

THE YEAR IN REVIEW 2013

SELECTED CASES FROM THE ALASKA SUPREME COURT,
THE ALASKA COURT OF APPEALS, THE UNITED STATES SUPREME COURT, THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF ALASKA, AND
THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ADMINISTRATIVE LAW | BUSINESS LAW | CIVIL PROCEDURE | CONSTITUTIONAL LAW
CONTRACT LAW | CRIMINAL LAW | CRIMINAL PROCEDURE | EMPLOYMENT LAW
FAMILY LAW | HEALTH LAW | IMMIGRATION LAW | INSURANCE LAW | MARITIME LAW
PROPERTY LAW | TORT LAW

INTRODUCTION

The *Alaska Law Review*'s Year in Review is a collection of brief summaries of selected state and federal appellate cases concerning Alaska law. They are neither comprehensive in breadth, as several cases are omitted, nor in depth, as many issues within individual cases are omitted. Attorneys should not rely on these summaries as an authoritative guide; rather, they are intended to alert the Alaska legal community to judicial decisions from the previous year. The summaries are grouped by subject matter.

ADMINISTRATIVE LAW

[Top](#) 

Alaskan Crude Corp. v. State

In *Alaskan Crude Corp. v. State*,¹ the supreme court held that the Oil and Gas Conservation Commission (“Commission”) can deny an oil and gas exploration facility’s application for an exemption from oil discharge requirements.² Alaskan Crude applied to the Commission to reopen a well for exploration.³ Statutes mandated that oil exploration facilities have a discharge prevention plan, but exempted gas exploration facilities from the requirement.⁴ A gas exploration facility, according to the statutes, has the sole purpose of exploring for natural gas.⁵ Therefore, the Commission rejected Alaskan Crude’s request for the discharge exemption because it found Alaskan Crude’s facility to not be a gas facility.⁶ On appeal, Alaskan Crude challenged the Commission’s facility classification.⁷ The supreme court affirmed the lower court’s decision, reasoning that a court should defer to an agency’s factual findings supported by substantial evidence.⁸ Accordingly, because Alaskan Crude represented that it would explore for oil as well as gas, and because Alaskan Crude also planned to keep any oil it recovered while exploring for

¹ 309 P.3d 1249 (Alaska 2013).

² *Id.* at 1251.

³ *Id.*

⁴ *Id.* at 1252.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 1253.

⁸ *Id.* at 1254.

gas, the Commission could classify the facility as one not solely used for the exploration of gas.⁹ Affirming the lower court's decision, the supreme court held that the Commission can deny an oil and gas exploration facility's application for an exemption from oil discharge requirements.¹⁰

Bachner Co. v. Weed

In *Bachner Co. v. Weed*,¹¹ the supreme court held that suits against individual procurement officers for good-faith acts performed within the course and scope of their official duties are barred by the exclusive remedy statute.¹² Bachner Company and Bowers Investment Company (together the "Companies") bid for a state building contract but did not receive it.¹³ Four members of the procurement committee for the contract were involved in irregularities while operating the bid scoring process.¹⁴ These irregularities included making untrue statements and changing scores to correct for perceived bias.¹⁵ The Companies sued the committee members in their individual capacities.¹⁶ On appeal, the Companies argued that the exclusive remedy statute did not bar their suits because the committee members' conduct demonstrated bad faith.¹⁷ The supreme court affirmed the lower court's decision, reasoning that these particular irregularities did not indicate bad faith.¹⁸ The court further reasoned that, because the acts constituting the irregularities were performed in the course and scope of the committee members' official duties, the Companies' suits could be characterized as a claim against an agency.¹⁹ Affirming the lower court's decision, the supreme court held that the exclusive remedy statute bars suits against individual procurement officers for good-faith acts performed within the course and scope of their official duties.²⁰

Griswold v. Homer City Council

In *Griswold v. Homer City Council*,²¹ the supreme court held that a municipality that expends significant resources responding to a public records request acts reasonably and in good faith even when the request is not fully complied with.²² In 2008, the Homer City Council approved a bond proposition and issued an election brochure to go with it.²³ Griswold, alleging the brochure constituted an illegal use of municipal funds to influence a ballot measure, filed a public records request for emails and documents relating to the brochure with the City Manager.²⁴ The Manager

⁹ *Id.* at 1256.

¹⁰ *Id.* at 1258.

¹¹ 315 P.3d 1184 (Alaska 2013).

¹² *Id.* at 1194.

¹³ *Id.* at 1187.

¹⁴ *Id.* at 1187–88.

¹⁵ *Id.* at 1191–94.

¹⁶ *Id.* at 1187.

¹⁷ *Id.* at 1188.

¹⁸ *Id.* at 1191–94.

¹⁹ *Id.* at 1194.

²⁰ *Id.*

²¹ 310 P.3d 938 (2013).

²² *Id.* at 941.

²³ *Id.* at 939.

²⁴ *Id.* at 940.

eventually produced all of the emails requested, except privileged emails or those that had been routinely deleted.²⁵ The lower court noted that the Manager need only “make a good faith and reasonable effort to locate records,” which was supported by the fact that the Manager not only purchased state of the art record retrieval software but spent nearly six months complying with Griswold’s request.²⁶ On appeal, Griswold argued that the Manager had not fully complied with his request, that the email search was inadequate and that the City had unlawfully failed to preserve public records.²⁷ The supreme court affirmed the lower court’s decision, adopting the aforementioned reasoning as well.²⁸ The court further reasoned that the Manager’s compliance was reasonable because the Manager had spent approximately fifty hours responding to Griswold and that it would have cost the city an additional five to ten thousand dollars to fully comply with Griswold’s request.²⁹ Affirming the lower court’s decision, the supreme court held that where a municipality expends significant resources responding to a public records request, it does so reasonably and in good faith even when the request is not fully complied with.³⁰

L Street Investments v. Municipality of Anchorage

In *L Street Investments v. Municipality of Anchorage*,³¹ the supreme court held that the voting requirements of Alaska Statute 29.35.450(c) do not apply to special assessment districts.³² In 1997, the Anchorage Assembly created Special Assessment District 1 SD97.³³ While this assessment district originally included the building at 420 L Street, a property owned by L Street Investments, the property was eventually carved out of the district.³⁴ Nevertheless, in 2010, the Assembly renewed and expanded the district to include the property.³⁵ L Street Investments filed a complaint for declaratory judgment against the municipality claiming that the voting rules required by the statute to expand an assessment district were not followed.³⁶ The supreme court affirmed the lower court’s decision, reasoning that Alaska Statute 29.35.450(c) was inapplicable to assessment districts since they were creatures of pure municipal law.³⁷ Thus, according to the court, the statute’s voting requirements did not need to be followed to expand the assessment district to include L Street Investments’ property.³⁸ Affirming the lower court’s decision, the supreme court held that the voting requirements of Alaska Statute 29.35.450(c) do not apply to special assessment districts.³⁹

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 941.

²⁹ *Id.*

³⁰ *Id.*

³¹ 307 P.3d 965

³² *Id.* at 973.

³³ *Id.* at 967.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 966–67.

³⁷ *Id.* at 973.

³⁸ *Id.*

³⁹ *Id.*

Rollins v. State, Dep't of Public Safety

In *Rollins v. State, Dep't of Public Safety*,⁴⁰ the supreme court held that the owner of a commercial liquor license has the burden of proof when challenging a decision from the Alcohol Beverage Control Board (the "Board") denying a waiver of the annual operating requirements.⁴¹ In 1990, Rollins purchased a liquor license.⁴² Each year from 1991 to 1994, Rollins applied for, and was granted, a waiver of the annual operating requirement, which required operation of at least thirty eight-hour days a year.⁴³ In 1995, Rollins applied again but was denied a waiver by the Board.⁴⁴ Rollins sued and eventually agreed to a settlement granting her a waiver for 1995 but barring the issuance of any future waivers without a showing of good cause.⁴⁵ In 2010, Rollins applied for another waiver, which the Board denied.⁴⁶ On appeal, Rollins argued that the Board should have the burden of proof to show that she had not satisfied the operating requirement.⁴⁷ The supreme court affirmed the lower court's decision, reasoning that having the requirement waived was a privilege.⁴⁸ Thus, according to the court, Rollins properly had the burden of proof to show either that the requirement was met or that there was good cause for it not being met.⁴⁹ Affirming the lower court's decision, the supreme court held that the owner of a commercial liquor licensee has the burden of proof when challenging a decision from the Board denying a waiver of the annual operating requirements.⁵⁰

Sosa De Rosario v. Chenega Lodging

In *Sosa De Rosario v. Chenega Lodging*,⁵¹ the supreme court held that in reviewing claims, the Workers' Compensation Appeals Commission (the "Commission") must defer to the Workers' Compensation Board's (the "Board") credibility determinations.⁵² Rosario fell when working at Chenega Lodging ("Chenega"), experienced a back injury and subsequently received temporary disability benefit payments from Chenega.⁵³ Rosario's physician reported that her injury resulted from her fall at work and that her injury would be chronic.⁵⁴ However, Chenega's independent medical evaluator concluded that Rosario's condition was caused by age-related degenerative changes.⁵⁵ Chenega and Rosario then appeared before the Board, which decided that Rosario did suffer a compensable work-related injury.⁵⁶ The Commission later reversed the Board's decision,

⁴⁰ 312 P.3d 1091 (Alaska 2013).

⁴¹ *Id.* at 1092.

⁴² *Id.* at 1093.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 1094.

⁴⁶ *Id.*

⁴⁷ *Id.* at 1095.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 1092.

⁵¹ 297 P.3d 139 (Alaska 2013).

⁵² *Id.* at 141.

⁵³ *Id.*

⁵⁴ *Id.* at 142.

⁵⁵ *Id.*

⁵⁶ *Id.* at 144.

concluding that there was insufficient evidence to support the Board's findings.⁵⁷ On appeal, Chenega argued that the Board improperly ignored one of its doctor's testimony during the initial hearing because it found the doctor's testimony not credible.⁵⁸ The supreme court reversed the Commission's decision, reasoning that it is the Board's responsibility to be the fact finder and determine credibility in these hearings.⁵⁹ Thus, according to the court, the Commission could not reverse the Board's credibility findings as it did here and the doctor's testimony could be given little weight.⁶⁰ Reversing the Commission's decision, the supreme court held that in reviewing claims, the Commission must defer to the Board's credibility determinations.⁶¹

State v. Estrada

In *State v. Estrada*,⁶² the supreme court held that the Board of Fisheries (the "Board") may enact regulations that allow the Department of Fish and Game (the "Department") to specify limitations on fishing through the issuance of fishing permits.⁶³ The Board was given authority to adopt regulations for conserving and developing fisheries.⁶⁴ Accordingly, it promulgated regulations that required fishermen to obtain permits from the Department, also giving the Department authority to impose conditions upon said permits.⁶⁵ When the Department discovered that the sockeye salmon population had fallen dangerously low, it reduced the annual catch limit for sockeye salmon.⁶⁶ Subsequently, Estrada and two other fishermen were charged with violating terms of their fishing permits by exceeding this limit.⁶⁷ On appeal, the fishermen argued that the Board exceeded its authority by delegating the aforementioned decision-making to the Department.⁶⁸ The supreme court reversed the lower court's decision, reasoning that courts should generally defer to an administrative agency's statutory interpretation.⁶⁹ Thus, according to the court, since such challenged authority was ultimately a question of legislative intent, the Board's interpretation must prevail since analogous authority had been exercised without intervention from the legislature for decades.⁷⁰ Reversing the lower court's decision, the supreme court held that the Board may enact regulations that allow the Department to specify limitations on fishing through the Department's issuance of fishing permits.⁷¹

⁵⁷ *Id.*

⁵⁸ *Id.* at 145.

⁵⁹ *Id.* at 146.

⁶⁰ *Id.* at 145–47.

⁶¹ *Id.* at 141.

⁶² 315 P.3d 688 (Alaska 2013).

⁶³ *Id.* at 690.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 691.

⁶⁷ *Id.*

⁶⁸ *Id.* at 693.

⁶⁹ *Id.* at 694.

⁷⁰ *Id.*

⁷¹ *Id.*

Brown v. Knowles

In *Brown v. Knowles*,⁷² the supreme court held that an employee's veil-piercing claim is not barred during the corporation's bankruptcy proceedings.⁷³ Brown, the sole shareholder of International Steel, entered into an agreement with Knowles, an employee, for a bonus compensation package but eventually stopped paying.⁷⁴ Knowles subsequently filed suit against International Steel and Brown in the lower court one day before International Steel filed for Chapter 11 bankruptcy protection.⁷⁵ In the lower court, Knowles received a monetary award.⁷⁶ On appeal, Brown argued that Knowles' veil-piercing claim was barred by International Steel's bankruptcy proceedings.⁷⁷ The supreme court affirmed the lower court's decision, reasoning that International Steel, and not Brown, was the debtor in the bankruptcy proceedings.⁷⁸ Thus, according to the court, since the veil-piercing claim was against Brown and not the corporation, Brown was not entitled to bankruptcy protection since he never filed for bankruptcy.⁷⁹ Affirming the lower court's decision, the supreme court held that an employee's veil-piercing claim is not barred during the corporation's bankruptcy proceedings.⁸⁰

McCarter v. McCarter

In *McCarter v. McCarter*,⁸¹ the supreme court held that, without filing a motion for relief from judgment, the court will not modify an agreement that has previously been incorporated into a final dissolution decree.⁸² Deborah McCarter filed a motion in the lower court for enforcement of a property agreement that was incorporated into her divorce decree with her ex-husband, David.⁸³ The lower court granted Deborah's motion.⁸⁴ On appeal, David argued that, due to inaccuracies contained in the agreement, the lower court erred in failing to modify it.⁸⁵ The supreme court affirmed the lower court's decision, reasoning that the court could not modify the contract on a piecemeal basis when the parties' property rights had previously been adjudicated and incorporated into a final judgment.⁸⁶ Thus, without a separate filing of a motion for relief from judgment, the court's job was to interpret and enforce the agreement based on the principles

⁷² 307 P.3d 915 (Alaska 2013).

⁷³ *Id.* at 919–20.

⁷⁴ *Id.* at 920–21.

⁷⁵ *Id.* at 921.

⁷⁶ *Id.* at 921–23.

⁷⁷ *Id.* at 927–28.

⁷⁸ *Id.*

⁷⁹ *Id.* at 928.

⁸⁰ *Id.* at 919–20.

⁸¹ 303 P.3d 509 (Alaska 2013).

⁸² *Id.* at 515.

⁸³ *Id.* at 512.

⁸⁴ *Id.*

⁸⁵ *Id.* at 512, 515.

⁸⁶ *Id.* at 515.

of contract law.⁸⁷ Affirming the lower court's decision, the supreme court held that the court will not modify an agreement that has previously been incorporated into a final dissolution decree without the filing of a motion for relief from judgment.⁸⁸

Tesoro Corp. v. State, Dep't of Revenue

In *Tesoro Corp. v. State, Dep't of Revenue*,⁸⁹ the supreme court held that parent corporations maintaining significant oversight of its subsidiaries are subject to taxation under the unitary business apportionment method.⁹⁰ Between 1969 and 1994, Tesoro's operations in Alaska were treated as a unitary business and taxed as such.⁹¹ However in 1995, its purchase of the Kenai Pipeline ("KPL") made Tesoro "engaged in the transportation of oil or gas by pipeline," subjecting itself to additional taxation.⁹² To avoid some of this new tax, Tesoro claimed that some of its subsidiaries (including KPL) were not unitary and, accordingly, only those non-unitary business segments were subject to this additional tax.⁹³ On appeal, Tesoro argued that the administrative law judge erred because of the corporation's passive investment approach regarding the aforementioned subsidiaries.⁹⁴ The supreme court affirmed the administrative judge's decision, reasoning that Tesoro's provision of credit facilities, financing, oversight, guidance and central management to its subsidiaries rendered it, and all of the subsidiaries at issue, a unitary business.⁹⁵ These interactions, according to the court, demonstrated Tesoro's continued control and influence over its subsidiaries, which resulted in considerable savings.⁹⁶ Affirming the administrative law judge's decision, the supreme court held that parent corporations maintaining significant oversight of its subsidiaries are subject to taxation under the unitary business apportionment method.⁹⁷

CIVIL PROCEDURE

[Top](#) 🏠

Alaskan Adventure Tours v. City and Borough of Yakutat

In *Alaskan Adventure Tours v. City and Borough of Yakutat*,⁹⁸ the supreme court held that when ruling on a motion for relief from judgment based on fraud, the lower court may require a showing that the fraud could not have been discovered by due diligence before or during trial.⁹⁹ In 2010, Yakutat filed suit against Adventure Tours for fraudulent conveyance of its assets to

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ 312 P.3d 830 (Alaska 2013).

⁹⁰ *Id.* at 833–34.

⁹¹ *Id.* at 834–35.

⁹² *Id.* at 835.

⁹³ *Id.*

⁹⁴ *Id.* at 838.

⁹⁵ *Id.* at 839–41.

⁹⁶ *Id.* at 841–42.

⁹⁷ *Id.* at 833–834.

⁹⁸ 307 P.3d 955 (Alaska 2013).

⁹⁹ *Id.* at 960.

avoid payment of taxes that it owed.¹⁰⁰ After finding that Adventure Tours had notice that it owed taxes at the time it transferred the assets, the lower court ruled against them.¹⁰¹ Subsequently, Adventure Tours motioned the court for relief from this judgment under Rule 60(b)(3), claiming that one of Yakutat's witnesses had lied about a conversation with the owner of Adventure Tours.¹⁰² This conversation was one of the ways that Yakutat had demonstrated Adventure Tours had notice of the taxes it owed prior to transferring the assets.¹⁰³ On appeal, Adventure Tours argued that the lower court had applied the wrong standard by requiring them to prove that the fraud could not have been timely shown during the fraudulent conveyance trial.¹⁰⁴ The supreme affirmed the lower court's decision, reasoning that Rule 60(b)(3) was not meant to be a backup plan for litigants that failed to adequately investigate their case or cross-examine an adverse witness the first time around.¹⁰⁵ Rather, Rule 60(b)(3) was meant to provide relief for parties who were unable to fully and fairly litigate their original case.¹⁰⁶ Affirming the lower court's decision, the supreme court held that when a movant had ample opportunity to uncover or demonstrate the alleged fraud or perjury during trial, relief under Rule 60(b)(3) may be denied.¹⁰⁷

American Marine Corp. v. Sholin

In American Marine Corp. v. Sholin,¹⁰⁸ the supreme court held that the State's savings statute does not require timely notice.¹⁰⁹ In 2005, Sholin was provided medical services by American Marine Corporation (the "Corporation").¹¹⁰ The Corporation asserted that Sholin's insurer had given them oral authorization to provide the services.¹¹¹ Nevertheless, Sholin's insurer subsequently denied the Corporation's requests for payment.¹¹² In response, the Corporation commenced an action for breach of contract against Sholin and her insurer.¹¹³ The lower court initially dismissed the claim for lack of service, prompting the Corporation to re-file the lawsuit almost a full year later.¹¹⁴ The lower court then granted summary judgment to the defendant since the defendant was not notified of the Corporation's initial claim until after the statute of limitations had run.¹¹⁵ On appeal, the Corporation argued that the plain meaning of the savings statute allowed for a timely filed action not dismissed on its merits to be re-filed within one year

¹⁰⁰ *Id.* at 957–58.

¹⁰¹ *Id.* at 958.

¹⁰² *Id.* at 958–59.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 960–61.

¹⁰⁵ *Id.* at 961.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ 295 P.3d 924 (Alaska 2013).

¹⁰⁹ *Id.* at 926–27.

¹¹⁰ *Id.* at 925.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 926.

¹¹⁵ *Id.*

of the initial action regardless of timely notice.¹¹⁶ The supreme court reversed the lower court's decision, reasoning that the savings statute plainly did not require timely notice.¹¹⁷ The court further reasoned that the purpose of the savings statute was to "facilitate resolution of suits on the merits."¹¹⁸ Reversing the lower court's decision, the supreme court held that the State's savings statute does not require timely notice.¹¹⁹

Bearden v. State Farm Fire & Casualty Co.

In *Bearden v. State Farm Fire & Casualty Co.*,¹²⁰ the supreme court held that pleading no contest to a disorderly conduct charge collaterally estops re-litigating the essential elements of that crime in a civil declaratory judgment action regarding insurance coverage.¹²¹ After a physical altercation with an acquaintance, Bearden pled no contest to disorderly conduct, which is a serious criminal offense.¹²² A civil complaint stemming from the same incident was subsequently filed against Bearden who, in turn, looked to his insurance for coverage.¹²³ On appeal, Bearden argued that he acted in self-defense.¹²⁴ The supreme court affirmed the lower court's decision, reasoning that pleading no contest when given the opportunity for a full and fair hearing necessarily meant the absence of self-defense had been decided.¹²⁵ Thus, according to the court, Bearden could not rely on the insurance policy for coverage.¹²⁶ Affirming the lower court's decision, the supreme court held that pleading no contest to a disorderly conduct charge collaterally estops re-litigating the essential elements of that crime in a civil declaratory judgment action regarding insurance coverage.¹²⁷

Chloe O. v. State, Dep't of Health & Social Services

In *Chloe O. v. State, Dep't of Health & Social Services*,¹²⁸ the supreme court held that when reviewing a lower court's holding that was made during a new hearing, review is based only on the evidence before the court during the new hearing.¹²⁹ The Office of Children Service ("OCS") filed suit to terminate Chloe's parental rights based on her history of drug abuse, suicide attempts, violent behavior and her predilection towards unsafe people and situations.¹³⁰ After a trial, the lower court terminated Chloe's rights.¹³¹ Chloe appealed but during briefing before the supreme court, the parties agreed that the case should be remanded because the lower court had

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 926–27.

¹¹⁸ *Id.* at 927.

¹¹⁹ *Id.* at 926–27.

¹²⁰ 299 P.3d 705 (Alaska 2013).

¹²¹ *Id.* at 715.

¹²² *Id.* at 707, 710.

¹²³ *Id.* at 707.

¹²⁴ *Id.* at 708.

¹²⁵ *Id.* at 712.

¹²⁶ *Id.* at 708–709.

¹²⁷ *Id.* at 715.

¹²⁸ 309 P.3d 850 (Alaska 2013)

¹²⁹ *Id.* at 856.

¹³⁰ *Id.* at 851.

¹³¹ *Id.* at 852.

applied the wrong evidentiary standard to the question of whether OCS had made active efforts to reunify the family.¹³² On remand, before a new judge, Chloe asked for and was granted a new evidentiary hearing.¹³³ Ultimately, the lower court in the new hearing determined, by clear and convincing evidence, that OCS had made extraordinary efforts to reunify the family.¹³⁴ On appeal, Chloe argued that the lower court erred because it ignored the testimony of a witness from the first hearing.¹³⁵ The supreme court affirmed the lower court's decision, reasoning that the witness' testimony was not before the lower court when it made its ruling on remand.¹³⁶ Furthermore, Chloe was adamant that the new judge "not base her decision on a review of the evidence presented to" the first judge.¹³⁷ Affirming the lower court's decision, the supreme court held that when reviewing a lower court's holding that was made during a new hearing, review is based only on the evidence before the court during the new hearing.¹³⁸

Dixon v. Blackwell

In *Dixon v. Blackwell*¹³⁹, the supreme court held that an ambiguous statement in a closing argument does not constitute a judicial admission.¹⁴⁰ After failing to reach an agreement in arbitration regarding payment of her medical expenses, Dixon filed a complaint against Blackwell.¹⁴¹ At trial, Blackwell's attorney estimated that Dixon's related medical expenses could be around \$17,955, but the jury awarded only \$12,710.¹⁴² On appeal, Dixon argued that Blackwell's attorney's estimation of medical expenses constituted a judicial admission and because the jury's verdict was lower than the estimated amount, the amount awarded must necessarily be inadequate.¹⁴³ The supreme court affirmed the lower court's decision, reasoning that a judicial admission must be "clear, deliberate, and unequivocal."¹⁴⁴ Here, according to the court, if Blackwell's attorney's estimation of medical expenses is taken in context, it did not meet the aforementioned standard for judicial admissions and, therefore, could not establish the inadequacy of the awarded amount.¹⁴⁵ Affirming the lower court's decision, the supreme court held that an ambiguous statement in a closing argument does not constitute a judicial admission.¹⁴⁶

¹³² *Id.* at 852.

¹³³ *Id.*

¹³⁴ *Id.* at 855.

¹³⁵ *Id.* at 856.

¹³⁶ *Id.* at 856, 859.

¹³⁷ *Id.* at 856.

¹³⁸ *Id.*

¹³⁹ 298 P.3d 185 (Alaska 2013).

¹⁴⁰ *Id.* at 187.

¹⁴¹ *Id.*

¹⁴² *Id.* at 188.

¹⁴³ *Id.* at 189.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 187.

Hill v. Giani

In *Hill v. Giani*,¹⁴⁷ the supreme court held that summary judgment is inappropriate where the movant is protected by qualified official immunity subject to a good faith requirement and the nonmovant presents some admissible evidence that the official acted in bad faith.¹⁴⁸ Giani, an independent care coordinator for the State Department of Health and Social Services, filed a Report of Harm (the “Report”) against Hill, the owner of an assisted living home for mentally handicapped adults, alleging various forms of abuse.¹⁴⁹ However, while an investigation into the Report revealed that some allegations contained therein were valid, there was no evidence to substantiate the abuse allegations.¹⁵⁰ Subsequently, Hill filed suit against Giani alleging defamation and various other claims.¹⁵¹ The lower court granted summary judgment for Giani on the basis of statutory immunity.¹⁵² On appeal, Giani argued that the investigation proved the validity of some of the allegations and, in turn, demonstrated Giani’s good faith in filing the report.¹⁵³ The supreme court reversed the lower court’s decision, reasoning that the investigation was not relevant to the issue of Giani’s personal good faith in filing the Report.¹⁵⁴ The court further reasoned that Hill provided some admissible evidence that could show bad faith by Giani in filing the Report.¹⁵⁵ Reversing the lower court’s decision, the supreme court held that summary judgment is inappropriate where the movant is protected by qualified official immunity subject to a good faith requirement and the nonmovant provides some admissible evidence of bad faith.¹⁵⁶

Patterson v. Infinity Insurance Co.

