821 N.W.2d 824 (Minn. App. Oct. 1, 2012), review denied (Minn. Dec. 18, 2012) (A12-0453).**

Minn. Stat. § 60A.08, subd. 1 (2008), does not require an insurer to provide an insured with a paper copy of every term and condition of an insured's commercial general liability policy each year upon renewal.

Jurisdiction and Procedure

***Leiendecker v. Asian Women United of Minn.*, 834 N.W.2d 741 (Minn. App. June 3, 2013), review granted (Minn. Aug. 20, 2013) (A12-1978, A12-2015).**

An expert witness who submits an affidavit in the course of a legal proceeding is absolutely immune from liability under the absolute-privilege doctrine.

Labor and Employment

***Aase v. Wapiti Meadows Cmty. Tech. & Servs., Inc.*, 832 N.W.2d 852 (Minn. App. May 20, 2013), review denied (Minn. Aug. 6, 2013) (A12-1671).**

Discharging an employee because her spouse accepted a position with a competitor is a violation of the Minnesota Human Rights Act's (MHRA) ban on discrimination based on the identity, situation, actions, or beliefs of a spouse, as defined in Minn. Stat. §§ 363A.02, subd. 1(1), .03, subd. 24 (2012), and is therefore not a legitimate, nondiscriminatory reason for an adverse employment decision for purposes of the second step of *McDonnell Douglas*.

***Doran v. Indep. Sch. Dist. No. 720*, 831 N.W.2d 1 (Minn. App. Apr. 22, 2013) (A12-1289).**

1. When a school district withdraws from its membership in an educational cooperative that has placed a teacher on an unrequested leave of absence, the teacher's statutory right to claim an open teaching position in the school district depends on a temporal relationship, not on a causal relationship, between the withdrawal and the leave. Minn. Stat. § 123A.33, subd. 8 (2012).

2. A school district "withdraws" from an educational cooperative and triggers the teacher's statutory right to claim a job in the district when the district removes its students from even one of several learning programs provided by the cooperative so that the district can provide the service by some other means. Minn. Stat. § 123A.33, subd. 1(c) (2012).

***LeDoux v. M.A. Mortenson Co.*, 835 N.W.2d 20 (Minn. App. July 22, 2013) (A12-2308).**

The features of a basic-oversight relationship between a general construction contractor and one of its subcontractors does not create the kind of “common enterprise” under Minnesota Statutes section 176.061, subdivisions 1–4, that bars a negligence action against the general contractor by a subcontractor’s employee who received workers’ compensation benefits for injuries sustained on the construction site.

***Minn. Laborers Health & Welfare Fund v. Granite RE, Inc.*, 826 N.W.2d 210 (Minn. App. Dec. 24, 2012), review granted (Minn. Mar. 19, 2013) (A12-1017).**

1. A union benefit fund is an intended third-party beneficiary of a payment surety bond issued on behalf of an employer that is required to pay the cost of employee fringe benefits to the fund under the terms of a collective bargaining agreement.

2. The one-year contractual limitations period set forth in a surety bond is tolled as to both the principal and the surety by the principal’s fraudulent concealment of a cause of action.

***Schmitz v. U.S. Steel Corp.*, 831 N.W.2d 656 (Minn. App. May 13, 2013), review granted (Minn. Aug. 6, 2013) (A12-0709).**

1. Minn. Stat. § 176.82, subd. 1 (2012), of the Minnesota Workers’ Compensation Act provides a cause of action for threatening to discharge an employee for seeking workers’ compensation benefits that is independent of claims for retaliatory discharge and intentional obstruction of benefits.

2. A claim for threatening to discharge an employee for seeking workers’ compensation benefits in violation of Minn. Stat. § 176.82, subd. 1, requires the plaintiff to show that a person, with knowledge that the plaintiff may have suffered a workplace injury, attempted to dissuade the plaintiff from seeking workers’ compensation benefits through one or more communications that created a reasonable apprehension of discharge and caused the plaintiff to delay or cease seeking benefits.

3. Under basic agency principles, an employer is vicariously liable for the actions of a supervisor who threatens to discharge an employee for seeking workers’ compensation benefits in violation of Minn. Stat. § 176.82, subd. 1.

4. A claim alleging retaliatory discharge in violation of Minn. Stat. § 176.82, subd. 1, seeking only money damages, sounds in tort and is therefore an action at law with an attendant right to a jury trial under the Minnesota Constitution.

5. A party is not entitled to a jury trial on a refusal-to-offer-continued-employment claim under Minn. Stat. § 176.82, subd. 2 (2012).

***Sipe v. STS Mfg., Inc.*, 822 N.W.2d 2 (Minn. App. Sept. 25, 2012), *rev'd*, 834 N.W.2d 683 (Minn. July 13, 2013) (A11-2082).**

The two-year statute of limitations under Minn. Stat. § 541.07(1) (2010) applies to wrongful-termination actions brought under the Minnesota Drug and Alcohol Testing in the Workplace Act, Minn. Stat. § 181.953, subd. 10 (2010).

Liens and Foreclosures

***Embree v. U.S. Bank N.A.*, 828 N.W.2d 141 (Minn. App. Mar. 18, 2013) (A12-1618).**

Recording a limited power of attorney granting limited authority to an attorney-in-fact to act on behalf of a mortgagee satisfies the requirement of Minn. Stat. § 580.05 (2012) that the authority of an attorney-in-fact shall “be evidenced by recorded power.”

***First Nat’l Bank v. Profit Pork, LLC*, 820 N.W.2d 592 (Minn. App. Sept. 4, 2012) (A11-1732).**

One who does not directly feed livestock but merely provides another with feed and information related to providing the feed to livestock is entitled to a production-inputs lien under Minn. Stat. § 514.966, subd. 3 (2010), rather than a feeder’s lien under Minn. Stat. § 514.966, subd. 4 (2010).

***JPMorgan Chase Bank, N.A. v. Erlandson*, 821 N.W.2d 600 (Minn. App. Sept. 4, 2012) (A12-0045).**

1. The holder of legal title to a mortgage can foreclose that mortgage by action without showing that it also holds the promissory note associated with the mortgage.

2. The mortgagee or the mortgagee’s successor in interest who is foreclosing a mortgage can, at the foreclosure sale, make a credit bid for the premises in the amount of the debt secured by the premises without showing that it possesses the note associated with the mortgage that was foreclosed.

