



**Minnesota Court of Appeals**

**Significant Decisions**

**September 2018-August 2019**

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## Part I – CIVIL CASES

### Administrative Law

***In re Application of Minn. Power for Authority to Increase Rates for Elec. Service in Minn.*, 929 N.W.2d 1 (Minn. App. May 6, 2019), review denied (Minn. Aug. 6, 2019) (A18-1029).**

The decision of the Minnesota Public Utilities Commission to account for, in a docket outside a general-rate case, additional sales revenue associated with providing electric service to energy-intensive trade-exposed (EITE) customers under an EITE rate schedule, is reasonable and in conformity with the plain language of Minn. Stat. § 216B.1696 (2018).

***In re Midway Pro Bowl Relocation Benefits Claim*, 930 N.W.2d 7 (Minn. App. May 20, 2019), *aff'd*, 937 N.W.2d 423 (Minn. Jan. 15, 2020) (A19-0237).**

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

I. The judicial-review provisions of the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.63-.69 (2018), govern a certiorari appeal from an administrative law judge's determination of the eligibility for or the amount of relocation assistance that the acquiring authority must provide under the Minnesota Uniform Relocation Act (MURA), Minn. Stat. §§ 117.50-.56 (2018).

***ITW Food Equip. Grp. v. Minn. Plumbing Bd.*, 933 N.W.2d 523 (Minn. App. July 1, 2019) (A18-1810).**

A final interpretation of the Minnesota Plumbing Code issued by the Minnesota Plumbing Board pursuant to Minn. Stat. § 326B.127, subd. 5 (2018), is subject to certiorari review by the court of appeals in the manner provided by Minn. Stat. § 14.69 (2018).

***In re Schmalz*, 934 N.W.2d 114 (Minn. App. Aug. 12, 2019), *rev'd*, \_\_ N.W.2d \_\_ (Minn. June 24, 2020) (A18-2156).**

Under the terms of Minn. Stat. § 256B.056, subd. 4a (2018), a community spouse's non-homestead life-estate interest is not salable unless the owner of the remainder interest intends to purchase the community spouse's life estate or the entire property is sold. When a life estate is deemed not salable, it is not considered for purposes of determining eligibility for medical-assistance long-term care benefits for the institutionalized spouse.

### Appellate Procedure & Review

***Buhl v. State*, 922 N.W.2d 435 (Minn. App. Jan. 7, 2019) (A18-0245).**

(See page 17 for first syllabus point for this case.)

II. The denial of a request for permission to bring a motion for reconsideration under Minn. Gen. R. Prac. 115.11 is not an appealable order.

***Dominium Mgmt. Servs. LLC v. Lee*, 924 N.W.2d 925 (Minn. App. Feb. 25, 2019) (A18-1916).**

When a party to an eviction action has filed a proper and timely notice for judicial review of a housing court referee’s confirmed decision under Minn. R. Gen. Prac. 611(a), the 15-day appeal period under Minn. Stat. § 504B.371, subd. 2 (2018), does not begin to run until judgment is entered on the district court’s review order.

***Abuzeni v. Mutschler*, 926 N.W.2d 59 (Minn. App. Apr. 1, 2019) (A18-2097).**

When plaintiffs dismiss the sole remaining claim against the same defendant without prejudice for the purpose of creating appellate jurisdiction over a partial judgment, the court of appeals will deem the dismissal to be with prejudice.

***State v. Garcia*, 927 N.W.2d 338 (Minn. App. Apr. 22, 2019) (A18-0343).**

In an appeal challenging the district court’s omnibus-hearing decision rejecting a criminal defendant’s entrapment defense, this court will review factual findings for clear error and legal conclusions de novo.

### **Child Protection**

***In re Welfare of Child of A.M.C.*, 920 N.W.2d 648 (Minn. App. Oct. 22, 2018) (A18-0323, A18-0333).**

In a child in need of protection or services (CHIPS) proceeding, a parent’s right to appointed counsel under Minn. Stat. § 260C.163, subd. 3(c) (Supp. 2017) does not depend on whether the parent has been designated as a party. All parents in such cases who desire counsel and are unable to afford counsel are entitled to appointed counsel when the district court “feels that such an appointment is appropriate.”

***In re Welfare of Children of J.L.G.*, 924 N.W.2d 9 (Minn. App. Dec. 24, 2018) (A18-1228).**

In adoption-placement cases, the district court must issue a written ruling expressly excluding a relative as a suitable placement option in order for that relative to be considered “ruled out by the court” pursuant to Minnesota Statutes section 260C.607, subdivision 2(5) (2018).

***In re Welfare of Child of K.L.W.*, 924 N.W.2d 649 (Minn. App. Feb. 11, 2019), review denied (Minn. Mar. 8, 2019) (A18-1255).**

Under the egregious-harm statute, Minn. Stat. § 260C.301, subd. 1(b)(6) (2018), “a child” is “in the parent’s care” when he or she is under the supervision, charge, or watchful oversight of the person subject to the termination proceeding.

***In re Welfare of Children of A.M.F.*, 934 N.W.2d 119 (Minn. App. Aug. 19, 2019) (A19-0542).**

The plain language of Minn. Stat. § 260C.607, subd. 6(a)(1) (2018), requires a relative or foster parent to have, at the time the relative or foster parent moves for an order for adoptive placement, a completed adoption home study under Minn. Stat. § 259.41 (2018), approving the relative or foster parent for adoption.

### **Civil Procedure**

***Rodgers v. Silva*, 920 N.W.2d 664 (Minn. App. Nov. 26, 2018) (A18-0469).**

When a party moves to compel arbitration and to dismiss for failure to state a claim upon which relief can be granted, a district court must decide the motion to compel arbitration before deciding, if appropriate, the motion to dismiss.

***Oliver v. State Farm Fire & Cas. Ins. Co.*, 923 N.W.2d 680 (Minn. App. Jan. 22, 2019), *aff'd*, 939 N.W.2d 749 (Minn. Mar. 4, 2020) (A18-0367).**

(See page 7 for second syllabus point for this case.)

I. The 90-day limit to file a motion to modify an arbitration award under Minn. Stat. § 572B.24(a) (2018) does not apply to an insured's request for preaward interest following an appraisal award.

***Vill. Lofts at St. Anthony Falls Ass'n v. Hous. Partners III-Lofts LLC*, 924 N.W.2d 619 (Minn. App. Feb. 4, 2019), *aff'd in part rev'd in part*, 937 N.W.2d 430 (Minn. Jan. 15, 2020) (A18-0256).**

1. For purposes of the statute of repose in Minnesota Statutes section 541.051, subdivision 1(a) (2014), which applies to common-law claims and runs from the date of "substantial completion of the construction" of an "improvement to real property," the two buildings in the condominium development in this case are two independent improvements.

2. For purposes of the statute of repose in Minnesota Statutes section 541.051, subdivision 4 (2018), which applies to claims of breach of the statutory warranties arising under Minnesota Statutes section 327A.02, subdivision 1 (2018), and runs from the applicable "warranty date," it is necessary to determine the warranty date of each condominium unit in a multi-unit condominium building.