In *Patterson v. Infinity Insurance Co.*,¹⁵⁷ the supreme court held that a claim mentioned but not explicitly asserted as a claim in one lawsuit sometimes may not be barred by res judicata in a second suit.¹⁵⁸ In 2008, Patterson sued Infinity Insurance Co. (“Infinity”), claiming that they acted in bad faith by failing to timely pay some of Patterson’s medical bills after a car accident.¹⁵⁹ The lower court granted Infinity’s motion for summary judgment but noted that the embezzlement claim that Patterson’s complaint mentioned did not relate to the underlying claims and, consequently, would not be considered.¹⁶⁰ Six months later, Patterson filed a new suit that specifically included the embezzlement claim.¹⁶¹ On appeal, Infinity argued that Patterson’s new

¹⁴⁷ 296 P.3d 14 (Alaska 2013).

¹⁴⁸ *Id.* at 25–26.

¹⁴⁹ *Id.* at 16, 18.

¹⁵⁰ *Id.* at 18–19.

¹⁵¹ *Id.* at 19.

¹⁵² *Id.*

¹⁵³ *Id.* at 27.

¹⁵⁴ *Id.* 27–28.

¹⁵⁵ *Id.* at 28.

¹⁵⁶ *Id.* 25–26.

¹⁵⁷ 303 P.3d 493 (Alaska 2013).

¹⁵⁸ *Id.* at 498–99.

¹⁵⁹ *Id.* at 495–96.

¹⁶⁰ *Id.* at 496.

¹⁶¹ *Id.*

suit was barred by res judicata.¹⁶² The supreme court reversed the lower court's decision, reasoning that Patterson's embezzlement claim dealt with a distinct harm from that alleged in the first suit.¹⁶³ It was distinct because although there would be some overlapping evidence, the new claim did not stem from conduct resulting from the car accident.¹⁶⁴ Reversing the lower court's decision, the supreme court held that a claim mentioned but not explicitly asserted as a claim in one lawsuit sometimes may not be barred by res judicata in a second suit.¹⁶⁵

Jackson v. Sey

In *Jackson v. Sey*,¹⁶⁶ the supreme court held that a post-judgment motion for relief from judgment is not subject to dismissal for lack of prosecution under Rule 41(e).¹⁶⁷ In 2008, the lower court granted a divorce to Sey and her husband Jackson after Jackson failed to appear at a hearing telephonically from jail.¹⁶⁸ Jackson subsequently filed a motion for relief from judgment, which would relieve him of the issued divorce obligations.¹⁶⁹ While the lower court allowed limited discovery into the issue, the court ultimately dismissed the motion for lack of prosecution.¹⁷⁰ On appeal, Jackson argued the lower court erred in not considering the merits of his aforementioned motion.¹⁷¹ The supreme court reversed the lower court's decision, reasoning that lack of prosecution under Rule 41(e) only applies to pending cases.¹⁷² Thus, according to the court, since a final judgment was entered, there could be no lack of prosecution of a pending case.¹⁷³ Reversing the lower court's decision, the supreme court held that a post-judgment motion for relief from judgment is not subject to dismissal for lack of prosecution under Rule 41(e).¹⁷⁴

Schultz v. Wells Fargo Bank, N.A.

In *Schultz v. Wells Fargo Bank, N.A.*,¹⁷⁵ the supreme court held that only a favorable verdict, not the most desired verdict, is necessary to be the prevailing party entitled to attorneys' fees under Alaska Civil Rule 82.¹⁷⁶ The Trust Advisory Committee (the "Committee") sought information on its property insurance premiums and coverage from its trustee, Wells Fargo Bank, N.A. ("Wells Fargo").¹⁷⁷ Unsatisfied with Wells Fargo's responses, the Committee petitioned the lower court for relief and its attorneys' fees, arguing that by failing to provide requested

¹⁶² *Id.* at 497.

¹⁶³ *Id.* at 498–99.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ 315 P.3d 674 (Alaska 2013).

¹⁶⁷ *Id.* at 677.

¹⁶⁸ *Id.* at 675.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 676.

¹⁷¹ *Id.* at 677.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 677.

¹⁷⁵ 301 P.3d 1237 (Alaska 2013).

¹⁷⁶ *Id.* at 1241–42.

¹⁷⁷ *Id.* at 1239.

information, Wells Fargo breached its fiduciary duty.¹⁷⁸ The lower court ultimately found that neither party had clearly prevailed in the action and, consequently, did not award the Committee its attorneys' fees.¹⁷⁹ On appeal, the Committee argued that the lower court misinterpreted Alaska Civil Rule 82.¹⁸⁰ The supreme court reversed the lower court's decision, reasoning that the prevailing party in a civil suit was the party who received a favorable verdict on the case's main issue.¹⁸¹ Here, since the Committee successfully obtained a court order compelling Wells Fargo to fulfill its fiduciary obligations by surrendering the insurance policy as well as half of the Committee's requested documents, it was the prevailing party entitled to attorneys' fees.¹⁸² Reversing the lower court's decision, the supreme court held that only a favorable verdict is necessary to be the prevailing party entitled to attorneys' fees under Alaska Civil Rule 82.¹⁸³

Steven v. Nicole

In *Steven v. Nicole*,¹⁸⁴ the supreme court held that a court does not abuse its discretion in refusing to cede jurisdiction as an inconvenient forum in a visitation dispute under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") if it provides sufficient reasoning to infer that it considered the relevant statutory factors.¹⁸⁵ Following the couple's divorce in 2004, and in contravention of Nicole's visitation rights, Steven refused to allow Nicole to take the children from Tennessee in May 2012.¹⁸⁶ Nicole filed a motion in Alaska to enforce her visitation rights but failed to pass a timely drug test in order to get custody of the children.¹⁸⁷ The lower court held that Nicole could enforce her rights over Christmas if she passed a drug test one month in advance.¹⁸⁸ On appeal, Steven claimed that the lower court should have voluntarily ceded jurisdiction as an inconvenient forum to Tennessee.¹⁸⁹ The supreme court affirmed the lower court's decision, reasoning that a court must articulate why a motion for inconvenient forum was denied under the UCCJEA by use of the established statutory factors.¹⁹⁰ Thus, according to the court, the lower court's explanation, while not explicitly referring to the aforementioned factors, was satisfactory because it demonstrated that the factors had been considered.¹⁹¹ Affirming the lower court's decision, the supreme court held that a court does not abuse its discretion in refusing to grant an inconvenient forum motion in a visitation dispute under the UCCJEA if it provides sufficient reasoning to infer that it considered the relevant statutory factors.¹⁹²

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 1242.

¹⁸² *Id.* at 1243.

¹⁸³ *Id.* at 1241–42.

¹⁸⁴ 308 P.3d 875 (Alaska 2013).

¹⁸⁵ *Id.* at 884.

¹⁸⁶ *Id.* at 878.

¹⁸⁷ *Id.* at 878–79.

¹⁸⁸ *Id.* at 879.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 883–84.

¹⁹¹ *Id.* at 884.

¹⁹² *Id.*

CONSTITUTIONAL LAW

[Top](#) 🏠

Barber v. State, Dep't of Corrections

In *Barber v. State, Dep't of Corrections*,¹⁹³ the supreme court held that requiring a prisoner to pay filing fees in order to appeal a Department of Corrections (“DOC”) disciplinary proceeding is a denial of the prisoner’s due process rights when that prisoner has an actual inability to pay.¹⁹⁴ Barber sought judicial review of two DOC disciplinary proceedings.¹⁹⁵ His appeals were rejected because he was unable to pay even the reduced filing fee required by the court.¹⁹⁶ On appeal, Barber argued that the filing fee statute deprived him of his due process rights.¹⁹⁷ The supreme court reversed the lower court’s decision, reasoning that Barber had a due process interest in avoiding punitive segregation and in obtaining judicial review of his DOC proceedings.¹⁹⁸ The court further reasoned that without judicial review there was a significant risk of erroneous deprivation of his interests and that the state’s legitimate interest in reducing frivolous prisoner litigation did not justify denying Barber his due process right of access to courts.¹⁹⁹ Reversing the lower court’s decision, the supreme court held that it is a denial of due process to require a prisoner to pay filing fees that he is actually unable to afford.²⁰⁰

Blaufuss v. Ball

In *Blaufuss v. Ball*,²⁰¹ the supreme court held that due process rights are not violated by a decision based purely on non-expert testimony when proper notice is received and both parties have the opportunity to present their own evidence.²⁰² In 2006, Ball filed for divorce from Blaufuss.²⁰³ At trial, Ball stated that he had supported Blaufuss for a number of years while separated but argued that he should no longer be required to do so because of Blaufuss’ ability to hold a job as well as her drug abuse problems.²⁰⁴ Blaufuss’ sister, however, explained that Blaufuss suffered from a documented mental illness and was in dire economic straits but provided no supporting documentation.²⁰⁵ The trial court found that Blaufuss suffered from mental illness and chronic substance abuse, and, consequently, found her unemployable.²⁰⁶ Accordingly, Ball was ordered to pay Blaufuss spousal support.²⁰⁷ In 2010, after not receiving

¹⁹³ 314 P.3d 58 (Alaska 2013).

¹⁹⁴ *Id.* at 64–66.

¹⁹⁵ *Id.* at 63.

¹⁹⁶ *Id.* at 62.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 64–66, 69.

¹⁹⁹ *Id.* at 65–66.

²⁰⁰ *Id.* 66, 69.

²⁰¹ 305 P.3d 281 (Alaska 2013).

²⁰² *Id.* at 287.

²⁰³ *Id.* at 283.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 284.

²⁰⁷ *Id.*

her payments, Blaufuss moved to find Ball in contempt of court.²⁰⁸ In response, Ball argued he had been deprived of due process at the divorce trial because the trial court made its decision without any financial or medical documentation supporting Blaufuss' allegations.²⁰⁹ The lower court agreed with Ball's due process argument.²¹⁰ The supreme court reversed the lower court's decision, reasoning that because Ball had received proper notice of the issues to be decided at trial and, furthermore, was not barred from presenting his own evidence at trial, his due process rights were not violated by the trial court's ruling.²¹¹ Reversing the lower court's decision, the supreme court held that due process rights are not violated by a ruling based purely on non-expert testimony when proper notice is received and both parties have the opportunity to present their own evidence.²¹²

Debra P. v. Laurence S.

In *Debra P. v. Laurence S.*,²¹³ the supreme court held that changing a child custody hearing to a final trial without proper notice violates due process.²¹⁴ Debra P. and Laurence S. were in dispute over who should have legal and physical custody of their child.²¹⁵ The lower court judge ordered an evidentiary hearing on September 21 for an interim order, allowing Debra P. and Laurence S. more time to work towards a settlement.²¹⁶ However, at the September 21 hearing, the court granted Laurence S. custody and announced that its order would be final.²¹⁷ On appeal, Debra P. argued that the lower court denied her the opportunity to fully present her case by changing the hearing to a final custody trial without giving proper, prior notice.²¹⁸ The supreme court reversed the lower court's decision, reasoning that procedural due process required that parties receive proper, prior notice in custody hearings.²¹⁹ Here, the lower court's comments would have led most people to believe only interim custody would be determined at the September 21 hearing and the lower court only told the parties its intention to make a final ruling after both parties had made their presentations.²²⁰ Reversing the lower court's decision, the supreme court held that changing a child custody hearing to a final trial without proper notice violates due process.²²¹

DesJarlais v. State, Office of the Lieutenant Governor

In *DesJarlais v. State, Office of the Lieutenant Governor*,²²² the supreme court held that the lieutenant governor properly refuses to certify a citizen-proposed initiative when it is clearly

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 284.

²¹⁰ *Id.* at 284–85.

²¹¹ *Id.* at 287.

²¹² *Id.* at 287.

²¹³ 309 P.3d 1258 (Alaska 2013).

²¹⁴ *Id.* at 1261.

²¹⁵ *Id.* at 1259.

²¹⁶ *Id.* at 1259–60.

²¹⁷ *Id.* at 1260.

²¹⁸ *Id.* at 1261.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² 300 P.3d 900 (Alaska 2013).

unconstitutional.²²³ DesJarlais submitted an initiative to the Office of the Lieutenant Governor that would result in a general ban on abortion.²²⁴ The Lieutenant Governor consulted the Department of Law and concluded that the initiative was unconstitutional and therefore did not circulate it.²²⁵ DesJarlais then filed a complaint in the lower court.²²⁶ The lower court granted summary judgment to the State because a law banning abortion was clearly unconstitutional under controlling federal and state precedents.²²⁷ On appeal, DesJarlais argued that *Roe v. Wade* was not controlling precedent and that the Alaska Constitution required the State to protect the natural rights of all people, including preborn children.²²⁸ The supreme court affirmed the lower court's decision, reasoning that the initiative was clearly unconstitutional under controlling federal and state precedents.²²⁹ Accordingly, stated the court, the lieutenant governor could not act against an established constitutional right and therefore properly denied to circulate the initiative.²³⁰ Affirming the lower court's decision, the supreme court held that the lieutenant governor properly refuses to certify a citizen-proposed initiative when it is clearly unconstitutional.²³¹

Heller v. Dep't of Revenue

In *Heller v. Dep't of Revenue*,²³² the supreme court held that the six-month residency requirements necessary to be eligible for the Permanent Fund Dividend ("PFD") cannot be circumvented even when absence is involuntary.²³³ In 2005, Heller, a military member, was posted in Alaska and subsequently took several steps to establish residency.²³⁴ Following deployment on August 14, 2005, he did not return to Alaska until December 11, 2006.²³⁵ In 2007, Heller applied for a PFD but was denied for failing to satisfy the six consecutive month residency requirement.²³⁶ On appeal, Heller argued that his deployment was an "allowable absence" under the eligibility requirements.²³⁷ The supreme court affirmed the lower court's decision, reasoning that Heller's interpretation ran contrary to both the plain language of the statute as well as its underlying legislative intent.²³⁸ Because the legislature sought to prevent potential abuses of the PFD by those with no intention of becoming permanent residents of Alaska, the court concluded that the residency requirements could not be circumvented even

²²³ *Id.* at 901.

²²⁴ *Id.*

²²⁵ *Id.* at 901–902.

²²⁶ *Id.* at 902.

²²⁷ *Id.*

²²⁸ *Id.* at 903, 905.

²²⁹ *Id.* at 904.

²³⁰ *Id.* at 905–906.

²³¹ *Id.* at 901.

²³² 314 P.3d 69 (Alaska 2013).

²³³ *Id.* at 84.

²³⁴ *Id.* at 72.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.* at 74.

²³⁸ *Id.* at 74–77.

when absence from the state was involuntary.²³⁹ The court further reasoned that the eligibility requirements were constitutional because they facilitated the State's interest in ensuring that only bona fide residents received PFD payments.²⁴⁰ Affirming the lower court's decision, the supreme court held that the six-month residency requirements necessary to be eligible for the Permanent Fund Dividend ("PFD") cannot be circumvented even when absence is involuntary.²⁴¹

Moore v. State

In *Moore v. State*,²⁴² the court of appeals held that the State's sexual abuse statute criminalizing sexually enticing minors online is constitutional.²⁴³ Moore was convicted of online enticement of a minor under the sexual abuse statute after he asked two chat room participants, police officers posing as fourteen-year-old girls, to masturbate for him.²⁴⁴ Moore appealed his conviction, arguing that the online enticement statute was unconstitutional because it restricted free speech.²⁴⁵ The statute forbids an adult from enticing, soliciting or encouraging either a child under age sixteen or a person that the offender believes is under age sixteen from engaging in sexual activities with him or her.²⁴⁶ The court of appeals affirmed the lower court's decision, reasoning that speech restrictions must be narrowly tailored to serve a compelling government interest.²⁴⁷ Here, the State has a compelling interest in protecting minors from online sexual predators.²⁴⁸ Furthermore, the statute is not overbroad because it requires the State to prove that the offender intended to cause the child to engage in sexual conduct.²⁴⁹ Affirming the lower court's decision, the court of appeals held that the State's sexual abuse statute criminalizing sexually enticing minors online is constitutional.²⁵⁰

Patrick v. Municipality of Anchorage

In *Patrick v. Municipality of Anchorage*,²⁵¹ the supreme court held that due process does not always require a full pre-revocation hearing when an informal opportunity to respond to allegations is presented prior to a license revocation.²⁵² After Patrick, a taxi-driver, was cited for driving with a suspended license, she repeatedly communicated with the transportation inspector charged with investigating the violation, arguing that she was not driving the vehicle that night.²⁵³ Nevertheless, the transportation inspector revoked her chauffeur license based on his classification of her as a chronic violator.²⁵⁴ Patrick requested a hearing where her license

²³⁹ *Id.*

²⁴⁰ *Id.* at 82.

²⁴¹ *Id.* at 84.

²⁴² 298 P.3d 209 (Alaska Ct. App. 2013).

²⁴³ *Id.* at 211.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.* at 212–13.

²⁴⁷ *Id.* at 214.

²⁴⁸ *Id.* at 213.

²⁴⁹ *Id.*

²⁵⁰ *Id.* at 219.

²⁵¹ 305 P.3d 292 (Alaska 2013).

²⁵² *Id.* at 300.

²⁵³ *Id.* at 297.

²⁵⁴ *Id.* at 296–97.

revocation was reaffirmed.²⁵⁵ On appeal, Patrick argued that her due process rights were violated because her license was revoked prior to a hearing.²⁵⁶ The supreme court affirmed the lower court's decision, reasoning that Patrick's conversations with the transportation satisfied due process in this instance by giving her sufficient notice that her license was going to be revoked as well as an opportunity to respond to the evidence against her.²⁵⁷ Affirming the lower court's decision, the supreme court held that due process does not always require a full pre-revocation hearing when an informal opportunity to respond to allegations is presented prior to a license revocation.²⁵⁸

State v. Doe A

In *State v. Doe A*,²⁵⁹ the supreme court held that decisions by two-to-one majorities of the supreme court prior to November 10, 2010, have precedential effect because Appellate Rule 106(b) does not apply retroactively.²⁶⁰ In 2008, the supreme court held in a two-to-one decision that amendments made in 1998 by the Alaska Legislature to Alaska's Sex Offender Registration Act ("ASORA") violated the State's Ex Post Facto Clause and, accordingly, could not apply to individuals who committed their crimes before those amendments became effective.²⁶¹ On November 10, 2010, Appellate Rule 106(b) was promulgated, providing that two-to-one decisions of the supreme court did not have precedential effect.²⁶² John Doe A and John Doe B were convicted prior to the 1998 amendments of separate crimes requiring them to register and comply with ASORA.²⁶³ After Appellate Rule 106(b) was promulgated, they challenged the application of the 1998 amendments to them on the same Ex Post Facto grounds.²⁶⁴ On appeal, the State argued that Appellate Rule 106(b) should be given retroactive effect, thus eliminating the precedential value of the 2008 case, because it was a procedural rule and because its post-adoption history demonstrated retroactivity was intended.²⁶⁵ The supreme court affirmed the lower court's decision, reasoning that Appellate Rule 106(b) was substantive since retroactively eliminating two-to-one decisions as precedent would eliminate rights created by those decisions, implicate public policy decisions and affect the results of future litigants' cases.²⁶⁶ The supreme court further reasoned that the post-adoption history did not clearly indicate an express intent of retroactive application.²⁶⁷ Affirming the lower court's decision, the supreme court held that decisions by two-to-one majorities of the supreme court prior to Appellate Rule 106(b)'s promulgation have precedential effect.²⁶⁸

²⁵⁵ *Id.* at 297.

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 300.

²⁵⁸ *Id.*

²⁵⁹ 297 P.3d 885 (Alaska 2013).

²⁶⁰ *Id.* at 886.

²⁶¹ *Id.*

²⁶² *Id.* at 888.

²⁶³ *Id.* at 886.

²⁶⁴ *Id.* at 885–86.

²⁶⁵ *Id.* at 889.

²⁶⁶ *Id.* at 890.

²⁶⁷ *Id.* at 891.

²⁶⁸ *Id.* at 886.

Sullivan v. Resisting Env'tl. Destruction on Indigenous Lands

In *Sullivan v. Resisting Env'tl. Destruction on Indigenous Lands*,²⁶⁹ the supreme court held that land development statutes limiting the State's evaluation duty to only a single best interest finding (a "BIF") are constitutional.²⁷⁰ In evaluating the Beaufort Sea Lease Sale Area for potential development, the Department of Natural Resources (the "Department") issued a single BIF in favor of disposing of the land beginning with a phase of lease sales.²⁷¹ The Department's actions were pursuant to a recently amended statute that permitted the State to evaluate the environmental, cultural and communal effects of developing land only so far as this first phase of leasing was concerned.²⁷² Subsequently, Resisting Environmental Destruction on Indigenous Lands ("REDOIL") successfully petitioned the lower court, arguing that the statute was unconstitutional because it did not require subsequent BIFs at each phase of develop.²⁷³ On appeal, the Department argued that the lower court erred in finding that the statute contravened the Alaska Constitution.²⁷⁴ The supreme court reversed the lower court's decision, reasoning that under the Alaska Constitution the Department's only duty was to maximize the benefit to Alaskans in developing the State's resources.²⁷⁵ Thus, according to the court, since BIFs were mere legislative conventions to achieve this end, the legislature had broad, constitutional discretion to limit them to the first phase of development.²⁷⁶ Reversing the lower court's decision, the supreme court held that land development statutes limiting the State's evaluation duty to only a single BIF are constitutional.²⁷⁷

Titus v. State, Dep't of Administration

In *Titus v. State, Dep't of Administration*,²⁷⁸ the supreme court held that suspending a driver's license for failure to carry liability insurance after involvement in a single-vehicle accident was not a violation of equal protection, substantive due process or procedural due process.²⁷⁹ In 2008, Titus was involved in a single motorcycle accident, resulting in minor personal injuries and damage to his motorcycle.²⁸⁰ Titus told the responding officer that he had insurance coverage.²⁸¹ However, the Department of Motor Vehicles ("DMV") subsequently notified Titus, who in fact did not have insurance, that his license would be suspended for ninety days after failing to provide proof of insurance within fifteen days of the accident.²⁸² The DMV hearing officer ultimately suspended Titus' license and the lower court upheld this decision.²⁸³ On appeal, Titus

²⁶⁹ 311 P.3d 625 (Alaska 2013).

²⁷⁰ *Id.* at 637.

²⁷¹ *Id.* at 626.

²⁷² *Id.* at 627.

²⁷³ *Id.* at 628.

²⁷⁴ *Id.* at 632.

²⁷⁵ *Id.* at 633.

²⁷⁶ *Id.*

²⁷⁷ *Id.* at 637.

²⁷⁸ 305 P.3d 1271 (Alaska 2013).

²⁷⁹ *Id.* at 1283.

²⁸⁰ *Id.* at 1274.

²⁸¹ *Id.*

²⁸² *Id.* at 1276.

²⁸³ *Id.*

argued that the suspension was a violation of equal protection as well as substantive and procedural due processes.²⁸⁴ The supreme court affirmed the lower court's decision, noting that the purpose of the proof-of-insurance statute was to discover and deter uninsured driving.²⁸⁵ The court reasoned that there was no equal protection issue because all drivers were required to have insurance.²⁸⁶ The court further reasoned that substantive and procedural due processes were not violated as the failure to carry liability insurance was related to a person's fitness to drive.²⁸⁷ Affirming the lower court's decision, the supreme court held that suspending a driver's license for failure to carry liability insurance in a single-vehicle accident was not a violation of equal protection, substantive due process or procedural due process.²⁸⁸

CONTRACT LAW

[Top](#) 🏠

Brooks v. Hollaar

In *Brooks v. Hollaar*,²⁸⁹ the supreme court held that the named payee on a promissory note has an economic interest in repayment and thus has standing to sue to collect on the loan regardless of the loan's proceeds origination.²⁹⁰ Between 2005 and 2006, Hollaar loaned \$266,430 to Brooks and his wife in a series of four promissory notes.²⁹¹ Initially, the money for the loans belonged to Hollaar's father, mother and sister.²⁹² They transferred the funds into Hollaar's bank account and he then transferred the funds to Brooks.²⁹³ Brooks failed to repay the loans within the notes' allotted time frames and Hollaar filed suit in 2009 in order to recover his losses.²⁹⁴ The lower court entered judgment in Hollaar's favor on all four promissory notes.²⁹⁵ On appeal, Brooks argued that because the money for the loans did not originate from Hollaar's bank account, he had no economic interest in the performance of the notes and could only sue for nominal damages, not full contract damages.²⁹⁶ The supreme court affirmed the lower court's decision, reasoning that Hollaar's economic interest arose from his status as named payee on the promissory notes.²⁹⁷ The court further reasoned that Brooks' contention was irrelevant because Hollaar was the funds transferor for all four notes as well.²⁹⁸ Affirming the lower court's decision, the supreme court held that the named payee on a promissory note has an economic interest in repayment and thus has standing to sue to collect on the loan.²⁹⁹

²⁸⁴ *Id.*

²⁸⁵ *Id.* at 1278.

²⁸⁶ *Id.* at 1277.

²⁸⁷ *Id.* at 1280.

²⁸⁸ *Id.* at 1283.

²⁸⁹ 297 P.3d 125 (Alaska 2013).

²⁹⁰ *Id.* at 128.