Local Government

***Motokazie! Inc. v. Rice Cnty.*, 824 N.W.2d 341 (Minn. App. Dec. 17, 2012) (A12-0735).**

1. A county ordinance requiring that zoning ordinances be enacted or amended by a supermajority vote does not conflict with Minn. Stat. § 375.51, subd. 1 (2012).

2. Amendments to the text of county zoning ordinances are not subject to the automatic approval penalty of Minn. Stat. § 15.99, subd. 2(a) (2012).

Probate

***In re Estate of Holmberg*, 823 N.W.2d 875 (Minn. App. Sept. 10, 2012), review denied (Minn. Nov. 27, 2012) (A12-0245).**

A person is not nominated as a personal representative for the purpose of allowing payment for attorney fees and expenses under Minn. Stat. § 524.3-720 (2010) unless such nomination is authorized by either the will of the decedent or in compliance with the priority of appointment statute, Minn. Stat. § 524.3-203 (2010).

***In re Estate of Jones*, 826 N.W.2d 540 (Minn. App. Dec. 24, 2012), review denied (Minn. Mar. 19, 2013) (A12-0828).**

When there is un rebutted evidence that the contributing account holder intended funds from a joint account to be used by the noncontributing account holder, the probate court does not err by excluding from the contributing account holder's estate funds withdrawn by the noncontributing account holder prior to the contributing account holder's death.

***In re Estate of Rutt*, 824 N.W.2d 641 (Minn. App. Oct. 22, 2012), review denied (Minn. Jan. 29, 2013) (A12-0335).**

1. A probate petition commences a probate action; when that petition is filed before written notice of a claim or demand for arbitration, prejudgment interest under Minn. Stat. § 549.09 (2010) begins on the date the petition was filed.

2. The monetary thresholds in Minn. Stat. § 549.09 are applied to the judgments as delineated by the district court, even when multiple transactions are included in a single judgment.

***In re G. B. Van Dusen Marital Trust*, 834 N.W.2d 514 (Minn. App. Apr. 8, 2013), review denied (Minn. June 26, 2013) (A12-0503, A12-0994, A12-1469).**

1. The district court erred by granting summary judgment to the trustee on the beneficiary's claim that she is entitled to additional distributions of principal from the trust.

2. Because the trust agreement allows the beneficiary to convert "unproductive property" to "productive property," the beneficiary may convert property that does not produce income to property that does produce income, even if property that does not produce income tends to appreciate in value so as to enlarge the amount of trust principal.

***In re Guardianship & Conservatorship of Pates*, 823 N.W.2d 881 (Minn. App. Nov. 13, 2012) (A12-0660).**

When a district court treats a guardianship petition as one for a protective order under Minn. Stat. § 524.5-310(b) (2010), the district court may only grant protective

powers specifically allowed under the conservatorship statute, Minn. Stat. § 524.5-417 (2010).

***In re Guardianship of Tschumy*, 834 N.W.2d 764 (Minn. App. July 29, 2013), review granted (Minn. Oct. 15, 2013) (A12-2179).**

Unless otherwise limited in the guardianship order, a guardian’s power to consent to necessary medical or other professional care for a ward under Minn. Stat. § 524.5-313(c)(4) (2012) includes the power to authorize disconnection of a permanently unconscious ward’s life-support systems without seeking an order from the district court.

***In re Trust of James Bernard Spencer Irrevocable Trust*, 825 N.W.2d 753 (Minn. App. Dec. 24, 2012), review denied (Minn. Feb. 27, 2013) (A12-0565).**

Because the grantor of a trust reserved to himself a testamentary power of appointment that could be exercised only in his last will and testament, the grantor did not validly exercise the appointment power by executing a document that does not state that it is a will, does not resemble a will, and does not reflect the intent necessary to create a will.

Real Estate and Property Rights

***Citizens State Bank Norwood Young Am. v. Brown*, 829 N.W.2d 634 (Minn. App. Apr. 29, 2013), review granted (Minn. July 16, 2013) (A12-1257).**

Under the Uniform Fraudulent Transfer Act (UFTA), Minn. Stat. § 513.44(b) (2012), spouses are insiders, and transfers between spouses are presumptively fraudulent as to existing creditors. This presumption of fraud may be rebutted only by clear and convincing evidence.

***City of Cloquet v. Crandall*, 824 N.W.2d 648 (Minn. App. Dec. 10, 2012) (A12-0391).**

A contract for deed purchaser is not a “fee title holder” and therefore not a property “owner” under Minnesota Statutes section 117.187 (2008), which entitles each property “owner” to certain minimum compensation following a governmental taking and which defines “owner” to include fee title holders.

***In re Mortg. Elec. Registration Sys., Inc.*, 835 N.W.2d 487 (Minn. App. Apr. 22, 2013) (A12-1050).**

In proceedings subsequent to initial registration, (1) preponderance of the evidence is the standard of proof for the amendment of the certificate of title, and (2) district courts may apply the doctrines of contemporaneous transaction and instantaneous seisin so as to accurately depict the real estate transaction and avoid an absurd result.

***Hous. and Redev. Auth. of Duluth v. Lee*, 832 N.W.2d 868 (Minn. App. July 1, 2013), review granted (Minn. Sept. 17, 2013) (A12-2078).**

Because Minn. Stat. § 504B.177(a) (2012) does not conflict with any federal statute, regulation, or guideline, landlords of federally-subsidized housing must comply with its provision prohibiting imposition of late fees exceeding eight percent of the overdue rent payment.

***Lanpher v. Nygard*, 829 N.W.2d 438 (Minn. App. Apr. 22, 2013), review denied (Minn. June 26, 2013) (A12-1419).**

The partition fence statute, Minn. Stat. §§ 344.01–.20 (2012), does not provide a unilateral right to repair a fence located at or near a property line unless the fence is a “partition fence” as defined under the statute and the procedural requirements of the statute have been satisfied.

***White v. City of Elk River*, 822 N.W.2d 320 (Minn. App. Oct. 29, 2012), review granted in part and denied in part (Minn. Jan. 15, 2013) (A12-0681).**

When the lawful use of property under a conditional-use permit later becomes a nonconforming use, the permit does not expire and the property must remain in compliance with the permit conditions to be a lawful nonconforming use entitled to the protections of Minn. Stat. § 462.357, subd. 1e (2010).