***Anderson v. Indep. Sch. Dist. 696*, 924 N.W.2d 911 (Minn. App. Feb. 11, 2019) (A18-0413).**

Minnesota Statutes, section 546.24 (2018), does not compel the district court to receive as final a civil jury's inconsistent verdict or prevent the district court from sending the jury out to deliberate further under section 546.16 to remedy the inconsistency, even if the district court has read the verdict aloud and received the jury's affirmation that it is their verdict.

***Buck Blacktop, Inc. v. Gary Contracting & Trucking Co.*, 929 N.W.2d 12 (Minn. App. May 6, 2019) (A18-1059).**

The four-part test stated in *Finden v. Klass*, 128 N.W.2d 748 (Minn. 1964), does not apply to a motion based on paragraph (f) of rule 60.02 of the Minnesota Rules of Civil Procedure.

***Bacon v. Bd. of Evangelical Lutheran Church in Am.*, 930 N.W.2d 437 (Minn. App. May 28, 2019) (A18-1307).**

A class action may be certified as a mandatory class under Minn. R. Civ. P. 23.02(a) when the class seeks monetary recovery and equitable relief on behalf of a retirement plan, rather than on behalf of individual plan participants, for excessive fees charged by the plan's trustee.

### **Environmental Law**

***In re Decision to Deny Petitions for a Contested Case Hearing*, 924 N.W.2d 638 (Minn. App. Feb. 4, 2019), review denied (Minn. Apr. 24, 2019) (A18-0581).**

In establishing a total maximum daily load for an impaired body of water, the Minnesota Pollution Control Agency is not required to designate a separate load allocation for natural background.

***BFI Waste Sys. of N. Am., LLC v. Bishop*, 927 N.W.2d 314 (Minn. App. Apr. 8, 2019), review denied (Minn. June 26, 2019) (A18-0963).**

I. Pursuant to Minn. Stat. § 473.848 (2018), the Minnesota Pollution Control Agency (MPCA) has the authority to issue an administrative penalty order (APO) for a violation of the restrictions on waste disposal contained in section 473.848 or a landfill permit incorporating those restrictions.

II. Under section 473.848, a landfill that accepts waste for deposit or placement into the landfill is “a person” who “dispose[d] of” waste.

***White Bear Lake Restoration Ass'n ex rel. State v. Minn. Dep't of Nat. Res.*, 928 N.W.2d 357 (Minn. App. Apr. 22, 2019), review granted (Minn. July 16, 2019) (A18-0750).**

1. When a complaint alleging violations of the Minnesota Environmental Rights Act (MERA) relates to conduct undertaken pursuant to a permit issued by the Minnesota Department of Natural Resources, the only available relief is under Minn. Stat. § 116B.10 (2018), and the bar in Minn. Stat. § 116B.03 (2018) applies.

2. In Minnesota, the common-law public-trust doctrine applies to navigable waters and does not apply to groundwater withdrawals.

***In re Applications of Enbridge Energy, Ltd. P'ship*, 930 N.W.2d 12 (Minn. App. June 3, 2019), review denied (Minn. Sept. 17, 2019) (A18-1283, A18-1291, A18-1292).**

I. In determining the project alternatives to be considered in an environmental-impact statement (EIS) under the Minnesota Environmental Policy Act (MEPA), a responsible governmental unit (RGU) does not err by taking the project proposer's objective into consideration when defining the purpose of and need for the project, or by excluding from consideration alternatives that would not meet that objective.

II. An RGU acts in a manner that is arbitrary, capricious, and unsupported by substantial evidence when it determines adequate a final EIS that fails to address potentially significant issues raised during scoping and in public comments on the draft EIS.

III. MEPA does not require completion of a traditional cultural properties (TCP) survey; an EIS may be determined adequate before a federal TCP survey is complete if the discussion of potential impacts to historic and cultural resources is otherwise sufficient.

### **Family Law**

***Muschik v. Conner-Muschik*, 920 N.W.2d 215 (Minn. App. Oct. 1, 2018) (A17-1332).**

A writing signed on or after August 1, 1979, by two parties before their marriage, but not witnessed as required by Minn. Stat. § 519.11, subd. 2 (2016), is not a valid and enforceable antenuptial agreement under that statute.

***In re Welfare of C.F.N.A.S.*, 923 N.W.2d 325 (Minn. App. Dec. 31, 2018), review denied (Minn. Mar. 19, 2019) (A18-0635).**

If one man has executed a recognition of parentage of a child, *see* Minn. Stat. § 257.75 (2018), and another man seeks to establish that he is the legal father of the child on the ground that he is the child's biological father, the second man may commence and maintain a paternity action under the Minnesota Parentage Act, Minn. Stat. §§ 257.51-.74 (2018), without seeking or obtaining a vacatur of the recognition of parentage.

***Madden v. Madden*, 923 N.W.2d 688 (Minn. App. Feb. 4, 2019) (A18-0505).**

1. When determining the amount of a modified award of permanent spousal maintenance, the district court must reconsider the factors relevant to the amount and duration of spousal maintenance, including the recipient's ability to meet his or her needs independently, as the factors exist at the time of the modification motion.

2. When determining the amount of a modified award of permanent spousal maintenance, the district court may attribute income to the recipient based on the recipient's then-present ability to meet his or her needs independently, even if the dissolution court did not attribute income to the recipient when awarding permanent spousal maintenance in the dissolution decree. But in doing so, the district court may not attribute income to the recipient based on the recipient's lack of reasonable efforts to become partially self-supporting by increasing his or her earning capacity through additional education or vocational training, unless the district court previously had expressly imposed on the recipient an obligation to make such reasonable efforts.

***T.G.G. v. H.E.S.*, 932 N.W.2d 830 (Minn. App. June 24, 2019), *rev'd*, \_\_N.W.2d\_\_ (Minn. June 17, 2020) (A18-1616).**

I. The grant of a temporary restraining order does not constitute a “judicial hearing” for the purpose of determining the timeliness of a revocation of a recognition of parentage under Minn. Stat. § 257.75, subd. 2 (2018).

II. Minn. Stat. § 259.52, subd. 8(1) (2018), which prohibits a putative father who does not qualify for a statutory exception and did not timely register with the Minnesota Father’s Adoption Registry from “maintaining” an ongoing paternity action once an adoption proceeding is commenced, does not facially violate the procedural due process rights of putative fathers.

### **Government & Immunity**

***Cilek v. Office of the Minn. Sec’y of State*, 927 N.W.2d 327 (Minn. App. Apr. 15, 2019), *rev'd*, 941 N.W.2d 411 (Minn. App. Apr. 8, 2020) (A18-1140).**

Under the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. §§ 13.01-.90 (2018), and Minn. Stat. § 201.091 (2018), data on (1) registered voter status, (2) reason for a challenge, and (3) voter history are public data.

***Save Lake Calhoun v. Strommen*, 928 N.W.2d 377 (Minn. App. Apr. 29, 2019), *aff'd in part rev'd in part*, 943 N.W.2d 171 (Minn. May 13, 2020) (A18-1007).**

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

II. Pursuant to Minn. Stat. §§ 83A.01-.07 (2018), the commissioner of natural resources lacks authority to change a lake name which has existed for 40 years.