²⁹¹ *Id.* at 127.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.* at 128.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

Calais Company, Inc. v. Ivy

In *Calais Company, Inc. v. Ivy*,³⁰⁰ the supreme court held that appraisers must comply with appraisal provisions in a settlement agreements.³⁰¹ Calais Company (the “Company”) and shareholder Ivy reached a settlement agreement in which the Company would buy Ivy’s shares at a value to be determined by a panel of three appraisers.³⁰² The three appraisers differed in their valuations, two ignoring liabilities and just calculating the fair market value of the Company.³⁰³ On appeal, the Company argued that the two aforementioned appraisers’ valuations did not comply with the settlement agreement.³⁰⁴ The supreme court reversed the lower court’s decision, reasoning that the settlement agreement contained plain language that the Company’s value was to be determined in accordance with Alaska Statute 10.06.630(a).³⁰⁵ Thus, according to the court, the two appraisers’ valuations did not comply with the settlement agreement because liquidation costs should have been considered when determining this value.³⁰⁶ Reversing the lower court’s decision, the supreme court held that appraisers must comply with appraisal provisions in a settlement agreements.³⁰⁷

Charles v. Stout

In *Charles v. Stout*,³⁰⁸ the supreme court held that a passenger is not an intended third party beneficiary of an insurance policy provided by a lender to protect the property that secures their loan.³⁰⁹ Charles was injured in a car accident where he was the passenger in Stout’s car.³¹⁰ In addition to suing Stout, Charles also sued Credit Union 1, the lender and lienholder for the vehicle.³¹¹ The loan agreement between Credit Union 1 and Stout provided that Stout would maintain liability insurance but Credit Union 1 would have the right to obtain insurance if Stout failed to do so.³¹² The agreement further stated that any insurance procured by Credit Union 1 would be primarily to protect Credit Union 1 rather than Stout.³¹³ On appeal, Stout argued that he was an intended third party beneficiary of the insurance policy that Credit Union 1 contracted to provide and he is therefore entitled to recover under that policy.³¹⁴ The supreme court affirmed the lower court’s decision, reasoning that there was no written agreement compelling Credit Union 1 to provide liability coverage for the benefit of Stout.³¹⁵ The court further reasoned that

³⁰⁰ 303 P.3d 410 (Alaska 2013).

³⁰¹ *Id.* at 420.

³⁰² *Id.* at 411.

³⁰³ *Id.* at 412–13, 418.

³⁰⁴ *Id.* at 417.

³⁰⁵ *Id.* at 418.

³⁰⁶ *Id.*

³⁰⁷ *Id.* at 420.

³⁰⁸ 308 P.3d 1138 (Alaska 2013).

³⁰⁹ *Id.*

³¹⁰ *Id.* at 1139.

³¹¹ *Id.*

³¹² *Id.* at 1141.

³¹³ *Id.*

³¹⁴ *Id.* at 1141.

³¹⁵ *Id.*

there was no evidence Charles was an intended third party beneficiary of the aforementioned coverage.³¹⁶ Affirming the lower court's decision, the supreme court held that a passenger is not an intended third party beneficiary of an insurance policy provided by a lender to protect the property that secures their loan.³¹⁷

Fernandez v. Fernandez

In *Fernandez v. Fernandez*,³¹⁸ the supreme court held that, if so provided by the terms of a settlement agreement, parties can return to "square one" after being unable to, in good faith, fulfill the antecedent terms of the agreement.³¹⁹ After David and Cynthia separated, they reached a settlement where Cynthia would pay David \$33,000 through a second mortgage on her home.³²⁰ However, if Cynthia could not obtain the mortgage, the parties would negotiate an alternative payment plan in good faith; if no agreement resulted, they would return to "square one" and figure things out from that point.³²¹ When this point was reached, the lower court imposed settlement terms upon Cynthia instead of allowing her to return to "square one."³²² On appeal, she argued the lower court had no authority to do that because the parties merely agreed to negotiate, not agree.³²³ The supreme court reversed the lower court's decision, reasoning that in an agreement to negotiate, parties retained the right to refuse proposed terms.³²⁴ In their settlement, Cynthia and David had not established a specific negotiation process, method of settling disputes or agreed a court could dictate settlement terms.³²⁵ Reversing the lower court's decision, the supreme court held that under the parties' settlement agreement, a party could return to "square one" after being unable to, in good faith, fulfill the antecedent terms of the agreement.³²⁶

Hussein-Scott v. Scott

In *Hussein-Scott v. Scott*,³²⁷ the supreme court held that the more important or principal clause controls in determining the meaning of an ambiguous divorce settlement agreement.³²⁸ Jerry Scott and Camilla Hussein-Scott dissolved their marriage and the court adopted by reference a form settlement completed by Jerry and reviewed by Camilla.³²⁹ On the line supposedly designating the end date for spousal support payments, Jerry indicated that payment would end on December 2, 2020, which was the eighteenth birthday of the couple's youngest daughter.³³⁰

³¹⁶ *Id.* at 1142.

³¹⁷ *Id.*

³¹⁸ 312 P.3d 1098 (Alaska 2013).

³¹⁹ *Id.* at 1104.

³²⁰ *Id.* at 1099–1100.

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.* at 1104.

³²⁵ *Id.*

³²⁶ *Id.* at 1105.

³²⁷ 298 P.3d 179 (Alaska 2013).

³²⁸ *Id.* at 180.

³²⁹ *Id.*

³³⁰ *Id.* at 181.

On a subsequent line designated for other specifics, Jerry indicated that payment would end on the couple's middle daughter's birthday, which was August 1, 2015.³³¹ The lower court reasoned that words should prevail over numbers and held that Jerry's obligation to pay spousal support ended on the eighteenth birthday of the middle daughter.³³² On appeal, Jerry argued that the lower court's factual finding that he was less likely to make an error in writing a child's name than in writing the date of a child's birthday should be given deference.³³³ The supreme court reversed the lower court's decision, reasoning that the determination of the lower court was not factual and that the principle that words control over numbers did not apply here because it only applies to contracts that resemble commercial agreements.³³⁴ The court further reasoned that the written date was both more important because of its location on the form and because it appeared first on the form.³³⁵ Reversing the lower court's decision, the supreme court held that the more important or principal clause controls in determining the meaning of an ambiguous divorce settlement agreement.³³⁶

Madonna v. Tamarack Air, Ltd.

In *Madonna v. Tamarack Air, Ltd.*,³³⁷ the supreme court held that an airplane maintenance company does not have a contractual duty to repair a plane that was damaged on its airfield after completion of a routine maintenance inspection.³³⁸ Madonna brought his airplane to Tamarack Air, Ltd. ("Tamarack") for a routine inspection, after which Tamarack damaged the plane while it sat on the company's airfield.³³⁹ Offering to repair the plane, Tamarack estimated the costs with Madonna, who rejected their offer in favor of personally arranging the repairs.³⁴⁰ On appeal, Madonna challenged the lower court's entry of summary judgment dismissing his claim that Tamarack had a contractual obligation to repair the damage it caused.³⁴¹ The supreme court affirmed the lower court's decision, reasoning that since Madonna had brought his plane to Tamarack for maintenance, it only had a contractual duty to fix problems arising during the inspection.³⁴² The inspection had been completed before the damage occurred, so no such obligation to repair that damage existed.³⁴³ Furthermore, having rejected Tamarack's repair offer, Madonna could not reasonably argue it had breached a duty to repair, unless he also conceded that Tamarack had to continually submit repair plans until he was satisfied, which would be an unenforceable contractual duty because of its indefinite and uncertain terms.³⁴⁴ Affirming the lower court's decision, the supreme court held that an airplane maintenance company does not

³³¹ *Id.*

³³² *Id.*

³³³ *Id.* at 184.

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.* at 180.

³³⁷ 298 P.3d 875 (Alaska 2013).

³³⁸ *Id.* at 879.

³³⁹ *Id.* at 877.

³⁴⁰ *Id.*

³⁴¹ *Id.* at 879.

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ *Id.* at 879–80.

have a contractual duty to repair an airplane that was damaged on its airfield after completion of a routine maintenance inspection.³⁴⁵

Nautilus Marine Enters. v. Exxon Mobil Corp.

In *Nautilus Marine Enters. v. Exxon Mobil Corp.*,³⁴⁶ the supreme court held that extrinsic evidence is admissible for interpreting the meaning of the words of a contract even when the language is not ambiguous.³⁴⁷ In 2006, Nautilus Marine and Exxon Mobil entered into a Settlement Agreement originating from a prior lawsuit.³⁴⁸ The parties, however, could not agree whether the prejudgment interest should be a simple or compound rate.³⁴⁹ Nautilus' attorney subsequently suggested the parties settle the principal damages and allow the court to determine the proper prejudgment interest.³⁵⁰ The settlement agreement ultimately included language to the effect that interest would be "compounded annually."³⁵¹ Nevertheless, both parties agreed that there was no discussion about the meaning of "compounded annually."³⁵² On appeal, Nautilus argued that the parol evidence rule barred the court from considering extrinsic evidence for determining the meaning of the Settlement Agreement unless the language of the contract was ambiguous.³⁵³ The supreme court affirmed the lower court's decision, reasoning that the parol evidence rule only prohibited the enforcement of prior inconsistent agreements and that extrinsic evidence could be considered even when the language of the contract was not ambiguous.³⁵⁴ The court further reasoned that allowing for extrinsic evidence would allow the courts to better interpret the contract and, thus, better meet the reasonable expectations of the parties at the time the contract was formed.³⁵⁵ Affirming the lower court's decision, the supreme court held that extrinsic evidence is admissible for interpreting the meaning of the words of a contract even when the language is not ambiguous.³⁵⁶

North Pacific Directors, Inc. v. Dep't of Administration

In *North Pacific Directors, Inc. v. Dep't of Administration*,³⁵⁷ the supreme court held that a contractor is not entitled to additional compensation due to differing site conditions when the differing site conditions could have been noticed during contractor inspections.³⁵⁸ The Alaska Department of Administration ("Department") and North Pacific contracted for a renovation, including asbestos removal, of the Juneau State Office Building.³⁵⁹ North Pacific's contract

³⁴⁵ *Id.* at 879.

³⁴⁶ 305 P.3d 309 (Alaska 2013).

³⁴⁷ *Id.* at 316.

³⁴⁸ *Id.* at 312.

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.* at 313.

³⁵² *Id.*

³⁵³ *Id.* at 315–16.

³⁵⁴ *Id.* at 316.

³⁵⁵ *Id.* at 317.

³⁵⁶ *Id.* at 316.

³⁵⁷ 2013 WL 4768380 (Alaska Sept. 6, 2013).

³⁵⁸ *Id.* at *10.

³⁵⁹ *Id.* at *1.

acknowledged that they were responsible for visiting and carefully examining the site.³⁶⁰ Nevertheless, North Pacific did not visit the site before they began the contract's work.³⁶¹ Later, it requested additional compensation for the asbestos removal, claiming the site's conditions differed from what was outlined in the contract, which caused the company to incur additional costs in fulfilling its obligations.³⁶² The Department denied the differing site conditions claim.³⁶³ North Pacific subsequently filed a claim against the Department, asserting that the Department had a duty to disclose superior knowledge of the site's conditions.³⁶⁴ The supreme court affirmed the lower court's decision, stating that no such duty existed.³⁶⁵ Therefore, according to the court, North Pacific's claim must fail due to their failure to investigate the site.³⁶⁶ Affirming the lower court's decision, the supreme court held that a contractor is not entitled to additional compensation due to differing site conditions when the differing site conditions could have been noticed during contractor inspections.³⁶⁷

Weilbacher v. Ring

In *Weilbacher v. Ring*,³⁶⁸ the supreme court held that contracts to transfer privilege are not unenforceable simply because a third party must approve the transfer before the transferee can enjoy the privilege's benefits.³⁶⁹ Weilbacher brought action against Ring, a purchaser of one of his lots, seeking rescission of the sale based on a mutual mistake concerning which boat-tie ups were associated with each of his lots.³⁷⁰ As the right to some of the tie-ups in question had been subsequently re-sold to Berube, a third party whom Weilbacher had failed to join as a defendant, the court ordered Weilbacher to join Berube as an indispensable party.³⁷¹ Weilbacher declined.³⁷² Asserting that Berube was necessary to provide relief to the parties, the lower court dismissed Weilbacher's claim.³⁷³ On appeal, Weilbacher argued that because the failure to gain approval by the homeowner's association had rendered the sales contract between him and Ring meaningless, Berube was not an indispensable party because Weilbacher had no claim against him.³⁷⁴ The supreme court affirmed the lower court's decision, reasoning that many types of privilege are subject to approval by third parties prior to sale.³⁷⁵ Nevertheless, according to the court, the initial sales contract here memorializing the privilege transfers were no less enforceable just because public agency approval was required before the parties could receive the full benefits of

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.* at *5

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.* at *10.

³⁶⁸ 296 P.3d 32 (Alaska 2013).

³⁶⁹ *Id.* at 38.

³⁷⁰ *Id.* at 34–35.

³⁷¹ *Id.* at 35.

³⁷² *Id.*

³⁷³ *Id.* at 36.

³⁷⁴ *Id.* at 38.

³⁷⁵ *Id.*

their contractual obligations.³⁷⁶ Affirming the lower court's decision, the supreme court held that contracts to transfer privilege are not unenforceable simply because a third party must approve the transfer.³⁷⁷

CRIMINAL LAW

[Top](#) ▲

Bottcher v. State

In *Bottcher v. State*,³⁷⁸ the supreme court held a person does not need to be a chronic offender for a lifetime revocation of their driver's license to be proper.³⁷⁹ While intoxicated, Bottcher drove his vehicle off of the road, killing a thirteen year-old boy and just nearly missing his nine year-old brother.³⁸⁰ Bottcher was stopped by a witness to the accident but refused to return to the scene, deciding to drive in the opposite direction instead.³⁸¹ Following his subsequent arrest, it was determined that Bottcher had a blood-alcohol content of 0.237 at the time.³⁸² Among other punishments, the lower court ultimately revoked Bottcher's driver's license for life.³⁸³ On appeal, Bottcher argued that this lifetime revocation was excessive.³⁸⁴ The supreme court affirmed the lower court's decision, reasoning that it was the court's duty to determine whether the case at hand represented an extreme one where lifetime revocation was necessary to protect the public.³⁸⁵ Here, according to the court, the lower court was not clearly mistaken in determining that Bottcher's driver's license must be revoked for life to protect the public considering his current offense in conjunction with his long history of alcohol abuse.³⁸⁶ Affirming the lower court's decision, the supreme court held a person does not need to be a chronic offender for a lifetime revocation of their driver's license to be proper.³⁸⁷

Diorec v. State

In *Diorec v. State*,³⁸⁸ the court of appeals held that a probation condition must give constitutionally adequate notice of what is prohibited.³⁸⁹ Diorec was charged with and plead no contest to unlawful sexual exploitation of a minor for possessing tapes of his stepdaughter in various stages of undress.³⁹⁰ The lower court imposed several probation conditions on Diorec,

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ 300 P.3d 528 (Alaska 2013).

³⁷⁹ *Id.* at 533.

³⁸⁰ *Id.* at 529.

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ *Id.* at 533.

³⁸⁶ *Id.* at 534–35.

³⁸⁷ *Id.* at 533.

³⁸⁸ 295 P.3d 409 (Alaska Ct. App. 2013).

³⁸⁹ *Id.* at 412.

³⁹⁰ *Id.*

including a prohibition on possessing sexually explicit material.³⁹¹ On appeal, Diorec argued that prohibiting sexually explicit material possession was overbroad and unconstitutionally vague because it might restrict possession of sexually explicit adult material.³⁹² The court of appeals remanded the lower court's decision, reasoning that Diorec's probation condition failed to give Diorec adequate notice of what was actually prohibited.³⁹³ Thus, according to the court, since "sexually explicit material" was defined to include "pornography," a term that had been held to be unconstitutionally vague, the probation condition was unconstitutionally vague as well.³⁹⁴ Remanding the lower court's decision, the court of appeals held that a probation condition must give constitutionally adequate notice of what is prohibited.³⁹⁵

Flood v. State

In *Flood v. State*,³⁹⁶ the court of appeals held that a defendant does not have a constitutional right to waive his presence at trial.³⁹⁷ At trial, the judge denied Flood's request to be absent at his trial.³⁹⁸ On appeal, Flood argued the trial judge abused his discretion in denying this request.³⁹⁹ Flood reasoned that because a defendant has a constitutional right to be present at his trial, he must also have a right to waive this constitutional right.⁴⁰⁰ The court of appeals affirmed the lower court's decision, reasoning that a constitutional right is a positive grant insofar as it does not inherently provide a defendant with the opposite of that right.⁴⁰¹ Thus, having the right to be present at trial did not give Flood a constitutional right to waive his presence at trial.⁴⁰² Affirming the lower court's decision, the court of appeals held that there was no abuse of discretion since a defendant does not have a constitutional right to waive his presence at trial.⁴⁰³

George v. State

In *George v. State*,⁴⁰⁴ the court of appeals held that probationers are not awarded good time credit to for spending time at a halfway house under a condition of probation.⁴⁰⁵ George and Price were sentenced to various periods of probation as part of their convictions.⁴⁰⁶ On probation, both George and Price spent time at Glacier Manor, a halfway house.⁴⁰⁷ Subsequently, both violated their probations multiple times, had their probations revoked by the lower court and

³⁹¹ *Id.* at 416.

³⁹² *Id.*

³⁹³ *Id.* at 417.

³⁹⁴ *Id.*

³⁹⁵ *Id.* at 412.

³⁹⁶ 304 P.3d 1083 (Alaska Ct. App. 2013).

³⁹⁷ *Id.* at 1086.

³⁹⁸ *Id.* at 1085.

³⁹⁹ *Id.* at 1083.

⁴⁰⁰ *Id.* at 1085–86.

⁴⁰¹ *Id.* at 1086.

⁴⁰² *Id.*

⁴⁰³ *Id.* at 1085.

⁴⁰⁴ 307 P.3d 4 (Alaska Ct. App. 2013).

⁴⁰⁵ *Id.* at 6.

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.*

were ordered to serve the remainder of their sentences in jail.⁴⁰⁸ On appeal, George and Price argued that they should receive good time credit for their time spent at Glacier Manor.⁴⁰⁹ The court of appeals affirmed the lower court's decision, reasoning that the governing statute, by its very terms, only applied to prisoners spending time at a correctional facility.⁴¹⁰ In addition, the court found that, as a matter of policy, that prisoners and probationers have different incentives for good behavior and that the application of good time credit is the prisoner's, not probationer's, incentive for good behavior.⁴¹¹ Affirming the lower court's decision, the court of appeals held that probationers are not awarded good time credit to for spending time at a halfway house under a condition of probation.⁴¹²

Jarnig v. State

In *Jarnig v. State*,⁴¹³ the court of appeals held that a warrantless search of a closed container is invalid unless the container is both "immediately associated with the arrest and within the person's immediate control at the time of arrest."⁴¹⁴ In, 2006 the Anchorage police arrested Jarnig, the driver of a car they believed to have been stolen.⁴¹⁵ While Jarnig was in a patrol car following his arrest, an officer searched the alleged stolen car and found a black nylon bag wedged under the passenger's seat that contained drugs and drug paraphernalia.⁴¹⁶ Subsequently, Jarnig was charged with third-degree misconduct involving a controlled substance.⁴¹⁷ The lower court convicted Jarnig, holding that the police had the authority to search any container that was within the driver's reach at the time of the arrest.⁴¹⁸ On appeal, Jarnig argued that the search of the bag was illegal.⁴¹⁹ The court of appeals remanded the case back to the lower court, reasoning that the search was invalid because a warrantless search of a closed container will only be upheld as a search incident to arrest if the container was both within the person's immediate control at the time of arrest and immediately associated with that person.⁴²⁰ Thus, the lower court's analysis was incomplete.⁴²¹ Remanding the case back to the lower court, the court of appeals held that a warrantless search of a closed container is invalid unless the container is both "immediately associated with the arrest and within the person's immediate control at the time of arrest."⁴²²

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.* at 7.

⁴¹¹ *Id.*

⁴¹² *Id.*

⁴¹³ 309 P.3d 1270 (Alaska Ct. App. 2013).

⁴¹⁴ *Id.* at 1275.

⁴¹⁵ *Id.* at 1272.

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

⁴¹⁸ *Id.* at 1275.

⁴¹⁹ *Id.* at 1272.

⁴²⁰ *Id.* at 1275.

⁴²¹ *Id.*

⁴²² *Id.*

Joseph v. State

In *Joseph v. State*,⁴²³ the court of appeals held that mitigating factor (d)(9) under the state's presumptive sentencing regime is applicable to sentencing for perjury.⁴²⁴ Following a trial for a speeding ticket, the defendant was charged with perjury.⁴²⁵ A presumptive sentencing range applied to the defendant because she was a second felony offender.⁴²⁶ At trial, the defendant proposed mitigating factor (d)(9) among others.⁴²⁷ Mitigating factor (d)(9) requires sentencing mitigation where the conduct in question is among the least serious within the defined offense.⁴²⁸ The lower court reasoned that (d)(9) was inapplicable to sentencing for perjury because its classification as a class B felony indicated the legislature's decision that perjury was a serious offense.⁴²⁹ On appeal, the defendant argued that the ruling on (d)(9) was made in error.⁴³⁰ The court of appeals reversed the lower court's decision, reasoning while the designation as a class B felony was evidence of the legislature's decision that perjury was a serious offense, accepting the lower court's reasoning would result in every class B felony falling outside the scope of (d)(9).⁴³¹ However, according to the court, factor (d)(9)'s function remained consistent across all offenses, serious or not.⁴³² Reversing the lower court's decision, the court of appeals held that mitigating factor (d)(9) under the state's presumptive sentencing regime is applicable to sentencing for perjury.⁴³³

Knipe v. State

In *Knipe v. State*,⁴³⁴ the court of appeals held that, when the totality of the circumstances is properly weighed, it is not inappropriate to not refer sentencing to a statewide three-judge panel.⁴³⁵ Knipe pled guilty to sexual abuse of a minor in the first degree but requested that the issue of sentencing be referred to a statewide three-judge panel because he believed the presumptive sentence would be manifestly unjust as applied to him.⁴³⁶ The lower court denied this request.⁴³⁷ On appeal, Knipe argued that denial of his request for referral to the statewide three-judge panel was manifestly unjust because of his low cognitive abilities and his childhood history of sexual abuse and neglect.⁴³⁸ The court of appeals affirmed the lower court's decision, reasoning that the superior court appropriately focused their denial of Knipe's request on the totality of the circumstances, including the severity of the injury to the victim and Knipe's failure

⁴²³ 315 P.3d 678 (Alaska Ct. App. 2013).

⁴²⁴ *Id.* at 686.

⁴²⁵ *Id.* at 681.

⁴²⁶ *Id.* at 683.

⁴²⁷ *Id.*

⁴²⁸ *Id.*

⁴²⁹ *Id.* at 685.

⁴³⁰ *Id.* at 683.

⁴³¹ *Id.* at 685.

⁴³² *Id.* at 686.

⁴³³ *Id.*

⁴³⁴ 305 P.3d 359 (Alaska 2013).

⁴³⁵ *Id.* at 363.

⁴³⁶ *Id.* at 360.

⁴³⁷ *Id.*

⁴³⁸ *Id.* at 363.

to provide an assessment of his rehabilitation potential or recidivism risk.⁴³⁹ The court further reasoned that although Knipe’s cognitive ability and history of abuse presented legitimate factors, the lower court’s decision not to refer sentencing to the statewide three-judge panel was not clearly mistaken.⁴⁴⁰ Affirming the lower court’s decision, the court of appeals held that, when the totality of the circumstances is properly weighed, it is not inappropriate to not refer sentencing to a statewide three-judge panel.⁴⁴¹

Lewis v. State

In *Lewis v. State*,⁴⁴² the court of appeals held that walking away from a halfway house in a non-violent and temporary manner could constitute a mitigating factor for the offense of escape in the second degree.⁴⁴³ In 2010, Lewis was placed in Glenwood Center, a halfway house in Anchorage.⁴⁴⁴ Shortly after his arrival, Lewis, drunk at the time, wandered away from the house despite being told that he should not leave.⁴⁴⁵ Within twenty-four hours, Lewis called the police and turned himself in, claiming that his leaving was a big misunderstanding.⁴⁴⁶ Nevertheless, at his sentencing, the lower court refused to mitigate his sentence even though his escape was both temporary and nonviolent.⁴⁴⁷ On appeal, Lewis argued that the lower court erred in refusing to mitigate his sentence.⁴⁴⁸ The court of appeals reversed the lower court’s decision, finding the nature of his escape both nonviolent and temporary enough to warrant a mitigation of his sentence.⁴⁴⁹ The court reasoned that such mitigation was proper because Lewis’ escape “was among the least serious included in the offense” for which he was convicted.⁴⁵⁰ Reversing the lower court’s decision, the court of appeals held that walking away from a halfway house in a non-violent and temporary manner could constitute a mitigating factor for the offense of escape in the second degree.⁴⁵¹

Luckart v. State

In *Luckart v. State*,⁴⁵² the supreme court held that when a defendant’s sentencing is referred to a three judge panel because it has been determined that the presumptive sentence would be manifestly unjust, the panel has authority to expand the prisoner’s parole eligibility.⁴⁵³ After determining that sentencing Luckart within the presumptive range would be manifestly unjust,

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.* at 363.

⁴⁴² 312 P.3d 856 (Alaska Ct. App. 2013).

⁴⁴³ *Id.* at 859–60.

⁴⁴⁴ *Id.* at 857.

⁴⁴⁵ *Id.* at 858.

⁴⁴⁶ *Id.*

⁴⁴⁷ *Id.* at 859.

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.* at 859–60.

⁴⁵⁰ *Id.* at 860.

⁴⁵¹ *Id.* at 859–60.

⁴⁵² 314 P.3d 1226 (Alaska 2013).