Torts

***Eischen v. Crystal Valley Coop.*, 835 N.W.2d 629 (Minn. App. Aug. 5, 2013), review denied (Minn. Oct. 15, 2013) (A13-0104).**

The doctrine of primary assumption of risk does not apply to bar claims for injuries arising out of towing of farm equipment.

***Gallagher v. BNSF Ry. Co.*, 829 N.W.2d 85 (Minn. App. Apr. 8, 2013) (A12-1327).**

1. Summary judgment dismissing a claim of violation of the Safety Appliance Act is inappropriate if there is any evidence from which a jury could reasonably conclude that the act was violated and that such violation caused a railroad employee’s injury.

2. Summary judgment dismissing a claim of negligence under the Federal Employers’ Liability Act is inappropriate if there is any evidence from which a jury could reasonably conclude that a railroad carrier breached its duty of care and that such breach caused a railroad employee’s injury.

***Gieseke ex rel. Diversified Water Div., Inc. v. IDCA, Inc.*, 826 N.W.2d 816 (Minn. App. Jan. 14, 2013), review granted (Minn. Apr. 16, 2013) (A12-0713).**

A claim of tortious interference with prospective advantage—also referred to as tortious interference with prospective economic advantage, tortious interference with business expectancy, wrongful interference with business relations or relationships, tortious interference with prospective contractual relations or relationships, and wrongful interference with prospective contractual relations or relationships—is a valid tort claim under Minnesota law.

***Grady v. Green Acres, Inc.*, 826 N.W.2d 547 (Minn. App. Feb. 4, 2013) (A12-0885).**

Because snow tubing is an inherently dangerous sport, primary assumption of the risk precludes others' liability for injuries to adults that result from their participation in the sport.

***Graphic Commc'ns Local 1B Health & Welfare Fund "A" v. CVS Caremark Corp.*, 833 N.W.2d 403 (Minn. App. May 6, 2013), review granted (Minn. July 31, 2013) (A12-1555).**

1. The Minnesota generic-prescription-drug substitution statute, Minn. Stat. § 151.21, subd. 4 (2012), does not give rise to an implied private right of action.

2. An action brought under Minn. Stat. § 325F.69, subd. 1 (2012), of the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68-70 (2012), and the private-attorney-general statute, Minn. Stat. § 8.31, subd. 3a (2012), alleging that pharmacies failed to pass on cost savings when dispensing generic prescription drugs in place of brand-name prescription drugs as mandated by law, survives a motion to dismiss under Minn. R. Civ. P. 12 when the complaint alleges misrepresentations that damaged consumers.

***Kellogg v. Finnegan*, 823 N.W.2d 454 (Minn. App. Nov. 13, 2012) (A12-0799).**

In the context of a defendant's summary judgment motion in a negligence case, evidence that the defendant fell asleep while driving after proceeding for only a short time may require that a jury determine whether the aggregate of facts known by the driver shows that a jury could reasonably determine that the sleep was foreseeable.

***Kolberg-Pioneer, Inc. v. Belgrade Steel Tank Co.*, 823 N.W.2d 669 (Minn. App. Oct. 22, 2012), review denied (Minn. Jan. 15, 2013) (A12-0538).**

Minnesota law applies to a downstream seller's common-law indemnity claim against a Minnesota manufacturer when the indemnity claim arises from a strict-liability claim asserted against the seller for the sale of the manufacturer's product in a different state.

***Lamere v. St. Jude Med., Inc.*, 827 N.W.2d 782 (Minn. App. Feb. 19, 2013) (A12-0609).**

1. Pursuant to Minn. Stat. § 573.02 (2012), the statute of limitations on a wrongful-death claim arising out of an alleged product defect begins to run at the time the alleged wrongdoing occurred, not at the time the decedent discovered or could have discovered his injury.

2. To successfully plead a parallel claim to avoid federal preemption, a plaintiff must do more than merely cite to a federal Good Management Practice (GMP) that may have been violated.

3. State common-law strict-liability claims impose general requirements that are different from federal device-specific requirements and therefore are preempted by 21 U.S.C. § 360k(a) (2006).

***O'Brien v. Dombeck*, 823 N.W.2d 895 (Minn. App. Dec. 3, 2012) (A12-0984).**

When two or more parties are severally liable on a judgment, Minn. Stat. § 604.02, subd. 2, authorizes reallocation of the uncollectible portion of a party's equitable share of the judgment. District courts are not required to allocate costs and disbursements according to each party's percentage of fault. *See* Minn. Stat. § 604.02 (2010).

***Poppler v. Wright Hennepin Coop. Electric Ass'n*, 834 N.W.2d 527 (Minn. App. July 19, 2013), review granted in part, denied in part (Minn. Sept. 15, 2013) (A12-1615).** (See page 4 for additional syllabus points for this case.)

2. A plaintiff seeking damages for lost profits must prove the existence and amount of the plaintiff's decrease in revenues as well as the existence or non-existence and amount of any offsetting decrease in the plaintiff's expenses. A plaintiff seeking damages for a dairy farm's losses due to stray voltage is not entitled to damages solely upon proof of "milk loss" (*i.e.*, decreased revenues due to decreased milk production) without any evidence of the existence or non-existence and amount of any offsetting decrease in the plaintiff's expenses.

4. The presence of stray electrical voltage does not give rise to a cause of action for trespass.

***Staab v. Diocese of St. Cloud*, 830 N.W.2d 40 (Minn. App. Apr. 29, 2013), review granted (Minn. June 26, 2013) (A12-1575, A12-1972).**

1. When a jury apportions fault to multiple tortfeasors, a district court may reallocate the uncollectible amount allocated to a non-defendant tortfeasor pursuant to the comparative-fault statute, Minn. Stat. § 604.02, subd. 2 (2012), following a motion for reallocation and a finding of uncollectibility.

2. When a district court reallocates a portion of a jury verdict from a non-defendant tortfeasor, the plaintiff is entitled to post-verdict interest on that portion from the date of the district court's reallocation order.

Unemployment Benefits

***Cont'l Hydraulics Inc. v. Dep't of Emp't & Econ. Dev.*, 832 N.W.2d 298 (Minn. App. June 10, 2013) (A12-1654).**

A portion of a predecessor employer's experience-rating history is transferred to a successor employer if (1) the successor employer acquires a portion, but not all, of the predecessor employer's organization, business, or workforce and (2) there is, at the time of the acquisition, substantially common management or control between the employers.

