

Summaries of Published Opinions

December 13, 2018

2018 COA 170. No. 14CA0505. People v. Godinez. *Juvenile Law—Delinquency—Direct Filing—Statutory Amendment—Retroactive Application—In-Court Identification—Hearsay—Constitutionality.*

A jury convicted Godinez of two counts of second degree kidnapping, two counts of sexual assault, and two counts of conspiracy to commit sexual assault. Godinez committed the crimes when he and some of his brothers used a deadly weapon to kidnap and forcibly sexually assault two women in two separate incidents. Godinez was 15 years old when he committed the crimes. The district court sentenced him to a controlling term of imprisonment of 32 years to life in the custody of the Department of Corrections.

On appeal, Godinez argued that the district court did not have jurisdiction to try him as an adult because the amendments made by the General Assembly in 2012 to the statute that authorizes criminal direct filing in district court against a juvenile (the 2012 Amendments) increased the direct-filing age from 14 to 16. The 2012 Amendments are only applicable to cases filed on or after the effective date of the 2012 Amendments. It is undisputed that Godinez committed and was charged with the crimes before the enactment of the 2012 Amendments. The 2012 Amendments (1) did not divest the court of jurisdiction over Godinez; (2) do not apply retroactively; and (3) are not applicable to Godinez.

Godinez next contended that the trial court committed reversible error when it permitted S.R., one of the victims, to identify him during trial, because her in-court identification was tainted by a suggestive out-of-court identifi-

cation procedure. It was for the jury, not the court, to assess the reliability of the in-court identification in light of the parties' stipulation that S.R. was unable to identify Godinez in a prior out-of-court identification procedure. Thus, the court did not err in allowing S.R.'s spontaneous in-court identification of Godinez.

Godinez also contended that the court violated his confrontation, fair trial, and due process rights by admitting the testimonial hearsay of four declarants. Because the statements of Edgar, one of Godinez's brothers and co-conspirators, were offered for their falsity rather than their truth, they were not hearsay and were therefore admissible. Further, the district court did not err in admitting the statements of A.G., one of Godinez's brother's, and A.G.'s girlfriend's statements over a hearsay objection, because those statements were not offered for their truth but for their effect on the police investigation. Finally, the prosecution offered the stepmother's statement to prove the falsity of A.G.'s statements. Even if this evidence was erroneously admitted, it was harmless given the other substantial evidence against Godinez.

Godinez last contended that Colorado's related sentencing statutes were unconstitutional as applied to him under the Sixth and Eighth Amendments to the U.S. Constitution. The thrust of his contention was that his aggregate sentence is the functional equivalent of a life without parole sentence. Godinez was convicted of multiple offenses for which he was sentenced to imprisonment for 32 years to life. He will be eligible for his first parole hearing in 32 years. Therefore, Godinez's sentence was not unconstitutional.

The judgment of conviction and sentences were affirmed.

2018 COA 171. No. 16CA0138. People v. Rigsby. *Criminal Law—Second Degree Assault—Third Degree Assault—Inconsistent Verdicts—Mens Rea—Double Jeopardy.*

During a bar fight, Rigsby struck the victim in the face with a glass. Rigsby was charged and convicted of two counts of second degree assault and one count of third degree assault, a lesser included offense. The trial court sentenced him to five years in the custody of the Department of Corrections for the second degree assault convictions and 66 days in jail for the third degree assault conviction, with all sentences running concurrently.

On appeal, Rigsby contended that the jury verdicts are logically and legally inconsistent. Rigsby could not have simultaneously acted with knowledge to cause bodily injury while also acting without knowledge, unaware of the risk of causing bodily injury. Because the second degree assault convictions required the jury to determine he was aware of the risk of bodily injury, and thus acted with intent or recklessly, while the third degree assault conviction required the jury to find he was unaware of the risk of bodily injury, the jury verdicts were legally and logically inconsistent. Logically and legally inconsistent verdicts require a new trial because the jury's findings cannot be reconciled to determine its intent.

Rigsby also contended, and the people conceded, that his three convictions must merge because they are multiplicitous and violate the Double Jeopardy Clause. A defendant is constitutionally protected from multiple convictions for the same offense when the relevant statute does not create separate offenses for the same criminal conduct. If, on remand, the jury again convicts Rigsby of both second degree assault counts, Rigsby's three convictions must merge because they are multiplicitous and violate the Double Jeopardy Clause.

The convictions were reversed and the case was remanded for a new trial.