***Lewison v. Hutchinson*, 929 N.W.2d 444 (Minn. App. May 13, 2019) (A18-1700).**

(See page 14 for first syllabus point for this case.)

2. When a person subject to the disclaimer requirement in Minn. Stat. § 211B.04 places nonconforming campaign materials on continuous public display, or distributes nonconforming campaign materials for continuous public display, the person commits a continuing violation for as long as the materials are on display.

***Olson v. Lesch*, 931 N.W.2d 832 (Minn. App. July 1, 2019), *aff'd*, 943 N.W.2d 648 (Minn. May 27, 2020) (A18-1694).**

A legislator’s actions must be within the sphere of legitimate legislative activity in order to warrant legislative immunity under Minnesota Statutes section 540.13 (2018) or the speech or debate clause of the Minnesota Constitution.



## **Insurance Coverage**

***O'Brien & Wolf, LLP, v. S. Cent. Minn. Elec. Workers' Family Health Plan*, 923 N.W.2d 310 (Minn. App. Dec. 31, 2018), review denied (Minn. Mar. 27, 2019) (A18-0921).**

When a member of an ERISA health plan is injured by tortfeasors and retains an attorney who represents the member knowing that the health plan will pay attorney fees only upon prior agreement to pay the fees and who settles the member's tort claims in a settlement sufficient to cover the member's reimbursement duty to the health plan, a contract implied in law has not been established so as to impose on the health plan the equitable duty to pay the attorney a contingent fee for recovering the reimbursement amount.

***Oliver v. State Farm Fire & Cas. Ins. Co.*, 923 N.W.2d 680 (Minn. App. Jan. 22, 2019), aff'd, 939 N.W.2d 749 (Minn. Mar. 4, 2020) (A18-0367).**

(See page 3 for first syllabus point for this case.)

II. An insurance appraisal panel determines the amount of loss under the policy and lacks authority to grant preaward interest under Minn. Stat. § 549.09, subd. 1(b) (2018).

***Nichols v. State Farm Mut. Auto. Ins. Co.*, 927 N.W.2d 334 (Minn. App. Apr. 15, 2019) (A18-1188).**

An insured incurs a loss under the Minnesota No-Fault Act when her health-care provider complies with the billing requirements of Minn. Stat. § 62Q.75, subd. 3 (2018), by submitting its charges to a health-plan company within six months of service.

***Peterson v. W. Nat'l Mut. Ins. Co.*, 930 N.W.2d 443 (Minn. App. June 3, 2019), review granted (Minn. Aug. 6, 2019) (A18-1081).**

Pursuant to Minn. Stat. § 604.18, subd. 2(a) (2018), an insurer must conduct a reasonable investigation and fairly evaluate the results to have a reasonable basis for denying an insured's first-party insurance-benefits claim.

## **Jurisdiction & Procedure**

***In re Welfare of Children of K.M.*, 919 N.W.2d 701 (Minn. App. Sept. 17, 2018), review denied (Minn. Mar. 1, 2019) (A18-1098, A18-1115).**

After a juvenile-protection order discharges a party's counsel, the district court administrator's service of notice of filing of the order on the discharged counsel does not constitute service on the party and therefore does not commence the running of the party's 20-day appeal period under Minn. R. Juv. Prot. P. 47.02, subd. 2.

***In re Boone*, 924 N.W.2d 44 (Minn. App. Feb. 19, 2019) (A18-0624).**

In the absence of an objection by the prosecuting authority, a court may not deny a felon's name-change petition on the basis of the factors set forth in Minn. Stat. § 259.13 (2018).

***Levine v. Bayview Loan Servicing, LLC*, 926 N.W.2d 49 (Minn. App. Apr. 1, 2019) (A18-0789).**

A Minnesota district court is a court of competent jurisdiction to adjudicate claims under the Fair Debt Collection Practices Act (FDCPA) and may not decline to exercise jurisdiction either because the claim involves interpreting an order of the United States Bankruptcy Court or because it involves unsettled federal law.

***Save Lake Calhoun v. Strommen*, 928 N.W.2d 377 (Minn. App. Apr. 29, 2019), *aff'd in part rev'd in part*, 943 N.W.2d 171 (Minn. May 13, 2020) (A18-1007).**

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

I. A petition for a writ of *quo warranto* relief based on a governmental agency's decision may overcome dismissal pursuant to Minn. R. Civ. P. 12.02(e) upon a showing that the decision, even if final, constitutes an ongoing exercise of power.

***In re Midway Pro Bowl Relocation Benefits Claim*, 930 N.W.2d 7 (Minn. App. 2019), *aff'd*, \_\_\_N.W.2d\_\_\_ (Minn. Jan. 15, 2020) (A19-0237).**

(See page 1 for first syllabus point for this case.)

2. Because Minn. Stat. § 14.63 only requires that the petition for the writ of certiorari be filed with the court of appeals and served on all parties to the contested case within the 30-day appeal period, relator's failure to serve the petition and the issued writ of certiorari on the agency within the appeal period does not deprive the court of appeals of jurisdiction.

## **Labor & Employment**

***Firefighters Union Local 4725 v. City of Brainerd*, 920 N.W.2d 232 (Minn. App. Oct. 8, 2018), *aff'd*, 934 N.W.2d 101 (Minn. Oct. 9, 2019) (A18-0398).**

A city commits an unfair labor practice within the meaning of Minn. Stat. § 179A.13, subd. 2(2) (2016), when, in the midst of an operating bargaining agreement, it unilaterally restructures its fire department to eliminate all full-time firefighter positions, effectively dissolving the union.

***In re Petition for Indep. Review*, 929 N.W.2d 452 (Minn. App. May 20, 2019) (A18-1786).**

Minn. Stat. § 179A.25 (2018) does not provide for independent review by the Bureau of Mediation Services of a grievance arising out of terms and conditions of employment when a collective-bargaining agreement governing the employment provides a procedure for arbitration of the grievance.

***Moore v. City of New Brighton*, 932 N.W.2d 317 (Minn. App. July 29, 2019), *review denied* (Minn. Oct. 15, 2019) (A18-2111).**

Administrative investigatory leaves are not categorically excluded from constituting adverse employment actions under the Minnesota Whistleblower Act, Minnesota Statutes, sections 181.931–.935 (2018).

## **Local Government**

***Butler v. City of Saint Paul*, 923 N.W.2d 43 (Minn. App. Jan 14, 2019), *aff'd*, 936 N.W.2d 478 (Minn. Dec. 18, 2019) (A18-0655).**

1. Election officials of a home rule charter city do not err in relying on the Statewide Voter Registration System (SVRS) to determine whether a petition to amend the charter of a home rule city contains the requisite number of signatures of registered voters in a city.

2. When a petition under Minn. Stat. § 204B.44 (2018) alleges that election officials committed an error, omission, or wrongful act in determining that a petition to amend a home rule city charter under Minn. Stat. § 410.12 (2018) is inadequate for failure to contain the requisite number of signatures of registered voters, the petitioner bears the burden of proving the existence of an error, omission, or wrongful act.