***Godbout v. Dep't of Emp't & Econ. Dev.*, 827 N.W.2d 799 (Minn. App. Mar. 18, 2013) (A12-1283).**

To satisfy the constitutional right to due process, a determination of overpayment of unemployment-insurance benefits by fraud must be preceded by clear notice to the recipient of the potential consequences of failing to maintain a current mailing address with the Department of Employment and Economic Development (DEED) after the receipt of benefits. Absent such notice, the appeal period to challenge a determination of overpayment by fraud does not begin to run until the subject of the determination receives actual notice of the determination.

***Thao v. Command Ctr., Inc.*, 824 N.W.2d 1 (Minn. App. Oct. 22, 2012) (A12-0068).**

When an employer unilaterally and substantially decreases an employee's hours of work, the employee has no duty to complain to the employer and give the employer an opportunity to correct the adverse change before the reduction in hours will be deemed to be a good reason to quit caused by the employer.

***Van de Werken v. Bell & Howell, LLC.*, 834 N.W.2d 220 (Minn. App. July 15, 2013) (A12-2194).**

When an applicant for unemployment benefits receives severance pay, it is error to apply severance-pay ineligibility to the period immediately following the applicant's last day of employment if the applicant was not then receiving severance pay.

***Wiley v. Dolphin Staffing–Dolphin Clerical Grp.*, 825 N.W.2d 121 (Minn. App. Nov. 13, 2012), review denied (Minn. Jan. 29, 2013) (A12-0383).**

Under Minn. Stat. § 268.095, subd. 1(3) (2010), an employee who gives notice of quitting to an employer in advance of separating from employment is deemed to have quit at the time she provides notice of quitting.

***Wiley v. Robert Half. Int'l, Inc.*, 834 N.W.2d 567 (Minn. App. July 22, 2013) (A12-2086).**

To be eligible for unemployment benefits under Minnesota Statutes section 268.095, subdivision 1(3) (2010), the unsuitability of employment must be at least one of the reasons the applicant quit the employment.

PART II – CRIMINAL CASES AND CASES ON RELATED SUBJECTS

Appellate Review

***State v. Kelley*, 832 N.W.2d 447 (Minn. App. July 1, 2013), review granted (Minn. Sept. 15, 2013) (A12-0993).**

When an unobjected-to error of the district court is reviewed on appeal under Minn. R. Crim. P. 31.02, the error is not plain when the law governing the district court's erroneous ruling was unsettled at the time of trial, but became settled in favor of the defendant during the pendency of the appeal.

***State v. Porte*, 832 N.W.2d 303 (Minn. App. June 24, 2013) (A12-1372).**

If the state does not make a harmless-error argument with respect to an issue that is subject to the harmless-error rule, this court is not required to undertake a harmless-error analysis but may do so in certain circumstances.

Constitutional Law

***State v. Christenson*, 827 N.W.2d 436 (Minn. App. Nov. 26, 2012), review denied (Minn. Feb. 19, 2013) (A12-0262).**

A citizen informant's sexual relationship with a suspected drug dealer being targeted for a controlled buy does not constitute outrageous government conduct in violation of the due-process guarantees of the United States and Minnesota Constitutions where the police did not know of the conduct or induce the conduct.

***State v. Maddox*, 825 N.W.2d 140 (Minn. App. Jan. 28, 2013) (A12-1208).**

A criminal defendant has a constitutional right to counsel at a restitution hearing held under Minnesota Statutes section 611A.045, subdivision 3(b) (2010), because the hearing is a critical stage of the state's prosecution of the defendant.

***State v. McElroy*, 828 N.W.2d 741 (Minn. App. Apr. 8, 2013), review denied (Minn. June 26, 2013) (A12-0921).**

A city ordinance restricting the volume of amplified music or entertainment emanating from an electronic device located within a motor vehicle that is being operated on a public street is not unconstitutionally overbroad or vague.

***State v. Phipps*, 820 N.W.2d 282 (Minn. App. Sept. 17, 2012) (A11-1795).**

1. When determining whether an order for protection is unconstitutionally vague, a court should apply the void-for-vagueness doctrine that applies to the determination whether a statute is unconstitutionally vague.

2. An order for protection providing that there must be “no contact” between the petitioner and the respondent is not unconstitutionally vague. Such an order prohibits the respondent from engaging in contact with the petitioner even if the petitioner first contacts the respondent.

***State v. Thomas*, 831 N.W.2d 914 (Minn. App. June 17, 2013), review denied (Minn. Aug. 20, 2013) (A12-1598).**

Because the Eighth Amendment to the United States Constitution provides an express textual source of protection from excessive bail, we will not consider a challenge to the imposition of bail premised on the Fourteenth Amendment.

***In re Welfare of B.A.H.*, 829 N.W.2d 431 (Minn. App. Apr. 22, 2013), review granted (Minn. July 16, 2013) (A12-1347).**

Minn. Stat. § 609.342, subd. 1(g) (2010), as applied to a single party in a case where a person under the age of 16 engages in sexual penetration with another person under the age of 16 and each party has a significant relationship to the other, is unconstitutionally vague and violates the Equal Protection Clause’s mandate that persons similarly situated be treated alike.

***State v. Wenthe*, 822 N.W.2d 822 (Minn. App. Nov. 26, 2012), *aff’d in part, rev’d in part*, __ N.W.2d __ 2013 WL 5928458 (Minn. Nov. 6, 2013) (A12-0263).**

Minnesota’s third-degree criminal sexual conduct statute, which criminalizes clergy sexual conduct that occurs during the course of a meeting in which the complainant seeks or receives spiritual counsel, does not violate the Establishment Clause of the U.S. Constitution on its face because it enunciates secular standards. Despite its facial validity, application of the clergy sexual conduct statute violates the Establishment Clause when the conviction is based on excessive evidence regarding religious doctrine or internal church practices.

DWI & Implied Consent

***Axelberg v. Comm’r of Pub. Safety*, 831 N.W.2d 682 (Minn. App. June 10, 2013), review granted (Minn. Aug. 20, 2013) (A12-1341).**

A voluntarily intoxicated driver may not assert the affirmative defense of necessity in an implied-consent judicial review hearing under Minn. Stat. § 169A.53, subd. 3(b) (2010).