⁴⁵³ *Id.* at 1238.

the lower court referred Luckart's case to a three-judge panel for sentencing.⁴⁵⁴ Although it sentenced him below the presumptive range, the panel determined it did not have authority to enhance Luckart's parole eligibility.⁴⁵⁵ On appeal, Luckart argued that the panel did have such authority.⁴⁵⁶ The supreme court reversed the panel's decision, reasoning that a sentence's presumptive nature alone was not determinative of the panel's authority to enhance parole eligibility.⁴⁵⁷ The court further stated that when the panel is referred a case governed by presumptive sentencing guidelines, the panel has the authority to enhance parole eligibility unless limited by a specific statutory provision.⁴⁵⁸ Reversing the panel's decision, the supreme court held that the three judge sentencing panel has authority to grant enhanced parole eligibility to defendants subject to presumptive sentences.⁴⁵⁹

Martin v. State

In *Martin v. State*,⁴⁶⁰ the court of appeals held that police may obtain evidence upon which to base a search warrant by walking up to a residence and peering inside through a small break in a closed set of blinds.⁴⁶¹ After tailing a group of individuals who had just purchased some materials often used in the production of methamphetamine, a police officer approached the apartment the group had just entered by way of a shared deck.⁴⁶² Upon reaching the window, the officer observed a small crack in the closed blinds and looked into the residence where he saw items used for making methamphetamine.⁴⁶³ The officer obtained a search warrant by telephone and then proceeded to arrest Martin and search the apartment.⁴⁶⁴ On appeal, Martin argued that the officer's search was unconstitutionally unreasonable.⁴⁶⁵ The court of appeals affirmed the lower court's decision, reasoning that although the closed blinds likely indicated both a desire for as well as a reasonable subjective belief of privacy, the weight of authority permitted the government to peer through such a hole.⁴⁶⁶ Thus, because the officer was able to peer through the hole with physical ease from a public vantage point, and was not conducting a mere fishing expedition, his search was lawful and not unreasonable.⁴⁶⁷ Affirming the lower court's decision, the court of appeals held that police may obtain evidence upon which to base a search warrant by walking up to a residence and peering inside through a small break in a closed set of blinds.⁴⁶⁸

⁴⁵⁴ *Id.* at 1228.

⁴⁵⁵ *Id.* at 1229.

⁴⁵⁶ *Id.*

⁴⁵⁷ *Id.* at 1238, 1230.

⁴⁵⁸ *Id.* at 1230–31.

⁴⁵⁹ *Id.* at 1238, 1231.

⁴⁶⁰ 297 P.3d 896 (Alaska Ct. App. 2013).

⁴⁶¹ *Id.* at 897.

⁴⁶² *Id.* at 898.

⁴⁶³ *Id.* at 897–98.

⁴⁶⁴ *Id.* at 898.

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.* at 899–900.

⁴⁶⁷ *Id.* at 900.

⁴⁶⁸ *Id.* at 897.

Rofkar v. State

In *Rofkar v. State*,⁴⁶⁹ the court of appeals held that a charge for possessing or manufacturing marijuana should be merged with a conviction for maintaining a building for keeping their controlled substances under Alaska's Double Jeopardy Clause.⁴⁷⁰ In the lower court, Rofkar was convicted of three counts relating to the possession and manufacturing of marijuana and a fourth count relating to the maintenance of a building for keeping or distributing controlled substances.⁴⁷¹ The lower court merged the first three charges into a single conviction but refused to merge the fourth charge with the other three.⁴⁷² On appeal, Rofkar argued that Alaska's Double Jeopardy Clause requires the fourth charge be merged with the other three.⁴⁷³ The court of appeals reversed the lower court's decision, reasoning that the statute criminalizing the maintaining of a building for keeping controlled substances was aimed at persons who facilitate someone else's drug offenses rather than at the person committing the drug offenses.⁴⁷⁴ Thus, if a person both commits the underlying drug offenses in addition to maintaining a building for keeping their controlled substances, the charges must be merged.⁴⁷⁵ Reversing the lower court's decision, the court of appeals held that a charge for possessing or manufacturing marijuana must be merged with a conviction for maintaining a building for keeping their controlled substances under Alaska's Double Jeopardy Clause.⁴⁷⁶

State v. Korkow

In *State v. Korkow*,⁴⁷⁷ the supreme court held that there is no legal presumption against a parole restriction beyond the statutory minimum.⁴⁷⁸ Korkow was convicted of first-degree murder after stabbing his wife to death in front of his two young children.⁴⁷⁹ The sentencing judge, after considering the severity of the case and Korkow's lack of remorse, restricted Korkow's eligibility for discretionary parole beyond the 33-year statutory minimum to 50 years, noting the need to protect Korkow's children and the public at large.⁴⁸⁰ On appeal, Korkow argued that parole restriction was outside of the permissible range compared with other cases.⁴⁸¹ The supreme court affirmed the lower court's decision, reasoning that although sentencing courts may take into consideration the Parole Board's expertise in assessing an individual's likelihood for a successful parole, sentencing courts are expressly permitted to restrict eligibility for discretionary parole beyond the minimum.⁴⁸² Here, the restriction was proper because the lower court had adequately considered all enumerated criteria, including the severity of the crime,

⁴⁶⁹ 305 P.3d 356 (Alaska Ct. App. 2013).

⁴⁷⁰ *Id.* at 359.

⁴⁷¹ *Id.* at 356.

⁴⁷² *Id.*

⁴⁷³ *Id.*

⁴⁷⁴ *Id.* at 358.

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.* at 359.

⁴⁷⁷ 314 P.3d 560 (2013).

⁴⁷⁸ *Id.* at 565.

⁴⁷⁹ *Id.* at 561.

⁴⁸⁰ *Id.*

⁴⁸¹ *Id.* at 561, 565.

⁴⁸² *Id.* at 564–65.

Korkow's lack of remorse and the need to protect the public.⁴⁸³ Affirming the lower court's decision, the supreme court held that there is no legal presumption against a parole restriction beyond the statutory minimum.⁴⁸⁴

State v. Silvera

In *State v. Silvera*,⁴⁸⁵ the court of appeals held that federal law does not preempt a three-judge sentencing panel's authority to impose a sentence lower than the presumptive range after considering the "harsh collateral consequences" of deportation.⁴⁸⁶ After reviewing Silvera's case, a three-judge sentencing panel considered the non-statutory mitigating factor of deportation's "harsh collateral consequences" on a criminal defendant and imposed a sentence under the presumptive range since deportation would subject Silvera to those "harsh collateral consequences."⁴⁸⁷ On appeal, the State argued that federal law prohibited a panel from modifying Silvera's sentence to affect immigration consequences.⁴⁸⁸ The court of appeals affirmed the lower court's decision, reasoning that Congress only prohibited state courts from deciding whether a criminal defendant should be deported.⁴⁸⁹ Congress, according to the court, did not expressly forbid state courts from adjusting a defendant's sentence to lessen the risk of deportation.⁴⁹⁰ Affirming the lower court's decision, the court of appeals held that federal law does not preempt a three-judge sentencing panel's authority to consider the "harsh collateral consequences" of deportation and impose a sentence lower than the presumptive range.⁴⁹¹

Stepovich v. State

In *Stepovich v. State*,⁴⁹² the supreme court held that merely attempting to hide evidence is not sufficient to support a conviction for attempted evidence tampering.⁴⁹³ Stepovich and another man were standing in an alley behind a bar with their hands cupped leaning towards each other.⁴⁹⁴ Both men were looking down into their hands when the arresting officer spotted them.⁴⁹⁵ As the officer approached the men, Stepovich backed away behind a dumpster.⁴⁹⁶ He reappeared empty handed.⁴⁹⁷ Subsequently, the officer found a small envelope of cocaine lying behind the dumpster.⁴⁹⁸ Stepovich was accordingly found guilty of attempted evidence tampering.⁴⁹⁹ On appeal, Stepovich argued that his conduct was not sufficient to support a

⁴⁸³ *Id.* at 566.

⁴⁸⁴ *Id.* at 565.

⁴⁸⁵ 309 P.3d 1277 (Alaska Ct. App. 2013).

⁴⁸⁶ *Id.* at 1280.

⁴⁸⁷ *Id.* at 1280–81.

⁴⁸⁸ *Id.* at 1280.

⁴⁸⁹ *Id.* at 1283.

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.* at 1280.

⁴⁹² 299 P.3d 734 (Alaska 2013).

⁴⁹³ *Id.* at 742.

⁴⁹⁴ *Id.* at 735.

⁴⁹⁵ *Id.*

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.*

⁴⁹⁸ *Id.* at 736.

⁴⁹⁹ *Id.* at 735.

conviction for attempted evidence tampering.⁵⁰⁰ The supreme court reversed the lower court's decision, reasoning that if a broad reading of suppressing and concealing were accepted it would unduly raise many misdemeanor cases when evidence was dropped or thrown into felony evidence tampering convictions.⁵⁰¹ Therefore, according to the court, the test here was whether the defendant's actions made it impossible or substantially more difficult for the evidence to be recovered.⁵⁰² Reversing the lower court's decision, the supreme court held that merely attempting to hide evidence is not sufficient to support a conviction attempted evidence tampering.⁵⁰³

Welsh v. State

In *Welsh v. State*,⁵⁰⁴ the court of appeals held that restitution in criminal cases is limited to the amount of actual damages that result rather than the amount of the defendant's unjust gain.⁵⁰⁵ Welsh was convicted of third-degree theft after stealing medication from the clinic where she was employed.⁵⁰⁶ The pills she stole were purchased by the clinic for three cents each and sold retail for seventy-six cents each.⁵⁰⁷ The lower court required Welsh to pay the seventy-six cents price in restitution based on an unjust enrichment theory.⁵⁰⁸ On appeal, Welsh argued that it was improper to award damages on such a theory in the case.⁵⁰⁹ The court of appeals reversed the lower court's decision, reasoning that the proper measure of restitution is the amount of actual damages suffered.⁵¹⁰ The court further reasoned, however, this amount does not need to be limited to wholesale prices, as that amount might not be sufficient to wholly cover the actual damages suffered.⁵¹¹ Reversing the lower court's decision, the court of appeals held that restitution in criminal cases is limited to the actual amount of damages suffered.⁵¹²

Williams v. State

In *Williams v. State*,⁵¹³ the court of appeals held that parole, even if subject to restrictive conditions, is not "official detention."⁵¹⁴ Williams, having been convicted of a felony, was ordered to live at a community residential center ("CRC") as a condition of his parole.⁵¹⁵ While being transported from one CRC to another, Williams left the transporting van as well as the surrounding area.⁵¹⁶ Based on these actions, Williams was convicted of escape in the second

⁵⁰⁰ *Id.* at 741.

⁵⁰¹ *Id.*

⁵⁰² *Id.* at 742.

⁵⁰³ *Id.*

⁵⁰⁴ 314 P.3d 566 (Alaska Ct. App. 2013).

⁵⁰⁵ *Id.* at 568.

⁵⁰⁶ *Id.* at 567.

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.* at 567–68.

⁵¹¹ *Id.* at 568.

⁵¹² *Id.*

⁵¹³ 301 P.3d 196 (Alaska Ct. App. 2013).

⁵¹⁴ *Id.* at 198.

⁵¹⁵ *Id.* at 196.

⁵¹⁶ *Id.* at 197.

degree, which was defined as removing oneself from official detention resulting from a felony without lawful authority.⁵¹⁷ On appeal, the State argued that “official detention” included parole with restrictive conditions such as the ones here.⁵¹⁸ The court of appeals reversed the lower court’s decision, reasoning that the legislative history of the statutory defined “official detention” such that the legislature did not intend the term to include supervision on probation or parole.⁵¹⁹ Accordingly, Williams could not be convicted of escape in the second degree because he was not subject to official detention.⁵²⁰ Reversing the lower court’s decision, the court of appeals held that parole, even if subject to restrictive conditions, is not “official detention.”⁵²¹

CRIMINAL PROCEDURE

[Top](#) ▲

Angasan v. State

In *Angasan v. State*,⁵²² the supreme court held that a defendant seeking a new trial based on evidence not presented at trial must normally show that this evidence was not known and could not have been known through diligent inquiry at the time of trial.⁵²³ Angasan filed a motion seeking a new trial, claiming that he had new evidence that would exculpate him from his conviction.⁵²⁴ The evidence consisted of affidavits from four of his relatives.⁵²⁵ The lower court denied Angasan’s motion, finding that the affidavits were known to either Angasan or his attorney at the time of trial and thus did not qualify as newly discovered evidence.⁵²⁶ On appeal, Angasan argued that he was entitled to a new trial based on any such evidence not presented at trial, even if it was known to the defendant or could have been known with diligent inquiry.⁵²⁷ The supreme affirmed the lower court’s decision, reasoning that almost every American jurisdiction required the new evidence to be unknown and not knowable through diligent inquiry at the time of trial before granting a new trial.⁵²⁸ The court further reasoned that such a requirement was necessary to prevent defendants from obtaining a new trial after receiving an adverse result and realizing that a different strategy might have been more effective.⁵²⁹ Affirming the lower court’s decision, the supreme court held that a defendant seeking a new trial based on evidence not presented at trial must normally show that this evidence was not known and could not have been known through diligent inquiry at the time of trial.⁵³⁰

⁵¹⁷ *Id.*

⁵¹⁸ *Id.* at 198.

⁵¹⁹ *Id.*

⁵²⁰ *Id.* at 199.

⁵²¹ *Id.* at 198.

⁵²² 314 P.3d 1219 (Alaska 2013).

⁵²³ *Id.* at 1221.

⁵²⁴ *Id.* at 1220.

⁵²⁵ *Id.*

⁵²⁶ *Id.*

⁵²⁷ *Id.*

⁵²⁸ *Id.* at 1223.

⁵²⁹ *Id.*

⁵³⁰ *Id.* at 1224.

Fisher v. State

In *Fisher v. State*,⁵³¹ the supreme court held that when a defendant files a habeas petition that could be filed under Criminal Rule 35.1, the court must treat the complaint as an application for post-conviction relief under that rule.⁵³² Fisher filed a petition for writ of habeas corpus, raising issues that could have been pursued in an application for post-conviction relief under Criminal Rule 35.1.⁵³³ The lower court dismissed his petition, and later denied his motion for reconsideration, holding that courts have the discretion to dismiss such claims and direct the defendant to file a new application for post-conviction relief.⁵³⁴ On appeal, Fisher argued that Civil Rule 86(m) requires the superior court to convert his petition into an application for post-conviction relief.⁵³⁵ The supreme court reversed the lower court's decision, reasoning that courts have never been given the discretion to dismiss habeas complaints that could be treated as applications for post-conviction relief.⁵³⁶ Reversing the lower court's decision, the supreme court held that when a defendant files a habeas petition that could be filed under Criminal Rule 35.1, the court must treat the complaint as an application for post-conviction relief under that rule.⁵³⁷

Davison v. State

In *Davison v. State*,⁵³⁸ the court of appeals held that when a defendant disputes factual allegations in a presentence report, the sentencing court must determine the validity and relevance of those allegations.⁵³⁹ Davison was initially charged with sexually assaulting his daughter based on penile, oral and digital penetration.⁵⁴⁰ On appeal, Davidson argued that statements regarding the alleged oral and digital penetration, charges he was acquitted of, should be stricken from the presentence report.⁵⁴¹ The court of appeals reversed the lower court's decision, reasoning that the importance of presentence reports and the degree to which they can affect a defendant in future necessitated action to determine whether any disputed facts contained in the report are sufficiently verified.⁵⁴² Thus, if such facts are found to be untrue, lacking in verification or will not be considered, the court must remove those assertions from the report.⁵⁴³ Reversing the lower court's decision, the court of appeals held that when a defendant disputes factual allegations in a presentence report, the sentencing court must determine the validity and relevance of those allegations.⁵⁴⁴

⁵³¹ 315 P.3d 686 (Alaska 2013).

⁵³² *Id.* at 688.

⁵³³ *Id.* at 687.

⁵³⁴ *Id.* at 687–88.

⁵³⁵ *Id.* at 687.

⁵³⁶ *Id.* at 688.

⁵³⁷ *Id.*

⁵³⁸ 307 P.3d 1 (Alaska Ct. App. 2013).

⁵³⁹ *Id.* at 4.

⁵⁴⁰ *Id.* at 1.

⁵⁴¹ *Id.* at 2–3.

⁵⁴² *Id.* at 3.

⁵⁴³ *Id.* at 3–4.

⁵⁴⁴ *Id.* at 4.

Hertz v. Macomber

In *Hertz v. Macomber*,⁵⁴⁵ the supreme court held that the Department of Corrections (“DOC”) may impose furlough release conditions regardless of whether those conditions were part of an inmate’s original sentence.⁵⁴⁶ In 1984, Hertz was convicted of second-degree murder and sentenced to a 40-year term with a 20-year parole eligibility.⁵⁴⁷ In 2009, he applied for an early release furlough but was denied because he refused to sign the paper work that required treatment or community service as conditions to his furlough.⁵⁴⁸ Hertz subsequently filed a complaint against his parole officers arguing that they lacked authority to impose furlough release conditions because they were not part of his original sentence and, accordingly, violated his due process rights.⁵⁴⁹ The supreme court affirmed the lower court’s decision, reasoning that such conditions did not prolong Hertz’s sentence.⁵⁵⁰ Thus, according to the court, the conditions did not implicate a liberty interest and, consequently, did not violate Hertz’s due process rights.⁵⁵¹ Affirming the lower court’s decision, the supreme court held that the DOC may impose furlough release conditions regardless of whether those conditions were part of an inmate’s original sentence.⁵⁵²

Hunter v. State

In *Hunter v. State*,⁵⁵³ the court of appeals held that a detective cannot testify to a defendant’s reputation based solely on interviews with and reports by other law enforcement officers.⁵⁵⁴ Hunter was convicted for second-degree murder based in part on the testimony of Detective Perrenoud.⁵⁵⁵ Perrenoud testified that Hunter had a reputation in the community for aggression and violence.⁵⁵⁶ This testimony was based entirely on an investigation involving interviews with law enforcement officers and reviews of documents prepared by law enforcement officers.⁵⁵⁷ On appeal, the State argued that the law enforcement officers were members of the community and therefore that Hunter’s reputation amongst them was his reputation within the community.⁵⁵⁸ The court of appeals reversed the lower court’s decision, reasoning that Hunter’s testified-to reputation existed only in a particular group of the community and, accordingly, was not necessarily generally held.⁵⁵⁹ Reversing the lower court’s decision, the court of appeals held that a detective cannot testify to a defendant’s reputation based solely on interviews with and reports by other law enforcement officers.⁵⁶⁰

⁵⁴⁵ 297 P.3d 150 (Alaska 2013).

⁵⁴⁶ *Id.* at 154–55.

⁵⁴⁷ *Id.* at 152.

⁵⁴⁸ *Id.*

⁵⁴⁹ *Id.* at 151.

⁵⁵⁰ *Id.* at 156.

⁵⁵¹ *Id.*

⁵⁵² *Id.* at 154–55.

⁵⁵³ 307 P.3d 8 (Alaska Ct. App. 2013).

⁵⁵⁴ *Id.* at 15.

⁵⁵⁵ *Id.* at 10.

⁵⁵⁶ *Id.* at 11.

⁵⁵⁷ *Id.*

⁵⁵⁸ *Id.*

⁵⁵⁹ *Id.* at 13.

⁵⁶⁰ *Id.* at 15.

Hutton v. State

In *Hutton v. State*,⁵⁶¹ the court of appeals held that a defendant's right to a unanimous jury with regards to a special interrogatory is protected when the jury receives a general instruction that each verdict must be unanimous.⁵⁶² Hutton was charged with third-degree misconduct involving weapons, which required the jury find that he knowingly possessed a concealable firearm.⁵⁶³ To avoid prejudice with regards to the other charges against Hutton, this question was presented to the jury as a special interrogatory.⁵⁶⁴ Because the interrogatory did not contain the phrase "We, the jury," as the other counts began, Hutton argued on appeal that there was a significant possibility that the jury did not understand its decision needed to be unanimous.⁵⁶⁵ The court of appeals affirmed the lower court's decision, reasoning that, because the special interrogatory was presented along with jury instructions stating that each verdict must be unanimous, the jury probably viewed the unanimity requirement as applying to the special interrogatory.⁵⁶⁶ Affirming the lower court's decision, the court of appeals held that a defendant's right to a unanimous jury with regards to a special interrogatory is protected when the jury receives a general instruction that each verdict must be unanimous.⁵⁶⁷

Miller v. State

In *Miller v. State*,⁵⁶⁸ the court of appeals held that failing to make an express ruling in connection with sentencing is not harmless error where the record does not clearly establish the truth of the allegation at issue.⁵⁶⁹ Miller was charged with assault for attacking a woman with whom he had a previous sexual encounter.⁵⁷⁰ At trial, the State alleged that the assault charge was a crime of domestic violence, which carried a mandatory sentence of thirty days in prison.⁵⁷¹ Without ever expressly ruling whether Miller's crime was a domestic violence, the lower court issued its written judgment labeling it as such.⁵⁷² On appeal, the State argued that the court's error was harmless.⁵⁷³ The court of appeals reversed the lower court's decision, stating that the court was required to make a factual and legal determination supporting its characterization of the offense on the record.⁵⁷⁴ Here, the record did not affirmatively establish that Miller's conduct constituted a crime of domestic violence.⁵⁷⁵ Reversing the lower court's decision, the court of appeals held that failing to make an express ruling in connection with sentencing is not harmless error where the record does not clearly establish the truth of the allegation at issue.⁵⁷⁶

⁵⁶¹ 305 P.3d 364 (Alaska 2013).

⁵⁶² *Id.* at 370.

⁵⁶³ *Id.* at 366.

⁵⁶⁴ *Id.*

⁵⁶⁵ *Id.* at 370

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

⁵⁶⁸ 312 P.3d 1112 (Alaska Ct. App. 2013).

⁵⁶⁹ *Id.* at 1116.

⁵⁷⁰ *Id.* at 1114.

⁵⁷¹ *Id.* at 1115.

⁵⁷² *Id.*

⁵⁷³ *Id.* at 1116.

⁵⁷⁴ *Id.*

⁵⁷⁵ *Id.*

⁵⁷⁶ *Id.*

State v. Clifton

In *State v. Clifton*,⁵⁷⁷ the court of appeals held that a convicted criminal defendant could be subject to a second and separate trial to assess if the defendant was guilty but mentally ill.⁵⁷⁸ Clifton believed she was under covert government surveillance.⁵⁷⁹ In 2006, Clifton and her human resources manager had a meeting where Clifton was informed she would have to undergo psychiatric evaluation.⁵⁸⁰ In response to this news, Clifton shoved the barrel of a loaded pistol against the manager's ribs and pulled the trigger.⁵⁸¹ While the pistol failed to fire, Clifton was still indicted for attempted murder and third-degree assault.⁵⁸² Multiple psychologists determined that Clifton suffered from a delusional disorder, but Clifton's attorney stated that he did not intend to rely on an insanity defense.⁵⁸³ Clifton was later found guilty on both counts and the State filed a motion asking the lower court to determine if Clifton should be found "guilty but mentally ill."⁵⁸⁴ The lower court stated that ruling her as "guilty but mentally ill" after her trial would be an unconstitutional violation of her equal protection rights.⁵⁸⁵ On appeal, Clifton argued that the legislature's distinction between defendants who commit crimes and defendants who commit crimes who also suffer from a mental disease was arbitrary.⁵⁸⁶ The court of appeals reversed the lower court's decision, stating that it was constitutional for the state to have lawfully enacted the procedures.⁵⁸⁷ The court reasoned that the legislature, in drawing the aforementioned distinction, could have found that the latter types of defendants should have their parole restricted because of their inability to appreciate the crimes they committed.⁵⁸⁸ Reversing the lower court's decision, the court of appeals held that a convicted criminal defendant could be subject to a second and separate trial to assess if the defendant was guilty but mentally ill.⁵⁸⁹

White v. State

In *White v. State*,⁵⁹⁰ the court of appeals held that a trial court may only grant a motion to overturn the jury's verdict and order a new trial when the judge finds the evidence to be so one-sided that the jury's view of the case was plainly unreasonable and unjust.⁵⁹¹ In the trial court, a jury found White guilty of fourth-degree assault.⁵⁹² After the verdict, White motioned under Alaska Criminal Rule 33(a) for the judge to overturn the jury's verdict and order a new trial on

⁵⁷⁷ 315 P.3d 694 (Alaska Ct. App. 2013).

⁵⁷⁸ *Id.* at 710.

⁵⁷⁹ *Id.* at 698.

⁵⁸⁰ *Id.*

⁵⁸¹ *Id.*

⁵⁸² *Id.*

⁵⁸³ *Id.*

⁵⁸⁴ *Id.* at 699–700.

⁵⁸⁵ *Id.* at 700.

⁵⁸⁶ *Id.* at 703–04.

⁵⁸⁷ *Id.* at 708.

⁵⁸⁸ *Id.* at 704.

⁵⁸⁹ *Id.* at 710.

⁵⁹⁰ 298 P.3d 884 (Alaska 2013).

⁵⁹¹ *Id.* at 885.

⁵⁹² *Id.*

the ground that the verdict was against the weight of the evidence.⁵⁹³ The judge denied the motion because the jury's verdict should not be overturned if there was any evidentiary basis for the jury's decision.⁵⁹⁴ On appeal, White argued that the district court erred by using the "any evidentiary basis" test when deciding his motion for a new trial.⁵⁹⁵ The court of appeals reversed the trial court's decision, reasoning that the only legal test appropriate in a trial court for a motion for a new trial is the "plainly unreasonable and unjust" test.⁵⁹⁶ The court further reasoned that the "any evidentiary basis" test is the proper standard only when an appellate court reviews a trial court's denial of a request for a new trial.⁵⁹⁷ Reversing the trial court's decision, the court of appeals held that a trial court may only grant a motion to overturn the jury's verdict and order a new trial when the judge finds the evidence to be so one-sided that the jury's view of the case was plainly unreasonable and unjust.⁵⁹⁸

EMPLOYMENT LAW

[Top](#) ▲

ARCTEC Services v. Cummings

In *ARCTEC Services v. Cummings*,⁵⁹⁹ the supreme court held that witness-credibility determinations by the Workers' Compensation Board (the "Board") are made in accordance with a subjective standard.⁶⁰⁰ In 2006, Cummings was hurt on the job and began receiving workers' compensation checks that periodically required her to certify that she had not been working.⁶⁰¹ However, while receiving the checks, Cummings occasionally worked without pay in her boyfriend's store.⁶⁰² In 2008, ARCTEC filed a petition for a finding of fraud with the Board.⁶⁰³ Since the Board found Cummings' testimony that she considered her time at the store to be purely voluntary and therefore not necessary to report credible, it denied ARCTEC's petition.⁶⁰⁴ ARCTEC subsequently appealed to the Workers' Compensation Appeals Commission (the "Commission"), arguing that the Board should have used an objective standard to evaluate Cummings' testimony that would determine if Cummings' subjectively held belief was objectively reasonable.⁶⁰⁵ The Commission agreed that the Board should have used an objective standard.⁶⁰⁶ The supreme court reversed the Commission's decision, citing evidence that both the legislative history and the language of the statute itself called for a subjective standard.⁶⁰⁷ The

⁵⁹³ *Id.*

⁵⁹⁴ *Id.*

⁵⁹⁵ *Id.* at 886.