3. In order to create a genuine issue of material fact concerning an error, omission, or wrongful act by election officials who rely on the SVRS, the petitioner must present the district court with admissible evidence contrary to the relied-on SVRS record.

***Schulz v. Town of Duluth*, 923 N.W.2d 703 (Minn. App. Feb. 11, 2019), *rev'd*, 936 N.W.2d 334 (Minn. Dec. 4, 2019) (A18-0845).**

Rule 19 of the rules of civil procedure applies to an action under Minnesota Statutes section 462.361, subdivision 1 (2018), for judicial review of a township's decision on an application for a zoning variance.

***Graco, Inc. v. City of Minneapolis*, 925 N.W.2d 262 (Minn. App. Mar. 4, 2019), *aff'd*, 937 N.W.2d 756 (Minn. Jan. 22, 2020) (A18-0593).**

A municipal ordinance does not conflict with, and is not impliedly preempted by, the Minnesota Fair Labor Standards Act (MFLSA), Minn. Stat. §§ 177.21-.35 (2018), merely by setting a higher minimum wage than that required by state law.

***Hagen v. Windemere Township*, 935 N.W.2d 895 (Minn. App. May 6, 2019), *review denied* (Minn. Aug. 6, 2019) (A18-1184).**

Under Minn. Stat. § 365.10, subd. 11 (2018), when no maintenance or construction has been conducted on a section of a town road for 25 years or more, the town board lacks authority to open or maintain that section of the road unless the town's electors grant that authority. In the absence of authority to open or maintain a road, no duty exists to open or maintain the road.

***Minn. Chamber of Commerce v. City of Minneapolis*, 928 N.W.2d 757 (Minn. App. Apr. 29, 2019), *aff'd*, \_\_\_ N.W.2d \_\_\_ (Minn. June 10, 2020) (A18-0771).**

1. Minneapolis's sick-and-safe-leave ordinance does not conflict with Minn. Stat. § 181.9413 (2018), and is not impliedly preempted by state law governing employer-provided leave, by requiring private employers to provide sick-and-safe leave.

2. Minneapolis's sick-and-safe-leave ordinance does not operate extraterritorially because it only requires employers to (1) allow employees to accrue leave during the hours they work in the city and (2) permit employees to use their leave on days they are scheduled to work in the city.

***City of Baxter v. City of Brainerd*, 932 N.W.2d 477 (Minn. App. July 15, 2019), *review denied* (Minn. Sept. 25, 2019) (A19-0097).**

A statutory city lacks authority pursuant to Minn. Stat. §§ 216B.36, 222.37, subd. 1, 301B.01, or 412.321, subd. 3 (2018), to impose a revenue-raising franchise fee on a municipally-owned utility that began providing retail electric service to an area before the city incorporated.

## **Probate & Trust**

***Lund v. Lund*, 924 N.W.2d 274 (Minn. App. Jan. 14, 2019), *review denied* (Minn. Mar. 27, 2019) (A18-0120).**

1. If there is no genuine issue of material fact that unfairly prejudicial conduct occurred, a district court may, without conducting an evidentiary hearing, exercise its equitable authority to grant a buy-out under Minn. Stat. §§ 302A.751, 322B.833 (2014).

2. Minn. Stat. § 501C.0709 (2018), as supplemented by the common law, governs a trustee's entitlement to reimbursement out of trust property for attorney fees and expenses incurred in administration of the trust.

***In re Estate of Short*, 933 N.W.2d 533 (Minn. App. Aug. 26, 2019) (A18-1682).**

When determining whether to distribute assets or hold open an estate with a contingent claim, courts must apply a balancing test to weigh the interests of efficient administration of an estate against protection of the contingent claim, considering the following factors: (1) the nature of the claim being asserted before another tribunal; (2) the hardship on the estate of deferred distribution of principal or income; and (3) the adverse effect of refusing any asset withholding and thereby potentially impairing satisfaction of a meritorious claim.

## **Real Estate & Property Rights**

***AIM Dev. (USA), LLC, v. City of Sartell*, 925 N.W.2d 255 (Minn. App. Mar. 4, 2019), review granted (Minn. May 28, 2019) (A18-0443).**

A landowner seeking to continue a prior permitted nonconforming use of property is bound by the uses allowed under the terms of the land-use permit in effect at the time of the property transfer to the landowner.

***Landmark Cmty. Bank, N.A. v. Klingelhutz*, 927 N.W.2d 748 (Minn. App. Apr. 15, 2019) (A18-0755).**

When determining whether a property is used primarily for agricultural purposes such that the property's owner qualifies for the agricultural homestead exemption under Minn. Stat. § 510.02, subd. 1 (2010), a district court must consider all of the record evidence regarding how the property is used. Evidence that the property receives valuation and tax deferral under Minn. Stat. § 273.111 (2018), the Minnesota Agricultural Property Tax Law, is relevant, but it is not determinative.

***In re Ali*, 931 N.W.2d 107 (Minn. App. June 3, 2019), *aff'd*, 938 N.W.2d 835 (Minn. Feb. 12, 2020) (A18-1287).**

Only amounts paid by a state agency to offset monetary expenses for services or equipment incurred by a family to keep a developmentally disabled family member living at home are excluded from the calculation of the family's annual income under 24 C.F.R. § 5.609(c)(16) (2018).

***Fletcher Properties, Inc. v. City of Minneapolis*, 931 N.W.2d 410 (Minn. App. June 10, 2019), review granted (Minn. Sept. 17, 2019) (A18-1271).**

A city ordinance prohibiting landlords from refusing to rent to tenants with federal housing choice vouchers does not implicate a fundamental right.

## **Remedies**

***Getz v. Peace*, 918 N.W.2d 233 (Minn. App. Sept. 17, 2018), *aff'd*, 934 N.W.2d 347 (Minn. Oct. 16, 2019) (A18-0121).**

Discounts negotiated for Medicaid beneficiaries under Minnesota's Prepaid Medical Assistance Program are "payments made pursuant to the United States Social Security Act" that are excepted from collateral-source offset under Minn. Stat. § 548.251, subd. 1(2) (2016).

***Aaron Carlson Corp. v. Cohen*, 919 N.W.2d 831 (Minn. App. Oct. 1, 2018), rev'd, 933 N.W.2d 63 (Minn. Sept. 11, 2019) (A18-0100).**

A duly appointed receiver under Minn. Stat. § 576.29 (2016) has the authority to pierce the corporate veil of a corporation in receivership.

***Green v. Kellen*, 921 N.W.2d 768 (Minn. App. Dec. 3, 2018), review denied (Minn. Feb. 19, 2019) (A18-0692).**

Minnesota Statutes section 550.366 (2016), which provides a three-year limitation on the execution of judgments for the balance of unpaid debts on agricultural property owed by a farm debtor, does not apply to judgment debts resulting from intentional torts.