***State v. Kjeseth*, 828 N.W.2d 480 (Minn. App. Apr. 8, 2013), review denied (Minn. June 18, 2013) (A12-1012).**

1. Felony test refusal is a predicate offense for first-degree driving while impaired (DWI), Minn. Stat. § 169A.24 (2010).

2. A prior felony conviction of impaired driving or test refusal that is used to enhance a violation of Minn. Stat. § 169A.20 (2010) must be included in the offender’s criminal-history score.

***Thole v. Comm’r of Pub. Safety*, 831 N.W.2d 17 (Minn. App. Apr. 29, 2013), review denied (Minn. July 16, 2013) (A12-1549).**

Indigent parties have no due-process right to court-appointed legal counsel in implied-consent proceedings.

Evidence

***State v. Dixon*, 822 N.W.2d 664 (Minn. App. Nov. 5, 2012) (A12-0193).**

1. Because friction-ridge-print identification using the methodology of analysis, comparison, evaluation-verification (ACE-V) is used mainly in connection with forensics, individuals actually involved with friction-ridge-print analysis using the ACE-V methodology, as well as individuals engaged in researching the validity of ACE-V analysis, constitute the relevant scientific community that must widely share the view that friction-ridge-print identification is reliable for purposes of establishing the admissibility of such identification evidence under the *Frye* prong of the *Frye-Mack* standard.

2. The state, proponent of friction-ridge-print-identification evidence in this case, met its burden of showing that ACE-V friction-ridge-print analysis, conducted by experienced examiners using appropriate standards and controls, is widely accepted as scientifically reliable by the relevant scientific community.

3. The record supports the district court’s finding that the friction-ridge-print analysis performed in this case conformed to the procedures necessary to ensure reliability.

4. The district court did not abuse its discretion by holding that the friction-ridge-print examiner in this case could testify that she made her identification determination “to a reasonable scientific certainty.”

***State v. McCormick*, 835 N.W.2d 498 (Minn. App. Aug. 12, 2013), review denied (Minn. Oct. 15, 2013) (A12-1253).**

When circumstantial evidence supports inferences that are inconsistent with the guilt of a criminal defendant, even when the circumstances are viewed in the light most favorable to the state, a district court errs by denying a motion for judgment of acquittal.

Expungement

***State v. A.S.E.*, 835 N.W.2d 513 (Minn. App. Aug. 19, 2013) (A13-0116, A13-0117).**

A district court may not exercise its inherent authority to expunge criminal records held in the judicial branch on the grounds that it will yield a benefit to the petitioner commensurate with societal burdens without making findings on the record analyzing the factors outlined in *State v. H.A.*, 716 N.W.2d 360 (Minn. App. 2006).

Forfeiture

***Nielsen v. 2003 Honda Accord*, 823 N.W.2d 347 (Minn. App. Sept. 10, 2012), review granted (Minn. Nov. 27, 2012) (A12-0217).**

The motor-vehicle exemption provision, Minnesota Statutes section 550.37, subdivision 12a (2010), does not preclude or limit a prosecuting authority from executing a forfeiture action to seize a repeat drunk driver’s motor vehicle used to commit a designated offense under Minnesota Statutes section 169A.63, subdivision 1(e) (2010), or require the state to pay him the value of the forfeited vehicle.

***Woodruff v. 2008 Mercedes*, 831 N.W.2d 9 (Minn. App. Apr. 22, 2013) (A12-1117).**

1. The holding of *Patino v. One 2007 Chevrolet*, 821 N.W.2d 810 (Minn. 2012), that, under the vehicle-forfeiture statute, a vehicle may not be judicially forfeited when the vehicle’s driver is not convicted of a designated offense, applies retroactively.

2. Where a driver accused of driving while impaired is not the owner of the subject vehicle, the driver’s agreement as part of a guilty plea not to assert certain rights or defenses in any subsequent forfeiture action brought under Minn. Stat. § 169A.63 (2012) is not binding upon the owner of the subject vehicle.

Guilty Pleas

***State v. Crump*, 826 N.W.2d 838 (Minn. App. Mar. 4, 2013), review denied (Minn. May 21, 2013) (A12-0912).**

A plea's effect on a defendant's sentence for a future unrelated criminal charge is a collateral consequence; ignorance of that consequence will not render the plea unintelligent or invalid.

***Uselman v. State*, 831 N.W.2d 690 (Minn. App. June 10, 2013) (A12-1533).**

A defendant's guilty plea is not knowing and voluntary if it arises from a plea petition that erroneously indicates that a conditional release period will not follow the defendant's imprisonment.

Juvenile Delinquency

***In re H.A.L.*, 828 N.W.2d 476 (Minn. App. Apr. 1, 2013) (A12-1235).**

When considering a juvenile-adjudication expungement petition, a district court cannot exercise its broad discretion and order the Minnesota Department of Human Services to seal its records pursuant to Minn. Stat. § 260B.198, subd. 6 (2012), unless the Minnesota Department of Human Services was properly served notice of the petition as required by Minn. Stat. § 245C.08, subd. 1(b) (2012).

***In re Welfare of J.H.*, 829 N.W.2d 607 (Minn. App. Mar. 4, 2013), review granted (Minn. May 29, 2013) (A12-1405).**

When ruling in a presumptive certification matter, a district court abuses its discretion when it does not give greater weight to both the seriousness of the alleged offense and the child's prior record of delinquency as mandated by Minn. Stat. § 260B.125, subd. 4 (2010).

***In re Welfare of P.C.T.*, 823 N.W.2d 676 (Minn. App. Dec. 3, 2012), review denied (Minn. Feb. 19, 2013) (A12-0895).**

In weighing the public-safety factors set forth in Minn. Stat. § 260B.125, subd. 4 (2010), to assess the presumptive adult certification of a juvenile, a district court abuses its discretion when it designates a proceeding an extended jurisdiction juvenile proceeding even though the accused juvenile has not presented clear and convincing evidence that the juvenile's programming history, adequacy of available programming, and available dispositional options so strongly favor an extended jurisdiction juvenile designation that the public safety would not be served by adult certification. The district court also abuses its discretion when it fails to afford sufficient weight to the seriousness of the offense and the juvenile's prior record of delinquency.

***In re Welfare of R.D.M.*, 825 N.W.2d 394 (Minn. App. Jan. 28, 2013), review denied (Minn. Apr. 16, 2013) (A12-1232).**

A district court does not lose subject-matter jurisdiction when it fails to hold a hearing on a certification motion within the deadlines prescribed by Minn. Stat. § 260B.125, subd. 2(4) (2012).