2018 COA 172. No. 16CA0385. People in re C.M.D. *Juvenile Law—Sex Offender—Colorado Sex Offender Registration Act—Constitutional Law—Eighth Amendment—Cruel and Unusual Punishment—Fourteenth Amendment—Due Process.*

C.M.D. was adjudicated delinquent based on an incident involving unlawful sexual contact when he was 17 years old. At the time of the incident, C.M.D. was serving a sentence in the Department of Youth Corrections based on prior adjudications, one of which was also for sexual assault. At sentencing, he was ordered to register as a sex offender under the Colorado Sex Offender Registration Act (CSORA).

On appeal, C.M.D. contended that, as applied to him and similarly situated juveniles, CSORA violates constitutional prohibitions against cruel and unusual punishment. Under the facts of this case, the Court of Appeals was not persuaded to depart from Colorado precedent holding that the sex offender registration requirement is not punishment. It therefore did not reach the questions whether such requirement is cruel or unusual. C.M.D. had a previous adjudication for unlawful sexual contact, so the magistrate

was statutorily precluded from waiving the registration requirement.

C.M.D. also argued that mandatory, lifetime sex offender registration under CSORA, as applied to him and similarly situated juveniles, violates due process. CSORA's stated purpose of protecting the public is rational, and C.M.D.'s claim does not implicate a fundamental right. C.M.D. did not show that CSORA violates due process or fundamental fairness when applied to juveniles in the circumstances presented here.

The order was affirmed.

2018 COA 173. Nos. 16CA2024 & 17CA1154. *Patterson v. James*. Probate—Tort Action—Dismissal—CRCP 12(b)—Attorney Fees—Joint and Several Fee Awards—Litigation Shield—Strict Privity Rule.

After her husband passed away, Patterson, with the assistance of her attorney Lees, filed a

tort action against her husband's children and an attorney, James, who represented one of the children in seeking appointment as personal representative of the estate. James moved to dismiss these claims under CRCP 12(b)(5), and the trial court granted the motion, finding that the litigation shield and strict privity rule barred Patterson's claims against James. James moved for attorney fees, and after a hearing, the trial court awarded attorney fees and costs jointly and severally against Patterson and Lees under CRS § 13-17-201. James requested additional attorney fees incurred in pursuing the underlying fee request pursuant to CRS § 13-17-102(2), which the trial court denied.

On appeal, Lees contended that the trial court converted the motion to dismiss to a CRCP 56 motion for summary judgment when it considered matters outside the pleading, thus precluding attorney fees under CRS §



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13-17-201. There is no indication that the trial court considered the exhibits attached to James's motion to dismiss and Patterson's response in ruling on James's motion to dismiss. Therefore, the motion to dismiss was not converted into a Rule 56 motion for summary judgment, and the trial court was not precluded from awarding attorney fees under CRS § 13-17-201.

Patterson contended on appeal that the trial court improperly dismissed her claims against James by misapplying the litigation shield and strict privity rule. An attorney's statements, even if defamatory, when made in the course of, or in preparation for, judicial proceedings in a filed case cannot be the basis of a tort claim if the statements are related to the litigation. The privilege not only shields attorneys from defamation claims arising from statements made in the course of litigation, but also bars other non-defamation claims that stem from the same conduct. Here, Patterson's claims against James arose from James's representation of the personal representative in the underlying probate litigation. Therefore, the litigation privilege applies and James was entitled to absolute immunity as a matter of law.

Lees and Patterson also contested the trial court's order granting attorney fees and costs jointly and severally against them. In view of the trial court's findings, which are amply supported in the record, the trial court's decision to impose joint and several liability was not manifestly arbitrary, unreasonable, or unfair. Further, the trial court was not prohibited from considering an unpublished opinion of the Court of Appeals for whatever persuasive value it may have had in reaching its decision. Lastly, James met her burden of establishing the reasonableness of the fees by providing testimony at the evidentiary hearing and sworn affidavits before the hearing.

On cross-appeal, James contended that the trial court erred in failing to make factual findings when it ruled on James's motion for attorney fees and costs and declined to assess fees under CRS § 13-17-192(2). The trial court declined to find that Patterson's or Lees's positions lacked substantial justification and did not abuse its discretion.

The judgment was affirmed and the case was remanded to the trial court to enter an award

of reasonable attorney fees incurred by James in defending this appeal.

