

## Summaries of Published Opinions

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**February 11, 2019**

**2019 CO 11. No. 18SA127. In re Accetta v. Brooks Towers Residences Condominium Association, Inc.** *Civil Procedure—Joinder—Declaratory Judgments—Colorado Common Interest Ownership Act.*

In this original proceeding pursuant to C.A.R. 21, the Supreme Court reviewed the

district court's order requiring plaintiff to join as indispensable parties the approximately 500 individual unit owners in the Brooks Tower Residences (Brooks Tower) rather than proceeding solely against his condominium association and its board members. Plaintiff sought, among other things, a declaratory judgment invalidating a provision of his condominium association's declaration that provides for ownership interests

to be allocated in the sole discretion of the declarant. The district court concluded that all of the Brooks Tower unit owners are indispensable parties and must be joined. The Supreme Court issued a rule to show cause why the district court's ruling should not be vacated. The Court concluded that the condominium association can adequately represent the interests of the absent unit owners for purposes of plaintiff's declaratory judgment action. Therefore, plaintiff need not join those absent owners. The Court made the rule to show cause absolute.

**February 19, 2019**

**2019 CO 12. No. 16SA256. Well Augmentation Subdistrict of the Central Colorado Water Conservancy District v. Centennial Water and Sanitation District.** *Water Law—Burden of Proof.*

Centennial Water and Sanitation District (Centennial) appealed from an order of the water court dismissing its objection to the Well Augmentation Subdistrict's (WAS) proposal to use additional sources of replacement water for its previously decreed augmentation plan. Centennial had asserted that WAS failed to comply with the notice requirements of the decree itself and that this failure amounted to a per se injury, for which it was entitled to relief without any further showing of operational effect. The water court heard Centennial's motion objecting to WAS's proposed addition of new sources of replacement water and, without requiring WAS to present evidence, found that Centennial failed to establish prima facie facts of WAS's inability to deliver augmentation water in quantity or time to prevent injury to other water users. Referencing CRCP 41 as the



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appropriate procedural vehicle, the water court dismissed Centennial's objection.

The Supreme Court affirmed. Exercise of the water court's retained jurisdiction was statutorily limited to preventing or curing injury to other water users, and the evidence presented by Centennial failed to establish that WAS would be unable, under the conditions imposed by the Engineer for approval of the additional sources of replacement water, to deliver augmentation water sufficient to prevent injury to other water users. Accordingly, the water court's dismissal of Centennial's objection was proper.

**2019 CO 13. No. 18SA224. In re People v. Tafoya.** *Sentencing and Punishment—Criminal Law—Preliminary Hearings.*

In this original proceeding pursuant to C.A.R. 21, the Supreme Court reviewed the district court's ruling denying petitioner a preliminary hearing when she was charged with Driving Under the Influence (DUI)—fourth or subsequent offense, a class 4 felony under CRS § 42-4-1301(1)(a), and was being held in custody on that charge.

The Court issued a rule to show cause and now makes the rule absolute. CRS § 16-5-301(1)(b)(II) provides that a defendant who is accused of a class 4, 5, or 6 felony and is in custody for that offense "may demand and shall receive a preliminary hearing." The legislature

amended the DUI statute to provide that DUI is a class 4 felony if the violation occurred after three or more prior convictions arising out of separate and distinct criminal episodes. Here, the complaint and information accused petitioner of committing a class 4 felony and she was being held in custody on that charge. Accordingly, under the plain language of the statute, petitioner was entitled to a preliminary hearing, and the district court erred in denying her request for such a hearing.

**February 25, 2019**

**2019 CO 14. Nos. 17SA231 & 17SA303. Dill v. Yamasaki Ring, LLC.** *Water Law—Adjudicated Water Rights—Indicia of Enforceability.*

The Supreme Court considered whether a 1909 water decree adjudicates a water right in certain springs. Because the decree failed to set forth required indicia of enforceability—including an appropriation date, a priority number, and quantification information—with respect to the springs, the Court answered the question in the negative. A decree must measure, limit, and define both the nature and extent of a water right. The priority, the location of diversion at the supply's source, and the amount of water for application to a beneficial use are all essential elements of the appropriative water right. Of these, priority is the most important stick in

the water rights bundle because priority is a function of appropriation and adjudication; indeed, the purpose of adjudication is to fix the priority of a water right.

As the water court concluded, the 1909 decree clearly and unambiguously sets forth an unenforceable entitlement to receive and conduct water from the springs. Without indicia of enforceability, and in particular a priority number, the 1909 decree cannot be deemed to adjudicate a water right in the springs that can be enforced and administered. Therefore, the Court affirmed the water court's judgment. **CL**

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