Postconviction

***Duncan v. Roy*, 830 N.W.2d 48 (Minn. App. May 6, 2013), review denied (Minn. July 16, 2013) (A12-1628).**

Because mandamus is an extraordinary remedy that is not available to control an administrator's exercise of discretion, mandamus may not be used to review the workability of prison-release conditions that the commissioner of corrections formulates by weighing interests in protecting public safety against competing release considerations.

Pretrial Procedure

***State v. Alvarez*, 820 N.W.2d 601 (Minn. App. Sept. 17, 2012), *aff'd*, 836 N.W.2d 527 (Minn. Sept. 11, 2013) (A11-1379, A12-0081).**

1. When a defendant's conviction in another jurisdiction has been reversed on appeal for issues unrelated to the sufficiency of the evidence, Minn. Stat. § 609.045 (2008) does not bar a second prosecution in Minnesota for the same conduct.

2. When a defendant's conviction in another jurisdiction has been reversed on appeal for issues unrelated to the sufficiency of the evidence, the double-jeopardy clause of the Minnesota Constitution does not bar a later prosecution in Minnesota for the same conduct.

***State v. Bakdash*, 830 N.W.2d 906 (Minn. App. May 20, 2013), review denied (Minn. Aug. 6, 2013) (A12-1133).** (See page 29 for additional syllabus points for this case.)

3. A defendant is not entitled to full disclosure of grand jury transcripts beyond the disclosure required by Minn. R. Crim. P. 18.04, subd. 2, absent a showing of a particularized need.

***State v. Martin*, 823 N.W.2d 913 (Minn. App. Dec. 24, 2012) (A12-0667).**

1. A prosecutor summoned by the grand jury during its deliberations undermines the independence of the grand jury and violates the secrecy of the deliberations by engaging in discussions with the grand jury extending beyond specific legal questions to broader discussions in which grand jurors disclose their individual opinions and reveal the reason for their stalemate.

2. A grand jury indictment may be tainted by inadmissible character evidence and speculative testimony elicited by the grand jurors themselves if the prosecutor asks similar questions, fails to limit the witnesses' testimony to relevant facts, or has called witnesses to testify without knowing whether they have relevant testimony to offer.

3. A police officer's testimony before the grand jury that the defendant is less credible than the testifying witness accusing him of the crime is a ground to dismiss an indictment supported almost entirely by the testimony of that witness.

***Resendiz v. State*, 832 N.W.2d 860 (Minn. App. June 10, 2013), review denied (Minn. Aug. 20, 2013) (A12-1733).**

The Uniform Mandatory Disposition of Detainers Act (UMDDA), Minn. Stat. § 629.292 (2012), imposes a duty on prison officials to promptly send speedy-disposition requests to the correct prosecuting authority, but because the act provides no remedy for the failure to do so, the duty is directory, not mandatory.

Search & Seizure

***State v. Dickey*, 827 N.W.2d 792 (Minn. App. Mar. 11, 2013) (A12-0516).**

1. A police officer has probable cause to arrest a suspect for constructive possession of illegal drugs when presented with objective facts that would give rise to an honest and strong suspicion that there is a strong probability that the suspect was exercising or had exercised dominion or control over the illegal drugs.

2. Where a police officer has probable cause to make a warrantless arrest of the driver of a vehicle based on the felony-arrest exception of the Fourth Amendment to the United States Constitution and Minn. Const. art. I, § 10, the officer may stop the vehicle to make the arrest.

***State v. Johnson*, 831 N.W.2d 917 (Minn. App. June 17, 2013), review denied (Minn. Sept. 17, 2013) (A12-1248).**

1. A person does not retain a reasonable expectation of privacy in data on a computer hard drive after seizure of the drive pursuant to a valid search warrant authorizing a search for that data, and thus subsequent forensic analysis of the hard drive to obtain the data identified in the warrant is not a Fourth Amendment search requiring a new warrant.

2. Although not bound by a sentencing agreement made by the state and a defendant before a trial under Minn. R. Crim. P. 26.01, subd. 4, a district court may exercise its discretion to sentence a defendant in accordance with such an agreement.

***State v. Klamar*, 823 N.W.2d 687 (Minn. App. Dec. 10, 2012) (A12-1196).**

An officer may order a driver to exit his or her vehicle for investigative purposes, without violating the protections of the United States and Minnesota Constitutions, when the officer has reasonable articulable suspicion that the person was driving while impaired.

***State v. Lemert*, 829 N.W.2d 421 (Minn. App. Mar. 25, 2013), review granted, (Minn. June 18, 2013) (A12-0050).**

Reasonable suspicion that a driver of a stopped vehicle is involved in large-scale drug activity, including recent drug activity involving the vehicle, supports a pat search of a passenger in the vehicle based on an officer's reasonable belief that the passenger may be armed and dangerous.

***State v. Setinich*, 822 N.W.2d 9 (Minn. App. Oct. 22, 2012) (A11-2303).**

A computerized license-plate check performed by law enforcement does not constitute a search under the Minnesota or United States Constitutions.

***State v. Yarbrough*, 828 N.W.2d 489 (Minn. App. Apr. 8, 2013), review granted (Minn. June 26, 2013) (A12-1872).**

Where the evidence in the search-warrant affidavit demonstrates that a suspect possessed a gun, it is common sense and reasonable to infer that the suspect would keep that gun at his residence.

Sentencing

***State v. Amundson*, 828 N.W.2d 747 (Minn. App. Apr. 15, 2013) (A12-2095).**

1. A motion to correct an unauthorized upward sentencing departure that is based solely on the claim that the sentence is not authorized by the sentencing guidelines is properly filed under Minn. R. Crim. P. 27.03, subd. 9, and is not subject to summary denial as a second or successive petition for postconviction relief under Minn. Stat. § 590.04, subd. 3 (2012), or the two-year time limit set forth in Minn. Stat. § 590.01, subd. 4(c) (2012).

2. The holding in *State v. Misquadace*, 644 N.W.2d 65, 72 (Minn. 2002), that a plea agreement alone is not a sufficient basis to depart from the sentencing guidelines, applies to appellant's 2005 sentence for a 2001 offense that was not charged until 2004.