***Miller v. Soo Line R.R. Co.*, 925 N.W.2d 642 (Minn. App. Mar. 11, n2019) (A18-0357).**

I. When a defendant/third-party plaintiff in a FELA action prevails on its claim for contribution and receives a money judgment, the third-party plaintiff is entitled to prejudgment interest under Minn. Stat. § 549.09, subd. 1(b) (2018).

II. Prejudgment interest for a judgment of contribution damages is computed as provided in Minn. Stat. § 549.09, subd. 1(b), and runs from the date the damages were incurred, not from the date the contribution action was commenced.

***Althaus v. Krueger*, 929 N.W.2d 907 (Minn. App. May 28, 2019) (A18-1772).**

When a defendant makes a pretrial offer of judgment pursuant to Minn. R. Civ. P. 68, and the defendant-offeror prevails or the relief awarded is less favorable than the offer, Minn. R. Civ. P. 68.03(b)(1) precludes the plaintiff-offeree from recovering post-offer costs and disbursements. The district court's discretion under Minn. R. Civ. P. 68.03(b)(3), to reduce the amount of a party's obligations to eliminate undue hardship or inequity, does not extend to allowing the plaintiff-offeree to recover post-offer costs and disbursements.

## **Torts**

***Fish v. Ramler Trucking, Inc.*, 923 N.W.2d 337 (Minn. App. Jan. 22, 2019), aff'd, 935 N.W.2d 738 (Minn. Nov. 27, 2019) (A18-0143).**

Minn. Stat. § 604.02 (2018) does not apply to reduce the amount of a judgment entered against a third-party tortfeasor based on the percentage of fault allocated to an employer immune from tort liability under the workers' compensation act. The contribution, if any, owed by the employer to a third-party tortfeasor is determined under Minn. Stat. § 176.061, subd. 11 (2018), and *Lambertson v. Cincinnati Welding Corp.*, 257 N.W.2d 679 (Minn. 1977).

***Ayers v. Kalal*, 925 N.W.2d 291 (Minn. App. Mar. 18, 2019) (A18-0503).**

Under Minn. Stat. § 65B.51, subd. 1 (2018), basic economic loss benefits paid to or on behalf of a person injured in the maintenance, use, or operation of a motor vehicle must be offset from any verdict in a personal-injury action brought by the injured person, regardless of whether the reparation obligor is entitled to indemnity from the tortfeasor under Minn. Stat. § 65B.53, subd. 1 (2018). A reparation obligor is subrogated to claims based on either negligence in a state other than Minnesota or negligence other than negligence in the maintenance, use, or operation of a motor vehicle.

***Wise v. Stonebridge Cmtys., LLC*, 927 N.W.2d 772 (Minn. App. Apr. 29, 2019) (A18-1258).**

The covenants of habitability in Minn. Stat. § 504B.161, subd. 1(a) (2018), do not support a private negligence cause of action by a tenant against a landlord for breach of the landlord's duty to repair and maintain the common areas of the leased premises.

### **Unemployment Benefits**

***Gonzales Diaz v. Three Rivers Cmty. Action, Inc.*, 917 N.W.2d 813 (Minn. App. Sept. 17, 2018) (A17-1810).**

I. This court reviews de novo whether a statutory exception to ineligibility applies to the facts found by an unemployment-law judge under the Minnesota Unemployment Insurance Act.

II. Minn. Stat. § 268.095, subd. 1(8) (Supp. 2017), requires that an employee have requested time off or other accommodation in order to be eligible for unemployment benefits after quitting employment because of loss of childcare. An employee who requested and received accommodations because of child-care unavailability, but then had those accommodations taken away, meets the accommodation-request requirement.

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

### **Constitutional Law**

***State v. Hill*, 918 N.W.2d 237 (Minn. App. 2018) (A17-2035).**

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

2. The constitutional protection against double jeopardy is not implicated when the defendant voluntarily consents to sever the charges prior to adjudication.

***In re Qwest Corp.*, 918 N.W.2d 578 (Minn. App. Sept. 24, 2018) (A18-0207).**

I. Proceedings initiated by a utility under Minn. Stat. § 237.045 (2016) to install a facility on railroad property do not effect an unconstitutional taking because the standard crossing fee established by that statute is distinct from any just compensation due for a taking and the statute does not preclude condemnation proceedings.

II. Minn. Stat. § 237.045 is not per se preempted by 49 U.S.C. § 10501 (2012).

***Forslund v. State*, 924 N.W.2d 25 (Minn. App. Jan. 22, 2019) (A17-0033).**

To establish a violation of the Education Clause of the Minnesota Constitution, Minn. Const. art. XIII, § 1, a plaintiff must demonstrate that the state has failed or is failing to provide an adequate education.

***Bedeau v. Evans*, 929 N.W.2d 21 (Minn. App. Apr. 1, 2019), review denied (Minn. June 26, 2019) (A18-1128).**

The Minnesota predatory registration statute's requirement that an offender register following a conviction of a nonpredatory offense arising from the same set of circumstances as a dismissed predatory offense charge does not implicate the separation-of-powers doctrine because a judge must determine whether probable cause supports the charged offenses and because registration is a collateral consequence of a conviction.

***State v. Thompson*, 929 N.W.2d 21 (Minn. App. May 13, 2019), aff'd, 937 N.W.2d 418 (Minn. Jan. 15, 2020) (A18-0545).**

If a tribal police officer suspects a person who is not an Indian of violating a Minnesota criminal statute on an Indian reservation, and if the victim is not an Indian or there is no victim, the tribal police officer lawfully may detain the person and deliver him or her to state law-enforcement authorities for further investigation and prosecution.

***Lewison v. Hutchinson*, 929 N.W.2d 444 (Minn. App. May 13, 2019) (A18-1700).**

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

1. The disclaimer requirement in Minn. Stat. § 211B.04 (2018) is a constitutionally permissible restraint on the speech of political candidates and their campaigns.

***In re Civil Commitment of Johnson*, 931 N.W.2d 649 (Minn. App. June 17, 2019), review denied (Minn. Sept. 17, 2019) (A18-1818).**

Mere speculation that a lawyer was under the influence of a mood-altering substance while representing a client in commitment proceedings under the Minnesota Commitment and Treatment Act (MCTA), Minn. Stat. §§ 253B.01-.24 (2010 & Supp. 2011), or under the Minnesota Commitment and Treatment Act: Sexually Dangerous Persons and Sexual Psychopathic Personalities, Minn. Stat. §§ 253D.01-.36 (2018), is insufficient to establish ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984).

### **DWI & Implied Consent**

***Mortenson v. Comm'r of Pub. Safety*, 918 N.W.2d 573 (Minn. App. Sept. 24, 2018), review denied (Minn. Dec. 18, 2018) (A16-0738).**

This court's opinion in *Steinolfson v. Comm'r of Pub. Safety*, 478 N.W.2d 808 (Minn. App. 1991), was overruled by the Minnesota Supreme Court's opinion in *Johnson v. Comm'r of Pub. Safety*, 911 N.W.2d 506 (Minn. 2018).