⁵⁹⁶ *Id.*

⁵⁹⁷ *Id.*

⁵⁹⁸ *Id.*

⁵⁹⁹ 295 P.3d 916 (Alaska 2013).

⁶⁰⁰ *Id.* at 923.

⁶⁰¹ *Id.* at 917.

⁶⁰² *Id.* at 918.

⁶⁰³ *Id.* at 919.

⁶⁰⁴ *Id.*

⁶⁰⁵ *Id.* at 919.

⁶⁰⁶ *Id.* at 919–20.

⁶⁰⁷ *Id.* at 921–23.

court further reasoned that since the legislature had given the Board "the sole power to determine credibility of a witness," the objective standard would also impermissibly impinge on the Board's authority.⁶⁰⁸ Reversing the lower court's decision, the supreme court held that witness-credibility determinations by the Board are made in accordance with a subjective standard.⁶⁰⁹

Beach v. Handforth-Kome

In *Beach v. Handforth-Kome*,⁶¹⁰ the supreme court held once an employer discovers reasonable grounds for dismissal, the employer need not provide additional procedural protections.⁶¹¹ Beach was fired from her job at a health clinic when the clinic's director discovered that she had falsified prescription drug records.⁶¹² Beach sued, alleging a breach of the implied covenant of good faith since she believed her employer retaliated against her for her suggestions about improving clinic security.⁶¹³ On appeal, Beach argued that her termination was not objectively fair.⁶¹⁴ The supreme court affirmed the lower court's decision, reasoning that Handforth-Kome had conducted a methodical review of the records that showed that the records were falsified and that Beach was responsible for the aforementioned falsification.⁶¹⁵ Accordingly, since the methodical review uncovered reasonable grounds for dismissal, according to the court, additional procedural protection was unnecessary.⁶¹⁶ Affirming the lower court's decision, the supreme court held once an employer discovers reasonable grounds for dismissal, the employer need not provide additional procedural protections.⁶¹⁷ Beach was fired from her job at a health clinic when the clinic's director discovered that she had falsified prescription drug records.⁶¹⁸

Grimmett v. University of Alaska

In *Grimmett v. University of Alaska*,⁶¹⁹ the supreme court held that an employer generally may not avoid a for-cause employee's due process protections at termination through use of a nonretention clause.⁶²⁰ In 2008, two employees of the University of Alaska lost their employment due to performance concerns.⁶²¹ Despite the for-cause language in their employment contracts, both employees were denied termination-for-cause hearings based upon the nonretention clause in their contracts.⁶²² On appeal, the University of Alaska argued that the nonretention clause allowed the University to terminate non-tenured employees without a

⁶⁰⁸ *Id.* at 923–24.

⁶⁰⁹ *Id.* at 923.

⁶¹⁰ 314 P.3d 53 (Alaska 2013).

⁶¹¹ *Id.* at 57.

⁶¹² *Id.* at 54.

⁶¹³ *Id.*

⁶¹⁴ *Id.* at 55.

⁶¹⁵ *Id.* at 57.

⁶¹⁶ *Id.*

⁶¹⁷ *Id.* at 57.

⁶¹⁸ *Id.*

⁶¹⁹ 303 P.3d 482 (Alaska 2013)

⁶²⁰ *Id.* at 490.

⁶²¹ *Id.* at 484–86.

⁶²² *Id.* at 485, 487.

showing of cause.⁶²³ The supreme court affirmed the lower court's decision, reasoning that using nonretention as a pretext for performance related termination violates an employee's expectation of due process under a for-cause contract.⁶²⁴ The court further reasoned that under the University's regulations, nonretention was only available when market forces, lack of funds, reorganization or other nonperformance issues called for the discontinuation of employment.⁶²⁵ Affirming the lower court's decision, the supreme court held that an employer generally may not avoid a for-cause employee's due process protections by use of a nonretention clause in terminating employment.⁶²⁶

Johnson v. Aleut Corp.

In *Johnson v. Aleut Corp.*,⁶²⁷ the supreme court held that a broadly worded arbitration agreement can give an arbitrator authority to determine the arbitrability of disputes as well as resolve such disputes based on theories that differ from those submitted by the parties.⁶²⁸ The employment contract between the Aleut Corporation (the "Corporation") and Johnson stated that Johnson would serve as CEO of the Corporation with an automatic extension subject to both his fulfilling a reminder provision and the Corporation providing him with notice if it chose not to renew his employment.⁶²⁹ Even though the Corporation never received Johnson's reminder, the two parties nonetheless proceeded to engage in renewal discussions.⁶³⁰ After Johnson was subsequently terminated without requisite notice, he challenged his termination in arbitration as required by his employment agreement.⁶³¹ The arbitrator ultimately determined that because the Corporation was aware of the reminder provision and because it did not terminate Johnson for cause, it breached the contract.⁶³² The lower court subsequently vacated the decision, holding that the arbitrator acted beyond the scope of his authority in determining that, contrary to both parties' concessions, the reminder was not a condition precedent to the renewal of Johnson's contract.⁶³³ The supreme court reversed the lower court's decision, reasoning that great deference is given to arbitration decisions.⁶³⁴ Thus, according to the court, the arbitrator's conclusion that the Corporation violated the agreement was reasonable and within the scope of the arbitrator's authority.⁶³⁵ Reversing the lower court's decision, the supreme court held that a broadly worded arbitration agreement can give an arbitrator authority to determine the arbitrability of disputes as well as resolve such disputes based on theories that differ from those submitted by the parties.⁶³⁶

⁶²³ *Id.* at 486.

⁶²⁴ *Id.* at 490.

⁶²⁵ *Id.* at 489.

⁶²⁶ *Id.* at 490.

⁶²⁷ 307 P.3d 942 (Alaska 2013).

⁶²⁸ *Id.* at 952.

⁶²⁹ *Id.*

⁶³⁰ *Id.* at 945.

⁶³¹ *Id.* at 947.

⁶³² *Id.*

⁶³³ *Id.*

⁶³⁴ *Id.* at 948.

⁶³⁵ *Id.*

⁶³⁶ *Id.* at 952.

Mills v. Hankla

In *Mills v. Hankla*,⁶³⁷ the supreme court held that municipalities are immune from negligent hiring claims because hiring is a discretionary action requiring deliberation and judgment.⁶³⁸ Hankla did not meet the eligibility requirements when he was appointed Hoonah police chief by the Hoonah City Council (the “Council”).⁶³⁹ The Council subsequently amended the city code to make him qualified and rehired him.⁶⁴⁰ Four employees then claimed the city negligently hired Hankla because of his alleged discriminatory treatment and sexual harassment.⁶⁴¹ On appeal, the employees challenged the lower court’s entry of summary judgment dismissing their negligent hiring claim.⁶⁴² The supreme court affirmed the lower court’s decision, interpreting Alaska Statute 09.65.070(d)(2) as providing qualified official immunity protecting municipalities from liability for discretionary actions when those actions were done by a public official within his scope of duties.⁶⁴³ Here, according to the court, the Council’s appointment of Hankla was discretionary because it required deliberation and judgment in evaluating and selecting candidates from an applicant pool.⁶⁴⁴ Affirming the lower court’s decision, the supreme court held that municipalities are immune from negligent hiring claims because hiring is a discretionary action requiring deliberation and judgment.⁶⁴⁵

Morrison v. Nana Worleyparsons, LLC

In *Morrison v. Nana Worleyparsons, LLC*,⁶⁴⁶ the supreme court held that short-term performance plans, without express indications to the contrary, do not alter at-will employment contracts.⁶⁴⁷ Morrison, an at-will employee at Nana Worleyparsons, was placed onto a Performance Improvement Plan (“PIP”) aimed at improving his lackluster work performance and negative attitude.⁶⁴⁸ Shortly thereafter, Morrison made an inappropriate comment to a co-worker at a work party and was fired.⁶⁴⁹ On appeal, Morrison argued that Nana Worleyparsons both breached his contract and the implied covenant of good faith and fair dealing.⁶⁵⁰ The supreme court affirmed the lower court’s decision, reasoning that since the PIP did not contain any express indications changing the at-will nature of Morrison’s employment, the PIP did not alter his original at-will employment contract.⁶⁵¹ The court further reasoned Nana Worleyparson’s actions did not breach the implied covenants of good faith and fair dealing because their actions were both objectively

⁶³⁷ 297 P.3d 158 (Alaska 2013).

⁶³⁸ *Id.* at 173.

⁶³⁹ *Id.* at 161.

⁶⁴⁰ *Id.*

⁶⁴¹ *Id.* at 162.

⁶⁴² *Id.* at 173.

⁶⁴³ *Id.*

⁶⁴⁴ *Id.*

⁶⁴⁵ *Id.*

⁶⁴⁶ 314 P.3d 508 (Alaska 2013).

⁶⁴⁷ *Id.* at 510–12.

⁶⁴⁸ *Id.* at 509.

⁶⁴⁹ *Id.* at 510.

⁶⁵⁰ *Id.*

⁶⁵¹ *Id.* at 511–12.

and subjectively appropriate in Morrison’s particular circumstance.⁶⁵² Affirming the lower court’s decision, the supreme court held that short-term performance plans, without express indications to the contrary, do not alter at-will employment contracts.⁶⁵³

Municipality of Anchorage v. Adamson

In *Municipality of Anchorage v. Adamson*,⁶⁵⁴ the supreme court held that in order to stay future medical benefits, an employer must demonstrate “the existence of the probability” that an appeal of a workers’ compensation decision will be decided against the compensation recipient.⁶⁵⁵ This case consolidated two lower court cases.⁶⁵⁶ In one case, the Municipality of Anchorage appealed an Alaska Workers’ Compensation Board (the “Board”) decision awarding compensation, arguing that medical benefits should be stayed under the standard of “probability of success on the merits.”⁶⁵⁷ The Alaska Workers’ Compensation Appeals Commission (the “Commission”) subsequently refused the stay because the Municipality had not shown that it was more likely than not that the appeal would prevail on the merits.⁶⁵⁸ In the other case, the City and Borough of Juneau (“CBJ”) similarly appealed a Board decision, asking for a stay of future medical benefits under the standard that it was more likely than not that the merits of the appeal would be decided in CBJ’s favor.⁶⁵⁹ The Commission applied a substantial question standard and, finding that CBJ raised a “serious and substantial question” about the claim, granted the stay.⁶⁶⁰ The supreme court affirmed the “probability of success on the merits” standard, reasoning that the correct standard must balance the hardships likely faced by both the employer and the employee in these types of cases.⁶⁶¹ Thus, according to the court, this high threshold was necessary since medical benefits were ongoing benefits that acted as a salary substitute for injured employees.⁶⁶² Reviewing the two consolidated cases, the supreme court held that in order to stay future medical benefits, an employer must demonstrate “the existence of the probability” that an appeal of a workers’ compensation decision will be decided against the compensation recipient.⁶⁶³

Plumbers & Pipefitters, Local 367 v. Municipality of Anchorage

In *Plumbers & Pipefitters, Local 367 v. Municipality of Anchorage*,⁶⁶⁴ the supreme court held that the Anchorage Municipal Code (“AMC”) limits the equitable jurisdiction of courts with respect to collective bargaining disputes.⁶⁶⁵ The Plumbers & Pipefitters, Local 367 (“Union”) and the Municipality of Anchorage (“Anchorage”) were engaged in collective bargaining

⁶⁵² *Id.*

⁶⁵³ *Id.* at 510–12.

⁶⁵⁴ 301 P.3d 569 (Alaska 2013).

⁶⁵⁵ *Id.* at 571.

⁶⁵⁶ *Id.* at 571–72.

⁶⁵⁷ *Id.*

⁶⁵⁸ *Id.* at 572.

⁶⁵⁹ *Id.*

⁶⁶⁰ *Id.* at 573.

⁶⁶¹ *Id.* at 578–79.

⁶⁶² *Id.* at 578.

⁶⁶³ *Id.* at 571.

⁶⁶⁴ 298 P.3d 195 (Alaska 2013).

⁶⁶⁵ *Id.* at 196.

negotiations for over a year.⁶⁶⁶ Unable to reach an agreement on all key points, the Union and Anchorage submitted Last Best Offers (“LBO”) to an arbitrator as required by the AMC.⁶⁶⁷ The arbitrator adopted the Union’s LBO, but, subsequently, the Anchorage Assembly failed to approve the decision.⁶⁶⁸ The Union voted to strike but in the interest of public health and safety forewent executing that action for the time being.⁶⁶⁹ On appeal, the Union argued that the arbitrator’s decision should be implemented in return for issuing an injunction against a strike pursuant to the court’s equitable jurisdiction.⁶⁷⁰ The supreme court affirmed the lower court’s decision, reasoning that, even acting in equity, a court cannot disregard statutes that “plain and fully” cover a situation.⁶⁷¹ Thus, according to the court, the court’s equitable power to grant relief that must be found within the AMC’s comprehensive scheme regulating impasses such as here was absent.⁶⁷² Affirming the lower court’s decision, the supreme court held that the AMC limits the equitable jurisdiction of courts with respect to collective bargaining disputes.⁶⁷³

Pruitt v. Providence Extended Care

In *Pruitt v. Providence Extended Care*,⁶⁷⁴ the supreme court held that filing an affidavit for readiness for hearing nearly four years after an employer files a controversion of such claim does not substantially comply with the two-year statute of limitations imposed by the workers’ compensation statute.⁶⁷⁵ In 2004, Pruitt was injured on the job and began receiving disability benefits.⁶⁷⁶ In 2005, after Pruitt filed a workers’ compensation claim, Pruitt’s employer, Providence Extended Care (“Providence”), filed three separate controversions in an attempt to disclaim any future disability payments.⁶⁷⁷ In 2009, Pruitt filed an affidavit for readiness for hearing and a hearing was held by the Workers’ Compensation Board (“Board”). Providence argued, and the Board agreed, that Pruitt’s claim should be dismissed as she failed to file anything within the two-year statute of limitations period, which began to run in 2005.⁶⁷⁸ The Alaska Workers’ Compensation Appeals Commission (“Commission”) subsequently upheld the Board’s decision and Pruitt appealed to the supreme court.⁶⁷⁹ The supreme court affirmed the Commission’s decision, reasoning that the plain language of the statute, along with the Board’s urging in 2006 that Pruitt contact staff at the Board for assistance in filing the necessary documents within the statute of limitations period, made it clear Pruitt did not substantially comply with the statute.⁶⁸⁰ Affirming the Commission’s decision, the supreme court held that

⁶⁶⁶ *Id.* at 197.

⁶⁶⁷ *Id.* at 197–98.

⁶⁶⁸ *Id.* at 197.

⁶⁶⁹ *Id.*

⁶⁷⁰ *Id.* at 196

⁶⁷¹ *Id.* at 201.

⁶⁷² *Id.* at 202–03.

⁶⁷³ *Id.* at 196.

⁶⁷⁴ 297 P.3d 891 (Alaska 2013).

⁶⁷⁵ *Id.* at 891.

⁶⁷⁶ *Id.* at 892.

⁶⁷⁷ *Id.*

⁶⁷⁸ *Id.* at 893.

⁶⁷⁹ *Id.* at 894.

⁶⁸⁰ *Id.* at 895.

filing an affidavit for readiness for hearing nearly four years after an employer files a controversy of such claim does not substantially comply with the two-year statute of limitations imposed by the workers' compensation statute.⁶⁸¹

Rosales v. Icicle Seafoods, Inc.

In *Rosales v. Icicle Seafoods, Inc.*,⁶⁸² the supreme court held that the Alaska Workers' Compensation Board ("Board") has authority to approve global settlements of related claims in workers' compensation cases.⁶⁸³ While working for Icicle Seafoods, Inc. ("Icicle"), Rosales was injured.⁶⁸⁴ He filed a report with the Board as well as a maritime lawsuit but later settled all his claims in a global settlement with Icicle, which the Board approved.⁶⁸⁵ When the Board subsequently refused to amend the settlement on Rosales' request, he appealed to the supreme court arguing that the Board's approval of the global settlement was invalid because it had no jurisdiction over his maritime claim.⁶⁸⁶ The supreme court affirmed the Board's decision, reasoning that even though Rosales could have pursued the two claims separately, the Board was not prohibited from settling both claims.⁶⁸⁷ Thus, according to the court, not amending Rosales' global settlement was proper to bar double recovery for the same claim.⁶⁸⁸ Affirming the Board's decision, the supreme court held that the Board has authority to approve global settlements of related claims in workers' compensation cases.⁶⁸⁹

FAMILY LAW

[Top](#) ▲

Amy M. v. State

In *Amy M. v. State*,⁶⁹⁰ the supreme court held that, in deciding whether a parent has been given a reasonable amount of time to remedy her conduct for purposes retaining parental rights, it is appropriate to consider his or her history of substance abuse in conjunction with present conduct.⁶⁹¹ The Office of Children's Services ("OCS") filed a petition for termination of Amy's parental rights three months after her child, Kadin, tested positive for cocaine at birth.⁶⁹² Amy had, up to that point, repeatedly failed to complete inpatient treatment programs, despite the requirements of her OCS case plan.⁶⁹³ However, between this filing and the start of the trial, Amy began taking steps towards a sober future.⁶⁹⁴ Nevertheless, the lower court concluded that Amy's substance abuse placed Kadin in need of aid and that she failed to remedy the

⁶⁸¹ *Id.* at 891.

⁶⁸² 316 P.3d 580 (Alaska 2013).

⁶⁸³ *Id.* at 585.

⁶⁸⁴ *Id.* at 582.

⁶⁸⁵ *Id.* at 583.

⁶⁸⁶ *Id.* at 583–84.

⁶⁸⁷ *Id.* at 585.

⁶⁸⁸ *Id.*

⁶⁸⁹ *Id.*

⁶⁹⁰ 320 P.3d 253 (Alaska 2013).

⁶⁹¹ *Id.* at 254.

⁶⁹² *Id.* at 255–56.

⁶⁹³ *Id.* at 256.

⁶⁹⁴ *Id.*

corresponding conditions within a reasonable time.⁶⁹⁵ On appeal, Amy argued that she was not given a reasonable amount of time to remedy her substance abuse.⁶⁹⁶ The supreme court affirmed the lower court's decision, reasoning that to terminate parental rights, a parent must have failed to remedy the conduct or conditions that placed the child in substantial risk within a reasonable time.⁶⁹⁷ Here, according to the court, Amy did not take any concrete steps toward obtaining long-term residential treatment, as required by her case plan, and her positive steps towards recovery were only very recent changes.⁶⁹⁸ Affirming the lower court's decision, the supreme court held that, in deciding whether a parent has been given a reasonable amount of time to remedy her conduct for purposes of maintaining child custody, it is appropriate to consider his or her present conduct as well as his or her history of substance abuse.⁶⁹⁹

Casey K. v. State, Dep't of Health & Social Services.

In *Casey K. v. State, Dep't of Health & Social Services*,⁷⁰⁰ the supreme court held that a delay by the Office of Children's Services ("OCS") in providing collateral information needed for a person's substance abuse evaluation does not in and of itself make OCS's efforts to reunify that person with their child unreasonable.⁷⁰¹ In 2010, OCS began investigating Casey K., the mother of a young girl named Cheyenne, for substance abuse and neglect.⁷⁰² OCS established a case plan for Casey, as well as a visitation schedule for Casey and Cheyenne, services for Casey during her subsequent incarceration and funding for Casey's urine analysis and other assessments.⁷⁰³ Casey, however, took no action to remedy her conduct, avoided contact with OCS, and failed to complete all but two of four urine analyses.⁷⁰⁴ In 2011, Casey had an appointment for a substance abuse evaluation, but OCS failed to submit the required collateral information to the assessor.⁷⁰⁵ Relying on incomplete information, the assessor concluded that Casey did not require substance abuse treatment and the treatment Casey did in fact require was delayed by approximately one year.⁷⁰⁶ On appeal, Casey argued that OCS's efforts to reunite her with Cheyenne were unreasonable because of the delay in providing the collateral information.⁷⁰⁷ The supreme court affirmed the lower court's decision, reasoning that a brief lapse in OCS's provision of services did not prevent a finding that OCS made reasonable efforts toward reunification.⁷⁰⁸ Affirming the lower court's decision, the supreme court held that a delay by OCS in providing collateral information needed for a person's substance abuse evaluation does not in and of itself make OCS's efforts to reunify that person with their child unreasonable.⁷⁰⁹

⁶⁹⁵ *Id.* at 257.

⁶⁹⁶ *Id.* at 258.

⁶⁹⁷ *Id.* at 258–59.

⁶⁹⁸ *Id.*

⁶⁹⁹ *Id.* at 254.

⁷⁰⁰ 311 P.3d 637 (Alaska 2013).

⁷⁰¹ *Id.* at 646.

⁷⁰² *Id.* at 640.

⁷⁰³ *Id.* at 646.

⁷⁰⁴ *Id.* at 644–45.

⁷⁰⁵ *Id.* at 641.

⁷⁰⁶ *Id.*

⁷⁰⁷ *Id.* at 646.

⁷⁰⁸ *Id.*

⁷⁰⁹ *Id.*

Childs v. Childs

In *Childs v. Childs*,⁷¹⁰ the supreme court held that the Servicemembers Civil Relief Act (the “Act”) does not preclude the consideration of military service pay when modifying child support payments.⁷¹¹ In 2005, Joshua and Christina Childs dissolved their marriage.⁷¹² Joshua subsequently served in the United States Army.⁷¹³ Accordingly, the lower court ordered the modification of his child support obligation to account for his military Basic Allowance for Housing.⁷¹⁴ On appeal, Joshua argued that the Act precluded the lower court from ordering the modification because he was an active service member.⁷¹⁵ The supreme court affirmed the lower court’s decision, reasoning that Joshua failed to show that his ability to present a defense was materially affected by his military duty.⁷¹⁶ The supreme court further reasoned that a servicemember was not entitled to a stay against a civil action merely by virtue of serving.⁷¹⁷ Affirming the lower court’s decision, the supreme court held that the Act does not preclude the consideration of military service pay when modifying child support payments.⁷¹⁸

Christopher C. v. State, Dep’t of Health & Social Services

In *Christopher C. v. State, Dep’t of Health & Social Services*,⁷¹⁹ the supreme court held that termination of parental rights is appropriate when active efforts to remedy the parents’ problematic behavior fail.⁷²⁰ The Office of Children’s Services (“OCS”) attempted to improve both parents’ parenting skills, in addition to providing substance abuse counseling.⁷²¹ However, OCS eventually filed a petition to terminate the parents’ rights after efforts to improve their parenting skills failed.⁷²² The lower court granted the petition and terminated their parental rights because they did not remedy their behavior despite OCS’s active efforts to avoid a family breakup.⁷²³ On appeal, the parents challenged these findings without providing any evidence beyond their own testimony.⁷²⁴ The supreme court affirmed the lower court’s decision, reasoning that each challenged finding was supported by appropriate evidence.⁷²⁵ The court further reasoned that while OCS’s efforts to keep the family together were imperfect, they qualified as active efforts.⁷²⁶ Affirming the lower court’s decision, the supreme court held that termination of parental rights is appropriate when active efforts to remedy parents’ problematic behavior fail.⁷²⁷

⁷¹⁰ 310 P.3d 955 (Alaska 2013).

⁷¹¹ *Id.* at 959.

⁷¹² *Id.* at 957.

⁷¹³ *Id.*

⁷¹⁴ *Id.*

⁷¹⁵ *Id.* at 959.

⁷¹⁶ *Id.*

⁷¹⁷ *Id.* at 959–60.

⁷¹⁸ *Id.* at 959.

⁷¹⁹ 303 P.3d 465 (Alaska 2013).

⁷²⁰ *Id.* at 467.

⁷²¹ *Id.* at 477–79.

⁷²² *Id.* at 472.

⁷²³ *Id.* at 473.

⁷²⁴ *Id.*

⁷²⁵ *Id.* at 475, 479, 480, 482.

⁷²⁶ *Id.* at 478–79.

⁷²⁷ *Id.* at 467.