3. When no reasons for a consecutive-sentencing departure are placed on the record at the time of sentencing, the defendant is entitled to a corrected concurrent sentence.

***State v. Borg*, 823 N.W.2d 352 (Minn. App. Nov. 5, 2012), *rev'd*, 834 N.W.2d 194 (Minn. July 31, 2013) (A09-1921).**

A restitution order issued more than 90 days after sentencing is not part of the sentencing order and, therefore, may not be appealed by the state because the rules of criminal procedure do not specifically allow appellate review by the state of a later-issued restitution order.

***State v. Brown*, 835 N.W.2d 24 (Minn. App. Aug. 12, 2013), *review denied* (Minn. Oct. 15, 2013) (A12-1276).**

A defendant who has been found guilty of a crime but has not yet been sentenced may not obtain dismissal of the complaint under the Uniform Mandatory Disposition of Detainers Act, Minn. Stat. § 629.292 (2012), on the ground that a sentencing hearing did not occur within six months of the defendant's request for a sentencing hearing.

***State v. Knutson*, 828 N.W.2d 485 (Minn. App. Apr. 8, 2013) (A12-0955).**

If a defendant's sentence includes both a fine and restitution, and if the defendant makes one or more payments to the district court administrator, the district court may not apply the defendant's payments to the restitution obligation before the fine unless the district court previously issued an order that so specified, as required by Minnesota Statutes section 611A.04, subdivision 4 (2012).

***State v. Mayl*, 836 N.W.2d 368 (Minn. App. Aug. 26, 2013), *review denied* (Minn. Nov. 12, 2013) (A13-0083).**

The district court does not have discretion under Minn. Stat. § 609.1055 (2010) to grant a downward dispositional departure to a defendant with severe and persistent mental illness when an executed sentence of imprisonment is mandatory under Minn. Stat. § 609.11, subd. 8(b) (2010).

***Pageau v. State*, 820 N.W.2d 271 (Minn. App. Sept. 10, 2012) (A12-0158).**

To impose stacked probationary periods when pronouncing a stayed sentence consecutively to another stayed sentence, a district court must specify that the probationary periods are to be stacked. In the absence of such a directive, the probationary periods run simultaneously.

***State v. Peter*, 825 N.W.2d 126 (Minn. App. Dec. 17, 2012), review denied (Minn. Feb. 27, 2013) (A12-0835).**

The district court abuses its discretion by departing downward durationally from the presumptive felony sentence under the guidelines to impose a misdemeanor sentence in order to protect the defendant from the possible effect of the federal government's policy to deport noncitizen felons.

***State v. Rushton*, 820 N.W.2d 287 (Minn. App. Sept. 17, 2012) (A11-1734).**

When imposing a life sentence pursuant to Minn. Stat. § 609.3455, subd. 4 (2010), a district court departs from the Minnesota Sentencing Guidelines when it sets a minimum term of imprisonment that is outside the presumptive sentencing-guidelines range.

***State v. Turrubiates*, 830 N.W.2d 173 (Minn. App. May 6, 2013), review denied (Minn. July 16, 2013) (A12-1109).**

When departing upward from the presumptive guidelines sentence for second-degree unintentional felony murder, Minn. Stat. § 609.19, subd. 2(1) (2010), while committing child endangerment resulting in substantial harm to the child's physical, mental, or emotional health, Minn. Stat. § 609.378, subd. 1(b)(1) (2010), a district court may rely on the aggravating factor of particular vulnerability of the victim based on the victim's infancy.

***State v. Watson*, 829 N.W.2d 626 (Minn. App. Apr. 15, 2013), review denied (Minn. June 26, 2013) (A12-0904).**

Under Minn. Stat. § 609.035, subd. 3 (2010), a district court may separately sentence a defendant for the offenses of certain persons not to possess firearms in violation of Minn. Stat. § 624.713, subd. 1(2) (2010), i.e., a felon-in-possession-of-a-firearm offense, and receiving or possessing a firearm, the serial number or other identification of which has been obliterated, removed, changed, or altered in violation of Minn. Stat. § 609.667(2) (2010), notwithstanding that both offenses were committed as part of the same conduct.

***Vazquez v. State*, 822 N.W.2d 313 (Minn. App. Oct. 29, 2012) (A12-0204).**

A motion for correction or reduction of sentence based solely on a challenge to the accuracy of the criminal-history score is properly brought under Minn. R. Crim. P. 27.03, subd. 9, and is not subject to the two-year postconviction statute of limitations.

Sex Offender Commitment

***In re Civil Commitment of Crosby*, 824 N.W.2d 351 (Minn. App. Jan. 7, 2013), review denied (Minn. Mar. 27, 2013) (A12-1224).**

Recent sexual conduct that is substantially similar to conduct that a sex offender previously engaged in as a precursor to his violent sex offenses may constitute part of a "course of harmful sexual conduct" for civil commitment of a sexually dangerous person under Minnesota Statutes section 253B.02, subdivision 18(c), and part of a "habitual course of misconduct" for civil commitment of a sexual psychopathic personality under Minnesota Statutes section 253B.02, subdivision 18(b), even if that conduct is not by itself "harmful sexual conduct" under the commitment statute.

***In re Civil Commitment of Moen*, 837 N.W.2d 40 (Minn. App. Aug. 5, 2013), review denied (Minn. Oct. 15, 2013) (A13-0602).**

1. If a person committed as a sexually dangerous person (SDP) brings a motion for relief from a commitment order pursuant to rule 60.02(e) of the Minnesota Rules of Civil Procedure based on the alleged inadequacy of treatment in the Minnesota Sex Offender Program (MSOP), without specifying the nature of the relief sought, the motion is barred by the exclusive transfer-or-discharge remedies of the Minnesota Commitment Act and the supreme court's opinion in *In re Civil Commitment of Lonergan*, 811 N.W.2d 635 (Minn. 2012).

2. If a person committed as an SDP brings a motion for relief from a commitment order pursuant to rule 60.02(e) of the Minnesota Rules of Civil Procedure based on the alleged inadequacy of treatment in the MSOP, the motion does not state a viable claim for relief under the rule.

3. A person committed as an SDP does not have a statutory right to counsel under section 253B.07, subdivision 2c, of the Minnesota Statutes for purposes of pursuing a motion for relief from a commitment order pursuant to rule 60.02(e) of the Minnesota Rules of Civil Procedure.