***Windsor v. Comm’r of Pub. Safety*, 921 N.W.2d 71 (Minn. App. Nov. 5, 2018) (A16-1074).**

I. This court’s opinion in *Olinger v. Comm’r of Pub. Safety*, 478 N.W.2d 806 (Minn. App. 1991), was overruled by the Minnesota Supreme Court’s opinions in *Johnson v. Comm’r of Pub. Safety*, 911 N.W.2d 506 (Minn. 2018), and *Morehouse v. Comm’r of Pub. Safety*, 911 N.W.2d 503 (Minn. 2018).

II. A district court errs by granting due-process relief under *McDonnell v. Comm’r of Pub. Safety*, 473 N.W.2d 848 (Minn. 1991), without first determining that the three elements of a *McDonnell* due-process claim have been established. In such circumstances, the claimant is not entitled to a remand for further proceedings if the record does not contain evidence sufficient to establish the elements.

***State v. Wood*, 922 N.W.2d 209 (Minn. App. Jan. 7, 2019), review denied (Minn. Mar. 27, 2019) (A17-1853).**

Because law-enforcement officers did not read the implied-consent advisory to appellant when they arrested him for driving while impaired in March 2016 but, rather, obtained a search warrant authorizing a blood draw, the officers were not precluded by the Minnesota Implied Consent Law then in effect, Minn. Stat. §§ 169A.50-.53 (2014), from executing the search warrant after appellant did not consent to the blood draw and objected to a blood test.

***Otto v. Comm’r of Pub. Safety*, 924 N.W.2d 658 (Minn. App. Mar. 25, 2019) (A18-0704).**

There is no constitutional or statutory requirement for police officers to inform vehicle drivers that they may refuse to perform field sobriety tests.

***State v. Anderson*, 931 N.W.2d 640 (Minn. App. June 17, 2019), aff’d, 941 N.W.2d 724 (Minn. Apr. 15, 2020) (A18-1491).**

A driver’s license revocation is “present” for the purposes of enhancing a criminal violation of the driving while impaired laws under Minnesota Statutes section 169A when the license revocation is effective, which occurs when the driver receives notice of the license revocation.

## **Evidence**

***In re: 3M Bair Hugger Litigation*, 924 N.W.2d 16 (Minn. App. Jan. 14, 2019), review denied (Minn. Mar. 27, 2019) (A18-0473).**

To determine whether the general-acceptance standard of Minn. R. Evid. 702 has been met, a court relies on evidence of the relevant scientific community’s acceptance or nonacceptance of the novel scientific theory.

***State v. Stewart*, 923 N.W.2d 668 (Minn. App. Jan. 22, 2019), review denied (Minn. Apr. 16, 2019) (A17-2039).**

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

1. Under Minn. R. Evid. 702, the proponent of expert witness testimony must establish foundational reliability with respect to the underlying theory and its application in the particular case, but the weight of that testimony in light of any contrary theory or other evidence is a matter for the fact-finder.

***Junker v. Comm’r of Pub. Safety*, 925 N.W.2d 661 (Minn. App. Mar. 25, 2019), review denied (Minn. June 18, 2019) (A18-0372).**

To impeach the credibility of breath-test results on the basis of burping, belching, or vomiting during the pretest observation period, a driver must sufficiently demonstrate that the burping, belching, or vomiting actually affected the test results.

***State v. Shaka*, 927 N.W.2d 762 (Minn. App. Apr. 29, 2019), review granted (Minn. July 16, 2019) and appeal dismissed (Minn. Nov. 19, 2019) (A18-0778).**

To establish that a defendant’s wrongful conduct caused the unavailability of a witness under the forfeiture-by-wrongdoing exception, the state may rely on direct or circumstantial evidence.

***State v. German*, 929 N.W.2d 466 (Minn. App. May 28, 2019) (A18-0883).**

“Circumstances proved” under the sufficiency-of-the-circumstantial-evidence test may include circumstances in the record that are uncontroverted, come from a state witness, and are not necessarily contradictory to the verdict, but they do not include circumstances, even if uncontroverted, that are not in the record.

***Dolo v. State*, 933 N.W.2d 423 (Minn. App. Aug. 19, 2019), rev’d, 942 N.W.2d 357 (Minn. Apr. 29, 2020) (A19-0063).**

When the state seeks to play part of a recorded interview and a defendant seeks to have the entire recording admitted under rule 106 of the Minnesota Rules of Evidence, a district court must conduct a fairness analysis to determine whether a party may require introduction of the evidence in its entirety.

### **Guilty Pleas**

***State v. Nicholas*, 924 N.W.2d 286 (Minn. App. Feb. 11, 2019), review denied (Minn. Apr. 24, 2019) (A17-2011).**

(See page 23 for second syllabus point for this case.)

I. Once a valid guilty plea has been “put formally before the court” by a defendant, it has been “entered,” and the defendant does not have an absolute right to withdraw it.

***Johnson v. State*, 925 N.W.2d 287 (Minn. App. Mar. 11, 2019) (A18-0918).**

When a defendant enters a guilty plea in consideration of the state’s threat of a sentence unauthorized by law, the plea is coerced and therefore involuntary and invalid.

### **Juvenile Delinquency**

***Roberts v. State*, 933 N.W.2d 418 (Minn. App. Aug. 12, 2019), review granted (Minn. Oct. 29, 2019) (A19-0389).**

Within the context of the statutory scheme and consistent with the plain language of Minn. Stat. § 624.713, subd. 1(2) (Supp. 2015), prohibiting persons who have been adjudicated delinquent of a “crime of violence” from possessing firearms, the definition of “crime of violence” contained within Minn. Stat. § 624.712, subd. 5 (Supp. 2015), unambiguously includes juvenile adjudications for the listed offenses.

### **Postconviction**

***Buhl v. State*, 922 N.W.2d 435 (Minn. App. Jan. 7, 2019) (A18-0245).**

(See page 1 for second syllabus point for this case.)

I. For purposes of determining whether a petitioner meets the statutory definition of “exonerated” under Minn. Stat. § 590.11, subd. 1 (1)(ii) (2018) of the Minnesota Imprisonment and Exoneration Remedies Act, the phrase “consistent with innocence” shall be interpreted as “agrees with innocence.”

### **Pretrial Procedure**

***State v. Strobel*, 921 N.W.2d 563 (Minn. App. Nov. 19, 2018), *aff’d*, 932 N.W.2d 303 (Minn. Aug. 14, 2019) (A18-0057).**

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

I. The state’s additional opportunity to prepare for trial as a result of pretrial delay does not constitute prejudice to the defendant sufficient to support a finding of a speedy-trial violation under *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L.Ed.2d 101 (1972).

***State v. Cruz Montanez*, 926 N.W.2d 434 (Minn. App. Apr. 8, 2019), *appeal dismissed*, 940 N.W.2d 162 (Minn. Mar. 11, 2020) (A19-0170).**

Minn. Stat. § 611.21 (2018), authorizing payment for expert, investigative, or other services, does not authorize payment for interpreter services to facilitate the public defender’s out-of-court communications with a client, even when the public defender asserts that it does not have funds available to pay for these services.