Claudio P. v. State, Dep’t of Health & Social Services

In *Claudio P. v. State, Dep’t. of Health and Social Services*,⁷²⁸ the supreme court held that termination of parental rights is warranted when an incarcerated parent’s failure to adequately arrange care for a child renders the child a need in care.⁷²⁹ Claudio P. was incarcerated prior to the birth of his child.⁷³⁰ While incarcerated, he arranged for the mother to care for the child, but the child was placed into the custody of the Office for Children’s Services (“OCS”) when the mother’s parental rights were terminated.⁷³¹ Ultimately, the lower court terminated Claudio’s parental rights as well.⁷³² On appeal, Claudio argued that the lower court erred in its ruling because, even though he was incarcerated, he made reasonable plans for his child to be cared for by his parents if the child’s mother was not available.⁷³³ The supreme court affirmed the lower court’s decision, reasoning that because it took Claudio over a year to take action to arrange care for his child following her placement in OCS custody, his efforts to plan for his child’s care were inadequate.⁷³⁴ Affirming the lower court’s decision, the supreme court held that termination of parental rights is warranted when an incarcerated parent’s failure to adequately arrange care for a child renders the child a need in care.⁷³⁵

Co v. Matson

In *Co v. Matson*,⁷³⁶ the supreme court held that in child custody cases the statutory best-interest factors should determine custody rather than deference to an interim custody agreement.⁷³⁷ As part of a divorce proceeding between the husband, Co, and the wife, Matson, the two entered into an interim custody arrangement regarding their two children.⁷³⁸ Matson later moved to amend the interim agreement due to the inability of the parents to communicate adequately as well as other concerns about Co’s parenting.⁷³⁹ In resolving the custody dispute, the lower court determined that the children would benefit from sole legal custody residing in one parent and concluded that the majority of the statutory best-interest factors favored granting Matson this custody.⁷⁴⁰ On appeal, Co argued that the lower court had improperly weighed the evidence in applying the statutory best-interest factors and abused its discretion by disrupting the status quo of the interim custody agreement.⁷⁴¹ The supreme court affirmed the lower court’s decision, reasoning that the court had substantial discretion in weighing the evidence and was not obligated to maintain the status quo of the interim custody agreement.⁷⁴² The court further

⁷²⁸ 309 P.3d 860 (Alaska 2013).

⁷²⁹ *Id.* at 865.

⁷³⁰ *Id.* at 861.

⁷³¹ *Id.* at 861–863.

⁷³² *Id.* at 863.

⁷³³ *Id.* at 864.

⁷³⁴ *Id.* at 865.

⁷³⁵ *Id.*

⁷³⁶ 313 P.3d 521 (Alaska 2013).

⁷³⁷ *Id.* at 530.

⁷³⁸ *Id.* at 523.

⁷³⁹ *Id.* at 523–24.

⁷⁴⁰ *Id.* at 524.

⁷⁴¹ *Id.* at 525, 530.

⁷⁴² *Id.* at 524, 530–31.

reasoned that such pre-trial interim agreements come second to considerations of the best interests of the children.⁷⁴³ Affirming the lower court's decision, the supreme court held that in child custody cases it is the statutory best-interest factors that determine custody rather than deference to the status quo of an interim custody agreement.⁷⁴⁴

David S. v. Jared H. & Connie H.

In *David S. v. Jared H. & Connie H.*,⁷⁴⁵ the supreme court held that a biological parent's repeated incarceration does not justify failure to communicate meaningfully his or her child.⁷⁴⁶ David was not listed on his daughter's birth certificate and had been incarcerated for most of her life.⁷⁴⁷ After the biological mother died, the lower court granted the child's maternal grandparents' petition to adopt her without David's consent.⁷⁴⁸ On appeal, David argued this was improper because his failure to communicate meaningfully with his daughter was justified by his incarceration.⁷⁴⁹ The supreme court affirmed the lower court's decision, reasoning that communication constraints resulting from the parent's own conduct could never justify the parent's failure to communicate.⁷⁵⁰ Thus, according to the court, David's repeated incarceration from parole violations was a result of his own conduct and, consequently, made his failure unjustifiable and his consent in the proceeding unnecessary.⁷⁵¹ Affirming the lower court's decision, the supreme court held that a biological parent's repeated incarceration does not justify failure to communicate meaningfully with his or her child.⁷⁵²

Glover v. Ranney

In *Glover v. Ranney*,⁷⁵³ the supreme court held that in divorce agreements dividing retirement benefits from military pensions, courts can compel award of a survivor benefit allowing receipt of the same amount after the employee spouse's death.⁷⁵⁴ Former spouses, Glover and Ranney, disputed whether a survivor benefit plan, from Glover's military pension, should be divided despite not being mentioned in the divorce agreement.⁷⁵⁵ On appeal, Glover argued the benefit plan was outside of their agreement's scope.⁷⁵⁶ The supreme court affirmed the lower court's decision, reasoning that a settlement equitably dividing retirement benefits implicitly included survivor benefits.⁷⁵⁷ However, Ranney, who would receive 28.6% of Glover's retired pay while

⁷⁴³ *Id.* at 531.

⁷⁴⁴ *Id.* at 530–31.

⁷⁴⁵ 308 P.3d 862 (Alaska 2013).

⁷⁴⁶ *Id.* at 869.

⁷⁴⁷ *Id.* at 864.

⁷⁴⁸ *Id.* at 863.

⁷⁴⁹ *Id.* at 863–864.

⁷⁵⁰ *Id.* at 869.

⁷⁵¹ *Id.* at 869–70.

⁷⁵² *Id.* at 869.

⁷⁵³ 314 P.3d 535 (Alaska 2013).

⁷⁵⁴ *Id.* at 540.

⁷⁵⁵ *Id.* at 537.

⁷⁵⁶ *Id.* at 539.

⁷⁵⁷ *Id.* at 544.

he was alive, should not be awarded 55% of it after his death.⁷⁵⁸ Affirming the lower court's inclusion of survivor benefits but remanding for proper allocation, the supreme court held that in divorce agreements dividing retirement benefits from military pensions, courts can compel award of a survivor benefit allowing receipt of the same amount after the employee spouse's death.⁷⁵⁹

Harris v. Governale

In *Harris v. Governale*,⁷⁶⁰ the supreme court held that a court must give weight to instances of domestic violence that occur outside the presence of the child when analyzing the child's best interest during a custodial determination.⁷⁶¹ Harris planned to move to Florida with her husband and sued Governale for sole custody of their child.⁷⁶² After a trial, however, the lower court awarded primary physical custody to Governale.⁷⁶³ On appeal, Harris argued that it was error for the lower court to disregard an instance of alleged domestic violence between Governale and his current girlfriend only because it had taken place outside the presence of the child.⁷⁶⁴ The supreme court reversed the lower court's decision, reasoning that there was no requirement under the statute that a child be present during alleged domestic violence for it to be a factor in a custodial determination.⁷⁶⁵ Children, according to the court, do not need to see the domestic violence for it to affect their wellbeing.⁷⁶⁶ Reversing the lower court's decision, the supreme court held that a court must give weight to instances of domestic violence that occur outside the presence of the child when analyzing the child's best interest during a custodial determination.⁷⁶⁷

Hawkins v. Williams

In *Hawkins v. Williams*,⁷⁶⁸ the supreme court held that a grandparent seeking court-ordered visitation with a grandchild must prove by clear and convincing evidence that visitation is in the best interests of the child, even when the parents do not explicitly object to all types of visitation.⁷⁶⁹ In 2011, Hawkins fell out of contact with her daughter, Williams.⁷⁷⁰ Hawkins later filed a petition for grandparent visitation with Williams' four children.⁷⁷¹ At trial, Williams did not testify, but Williams' husband, who had no general objections to visitation, was concerned with Hawkins seeing the children unannounced.⁷⁷² On appeal, Hawkins argued that the lower court should not have applied the clear and convincing standard to the case because the parents

⁷⁵⁸ *Id.* at 545.

⁷⁵⁹ *Id.* at 538.

⁷⁶⁰ 311 P.3d 1052 (Alaska 2013).

⁷⁶¹ *Id.* at 1058, 1061.

⁷⁶² *Id.* at 1054.

⁷⁶³ *Id.* at 1054.

⁷⁶⁴ *Id.* at 1058–59.

⁷⁶⁵ *Id.* at 1059, 1061.

⁷⁶⁶ *Id.*

⁷⁶⁷ *Id.* at 1058, 1061.

⁷⁶⁸ 314 P.3d 1202 (Alaska 2013).

⁷⁶⁹ *Id.* at 1204–05.

⁷⁷⁰ *Id.* at 1204.

⁷⁷¹ *Id.*

⁷⁷² *Id.* at 1205.

did not object to her visitation.⁷⁷³ The supreme court affirmed the lower court's decision, reasoning that court-ordered visitation was different than other types of visitation because the former infringed on the family's rights to make decisions relating to the care of their children.⁷⁷⁴ The supreme court further reasoned that Williams and her husband did object to court-ordered visitation by opposing Hawkins' petition and voicing the aforementioned concern.⁷⁷⁵ Affirming the lower court's decision, the supreme court held that a grandparent seeking court-ordered visitation with a grandchild must prove by clear and convincing evidence that visitation is in the best interests of the child.⁷⁷⁶

Irma E. v. State

In *Irma E. v. State*,⁷⁷⁷ the supreme court held that an adult family member is entitled to a hearing to contest the Office of Children's Services ("OCS") placement decision if OCS denies him or her child custody.⁷⁷⁸ Irma took custody of her biological granddaughters after their mother became homeless.⁷⁷⁹ OCS then removed Irma's granddaughters from her home because Irma allowed her son to live with them despite his alleged history of sexual abuse.⁷⁸⁰ OCS placed Irma's granddaughters with a non-relative foster family and Irma repeatedly asked OCS to place the girls back with her.⁷⁸¹ OCS denied Irma's request and refused to grant a hearing on the matter.⁷⁸² On appeal, Irma argued that OCS should have granted her a hearing.⁷⁸³ The supreme court reversed the lower court's decision, explaining that OCS was required by statute to not only explain its basis for denying a child's placement with an adult family member, but also to inform the adult family member of his or her right to request a hearing to review OCS's decision.⁷⁸⁴ Accordingly, the court concluded that OCS's denial of a hearing in this instance was improper.⁷⁸⁵ Reversing the lower court's decision, the supreme court held that an adult family member is entitled to a hearing to contest the OCS placement decision if OCS denies him or her child custody.⁷⁸⁶

Kyle S. v. State, Dep't of Health & Social Services

In *Kyle S. v. State, Dep't of Health & Social Services*,⁷⁸⁷ the supreme court held that efforts directed at a child in need can satisfy the active efforts requirements of the Indian Child Welfare

⁷⁷³ *Id.*

⁷⁷⁴ *Id.*

⁷⁷⁵ *Id.*

⁷⁷⁶ *Id.* at 1204–05.

⁷⁷⁷ 312 P.3d 850 (Alaska 2013).

⁷⁷⁸ *Id.* at 851.

⁷⁷⁹ *Id.*

⁷⁸⁰ *Id.*

⁷⁸¹ *Id.*

⁷⁸² *Id.* at 852.

⁷⁸³ *Id.*

⁷⁸⁴ *Id.* at 853.

⁷⁸⁵ *Id.* at 855.

⁷⁸⁶ *Id.* at 851.

⁷⁸⁷ 309 P.3d 1262 (Alaska 2013).

Act (“ICWA”).⁷⁸⁸ Jane, an Indian child, was taken into state custody after reports of physical abuse.⁷⁸⁹ Based on Jane’s substance abuse problems and her propensity to run away, the lower court determined that Jane was a child in need of aid.⁷⁹⁰ On appeal, Kyle S., Jane’s father, argued that the Office of Children’s Services (“OCS”) failed to make the statutorily required “active efforts” to prevent the family’s breakup.⁷⁹¹ The supreme court affirmed the lower court’s decision, determining that OCS must address a family’s particular needs in determining what efforts to take.⁷⁹² The supreme court reasoned that because Jane’s behavior was the cause of her adjudication as a child in need of aid, OCS could focus their efforts on Jane rather than on reunification with her family.⁷⁹³ Affirming the lower court’s decision, the supreme court held that efforts directed at a child in need can satisfy the active efforts requirements of the ICWA.⁷⁹⁴

Mallory D. v. Malcolm D.

In *Mallory D. v. Malcolm D.*,⁷⁹⁵ the supreme court held that a court is not required to impute full-time income to a parent who could work full-time but chooses not to in order to accommodate their child’s scheduling needs.⁷⁹⁶ In 2009, Mallory and Malcolm divorced and split custody of their three children.⁷⁹⁷ Mallory worked thirty hours per week at eighteen dollars per hour.⁷⁹⁸ She testified that her schedule allowed her to drive her daughter to and from school but also that her applications for full-time employment were unsuccessful.⁷⁹⁹ The lower court held that it was required to impute full-time income to Mallory because she could work full-time but chose not to in order to meet her daughter’s scheduling needs.⁸⁰⁰ On appeal, Mallory argued that the lower court erred in doing so.⁸⁰¹ The supreme court reversed the lower court’s decision, explaining that courts have broad discretion to impute income in cases of voluntary and unreasonable underemployment.⁸⁰² Thus, the lower court, according to the supreme court, was not required to impute Mallory’s hypothetical full-time income because the statute “does not rigorously command pursuit of maximum earnings.”⁸⁰³ Reversing the lower court’s decision, the supreme court held that a court is not required to impute full-time income to a parent who could work full-time but chooses not to in order to accommodate their child’s scheduling needs.⁸⁰⁴

⁷⁸⁸ *Id.* at 1270.

⁷⁸⁹ *Id.* at 1263.

⁷⁹⁰ *Id.* at 1265.

⁷⁹¹ *Id.* at 1267.

⁷⁹² *Id.* at 1269.

⁷⁹³ *Id.*

⁷⁹⁴ *Id.* at 1270.

⁷⁹⁵ 309 P.3d 845 (Alaska 2013).

⁷⁹⁶ *Id.* at 849.

⁷⁹⁷ *Id.* at 846.

⁷⁹⁸ *Id.*

⁷⁹⁹ *Id.*

⁸⁰⁰ *Id.* at 849.

⁸⁰¹ *Id.*

⁸⁰² *Id.*

⁸⁰³ *Id.*

⁸⁰⁴ *Id.*

Martin v. Martin

In *Martin v. Martin*,⁸⁰⁵ the supreme court held that in a child custody case a lesser showing of change in circumstances is needed to modify a visitation schedule than the underlying custody provisions of a parenting agreement.⁸⁰⁶ Gregory and Melody Martin dissolved their marriage and formed a parenting agreement with shared physical custody of their children.⁸⁰⁷ When the Martins later filed cross-motions to modify the agreement, the lower court refused to modify the custody provisions because there were no substantial changes in circumstances to warrant modification.⁸⁰⁸ The lower court did, however, modify the visitation schedule, finding that these modifications were in the children's best interests.⁸⁰⁹ On appeal, Gregory argued that it was error for the lower court to modify the visitation schedule while finding that there was no substantial change in circumstances.⁸¹⁰ The supreme court affirmed the lower court's decision, noting that the lower court's finding of no substantial change in the circumstances.⁸¹¹ Nevertheless, the lower court, as pointed out by the supreme court, did find that minimizing parental contact was in the children's best interest due to "ongoing conflicts."⁸¹² Affirming the lower court's decision, the supreme court held that in a child custody case a lesser showing of change in circumstances is needed to modify a visitation schedule than the underlying custody provisions of a parenting agreement.⁸¹³

Nancy M. v. John M.

In *Nancy M. v. John M.*,⁸¹⁴ the supreme held that it is not error for a court to consider the impact of a parent's status as a renter and student on the stability factor during a custodial determination.⁸¹⁵ The father, John M., owned his own house and worked as a tenured professor at the University of Alaska.⁸¹⁶ The mother, Nancy M., had recently moved to California where she rented an apartment and was in the process of seeking admission to a doctoral program.⁸¹⁷ The lower court held that, in light of these facts, the stability factor in the custodial determination slightly favored the father.⁸¹⁸ Consequently, the lower court awarded primary custody of their child to him.⁸¹⁹ On appeal, Nancy argued that disfavoring a parent for renting and attending graduate school was error.⁸²⁰ The supreme court affirmed the lower court's decision, reasoning

⁸⁰⁵ 303 P.3d 421 (Alaska 2013).

⁸⁰⁶ *Id.* at 425.

⁸⁰⁷ *Id.* at 423.

⁸⁰⁸ *Id.* at 423–25.

⁸⁰⁹ *Id.* at 424–25.

⁸¹⁰ *Id.* at 425.

⁸¹¹ *Id.*

⁸¹² *Id.*

⁸¹³ *Id.*

⁸¹⁴ 308 P.3d 1130 (Alaska 2013).

⁸¹⁵ *Id.* at 1135–36.

⁸¹⁶ *Id.* at 1135.

⁸¹⁷ *Id.* at 1131.

⁸¹⁸ *Id.* at 1135.

⁸¹⁹ *Id.* at 1133.

⁸²⁰ *Id.* at 1135.

that stability can take into account multiple factors.⁸²¹ Thus, here, while the status of renter versus homeowner was not dispositive, the stability factor was further influenced by the mother's general, undetermined plans for her future career and education.⁸²² Affirming the lower court's decision, the supreme court held that it is not error for a court to consider the impact of a parent's status as a renter and student in regards to the stability of the household during a custodial determination.⁸²³

Native Village of Tununak v. State, Dep't of Health & Social Services

In *Native Village of Tununak v. State, Dep't of Health & Social Services*,⁸²⁴ the supreme court held that clear and convincing evidence is necessary before departing from the Indian Child Welfare Act's ("ICWA") adoptive preferences.⁸²⁵ The Office of Children's Services ("OCS") assumed custody of Dawn when she was four months old and placed her in a non-Native foster home.⁸²⁶ The Native Village of Tununak (the "Tribe") intervened in Dawn's case, arguing for placement with Dawn's grandmother since adoptive preference must be given to the child's extended family unless there is "good cause" for deviation.⁸²⁷ The lower court held that a preponderance of the evidence supported its conclusion that there was good cause to deviate from the ICWA adoptive preferences, however.⁸²⁸ On appeal, the Tribe argued that the good cause showing under the ICWA required clear and convincing evidence before departing from the Act's adoptive preferences.⁸²⁹ The supreme court reversed the lower court's decision, reasoning that Congress' intent and the U.S. Supreme Court's interpretation of the ICWA favored overturning precedential use of the preponderance of the evidence standard in these circumstances.⁸³⁰ Reversing the lower court's decision, the supreme court held that clear and convincing evidence is necessary before departing from the ICWA's adoptive preferences.⁸³¹

O'Neal v. Campbell

In *O'Neal v. Campbell*,⁸³² the supreme court held that a parent with equal joint custody may still be required to pay child support where there is a disparity in income between parents.⁸³³ O'Neal and Campbell had a daughter together.⁸³⁴ Campbell made less than half of O'Neal's income.⁸³⁵ In 2010, Campbell successfully petitioned the lower court for joint legal custody, shared physical custody and a child support order.⁸³⁶ O'Neal motioned for reconsideration of the child support

⁸²¹ *Id.* at 1136.

⁸²² *Id.*

⁸²³ *Id.* at 1135–36.

⁸²⁴ 303 P.3d 431 (Alaska 2013).

⁸²⁵ *Id.* at 446.

⁸²⁶ *Id.* at 433–34.

⁸²⁷ *Id.* at 433.

⁸²⁸ *Id.* at 439.

⁸²⁹ *Id.* at 446.

⁸³⁰ *Id.* at 449.

⁸³¹ *Id.* at 446.

⁸³² 300 P.3d 15 (Alaska 2013).

⁸³³ *Id.* at 16.

⁸³⁴ *Id.*

⁸³⁵ *Id.*

⁸³⁶ *Id.*

order since she had custody of their daughter fifty-percent of the time.⁸³⁷ The supreme court affirmed the lower court's decision, reasoning that child support payments were based on both the relative percentage of physical custody as well as the relative adjusted incomes of the parents.⁸³⁸ Thus, according to the court, awarding child support to Campbell was not an abuse of discretion under the circumstances.⁸³⁹ Affirming the lower court's decision, the supreme court held that a parent with equal joint custody may still be required to pay child support where there is a disparity in income between the parents.⁸⁴⁰

Petrilla v. Petrilla

In *Petrilla v. Petrilla*,⁸⁴¹ the supreme court held that decisions denying motions to modify child support payments must be supported by a sufficient factual basis.⁸⁴² Brian and Roxana Petrilla divorced and subsequently shared custody of their daughter until late 2011 when Brian began preparations to move to Nevada.⁸⁴³ Roxana sought to modify the child support payment, filing a motion to impute Brian's income from 2011 to calculate the support amount.⁸⁴⁴ After an earlier determination that Brian's imputable income was \$44,387, Brian submitted a motion to modify the payments based on his new position in Nevada, which paid \$33,000 per year.⁸⁴⁵ The lower court denied this motion reasoning that Brian had waited until an unfavorably high amount was imputed to begin searching for work.⁸⁴⁶ On appeal, Brian argued that the lower court had abused its discretion in denying his motion for modification despite his new salary information.⁸⁴⁷ The supreme court reversed the lower court's decision, reasoning that the lower court was required to make factual determinations before denying Brian's motion.⁸⁴⁸ These determinations included Brian's earning capability and the availability of higher paying jobs in Nevada.⁸⁴⁹ Reversing the lower court's decision, the supreme court held that decisions denying motions to modify child support payments must be supported by a sufficient factual basis.⁸⁵⁰

Philip J. v. State, Dep't of Health & Social Services

In *Philip J. v. State Department of Health & Social Services*,⁸⁵¹ the supreme court held that social workers' failure to ensure an abusive father seeks aid does not render the workers' efforts to reunify an Indian father with his family inadequate.⁸⁵² Philip had a long documented history of

⁸³⁷ *Id.*

⁸³⁸ *Id.*

⁸³⁹ *Id.*

⁸⁴⁰ *Id.*

⁸⁴¹ 305 P.3d 302 (Alaska 2013).

⁸⁴² *Id.* at 302.

⁸⁴³ *Id.* at 303.

⁸⁴⁴ *Id.* at 303–04.

⁸⁴⁵ *Id.* at 304.

⁸⁴⁶ *Id.* at 305.

⁸⁴⁷ *Id.* at 306.

⁸⁴⁸ *Id.* at 307.

⁸⁴⁹ *Id.*

⁸⁵⁰ *Id.* at 302.

⁸⁵¹ 314 P.3d 518 (Alaska 2013).

⁸⁵² *Id.* at 529.

domestic abuse and sexual assault against his wife and children beginning in 2004.⁸⁵³ In April 2010, soon after Philip had been released from prison, an Office of Children Services (“OCS”) family supervisor visited the family and identified safety threats including domestic violence, sexual abuse and substance abuse.⁸⁵⁴ As a result, the family supervisor took custody of Philip’s seven children, eventually placing them in their grandmother’s custody.⁸⁵⁵ Throughout 2010 OCS attempted to engage Philip in a case plan to reunify him with his children, to which he refused to cooperate.⁸⁵⁶ The lower court eventually terminated Philip’s parental rights, ruling that his children were in need of aid.⁸⁵⁷ On appeal, Philip argued that OCS’s efforts to reunite him with his children were inadequate.⁸⁵⁸ The supreme court affirmed the lower court’s decision, reasoning that the prolonged and continued efforts of OCS to encourage Philip to attend anger management, domestic violence and batter’s programs were sufficient.⁸⁵⁹ Affirming the lower court’s decision, the supreme court held that social workers’ failure to ensure an abusive father seeks aid does not render the workers’ reunification efforts inadequate.⁸⁶⁰

Pfeil v. Lock

In *Pfeil v. Lock*,⁸⁶¹ the supreme court held that applying the *Rose* factors to the division of marital property in divorce is inappropriate when assets have been commingled.⁸⁶² In 2011, Lock filed for divorce following four years of cohabitation and marriage.⁸⁶³ In dividing assets, the parties could agree how they would allocate ownership of the two homes they owned but disputed the distribution of a truck and a four-wheeler.⁸⁶⁴ On appeal, Lock argued for application of the *Rose* factors to their real property, treating their divorce as a rescission and returning both parties to the state they were in prior to marriage, but for application of different factors to the truck and four-wheeler.⁸⁶⁵ The supreme court reversed the lower court’s decision, reasoning that while limiting equitable division to a single asset may be appropriate, applying *Rose* rescission principles to a single asset was not.⁸⁶⁶ Divorcing spouses, according to the court, have either maintained separate economic identities or they have not, and where economic identities and assets have been commingled, *Rose* rescission is not appropriate.⁸⁶⁷ Reversing the lower court’s decision, the supreme court held that applying the *Rose* factors to the division of marital property in divorce is inappropriate where assets have been commingled.⁸⁶⁸

⁸⁵³ *Id.* at 520–25.

⁸⁵⁴ *Id.* at 523.

⁸⁵⁵ *Id.*

⁸⁵⁶ *Id.* at 524.

⁸⁵⁷ *Id.* at 526–27.

⁸⁵⁸ *Id.* at 528.

⁸⁵⁹ *Id.* 528–30.

⁸⁶⁰ *Id.* at 529.

⁸⁶¹ 311 P.3d 649 (Alaska 2013).

⁸⁶² *Id.* at 654–55.

⁸⁶³ *Id.* at 650–51.

⁸⁶⁴ *Id.* at 651.

⁸⁶⁵ *Id.*

⁸⁶⁶ *Id.* at 654–55.

⁸⁶⁷ *Id.* at 653, 655.

⁸⁶⁸ *Id.* at 654–55.

Reilly v. Northrop

In *Reilly v. Northrop*,⁸⁶⁹ the supreme court held that a parent could be voluntarily underemployed when more lucrative employment could be found outside the parent’s trained field.⁸⁷⁰ In 2003, Reilly and Vinnette had a child, while Reilly was working in Alaska as a drilling engineer.⁸⁷¹ In 2004, Reilly moved to Montana but was unable to obtain comparable employment and subsequently had a second child who, like his first child, had special needs.⁸⁷² On appeal, Reilly argued that his child support payments should be based on his current income and, consequently, should be reduced.⁸⁷³ The supreme court affirmed the lower court’s decision, reasoning that underemployment could be considered voluntary even if it was the result of failed good faith attempts to gain sufficient employment.⁸⁷⁴ Thus, the lower court did not err in imputing Reilly’s income based on the average income of workers in a similar field in southwest Montana.⁸⁷⁵ Affirming the lower court’s decision, the supreme court held that a parent could be found to be voluntarily underemployed when more lucrative employment could be found outside the parent’s trained field.⁸⁷⁶

Ronny M. v. Nanette H.