Substantive Criminal Law

***State v. Bakdash*, 830 N.W.2d 906 (Minn. App. May 20, 2013), review denied (Minn. Aug. 6, 2013) (A12-1133).** (See page 24 for additional syllabus points for this case.)

1. Under the doctrine of transferred intent, when a defendant acts with the intent to cause the death of a specific victim, but instead contemporaneously causes death or injury to unintended victims, the defendant is guilty of specific-intent crimes relating to the death or injury of the unintended victims. So long as the state proves that the defendant intended to cause the death of a person, the doctrine of transferred intent applies regardless of whether the defendant succeeds in causing death or harm to the

intended victim, the intended victim is specifically identified, or the state brings charges against the defendant relating to the intended victim.

2. Because transferred intent is incorporated into the statutory charges of first-degree murder and attempted first-degree murder, an indictment is not constructively amended when the state advances transferred intent as a theory at trial but not before the grand jury.

***State v. Broten*, 836 N.W.2d 573 (Minn. App. Sept. 3, 2013), review denied (Minn. Nov. 12, 2013) (A13-0192).**

Proof of bodily harm is not required for a conviction of malicious punishment of a child under Minn. Stat. § 609.377, subd. 1 (2010). Minn. Stat. § 609.377 (2010) is not unconstitutionally vague.

***State v. Garcia-Gutierrez*, 830 N.W.2d 919 (Minn. App. May 20, 2013), review granted (Minn. Aug. 6, 2013) (A12-2012).**

To prove the crime of first-degree burglary—possession of a dangerous weapon under Minnesota Statutes section 609.582, subdivision 1(b) (2012), the state must prove that a defendant knowingly possessed a dangerous weapon.

***State v. Gerard*, 832 N.W.2d 314 (Minn. App. June 24, 2013), review denied (Minn. Sept. 17, 2013) (A13-0043).**

A determination of whether a person “unjustifiably” injured, maimed, mutilated, or killed an animal pursuant to Minn. Stat. § 343.21, subd. 1 (2010), is a fact issue for the jury.

***State v. Greenman*, 825 N.W.2d 387 (Minn. App. Jan. 22, 2013) (A12-1605).**

A person operating a “Segway” electric personal assistive mobility device is not a driver of a motor vehicle and is not, therefore, subject to the prohibitions of the Minnesota Impaired Driving Code, Minn. Stat. ch. 169A (2010).

***State v. McCauley*, 820 N.W.2d 577 (Minn. App. Sept. 4, 2012), review denied (Minn. Oct. 24, 2012) (A11-0606).**

Under Minn. Stat. § 617.247, subd. 3(a) (2010), the state must prove that a defendant knowingly disseminated a pornographic work involving a minor.

***State v. Nelson*, 823 N.W.2d 908 (Minn. App. Dec. 10, 2012), review granted (Minn. Feb. 27, 2013) (A12-0071).**

1. As used in Minn. Stat. § 609.375 (2006), the phrase “care and support” refers exclusively to an obligor’s financial obligation toward a spouse or child.

2. Evidence that an obligor provided nonmonetary care to a spouse or child is not relevant to the state’s burden in obtaining a conviction under Minn. Stat. § 609.375.

***State v. Rick*, 821 N.W.2d 610 (Minn. App. Sept. 24, 2012), *aff'd*, 835 N.W.2d 478 (Minn. Aug. 21, 2013) (A12-0058).**

Minn. Stat. § 609.2241, subd. 2(2) (2008), does not apply to acts of sexual penetration, as that term is defined in statute, including those that result in a transfer of sperm.

***State v. Rohan*, 834 N.W.2d 223 (Minn. App. July 22, 2013), *review denied* (Minn. Oct. 15, 2013) (A12-2256).**

Under Minn. Stat. § 340A.503, subd. 2(1) (2010), subject to applicable statutory defenses, it is a strict-liability offense to serve alcohol to a person under age 21

***State v. Smith*, 819 N.W.2d 724 (Minn. App. Sept. 4, 2012), *aff'd*, 835 N.W.2d 1 (Minn. Aug. 14, 2013) (A11-1687).**

The execution of a do-not-resuscitate order by an elderly person severely injured in a car accident caused by a drunk driver is not a superseding cause that prevents the driver's conviction for criminal vehicular homicide.

***State v. Smith*, 825 N.W.2d 131 (Minn. App. Dec. 24, 2012), *review denied* (Minn. Mar. 19, 2013) (A12-0052).**

Threatening conduct that occurs during an ongoing confrontation may constitute a threat to commit a future crime of violence under the terroristic-threats statute, Minn. Stat. § 609.713, subd. 1 (2008).

***State v. Ulrich*, 829 N.W.2d 429 (Minn. App. Apr. 8, 2013) (A12-1463).**

Minn. Stat. § 243.166, subd. 1b(a)(2) (2010), does not require predatory-offender registration for violations of Minn. Stat. § 609.352, subd. 2a(2)-(3) (2010).

***State v. Watkins*, 820 N.W.2d 264 (Minn. App. Sept. 10, 2012), *review granted in part and denied in part* (Minn. Nov. 20, 2012) (A11-1793).** (See page 32 for additional syllabus points for this case.)

1. To be convicted of a felony for violating a domestic abuse no-contact order under Minn. Stat. § 629.75, subd. 2(d)(1) (2010), the defendant must have intentionally engaged in prohibited conduct, knowing that such contact was prohibited.

Trial Procedure

***State v. Olsen*, 824 N.W.2d 334 (Minn. App. Dec. 17, 2012), review denied (Minn. Feb. 27, 2013) (A12-0123).**

It is reversible error to instruct a jury that has reported it is at an impasse that it must reach a decision.

***State v. Seaver*, 820 N.W.2d 627 (Minn. App. Sept. 24, 2012) (A11-1909).**

When a gender-based *Batson* challenge is made to a peremptory strike, the proponent of the peremptory strike offers a legitimate gender-neutral reason for the strike, and the party challenging the strike fails to establish that the strike is motivated by purposeful gender discrimination, a district court clearly errs by sustaining the *Batson* challenge.

***State v. Watkins*, 820 N.W.2d 264 (Minn. App. Sept. 10, 2012), review granted in part and denied in part (Minn. Nov. 20, 2012) (A11-1793).** (See page 31 for additional syllabus points for this case.)

2. When a jury instruction omits an element of the offense, the error affects the defendant's substantial rights.