***State v. Scheffler*, 932 N.W.2d 57 (Minn. App. July 8, 2019) (A19-0488).**

A decision whether to waive the filing fee in an action to expunge criminal records is governed by Minn. Stat. § 609A.03 (2018), the relevant expungement statute, and not by Minn. Stat. § 563.01 (2018), the in forma pauperis statute.

## Search & Seizure

***State v. Hill*, 918 N.W.2d 237 (Minn. App. Sept. 24, 2018) (A17-2035).**

(See page 13 for second syllabus point for this case.)

1. The search of an appurtenant structure, such as a storage locker in an apartment building, requires a connection to the person identified as the subject of the search in the statement of probable cause set forth in a search warrant.

***State v. Poehler*, 921 N.W.2d 577 (Minn. App. Dec. 10, 2018), *aff'd*, 935 N.W.2d 729 (Minn. Nov. 27, 2019) (A18-0353)**

A police officer who stopped a car being driven with a cracked windshield, but who identified no circumstances to indicate that he reasonably suspected that the crack limited or obstructed the driver's vision under Minnesota Statutes, section 169.71, subdivision 1(a)(1) (2018), has not established that he had reasonable suspicion to stop the car.

***State v. Leonard*, 923 N.W.2d 52 (Minn. App. Feb. 4, 2019), *rev'd*, 943 N.W.2d 149 (Minn. May 13, 2020) (A17-2061).**

A hotel guest has no reasonable expectation of privacy in identifying information that the guest voluntarily reveals to a hotel operator for purposes of renting a hotel room. When police obtain that identifying information by searching hotel-registration records under Minn. Stat. § 327.12 (2018), there is no violation of the hotel guest's Fourth Amendment rights.

***State v. Dexter*, 929 N.W.2d 455 (Minn. App. May 20, 2019), *aff'd*, 941 N.W.2d 388 (Minn. Apr. 8, 2020) (A18-0761).**

If a warrant to search a home relies on information from a confidential police informant about contraband inside the home, but the warrant application includes no facts indicating whether the informant could be considered a government agent who violated the resident-defendant's Fourth Amendment rights, Minnesota Rule of Criminal Procedure 9.01 entitles the defendant to discover non-identifying information relevant to the constitutionality of the informant's conduct.

***State v. Marsh*, 931 N.W.2d 825 (Minn. App. June 24, 2019), *review denied* (Minn. Sept. 17, 2019) (A18-1093).**

The validity of a search of a rented room, pursuant to a warrant authorizing the search of an entire house, depends on whether the officers knew or reasonably should have known that it was a multiple-occupancy house during the search.

## **Sentencing & Restitution**

***State v. Patzold*, 917 N.W.2d 798 (Minn. App. Sept. 10, 2018), review denied (Minn. Nov. 27, 2018) (A17-1549).**

When, in the course of committing a criminal-sexual-assault offense with force or violence, a specific instance of the defendant's conduct constitutes more than one additional criminal offense, such as when a single incident of domestic assault constitutes both assault-fear and assault-harm, the defendant may be sentenced for only one of those offenses in addition to the criminal-sexual-conduct sentence.

***State v. Barthman*, 917 N.W.2d 119 (Minn. App. Sept. 10, 2018), aff'd, 938 N.W.2d 257 (Minn. Feb. 5, 2020) (A17-1191).**

When a district court, in imposing consecutive sentences for two first-degree criminal sexual conduct convictions based on separate incidents involving the same victim, imposes a statutory-maximum sentence on one count (a more-than-double upward durational departure), it unduly exaggerates the seriousness of the crimes also to impose the statutory-maximum sentence on the second count.

***State v. Roy*, 920 N.W.2d 227 (Minn. App. Oct. 8, 2018), aff'd, 928 N.W.2d 341 (Minn. May 22, 2019) (A18-0326).**

The interjurisdictional rule for jail credit applies to time served by a tribal member of the Red Lake Band of Chippewa Indians at the Red Lake Indian Reservation detention center for crimes committed by the tribal member within the reservation's boundaries.

***State v. Strobel*, 921 N.W.2d 563 (Minn. App. 2018), aff'd, 932 N.W.2d 303 (Minn. 2019) (A18-0057).**

(See page 17 for the first syllabus point for this case.)

II. A prior fifth-degree controlled-substance-possession offense may not be classified as a felony when calculating a criminal-history score to be used in sentencing a crime that occurred after the effective date of the Drug Sentencing Reform Act (DSRA) amendments to Minnesota Statutes section 152.025 (2016), if the prior offense would qualify as a gross misdemeanor under subdivision 4(a) of the DSRA-amended version of section 152.025.

***State v. Franson*, 921 N.W.2d 783 (Minn. App. Dec. 10, 2018), review denied (Minn. Feb. 27, 2019) (A18-0539).**

A district court has jurisdiction to reimpose a mandatory conditional-release term if it was authorized by law at the time the district court removed it from the sentence and the defendant had not developed a crystallized expectation as to the finality of his sentence.

***State v. Stewart*, 923 N.W.2d 668 (Minn. App. 2019), review denied (Minn. Apr. 16, 2019) (A17-2039).**

(See page 16 for first syllabus point for this case.)

2. Under Minn. Sent. Guidelines 2.B.1.h (Supp. 2015), if a defendant has a prior conviction that would be classified as a felony conviction under Minn. Sent. Guidelines 2.B.7 (Supp. 2015) but received a misdemeanor or gross misdemeanor sentence, the conviction must be counted in the defendant's criminal-history score as a misdemeanor or gross misdemeanor conviction.

***State v. Watson*, 925 N.W.2d 658 (Minn. App. Mar. 18, 2019), review denied (Minn. May 28, 2019) (A18-1187).**

A sentence for an out-of-state conviction that results in the out-of-state sentencing court imposing a probationary term but reserving the right to vacate the stay and impose a sentence is the equivalent of a stay of imposition for purposes of calculating the defendant's criminal-history score under the Minnesota Sentencing Guidelines.

***Thibodeaux v. Evans*, 926 N.W.2d 602 (Minn. App. Apr. 1, 2019) review denied (Minn. June 26, 2019) (A18-0983).**

When an individual is charged with an offense requiring registration as a predatory offender under Minn. Stat. § 243.166, subd. 1b (2018), and is later adjudicated delinquent of a different offense filed in a separate petition but arising out of the same set of circumstances, the individual is required to register if the initial charged offense requiring registration was supported by probable cause.

***State v. Alger*, 928 N.W.2d 770 (Minn. App. May 13, 2019), *aff'd*, 941 N.W.2d 396 (Minn. Apr. 8, 2020) (A18-1000).**

An offender may receive multiple sentences for violating the no-contact provisions of an order for protection (OFP) with respect to multiple persons protected by the provisions, even if the violations arose out of a single behavioral incident, because each person protected by the no-contact provisions of an OFP is a victim of the crime of violating those provisions.

***State v. Branch*, 930 N.W.2d 770 (Minn. App. June 10, 2019), *aff'd*, 942 N.W.2d 711 (Minn. May 6, 2020) (A18-1055).**

Under the rule that a defendant may receive only one sentence for multiple offenses involving one victim committed as part of a single behavioral incident, a conviction of a single count of drive-by shooting at an occupied motor vehicle does not constitute an offense against each of the vehicle's occupants.