In *Ronny M. v. Nanette H.*,⁸⁷⁷ the supreme court held that the fact that the non-custodial parent earns a smaller income than the primary physical custodial parent does not constitute “good cause” to vary child support payments.⁸⁷⁸ In the late 1990s and early 2000s, Ronny M. and Nanette H. lived in Florida and had two children together.⁸⁷⁹ Eventually, the couple separated, with Nanette maintaining custody.⁸⁸⁰ In 2009, Nanette moved to Alaska with the two children.⁸⁸¹ In November 2010 Nanette filed in the lower court for sole legal and primary physical custody of the children as well as to receive child support payments.⁸⁸² In 2011, the lower court ordered Ronny to pay Nanette \$215 per month in child support.⁸⁸³ On appeal, Ronny argued that the lower court should have found “good cause” to vary the child support payments because Nanette had enough money to support the children without his payments that he could not afford.⁸⁸⁴ The supreme court affirmed the lower court’s decision, reasoning that even though Nanette made more money than Ronny, the difference between their incomes did not amount to a showing of

⁸⁶⁹ 314 P.3d 1206 (Alaska 2013).

⁸⁷⁰ *Id.* at 1210.

⁸⁷¹ *Id.*

⁸⁷² *Id.* at 1211.

⁸⁷³ *Id.*

⁸⁷⁴ *Id.* at 1213–14.

⁸⁷⁵ *Id.* at 1217–18.

⁸⁷⁶ *Id.* at 1210.

⁸⁷⁷ 303 P.3d 392 (Alaska 2013).

⁸⁷⁸ *Id.* at 406.

⁸⁷⁹ *Id.* at 396.

⁸⁸⁰ *Id.*

⁸⁸¹ *Id.*

⁸⁸² *Id.* at 395.

⁸⁸³ *Id.* at 399, 406.

⁸⁸⁴ *Id.* at 405–06

manifest injustice, which is required to find good cause.⁸⁸⁵ Affirming the lower court’s decision, the supreme court held that the fact that the non-custodial parent earns a smaller income than the primary physical custodial parent does not constitute “good cause” to vary child support payments.⁸⁸⁶

Rosenblum v. Perales

In *Rosenblum v. Perales*,⁸⁸⁷ the supreme court held that a court is not barred from considering a parent’s military deployment when resolving a custody dispute.⁸⁸⁸ Perales sued Rosenblum, the father of her four-year-old son, for primary physical custody and shared legal custody.⁸⁸⁹ The trial court awarded custody to Perales.⁸⁹⁰ On appeal, Rosenblum argued that the trial court’s decision violated the law by taking into account his regular military deployments in determining custody.⁸⁹¹ The law mandated that “a parent’s temporary duty, mobilization, or deployment to military service and the resultant temporary disruption to the child of the parent may not be a factor in a court’s [custody] decision.”⁸⁹² The supreme court affirmed the lower court’s decision, reasoning that “temporary” should be given its ordinary meaning.⁸⁹³ Therefore, Rosenblum’s recurring deployment for a third of every year was not temporary because each deployment continued beyond a limited period of time.⁸⁹⁴ Accordingly, it was also reasonable to conclude that the disruption this deployment schedule would cause to his son would not be temporary.⁸⁹⁵ Affirming the lower court’s decision, the supreme court held that a court is not barred from considering a parent’s military deployment when resolving a custody dispute.⁸⁹⁶

Schaub v. Schaub

In *Schaub v. Schaub*,⁸⁹⁷ the supreme court held that laches do not bar the prospective division of retirement benefits pursuant to a marriage dissolution.⁸⁹⁸ Theresa and “Hank” Schaub separated in 1986.⁸⁹⁹ In 1992, Hank petitioned the court to dissolve their marriage, representing that he had made diligent efforts but had been unable to locate Theresa.⁹⁰⁰ Subsequently, in 2010, Theresa filed a motion seeking a post-decree equitable distribution of their property.⁹⁰¹ On appeal, Hank

⁸⁸⁵ *Id.* at 406.

⁸⁸⁶ *Id.*

⁸⁸⁷ 303 P.3d 500 (Alaska 2013).

⁸⁸⁸ *Id.* at 509, 506.

⁸⁸⁹ *Id.* at 502.

⁸⁹⁰ *Id.* at 503.

⁸⁹¹ *Id.*

⁸⁹² *Id.* at 505 (internal citation omitted).

⁸⁹³ *Id.* at 506.

⁸⁹⁴ *Id.*

⁸⁹⁵ *Id.*

⁸⁹⁶ *Id.* at 509, 506.

⁸⁹⁷ 305 P.3d 337 (Alaska 2013).

⁸⁹⁸ *Id.* at 345.

⁸⁹⁹ *Id.* at 338–39.

⁹⁰⁰ *Id.* at 339.

⁹⁰¹ *Id.*

raised the defense of laches because it had taken Theresa many years to petition the court.⁹⁰² The supreme court affirmed the lower court's decision, reasoning that laches did not bar the division of Hank's future retirement benefits.⁹⁰³ Here, Hank would not suffer unreasonable prejudice from this prospective division, while Theresa would certainly be prejudiced if denied her share.⁹⁰⁴ Affirming the lower court's decision, the supreme court held that laches do not bar the prospective division of retirement benefits to a marriage dissolution.⁹⁰⁵

Sherman v. State, Dep't of Health and Social Services

In *Sherman v. State, Dep't of Health and Social Services*,⁹⁰⁶ the supreme court held that parents who neglect to comply with Office of Child Services ("OCS") developed case plans may be deemed to have failed to remedy previous abandonment of their child.⁹⁰⁷ In 2012, OCS took custody of Sherman's son, Kadin, after determining that both Kadin and his mother tested positive for cocaine.⁹⁰⁸ OCS had previously removed Sherman's other three children from his care for the exact same reason.⁹⁰⁹ Soon thereafter, OCS developed a case plan wherein Sherman could regain custody of Kadin if he submitted to psychological tests, provided OCS with housing and income information and attended monthly case planning meetings.⁹¹⁰ After refusing to follow nearly every aspect of the case plan, the lower court terminated Sherman's rights to Kadin.⁹¹¹ On appeal, Sherman argued that he neither abandoned nor failed to remedy Kadin's abandonment.⁹¹² The supreme court affirmed the lower court's decision, reasoning that, in failing to participate in nearly every aspect of the case plan, Sherman had both abandoned and failed to remedy such abandonment.⁹¹³ The court further reasoned that this conclusion was only strengthened by Sherman's continued secrecy and recalcitrance towards OCS caseworkers.⁹¹⁴ Affirming the lower court's decision, the supreme court held that parents who neglect to comply with OCS developed case plans may be deemed to have failed to remedy previous abandonment of their child.⁹¹⁵

Swaney v. Granger

In *Swaney v. Granger*,⁹¹⁶ the supreme court held that modification of child support orders in existence before the initial motion for modification is served on the opposing party is

⁹⁰² *Id.*

⁹⁰³ *Id.* at 345.

⁹⁰⁴ *Id.*

⁹⁰⁵ *Id.*

⁹⁰⁶ 310 P.3d 943 (Alaska 2013).

⁹⁰⁷ *Id.* at 946

⁹⁰⁸ *Id.*

⁹⁰⁹ *Id.* at 946–47.

⁹¹⁰ *Id.* at 948.

⁹¹¹ *Id.*

⁹¹² *Id.*

⁹¹³ *Id.* at 951–52.

⁹¹⁴ *Id.*

⁹¹⁵ *Id.* at 946.

⁹¹⁶ 297 P.3d 132 (Alaska 2013).

improper.⁹¹⁷ In 2005, the lower court granted Granger and Swaney a divorce and issued a child custody and support order covering their four minor children.⁹¹⁸ In 2008, Granger filed a motion to modify the child custody and support order.⁹¹⁹ The lower court subsequently granted the motion.⁹²⁰ The court, however, only modified the custody aspect of the order, leaving the child support aspect to be determined later.⁹²¹ Three years later the lower court revisited the issue and modified the child support aspect of the order as well, retroactively changing the amount of several of the child support payments due to be paid before the motion for modification was served on Swaney in 2008.⁹²² On appeal, Swaney argued that modifying child support orders in this manner violated Alaska Rule of Civil Procedure 90.3.⁹²³ The supreme court reversed the lower court's decision, reasoning that Alaska Rule of Civil Procedure 90.3 prohibited the retroactive modification of existing child support orders for the period before the motion for modification was served on the opposing party.⁹²⁴ Reversing the lower court's decision, the supreme court held that modification of child support orders in existence before the initial motion for modification is served on the opposing party is improper.⁹²⁵

Urban v. Urban

In *Urban v. Urban*,⁹²⁶ the supreme court held that in a divorce proceeding, a court may rely on property tax assessments over a real estate agent's estimate.⁹²⁷ In their divorce proceeding, Martha and Delbert Urban disagreed on the value of land they owned.⁹²⁸ The lower court ultimately valued the couple's property based on a tax assessment.⁹²⁹ On appeal, Delbert argued that the superior court erred in its property valuation.⁹³⁰ The supreme court affirmed the lower court's decision, reasoning that since the lower court's decision was reviewed for abuse of discretion, its decision that the tax assessment was more reliable than the realtor's opinion was not reversible error.⁹³¹ Affirming the lower court's decision, the supreme court held that reliance on tax valuation in regards to property appraisal is reasonable.⁹³²

⁹¹⁷ *Id.* at 136.

⁹¹⁸ *Id.* at 133.

⁹¹⁹ *Id.* at 134.

⁹²⁰ *Id.*

⁹²¹ *Id.*

⁹²² *Id.*

⁹²³ *Id.* at 136.

⁹²⁴ *Id.*

⁹²⁵ *Id.*

⁹²⁶ 314 P.3d 513 (Alaska 2013).

⁹²⁷ *Id.* at 515–16.

⁹²⁸ *Id.* at 514.

⁹²⁹ *Id.* at 515.

⁹³⁰ *Id.*

⁹³¹ *Id.*

⁹³² *Id.* at 515–16.

Wagner v. Wagner

In *Wagner v. Wagner*,⁹³³ the supreme court held that courts have a duty to inform a pro se litigant of the proper procedure for an action when the litigant exhibits behavior that constitutes a lack of familiarity with the rules.⁹³⁴ Felicia and Richard Wagner married in 1993.⁹³⁵ When Felicia filed for divorce in 2010 there was a dispute about the division of marital property.⁹³⁶ Richard failed to appear at three of the four pre-trial conferences and at trial but had called the court's legal secretary to ask for a continuance prior to three of his four absences.⁹³⁷ Richard's requests were never granted and he was never warned of the proper procedure for requesting a continuance.⁹³⁸ At trial, the court determined that, based on Richard's repeated absence, it had no choice but to determine that his absence from trial was voluntary and thus made several findings of fact and conclusions of law based on Felicia's testimony alone.⁹³⁹ On appeal, Richard argued that the court erred in concluding that his absence was voluntary and in proceeding to trial without him.⁹⁴⁰ The supreme court reversed the lower court's decision, reasoning that Richard's continued attempts to request a continuance by calling the court's secretary evidenced his belief that he was utilizing the appropriate procedure.⁹⁴¹ Based on this belief, combined with the fact that the lower court never ordered Richard to cease calling for continuances or advised him that he needed to file a motion for continuance, the court further reasoned that Richard's behavior constituted a lack of familiarity with the rules and thus was a legitimate request for continuance.⁹⁴² Reversing the lower court's decision, the supreme court held courts have a duty to inform a pro se litigant of the proper procedure for an action when the litigant exhibits behavior that constitutes a lack of familiarity with the rules.⁹⁴³

Wanner-Brown v. Brown

In *Wanner-Brown v. Brown*,⁹⁴⁴ the supreme court held that all retirement benefits vested during the course of a marriage are considered marital property regardless of when the retirement classification status was determined.⁹⁴⁵ Prior to his marriage, Conrad worked for the State in a position with a retirement classification of Tier 1.⁹⁴⁶ He later left his position and cashed out his retirement benefits.⁹⁴⁷ After his marriage to Tammy, Conrad again became employed by the State and completely re-earned his retirement benefits during the course of the marriage.⁹⁴⁸

⁹³³ 299 P.3d 170 (Alaska 2013).

⁹³⁴ *Id.* at 174.

⁹³⁵ *Id.* at 172.

⁹³⁶ *Id.*

⁹³⁷ *Id.*

⁹³⁸ *Id.* at 172–73.

⁹³⁹ *Id.*

⁹⁴⁰ *Id.* at 173.

⁹⁴¹ *Id.* at 174, 176.

⁹⁴² *Id.*

⁹⁴³ *Id.*

⁹⁴⁴ 312 P.3d 1106 (Alaska 2013).

⁹⁴⁵ *Id.* at 1111.

⁹⁴⁶ *Id.* at 1107.

⁹⁴⁷ *Id.*

⁹⁴⁸ *Id.*

While new employees at this time were classified as Tier 2, Conrad was able to retain his Tier 1 classification due to this prior employment with the State.⁹⁴⁹ The Tier 1 status allowed Conrad to receive full retirement benefits five years earlier, resulting in an almost \$80,000 increase in the present value of his benefits.⁹⁵⁰ After Conrad filed for divorce, the lower court determined that Conrad should be classified as a Tier 2 employee when determining the distribution of marital assets because his Tier 1 status was acquired before the marriage.⁹⁵¹ The supreme court reversed the lower court's decision, reasoning that all benefits obtained during a marriage are marital property.⁹⁵² As Conrad re-earned all his benefits during the marriage, his benefits should have been classified as Tier 1 when determining the distribution of marital assets.⁹⁵³ Reversing the lower court's decision, the supreme court held that all retirement benefits vested during the course of a marriage are considered marital property regardless of when the retirement classification status was determined.⁹⁵⁴

Wilhour v. Wilhour

In *Wilhour v. Wilhour*,⁹⁵⁵ the supreme court held that factual disputes over a parent's potential future income necessitate an evidentiary hearing to determine child support payments.⁹⁵⁶ After Joshua Wilhour relocated to move closer to his son, the lower court still used his previous income to determine his child support payments.⁹⁵⁷ His new income following relocation was substantially less than before, but Jacqueline Wilhour argued that the reduction was merely temporary.⁹⁵⁸ On appeal, he argued that the factual dispute over his income necessitated an evidentiary hearing that was denied by the lower court.⁹⁵⁹ The supreme court reversed the lower court's decision, reasoning that there was a genuine factual dispute over whether Joshua's income reduction was temporary or permanent.⁹⁶⁰ Additionally, according to the court, any income change resulting from a parent moving closer to his or her child should rarely weigh against that parent.⁹⁶¹ Reversing the lower court's decision, the supreme court held that factual disputes over a parent's potential future income necessitate an evidentiary hearing to determine child support payments.⁹⁶²

⁹⁴⁹ *Id.*

⁹⁵⁰ *Id.*

⁹⁵¹ *Id.*

⁹⁵² *Id.* at 1111.

⁹⁵³ *Id.*

⁹⁵⁴ *Id.*

⁹⁵⁵ 308 P.3d 884 (Alaska 2013).

⁹⁵⁶ *Id.* at 888–89.

⁹⁵⁷ *Id.* at 887.

⁹⁵⁸ *Id.*

⁹⁵⁹ *Id.* at 888.

⁹⁶⁰ *Id.*

⁹⁶¹ *Id.* at 889.

⁹⁶² *Id.* at 888–89.

HEALTH LAW

[Top](#) 

In re Stephen O.

In *In re Stephen O.*,⁹⁶³ the supreme court held that in an involuntary commitment hearing, the court must consider whether the psychiatric patient is able to live safely outside of a controlled environment.⁹⁶⁴ In 2004 Stephen had heard voices that made him fearful and led him to seriously injure himself by jumping off a 16 to 18 foot ledge.⁹⁶⁵ In 2009, Stephen claimed he began hearing the voice of Jesus telling him to repent and start attending church.⁹⁶⁶ Accordingly, the lower court found Stephen gravely disabled and ordered his involuntary commitment to a mental facility and for his involuntary administration of psychotropic drugs.⁹⁶⁷ The supreme court reversed the lower court's decision, reasoning that in determining whether a patient is severely disabled, the court is not to consider if commitment would be preferable or in the patient's best interest but whether the patient can live safely without commitment.⁹⁶⁸ The lower court's reliance upon hearsay, the patient's history involving markedly different symptoms and his willingness to receive medical treatment all corroborate against a finding of being severely disabled.⁹⁶⁹ Reversing the lower court's decision, the supreme court held that in involuntary commitment hearings, the court must consider whether the patient is able to live safely outside of a controlled environment.⁹⁷⁰

IMMIGRATION LAW

[Top](#) 

Villars v. Villars

In *Villars v. Villars*,⁹⁷¹ the supreme court held that, as her immigration sponsor, a former husband's obligation to support his non-citizen ex-wife was correctly adjusted for the time daughter did not live with the ex-wife, the ex-wife's move to a different state and the ex-wife's earnings.⁹⁷² Richard Villars sponsored Olga Villars' immigration to America.⁹⁷³ The couple ultimately divorced in 2009 with a decree maintaining his sponsoring obligation.⁹⁷⁴ Olga then moved from Alaska to California and married Nasif in late 2009.⁹⁷⁵ From January to November 2010, Richard did not pay any support to Olga causing her to file a motion for those payments.⁹⁷⁶

⁹⁶³ 314 P.3d 1185 (Alaska 2013).

⁹⁶⁴ *Id.* at 1193.

⁹⁶⁵ *Id.* at 1187.

⁹⁶⁶ *Id.*

⁹⁶⁷ *Id.* at 1191.

⁹⁶⁸ *Id.* at 1193.

⁹⁶⁹ *Id.* at 1194–96.

⁹⁷⁰ *Id.* at 1193.

⁹⁷¹ 305 P.3d 321 (Alaska 2013).

⁹⁷² *Id.* at 325.

⁹⁷³ *Id.* at 323.

⁹⁷⁴ *Id.*

⁹⁷⁵ *Id.*

⁹⁷⁶ *Id.*

The lower court found that Olga was not owed that support, however.⁹⁷⁷ On appeal, Olga challenged the lower court's use of California's lower federal poverty level, the time she and her daughter had lived separately and her 2010 earnings in its calculations.⁹⁷⁸ The supreme court affirmed the method used by the lower court, reasoning that support obligations must be adjusted down when a family member leaves the household.⁹⁷⁹ Additionally, the court reasoned that the applicable poverty level was the state where the potential recipient was currently living and that support obligations should also be offset by any earned income.⁹⁸⁰ Affirming the lower court's calculation method, the supreme court held that, as her immigration sponsor, a former husband's obligation to support his non-citizen ex-wife was correctly adjusted.⁹⁸¹

INSURANCE LAW

[Top](#) 

Dearlove v. Campbell

In *Dearlove v. Campbell*,⁹⁸² the supreme court held that voluntary pre-trial payments are sometimes included in the recipient's total recovery for purposes of Alaska Civil Rule 68 analysis.⁹⁸³ In a two-car collision, Dearlove, the driver of the first vehicle, collided with and injured Campbell, a passenger in the second vehicle.⁹⁸⁴ Campbell's insurance covered Campbell's medical bills of \$20,000 and established a subrogation claim against Dearlove.⁹⁸⁵ Dearlove first offered to settle with Campbell for \$18,000, but Campbell denied the offer because it would have left her responsible for the subrogation claim.⁹⁸⁶ Subsequently, Dearlove's insurance company paid the subrogation claim of \$20,000 to Campbell's insurance company.⁹⁸⁷ Dearlove then made a second settlement offer of \$5,000, which Campbell rejected as well.⁹⁸⁸ A jury later returned a total award of \$3,870 for Campbell and both parties claimed prevailing party status and, accordingly, moved for attorneys' fees under Rule 68.⁹⁸⁹ The lower court ruled that Dearlove should be awarded attorney's fees accrued after the second offer.⁹⁹⁰ On appeal, Dearlove argued that she should be awarded attorney's fees accrued after the first offer as well.⁹⁹¹ The supreme court affirmed the lower court's decision, reasoning that not including the subrogation payment in Campbell's total recovery to be compared to the first offer to determine

⁹⁷⁷ *Id.* at 324.

⁹⁷⁸ *Id.*

⁹⁷⁹ *Id.* at 325, 327.

⁹⁸⁰ *Id.*

⁹⁸¹ *Id.* at 325.

⁹⁸² 301 P.3d 1230 (Alaska 2013).

⁹⁸³ *Id.* at 1235.

⁹⁸⁴ *Id.* at 1231–32.

⁹⁸⁵ *Id.* at 1232.

⁹⁸⁶ *Id.* at 1234, 1232.

⁹⁸⁷ *Id.* at 1232.

⁹⁸⁸ *Id.* at 1235, 1232

⁹⁸⁹ *Id.* at 1232.

⁹⁹⁰ *Id.* at 1233.

⁹⁹¹ *Id.*

if Dearlove was entitled to attorney's fees could lead to abusive settlement practices.⁹⁹² Thus, according to the court, attorney's fees accrued by Dearlove between her two settlement offers was not available because Campbell's recovery to be compared to Dearlove's offer of \$18,000 was \$23,870.⁹⁹³ Affirming the lower court's decision, the supreme court held that voluntary pre-trial payments are sometimes included in the recipient's total recovery for purposes of Rule 68 analysis.⁹⁹⁴

McDonnell v. State Farm Mutual Automobile Insurance Co.

In *McDonnell v. State Farm Mutual Automobile Insurance Co.*,⁹⁹⁵ the supreme court held that personal injury claims are not subject to statutorily mandated appraisal under Alaska's insurance code.⁹⁹⁶ In 2007, McDonnell and her son were in a car accident.⁹⁹⁷ McDonnell claimed both her and her son suffered back injuries from this accident.⁹⁹⁸ State Farm, McDonnell's insurer, however, did not believe the aforementioned accident was the source of all the claimed injuries.⁹⁹⁹ Unable to settle, McDonnell asked for a declaratory judgment arguing that, statutorily, her claims were entitled to mandatory appraisal.¹⁰⁰⁰ Subsequently, the lower court granted summary judgment in favor of State Farm.¹⁰⁰¹ On appeal, McDonnell argued again for the application of mandatory appraisal to her claims.¹⁰⁰² The supreme court affirmed the lower court's decision, reasoning that the statutorily mandated appraisal applied to, among other things, personal property.¹⁰⁰³ Thus, according to the court, given the context, personal injury claims were not included in personal property and, consequently, fell outside the statute's bounds.¹⁰⁰⁴ Affirming the lower court's decision, the supreme court held that personal injury claims are not subject to statutorily mandated appraisal.¹⁰⁰⁵

SOP, Inc. v. State, Dep't of Natural Resources

In *SOP, Inc. v. State, Dep't of Natural Resources*,¹⁰⁰⁶ the supreme court held that a state park issuing special use permits not revocable at will create unconstitutional easements over public land.¹⁰⁰⁷ The Nancy Lake State Recreation Area (the "Park") granted numerous special use permits that allowed private land owners to use ATVs on Park trails to access their remote

⁹⁹² *Id.* at 1234–35.

⁹⁹³ *Id.* at 1235.

⁹⁹⁴ *Id.*

⁹⁹⁵ 299 P.3d 715 (Alaska 2013).

⁹⁹⁶ *Id.* at 723.

⁹⁹⁷ *Id.* at 718.

⁹⁹⁸ *Id.*

⁹⁹⁹ *Id.*

¹⁰⁰⁰ *Id.*

¹⁰⁰¹ *Id.*

¹⁰⁰² *Id.* at 719.

¹⁰⁰³ *Id.* at 721.

¹⁰⁰⁴ *Id.*

¹⁰⁰⁵ *Id.* at 723.

¹⁰⁰⁶ 310 P.3d 962 (Alaska 2013).

¹⁰⁰⁷ *Id.* at 964.

properties.¹⁰⁰⁸ As these properties became more populated, ATV usage rose considerably, damaging the wildlife and vegetation surrounding the trails.¹⁰⁰⁹ SOP, Inc. sued to enjoin the Park from issuing these special use permits.¹⁰¹⁰ On appeal, the Park argued that the permits were mere licenses within the scope of the Park's authority to grant.¹⁰¹¹ The supreme court reversed the lower court's decision, reasoning that the permits constituted appurtenant easements because the permits were revocable only for cause and every remote private property owner who applied received a permit on the basis of owning property in that area.¹⁰¹² The court further reasoned that, as easements, the permits constituted an impermissible, unconstitutional disposal of state park land.¹⁰¹³ Reversing the lower court's decision, the supreme court held that a state park issuing special use permits not revocable at will create unconstitutional easements over public land.¹⁰¹⁴

United Services Automobile Association v. Neary

In *United Services Automobile Association v. Neary*,¹⁰¹⁵ the supreme court held that the number of insureds does not affect an explicit per-occurrence policy limit.¹⁰¹⁶ While handling his father's gun a minor accidentally shot two friends with a single bullet, killing one and injuring the other.¹⁰¹⁷ The parents of the victims sued the minor, his parents and their insurer, United Services Automobile Association ("USAA").¹⁰¹⁸ The parents' plan, which covered themselves and their son, included a limit of liability provision that limited the coverage of each occurrence to \$300,000.¹⁰¹⁹ The policy further stated that the total liability for USAA under the plan resulting from any one occurrence would not be greater than that limit regardless of the number of insureds.¹⁰²⁰ The lower court held that each of the insureds were subject to an independent per-occurrence limit, resulting in potential liability of up to \$900,000 for USAA.¹⁰²¹ On appeal, USAA argued that the per-occurrence limit was not dependent on the number of insureds.¹⁰²² The supreme court reversed the lower court's decision, reasoning that while ambiguities should be construed in favor of the insured, the language of this policy was clear and unambiguous.¹⁰²³ Reversing the lower court's decision, the supreme court held that the number of insureds does not affect an explicit per-occurrence policy limit.¹⁰²⁴

¹⁰⁰⁸ *Id.* at 963.

¹⁰⁰⁹ *Id.* at 964.

¹⁰¹⁰ *Id.* at 966.

¹⁰¹¹ *Id.* at 967.

¹⁰¹² *Id.* at 967–69.

¹⁰¹³ *Id.* at 969.

¹⁰¹⁴ *Id.*

¹⁰¹⁵ 307 P.3d 907 (Alaska 2013).