2018 COA 174. No. 17CA0156. Bank of New York Mellon v. Peterson. *Creditor—Debtor—Promissory Note—Statute of Limitations—Foreclosure—Abandonment.*

In 2007, the borrower, Parker, obtained a loan for a house evidenced by a promissory note. Parker soon thereafter stopped making payments. In October 2008, the Bank of New York Mellon (the Bank) initiated foreclosure proceedings. In December 2008, the Bank approved Parker's request for a loan modification, and Peterson remitted a payment on Parker's behalf that same month. Neither Peterson nor Parker made any more payments. Even so, in 2010, the Bank withdrew the 2008 foreclosure. It subsequently sent the borrower a new acceleration warning letter providing him another opportunity to cure the default. In January 2015, the Bank initiated and pursued foreclosure proceedings (the January 2015 foreclosure) and the district court authorized the property's sale. The Bank purchased the property in the foreclosure sale. Two months later, the Bank commenced this action to acquire possession and evict Peterson and Parker from the property, which was granted by the district court.

On appeal, Peterson and Parker asserted that the 2015 foreclosure and the resulting judgment of possession cannot be legally enforced because the six-year statute of limitations for an action for default on a promissory note had already expired. They claimed that the Bank triggered the statute of limitations in 2008 when it accelerated the obligation on the note. The Bank admitted that it accelerated the note in 2008 by initiating foreclosure proceedings. However, because the Bank abandoned the acceleration in 2010 by withdrawing the foreclosure and providing Peterson and Parker another opportunity to cure the default, the abandonment restored the note's original maturity date for purposes of accrual of the statute of limitations.

The judgment was affirmed.

2018 COA 175. No. 17CA0280. People v. Taylor. *Criminal Procedure Rule 35(c)(3)(VII)—Successive Postconviction Claims Barred.*

A jury found defendant guilty of first degree murder, attempted first degree murder, and assault. On direct appeal, a division affirmed. Defendant filed a pro se Crim. P. 35(c) motion raising seven claims mainly related to ineffective assistance of counsel and requesting postconviction counsel. The motion was summarily denied and a division of the Court of Appeals affirmed.

Defendant then filed a second pro se Crim. P. 35(c) motion. He renewed some of the claims from his first motion and raised new claims. Counsel was appointed and filed a supplemental motion. The postconviction court denied the motion, finding the claims that were the same in the two motions were barred as successive and denying the new claims on the merits.

On appeal, defendant argued that the claims are not barred as successive under Crim. P. 35(c)(3)(VI) because they were not raised and resolved in the first Crim. P. 35(c) motion. Here, defendant's first motion addressed seven claims in 22 pages of argument supported by 26 pages of exhibits. Defendant raised these claims in his first motion within the meaning of Crim. P. 35(c)(3)(VI), and the claims were resolved. The renewed claims were properly barred as successive.

As to the new claims, defendant argued that Crim. P. 35(c)(3)(VII), added in 2004, did not supersede prior case law holding a defendant can raise new postconviction claims if the first motion was filed pro se. Crim. P. 35(c)(3)(VII) bars postconviction claims that could have been presented in an appeal or postconviction proceeding previously brought and supersedes case law to the contrary. Thus, defendant's new postconviction claims raised for the first time in his second motion are barred.

The order was affirmed.

2018 COA 176. No. 17CA1484. In re Marriage of Hogsett. *Common Law Marriage Test—Same-Sex Couples—Domestic Relations.*

Hogsett and Neale, a same-sex couple, ended their 13-year relationship. Hogsett believed the parties were common law married and petitioned for dissolution. Neale disagreed and moved to dismiss the petition. The district court applied the test for determining whether a common law marriage exists in *People v. Lucero*, 747 P.2d

660 (Colo. 1987), and found no common law marriage existed and granted Neale’s motion to dismiss. Hogsett moved for relief from the court’s judgment under CRCP 59. Her motion was deemed denied. Both parties agreed that *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015), which overturned laws banning same-sex marriage, applies retroactively in deciding whether a same-sex common law marriage existed between them.

On appeal, Hogsett contended that the district court erred in applying the *Lucero* test and finding no common law marriage existed. The Court of Appeals concluded that a court may find a same-sex common law marriage existed under the *Lucero* test based on the parties’ pre-*Obergefell* conduct. Here, the district court did not err in applying *Lucero* and finding no common law marriage existed.

Hogsett also made several evidentiary arguments, which the Court rejected.

The judgment was affirmed.

2018 COA 177. No. 17CA2038. People in the Interest of A.R. *Dependency and Neglect—Ineffective Assistance of Counsel—Termination of Parental Rights—Prejudice Inquiry—Fundamental Fairness.*

The Pueblo County Department of Social Services offered no testimony at mother’s adjudicatory and termination of parental rights hearings. Mother’s trial counsel accepted a no-fault adjudication in her absence, and mother’s parental rights were terminated.