## **Sex Offender Commitment**

***In re Civil Commitment of Poole*, 921 N.W.2d 62 (Minn. App. Oct. 29, 2018), review denied (Minn. Jan. 15, 2019) (A18-0814).**

I. When a Judicial Appeal Panel holds a first-phase hearing on a petition by a committed person seeking discharge from the Minnesota Sex Offender Program, the panel should not consider evidence other than that provided by the committed person.

II. Any error a Judicial Appeal Panel may commit at a first-phase hearing on a petition for discharge from the Minnesota Sex Offender Program by considering evidence other than that provided by the committed person is subject to a harmless-error analysis.

III. Conclusory and otherwise unsupported assertions that a committed person is not a danger to the public do not make a prima facie case for discharge from the Minnesota Sex Offender Program.

***In re Civil Commitment of Edwards*, 933 N.W.2d 796 (Minn. App. July 22, 2019), review denied (Minn. Oct. 15, 2019) (A19-0194, A19-0239).**

This court does not apply de novo review to a commitment appeal panel's decision on the merits of a petition for a reduction in custody under Minn. Stat. § 253D.27 (2018), unless the panel has ordered dismissal under Minn. R. Civ. P. 41.02(b). Instead, we review such a decision for clear error, examining the record to determine whether the evidence as a whole sustains the panel's findings.

## **Substantive Criminal Law**

***State v. Black*, 919 N.W.2d 704 (Minn. App. Oct. 22, 2018) (A17-1612).**

The phrase "other than a peace officer" in Minn. Stat. § 624.714, subd. 1a (2016), creates an exception to criminal liability and not an element of the offense of possessing a pistol without a permit.

***State v. Defatte*, 921 N.W.2d 556 (Minn. App. Nov. 19, 2018), *aff'd*, 928 N.W.2d 338 (Minn. May 22, 2019) (A18-0881).**

In determining whether a defendant is subject to an enhanced felony charge of domestic assault under Minn. Stat. § 609.2242, subd. 4 (2016), "previous qualified domestic violence-related offense convictions" may arise from a single behavioral incident involving the same victim, and are not limited to convictions for which the defendant has been sentenced.

***State v. Jones*, 921 N.W.2d 774 (Minn. App. Dec. 10, 2018), review denied (Minn. Feb. 27, 2019) (A17-1840, A17-1841).**

In a first-degree burglary prosecution, the state is not required to prove that the defendant entered the building without a claim of right under Minn. Stat. § 609.582, subd. 1(b) (2016); therefore, misdemeanor trespass under Minn. Stat. § 609.605, subd. 1(b)(4) (2016), is not a lesser-included offense of first-degree burglary. The continuing offense of possession of a firearm by an ineligible person committed inside of the building is a sufficient independent crime to support a first-degree burglary conviction.

***State v. Maack*, 921 N.W.2d 790 (Minn. App. Dec. 24, 2018) (A18-0315).**

Mere knowledge that another person is storing methamphetamine paraphernalia in a private bedroom of a child's home is insufficient to support a conviction of engaging in the activity of storing methamphetamine paraphernalia in a child's home under Minn. Stat. § 152.137, subd. 2(a)(4) (2016).

***State v. Gosewisch*, 921 N.W.2d 796 (Minn. App. Dec. 31, 2018), review denied (Minn. Mar. 19, 2019) (A18-1142, A18-1143).**

Under Minnesota Statutes section 609.349 (2016), an actor's criminal sexual conduct with a vulnerable complainant is excused when the complainant "is the actor's legal spouse" at the time of the offense.

***State v. Wilkie*, 924 N.W.2d 38 (Minn. App. Jan. 28, 2019), review granted (Minn. Apr. 24, 2019) (A18-0288).**

A person takes a substantial step toward committing third-degree criminal sexual conduct by arranging via social media to meet a juvenile to engage in sexual penetration, verifying that the juvenile has sexual experience and wants to engage in the act, sending explicit photographs to the juvenile suggestive of the act, negotiating to meet in the juvenile's unoccupied family home to engage in the act, obtaining directions to the home, following the juvenile's directions to approach the home, and knocking on the front door.

***State v. Lagred*, 923 N.W.2d 345 (Minn. App. Feb. 11, 2019) (A18-0154).**

The alternatives in Minnesota's first-degree aggravated-robbery statute, Minn. Stat. § 609.245, subd. 1 (2016), are means of committing the offense, and those alternatives are consistent with the fundamental fairness required by due process. A jury therefore need not unanimously agree regarding which of those means was used to commit a first-degree aggravated robbery.



***State v. Nicholas*, 924 N.W.2d 286 (Minn. App. Feb. 11, 2019), review denied (Minn. Apr. 24, 2019) (A17-2011).**

(See page 16 for second syllabus point for this case.)

II. The act of scheduling a hearing on an ex parte order for protection (OFP) outside of the statutorily permissible time frame does not automatically cause the OFP to expire; rather, an ex parte OFP expires once the statutorily prescribed time frame runs without a hearing.

***State v. Stay*, 923 N.W.2d 355 (Minn. App. Feb. 11, 2019), *aff'd*, 935 N.W.2d 428 (Minn. Nov. 13, 2019) (A18-0335).**

Under Minn. Stat. § 609.20(2) (2014), a first-degree manslaughter conviction, predicated on an underlying fifth-degree assault, does not require proof that the defendant also acted “with such force and violence that death of or great bodily harm to any person was reasonably foreseeable.”

***State v. Townsend*, 925 N.W.2d 280 (Minn. App. Mar. 11, 2019), review denied (Minn. May 14, 2019) (A18-0792).**

The phrase “carrying away” in Minnesota’s simple-robbery statute, Minn. Stat. § 609.24 (2016), means the act of moving personal property from the location of the taking.

***State v. Owens*, 930 N.W.2d 1 (Minn. App. May 20, 2019), review denied (Minn. Aug. 6, 2019) (A18-1800).**

Wholly owned subsidiaries of the same parent corporation are separate “persons” under Minn. Stat. § 152.33, subd. 1 (2014).

***Bergman v. Caulk*, 931 N.W.2d 114 (Minn. App. June 3, 2019), *rev'd*, 938 N.W.2d 248 (Minn. Feb. 5, 2020) (A18-1784).**

I. Under 18 U.S.C. § 921(a)(33)(B)(ii) (2018), a person convicted of a “misdemeanor crime of domestic violence,” as defined in 18 U.S.C. § 921(a)(33)(A) (2018), is not considered convicted of such an offense when the conviction is expunged by a district court under its inherent authority, unless the expungement order expressly provides that the person may not ship, transport, possess, or receive firearms.

II. A sheriff lacks discretion to deny an applicant a permit to carry under Minn. Stat. §§ 624.713, subd. 1(12), .714, subd. 2(b) (2018), on the basis that the applicant’s conviction of a misdemeanor domestic assault was expunged solely under a district court’s inherent authority.