¹⁰¹⁶ *Id.* at 910.

¹⁰¹⁷ *Id.* at 909.

¹⁰¹⁸ *Id.*

¹⁰¹⁹ *Id.*

¹⁰²⁰ *Id.*

¹⁰²¹ *Id.* at 910.

¹⁰²² *Id.*

¹⁰²³ *Id.* at 910–11.

¹⁰²⁴ *Id.* at 910.

MARITIME LAW

[Top](#) 

Janes v. Alaska Railbelt Marine, LLC

In *Janes v. Alaska Railbelt Marine, LLC*,¹⁰²⁵ the supreme court held that a plaintiff who asserts that a shipowner's failure to provide safer, alternative devices or methods that renders a vessel unseaworthy bears the initial burden of proving that the alternative devices or methods are feasible.¹⁰²⁶ Janes, a railroad conductor, sued Alaska Railbelt Marine, LLC, for injuries he suffered while loading railcars owned by the corporation onto a barge via a set of tracks.¹⁰²⁷ Janes alleged that placing cargo onto the tracks and failing to provide devices to stop moving railcars from hitting the non-rail cargo made the barge unseaworthy.¹⁰²⁸ At trial, the lower court found that Janes had not demonstrated that safer alternatives for stopping the railcars existed, and, consequently, his unseaworthiness claim must fail.¹⁰²⁹ On appeal, Janes argued that the lower court erred in requiring him to prove the feasibility of alternatives for stopping the railcars.¹⁰³⁰ The supreme court affirmed the lower court's decision, reasoning that because Janes' theories of unseaworthiness posited that the barge was not reasonably fit due to the failure to provide one of two alternative stopping devices, it was critical that the devices would work the way that Janes claimed they would.¹⁰³¹ Thus, according to the court, since Janes' unseaworthiness claim depended on a showing that additional stopping devices were needed to make the barge reasonably fit, Janes' lack of demonstration was dispositive.¹⁰³² Affirming the lower court, the supreme court held that a plaintiff who claims unseaworthiness based on a shipowner's failure to provide safer, alternative devices or methods bears the burden of proving the feasibility of the alternative devices or methods.¹⁰³³

PROPERTY LAW

[Top](#) 

Beals v. Beals

In *Beals v. Beals*,¹⁰³⁴ the supreme court held that absent evidence of intent to keep property separate it will be considered marital.¹⁰³⁵ The Bealses married in 2000 and divorced in 2011.¹⁰³⁶ Prior to the marriage Mark Beals owned a home at 534 Second Avenue.¹⁰³⁷ The couple refinanced this home in order to convert \$42,092 of equity to cash, which was used to purchase

¹⁰²⁵ 309 P.3d 867 (Alaska 2013).

¹⁰²⁶ *Id.* at 883.

¹⁰²⁷ *Id.* at 873.

¹⁰²⁸ *Id.* at 873–74.

¹⁰²⁹ *Id.* at 874.

¹⁰³⁰ *Id.* at 880–81.

¹⁰³¹ *Id.* at 883.

¹⁰³² *Id.*

¹⁰³³ *Id.*

¹⁰³⁴ 303 P.3d 453 (Alaska 2013).

¹⁰³⁵ *Id.* at 460.

¹⁰³⁶ *Id.* at 456.

¹⁰³⁷ *Id.*

an adjacent lot.¹⁰³⁸ Since this cash could be “easily tracked and separated from the marital assets,” the lower court decided Mark was entitled to \$42,092 of lot’s \$45,000 worth.¹⁰³⁹ On appeal, Patricia argued that Mark had not presented evidence sufficient to characterize the adjacent lot as separate property and was thus subject to marital distribution.¹⁰⁴⁰ The supreme court reversed the lower court’s decision, reasoning that except where marriage is short and no commingling of assets has occurred, property is presumed marital absent evidence of intent to the contrary.¹⁰⁴¹ Here, the adjacent lot was titled in both Mark’s and Patricia’s names.¹⁰⁴² Reversing the lower court’s decision, the supreme court held that absent evidence of an intent to keep property separate the property will be considered marital.¹⁰⁴³

Burke v. Maka

In *Burke v. Maka*,¹⁰⁴⁴ the supreme court held that the doctrine of laches precludes a party from challenging the validity of a covenant where the party knew of the shared use yet failed to assert a right to exclusive use for more than four years.¹⁰⁴⁵ Lot 9A shared a driveway with adjacent Lot 9B.¹⁰⁴⁶ In 2001, the owner of both lots filed a covenant granting each lot access to a shared driveway.¹⁰⁴⁷ However, this covenant was not recorded until 2004.¹⁰⁴⁸ The Burkes, purchased Lot 9A in 2004.¹⁰⁴⁹ Although they were unaware of the covenant, the Burkes stipulated that its recording before the sale placed them on constructive notice.¹⁰⁵⁰ Further, the Burkes did not object when the owner of 9B utilized the shared driveway.¹⁰⁵¹ It was not until 2009 that the Burkes contested the covenant, filing suit to quiet title, arguing that the covenant was invalid.¹⁰⁵² The supreme court affirmed the lower court’s decision, reasoning that evidence of the Burke’s knowledge of the covenant combined with their failure to object to the shared use of the driveway for more than four years constituted an unreasonable delay in seeking relief that consequently prejudiced the owners of Lot 9B.¹⁰⁵³ Affirming the lower court’s decision, the supreme court held that the doctrine of laches precludes a party from challenging the validity of a covenant where the party knew of the shared use yet failed to assert a right to exclusive use for more than four years.¹⁰⁵⁴

¹⁰³⁸ *Id.* at 457.

¹⁰³⁹ *Id.* (internal quotation marks omitted).

¹⁰⁴⁰ *Id.* at 458.

¹⁰⁴¹ *Id.* at 460.

¹⁰⁴² *Id.*

¹⁰⁴³ *Id.*

¹⁰⁴⁴ 296 P.3d 976 (Alaska 2013).

¹⁰⁴⁵ *Id.* at 980.

¹⁰⁴⁶ *Id.* at 977.

¹⁰⁴⁷ *Id.*

¹⁰⁴⁸ *Id.* at 978.

¹⁰⁴⁹ *Id.*

¹⁰⁵⁰ *Id.*

¹⁰⁵¹ *Id.*

¹⁰⁵² *Id.*

¹⁰⁵³ *Id.* at 980

¹⁰⁵⁴ *Id.*

Gefre v. Davis Wright Tremaine, LLP

In *Gefre v. Davis Wright Tremaine, LLP*,¹⁰⁵⁵ the supreme court held that the ten-year statute of limitations is inapplicable to tort claims that are merely attendant to an underlying claim involving an ownership interest in property.¹⁰⁵⁶ In response to Petro Alaska's President and majority shareholder personally acquiring a piece of property that was intended to belong to the corporation, the corporation's shareholders filed a derivative action for fiduciary fraud, fraudulent conveyance, legal malpractice, and civil conspiracy against the corporation's former attorneys.¹⁰⁵⁷ The superior court dismissed the shareholders' derivative action, finding that the claims were time-barred.¹⁰⁵⁸ On appeal, the shareholders argued that the superior court erred in refusing to apply a ten-year statute of limitations to the conspiracy and fraudulent conveyance claims which were related to the acquisition of the property at issue.¹⁰⁵⁹ The supreme court affirmed the lower court's decision, reasoning that the ten-year statute of limitations did not apply to the civil conspiracy and fraudulent conveyance claims because the claims did not directly involve the determination of a right or claim to or interest in the underlying real property.¹⁰⁶⁰ Affirming the lower court's decision, the court held that the statute's ten-year limitations period does not apply to tort claims that are merely attendant to an underlying claim involving a property interest.¹⁰⁶¹

Griffin v. Weber

In *Griffin v. Weber*,¹⁰⁶² the supreme court held that the burden of proof to reform a quitclaim deed into a security agreement is met when both parties to the transaction testify that they understood the deed's purpose was to provide security for the transaction.¹⁰⁶³ In 2009, Weber agreed to cosign a refinanced mortgage that Griffin wanted to take out on her property.¹⁰⁶⁴ Before taking out the mortgage, Griffin executed a quitclaim deed to transfer ownership of her property from only herself to herself and Weber.¹⁰⁶⁵ In 2010, Griffin wanted to refinance again, this time with her fiancé as cosigner.¹⁰⁶⁶ The bank asked that Weber relinquish his interest in the property first, this dispute arose and Griffin asked the court to reform the 2009 deed into a security instrument.¹⁰⁶⁷ At trial, Griffin testified that a purpose of the transaction was to provide security to Weber in case she defaulted on the mortgage.¹⁰⁶⁸ Furthermore, Weber testified that the purpose of the quitclaim deed was to secure his interest in the loan in case something

¹⁰⁵⁵ 306 P.3d 1264 (Alaska 2013).

¹⁰⁵⁶ *Id.* at 1272.

¹⁰⁵⁷ *Id.* at 1267–70.

¹⁰⁵⁸ *Id.* at 1271.

¹⁰⁵⁹ *Id.* at 1271–72.

¹⁰⁶⁰ *Id.* at 1272.

¹⁰⁶¹ *Id.*

¹⁰⁶² 299 P.3d 701 (Alaska 2013).

¹⁰⁶³ *Id.* at 701.

¹⁰⁶⁴ *Id.* at 701–02.

¹⁰⁶⁵ *Id.* at 702.

¹⁰⁶⁶ *Id.*

¹⁰⁶⁷ *Id.*

¹⁰⁶⁸ *Id.* at 703.

happened to Weber.¹⁰⁶⁹ The supreme court reversed the lower court's decision, reasoning that the parties' testimonies provided the clear and convincing evidence necessary to show that a security was intended.¹⁰⁷⁰ Reversing the lower court's decision, the supreme court held that the burden of proof to reform a quitclaim deed into a security agreement is met when both parties to the transaction testify that they understood the deed's purpose was to provide security for the transaction.¹⁰⁷¹

McCarrey v. Kaylor

In *McCarrey v. Kaylor*,¹⁰⁷² the supreme court held that the Federal Land Policy and Management Act ("FLPMA") does not terminate classifications created by the Small Tract Act.¹⁰⁷³ The Kaylor's owned a property directly adjacent to a property owned by the McCarreys.¹⁰⁷⁴ The McCarreys' property lot had its origins in the Small Tract Act, an act that authorized the sale of public lands to private parties.¹⁰⁷⁵ Furthermore, the deed accompanying the McCarrey lot reserved a fifty-foot right-of-way that allowed access to a section of the Kaylor lot.¹⁰⁷⁶ Eventually, the McCarreys planned to build a fence that would restrict the Kaylor's use of the right-of-way.¹⁰⁷⁷ The Kaylor's then commenced this action to establish a prescriptive easement and obtain an injunction preventing the erection of the proposed fence.¹⁰⁷⁸ On appeal, the McCarreys argued that the right-of-way on their land was terminated when the Small Tract Act was repealed by the FLPMA.¹⁰⁷⁹ The supreme court affirmed the lower court's decision, explaining that the right-of-way survived the repeal of the Small Tract Act because the FLPMA did not explicitly terminate the classifications created by the Small Tract Act, one of which formed the basis for this right-of-way.¹⁰⁸⁰ The court further reasoned that such classifications survived since the Bureau of Land Management's regulations stated that the classifications created by the Small Tract Act remained effective despite the Act's repeal.¹⁰⁸¹ Furthermore, the court noted that the FLPMA was limited in scope to public lands and that it probably did not affect the private land interests involved here.¹⁰⁸² Affirming the lower court's decision, the supreme court held that the Federal Land Policy and Management Act ("FLPMA") does not terminate classifications created by the Small Tract Act.

¹⁰⁶⁹ *Id.* at 702.

¹⁰⁷⁰ *Id.* at 704.

¹⁰⁷¹ *Id.* at 701.

¹⁰⁷² 301 P.3d 559 (Alaska 2013).

¹⁰⁷³ *Id.* at 567.

¹⁰⁷⁴ *Id.* at 561.

¹⁰⁷⁵ *Id.* at 561, 565.

¹⁰⁷⁶ *Id.* at 562.

¹⁰⁷⁷ *Id.* at 561.

¹⁰⁷⁸ *Id.*

¹⁰⁷⁹ *Id.* at 564.

¹⁰⁸⁰ *Id.* at 565.

¹⁰⁸¹ *Id.* at 566.

¹⁰⁸² *Id.*

Schweitzer v. Salamatof Air Park Subdivision Owners, Inc.

In *Schweitzer v. Salamatof Air Park Subdivision Owners, Inc.*,¹⁰⁸³ the supreme court held that the determination of aircraft ownership is not preempted by the Federal Aviation Administration's ("FAA") authority.¹⁰⁸⁴ In 2010, Schweitzer filed a claim of exemption to prevent the seizure of an incomplete airplane in his possession as satisfaction of Salamatof Air Park Subdivision Owners, Inc.'s (the "Association") monetary judgment against him.¹⁰⁸⁵ Over Schweitzer's contentions that the plane was the property of a third party, the lower court determined that the incomplete plane was salvaged from parts of one of Schweitzer's planes and therefore was his property.¹⁰⁸⁶ On appeal, Schweitzer argued that the court could not make the ownership decision because it lacked subject-matter jurisdiction.¹⁰⁸⁷ The supreme court affirmed the lower court's decision, reasoning that the lower court did not need statutory authorization to rule as it did since the court had the inherent power to resolve property ownership disputes.¹⁰⁸⁸ The court further reasoned that while federal regulations governed the assignment of identification by airplane manufacturers, nothing in the regulations restricted the lower court's power to look beyond the airplane's registration number to determine ownership.¹⁰⁸⁹ Affirming the lower court's decision, the supreme court held that the determination of aircraft ownership is not preempted by the FAA's authority.¹⁰⁹⁰

Stanhope v. Stanhope

In *Stanhope v. Stanhope*,¹⁰⁹¹ the supreme court held that in an equitable division of marital assets proceeding, it is reasonable to award a contested marital residence to the party with the ability to afford for the property's upkeep and mortgage.¹⁰⁹² In 2010, Kenneth divorced his wife, Maryna.¹⁰⁹³ At the time of the divorce, Kenneth was disabled and considered unable to hold a job, while Maryna worked as a janitor.¹⁰⁹⁴ During proceedings to equally divide the marital property, the superior court found that Maryna, due to her job, was in a better position to pay the home's mortgage and upkeep, awarding her the marital residence.¹⁰⁹⁵ On appeal, Kenneth argued that the lower court erred by awarding Maryna the residence because he was dependent on the house.¹⁰⁹⁶ The supreme court affirmed the lower court's decision, reasoning that the lower court did not abuse its discretion weighing the different factors in the case, ultimately awarding the home to the person who could afford to maintain the residence.¹⁰⁹⁷ Kenneth's poor health,

¹⁰⁸³ 308 P.3d 1142 (Alaska 2013).

¹⁰⁸⁴ *Id.* at 1148.

¹⁰⁸⁵ *Id.* at 1145–46.

¹⁰⁸⁶ *Id.*

¹⁰⁸⁷ *Id.* at 1146.

¹⁰⁸⁸ *Id.* at 1147.

¹⁰⁸⁹ *Id.* at 1148.

¹⁰⁹⁰ *Id.* at 1148.

¹⁰⁹¹ 306 P.3d 1282 (Alaska 2013).

¹⁰⁹² *Id.* at 1287.

¹⁰⁹³ *Id.* at 1285.

¹⁰⁹⁴ *Id.* at 1286–89.

¹⁰⁹⁵ *Id.* at 1286.

¹⁰⁹⁶ *Id.* at 1289.

¹⁰⁹⁷ *Id.*

inability to work and destruction of a number of marital assets were properly weighed against Maryna's recent immigration, modest earning capacity as a janitor and lack of health problems.¹⁰⁹⁸ Affirming the lower court's decision, the supreme court held that in an equitable division of marital assets proceeding, it is reasonable to award the contested marital residence to the party with the ability to afford for the property's upkeep and mortgage.¹⁰⁹⁹

Windel v. Mat-Su Title Insurance Agency, Inc.

In *Windel v. Mat-Su Title Insurance Agency, Inc.*,¹¹⁰⁰ the supreme court held that easements on property owned by tenants by the entirety but missing a co-grantor's signature can nonetheless be valid.¹¹⁰¹ Windel purchased a parcel of land from the Davises, tenants by the entirety who jointly had recorded a fifty-foot-wide easement for a public road on the property.¹¹⁰² Carnahan purchased land adjacent to Windel's property and upgraded the road.¹¹⁰³ Windel sued Carnahan for trespass and argued that the easement was invalid.¹¹⁰⁴ The supreme court affirmed the lower court's decision, reasoning that despite Mrs. Davis' absent signature on the easement's recording, the easement was valid under the doctrine of ratification.¹¹⁰⁵ Mrs. Davis' silence ratified the easement conveyance.¹¹⁰⁶ Affirming the lower court's decision, the supreme court held that easements on property owned by tenants by the entirety but missing a co-grantor's signature can nonetheless be valid.¹¹⁰⁷

TORT LAW

[Top](#) 

Kalenka v. Jadon, Inc.

In *Kalenka v. Jadon, Inc.*,¹¹⁰⁸ the supreme court held that lack of direct evidence of a bar patron's intoxication is not necessarily fatal at the summary judgment stage to a claim under the dram shop statute.¹¹⁰⁹ Morrell went drinking at a bar and fatally stabbed Kalenka in a fight later that night.¹¹¹⁰ Kalenka's estate representative brought a wrongful death action against the bar, claiming that the bar violated the dram shop statute by serving Morrell alcohol when he was drunk.¹¹¹¹ Under the dram shop statute, a bar serving alcohol to a drunk patron is civilly liable for damages caused by the patron's intoxication.¹¹¹² Nevertheless, the bar won its summary

¹⁰⁹⁸ *Id.*

¹⁰⁹⁹ *Id.* at 1287.

¹¹⁰⁰ 305 P.3d 264 (Alaska 2013).

¹¹⁰¹ *Id.* at 274.

¹¹⁰² *Id.* at 267.

¹¹⁰³ *Id.*

¹¹⁰⁴ *Id.* at 268.

¹¹⁰⁵ *Id.* at 272.

¹¹⁰⁶ *Id.*.

¹¹⁰⁷ *Id.* at 274.

¹¹⁰⁸ 305 P.3d 346 (Alaska 2013).

¹¹⁰⁹ *Id.* at 352.

¹¹¹⁰ *Id.* at 347.

¹¹¹¹ *Id.* at 348.

¹¹¹² *Id.* at 349.

judgment motion because there was no direct evidence of Morrell’s drunken state at the bar.¹¹¹³ On appeal, Kalenka’s estate argued that a jury could have inferred that Morrell was visibly intoxicated based on his later behavior.¹¹¹⁴ The supreme court reversed the lower court’s decision, reasoning that if an issue of material fact remained, summary judgment should not be granted.¹¹¹⁵ Here, according to the court, there was still the question of material fact regarding whether the bar servers should have noticed Morrell’s intoxication.¹¹¹⁶ Reversing the lower court’s decision, the supreme court held that lack of direct evidence of a bar patron’s intoxication is not necessarily fatal at the summary judgment stage to a claim under the dram shop statute.¹¹¹⁷

Kennedy v. Municipality of Anchorage

In *Kennedy v. Municipality of Anchorage*,¹¹¹⁸ the supreme court held that “garden-variety” mental anguish claims do not waive physician and psychotherapist privileges.¹¹¹⁹ Two former police officers brought claims against the Municipality of Anchorage for racial discrimination, claiming damages for mental anguish.¹¹²⁰ The Municipality sought discovery concerning the nature of the officers’ mental anguish claims, requesting the officers’ medical and counseling records.¹¹²¹ Subsequently, the lower court granted the Municipality’s motion to compel.¹¹²² On appeal, the officers argued that claims for the sort of mental anguish that any normal person would experience under the circumstances did not place their emotional conditions at issue, and, accordingly, did not waive the privilege that protected these records during discovery.¹¹²³ The supreme court reversed the lower court’s decision, reasoning that although discovery of a patient’s medical records may be compelled when serious psychological conditions such as depression are claimed, similar compulsion would not be granted for garden-variety mental anguish claims, such as claims of anger, disappointment and sadness.¹¹²⁴ Reversing the lower court’s decision, the supreme court held that “garden-variety” mental anguish claims do not waive physician and psychotherapist privileges.¹¹²⁵

Lum v. Koles

In *Lum v. Koles*,¹¹²⁶ the supreme court held that unlawful entry by a police officer does not make any subsequent use of force per se unreasonable.¹¹²⁷ After receiving a domestic disturbance emergency telephone call from a third party, police officers entered the Lum’s apartment without

¹¹¹³ *Id.* at 350.

¹¹¹⁴ *Id.*

¹¹¹⁵ *Id.*

¹¹¹⁶ *Id.*

¹¹¹⁷ *Id.* at 352.

¹¹¹⁸ 305 P.3d 1284 (Alaska 2013).

¹¹¹⁹ *Id.* at 1284.

¹¹²⁰ *Id.* at 1285.

¹¹²¹ *Id.* at 1286.

¹¹²² *Id.*

¹¹²³ *Id.* at 1287.

¹¹²⁴ *Id.* at 1290–92.

¹¹²⁵ *Id.* at 1284.

¹¹²⁶ 314 P.3d 546 (Alaska 2013).

¹¹²⁷ *Id.* at 555.

knocking or announcing their presence.¹¹²⁸ An altercation ensued and the police officers pepper sprayed and handcuffed Daniel Lum.¹¹²⁹ After the Lums sued the officers for excessive force and unlawful entry, the lower court granted summary judgment for the officers based on qualified immunity.¹¹³⁰ On appeal, the Lums argued that the unlawful entry and subsequent acts of force should be considered together, defeating the officers' qualified immunity by making their use of force per se unreasonable.¹¹³¹ The supreme court affirmed the lower court's decision, reasoning that, in an excessive force analysis, the court must look solely at the use of force at the time the force was applied.¹¹³² Thus, according to the court, unlawful entry does not make applied force per se unreasonable and, consequently, the force ultimately used here was reasonable at the time it was applied.¹¹³³ Affirming the lower court's decision, the supreme court held that unlawful entry by a police officer does not make any subsequent use of force per se unreasonable.¹¹³⁴

Maness v. Daily

In *Maness v. Daily*,¹¹³⁵ the supreme court held that qualified immunity protected state troopers from excessive force claims.¹¹³⁶ Maness had fled from state troopers, who pursued him until a police department officer shot him non-fatally.¹¹³⁷ Subsequently, Maness brought claims of excessive force against the troopers.¹¹³⁸ Finding the troopers were public servants protected by qualified immunity, the lower court granted summary judgment.¹¹³⁹ On appeal, Maness argued that officers may be liable for excessive force if they violate the Fourth Amendment by provoking a violent confrontation.¹¹⁴⁰ The supreme court affirmed the lower court's decision, reasoning that qualified immunity protected police officers' exercise of discretionary functions.¹¹⁴¹ The court further reasoned that, regarding excessive force claims, the officer's conduct must be objectively reasonable or he must reasonably believe his conduct was lawful from the perspective of a reasonable officer.¹¹⁴² Here, the troopers' actions were objectively reasonable.¹¹⁴³ Affirming that lower court's decision, the supreme court held that qualified immunity protected state troopers from excessive force claims.¹¹⁴⁴

¹¹²⁸ *Id.* at 551.

¹¹²⁹ *Id.*

¹¹³⁰ *Id.* at 552.

¹¹³¹ *Id.* at 552, 554.

¹¹³² *Id.* at 554.

¹¹³³ *Id.* at 554–55.

¹¹³⁴ *Id.* at 555.

¹¹³⁵ 307 P.3d 894 (Alaska 2013).

¹¹³⁶ *Id.* at 903.

¹¹³⁷ *Id.* at 897–98.

¹¹³⁸ *Id.* at 899.

¹¹³⁹ *Id.*

¹¹⁴⁰ *Id.* at 902.

¹¹⁴¹ *Id.* at 901.

¹¹⁴² *Id.*

¹¹⁴³ *Id.* at 903.

¹¹⁴⁴ *Id.*

Wiersum v. Harder

In *Wiersum v. Harder*,¹¹⁴⁵ the supreme court held that landowners do not have a duty to their neighbors to prevent unreasonable risks of harm caused by third parties.¹¹⁴⁶ Harder brought a timber trespass action against his neighbors, the Wiersums, seeking damages after he discovered that the Wiersums had cut down trees on his property.¹¹⁴⁷ In their answer, the Wiersums filed a third-party complaint against another neighbor, Wietfeld, alleging that she negligently misrepresented to the Wiersums that she owned the property in between her home and their home and granted them permission to cut down the trees.¹¹⁴⁸ The lower court dismissed the claim against Wietfeld holding that she did not owe a duty to the Wiersums.¹¹⁴⁹ On appeal, the Wiersums argued that Wietfeld was liable because she negligently misrepresented or failed to disclose information to the Wiersums and that Wietfeld owed a broad duty to her neighbors to prevent unreasonable risks of harm.¹¹⁵⁰ The supreme court affirmed the lower court's decision, reasoning that claims for negligent misrepresentation and failure to disclose require a business transaction between the parties, which was not present in this case.¹¹⁵¹ The court further reasoned that Wietfeld owed no broad duty of care to her neighbors since there was no statute, regulation, contract or case law supporting such a liability theory.¹¹⁵² Affirming the lower court's decision, the supreme court held that landowners do not have a duty to their neighbors to prevent unreasonable risks of harm caused by third parties.¹¹⁵³

¹¹⁴⁵ 316 P.3d 557 (Alaska 2013).

¹¹⁴⁶ *Id.* at 566–67.

¹¹⁴⁷ *Id.* at 560.

¹¹⁴⁸ *Id.*

¹¹⁴⁹ *Id.* at 563.

¹¹⁵⁰ *Id.*

¹¹⁵¹ *Id.* at 563–66.

¹¹⁵² *Id.* at 566.

¹¹⁵³ *Id.* at 566–67.