On appeal, mother argued that her trial counsel was ineffective at the adjudicatory and termination hearings. The Court of Appeals applied the two-prong test outlined in *Strickland v. Washington*, 466 U.S. 668 (1984), to review her ineffective assistance of counsel claim. These prongs are that (1) counsel’s performance was outside the range of professionally competent assistance, and (2) the parent was prejudiced by counsel’s errors. The Court departed from the outcome-determinative prejudice inquiry

applied by previous divisions of the Court and adapted the prejudice inquiry to the context of termination of parental rights proceedings to “focus on whether counsel’s deficient performance rendered the proceeding fundamentally unfair or the result of the proceeding unreliable.”

Here, based on her counsel’s failure to subject the case to meaningful adversarial testing, mother made a sufficient showing that her counsel’s deficient performance was outside the range of professionally competent assistance, and further, rendered the termination proceeding presumptively unfair and unreliable.

The judgment was reversed and the case was remanded.

2018 COA 178. No. 17CA2126. People in the Interest of M.H-K. *Child Dependency and Neglect—Civil Jury Instructions—Introductory Remarks.*

The Denver Department of Human Services (the Department) filed a petition in dependency and neglect against mother and father. The petition included a detailed case history and a summary of the referrals that prompted the Department’s action. Shortly before trial, the Department amended the case history portion of the petition, adding information that included the dates the parents had missed court-ordered drug tests and the results of the tests they had taken.

At the beginning of the trial, as part of its statement of the case instruction, the juvenile court read the entire amended case history to the venire, and a written copy of the instruction was included in the juror notebooks. Later, the court admitted evidence that mother had declined requests for drug testing before the Department had filed the petition. The jury determined the child was dependent and neglected because his environment was injurious to his welfare, he was lacking proper parental care, and his parents had failed or refused to provide proper or necessary subsistence, education, medical care, or other care.

On appeal, father argued that the juvenile court committed reversible error by incorporating the case history portion of the petition into its statement of the case instruction to prospective jurors. The purpose of the in-

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troductory statement of the case is to orient the jury to the nature of the case as a way of facilitating the jury selection process. The juvenile court's instruction departed from this limited purpose and it amounted to a judicially endorsed opening statement on behalf of the Department. Further, this instruction was not harmless because it impaired the basic fairness of the trial in a way that likely influenced the outcome of the case. The juvenile court abused its discretion.

Mother contended that the juvenile court erred when it admitted evidence that she refused to agree to drug testing for herself and the child before the Department filed its petition. Because it could arise on remand, the Court addressed mother's argument. In this case, where mother and child exhibited nothing that would indicate the use of drugs, mother was entitled to a presumption that her refusal to take a drug test was objectively reasonable. Her refusal to consent to voluntary drug testing is so lacking in probative value as to be inadmissible. Therefore, it was an abuse of discretion to admit the refusal into evidence.

Mother also argued that it was an abuse of discretion to admit evidence that mother refused the caseworker's request to stop breastfeeding pending a drug test. This request was made before the filing of the petition and mother retained her rights as a presumptively fit parent to make decisions in the best interests of her child. The juvenile court abused its discretion when it admitted this evidence.

The judgment was reversed and the case was remanded for a new trial.

December 27, 2018

2018 COA 179. No. 15CA2010. People v. Jaeb. *Criminal Law—Theft—Evidence of Value—Hearsay Exceptions—Restitution.*

Defendant contracted to rent a U-Haul trailer but did not return the trailer by the appointed time. About one month later, police discovered the U-Haul trailer and several other trailers on a property that did not belong to defendant but contained many of his belongings. The People charged defendant with several theft crimes. At trial, the prosecution offered Exhibit 9 as

proof of the stolen trailer's value. Exhibit 9 was a notarized affidavit attesting to the replacement cost of the trailer and its actual cash value, apparently signed by a manager of the equipment recovery/records department at U-Haul International. The manager was not called to testify. As relevant to this appeal, defendant was convicted of one count of theft—\$5,000 to \$20,000. He was also ordered to pay restitution for damage to the stolen property.

On appeal, defendant argued that the evidence admitted at trial to prove the value of the U-Haul was inadmissible hearsay and was admitted in violation of his rights under the Confrontation Clause. Exhibit 9 was not admissible under the business records hearsay exception because it was created a year and a half after the theft of the trailer and was thus not created at or near the time of the events recorded in it. Further, Exhibit 9 was requested by the witness. Exhibit 9 also does not fall within CRS § 18-4-414(2), which provides a hearsay exception for theft of items from a store where "labels and tags, signs, shelf tags, and notices" provide evidence of value of similar items. Therefore, Exhibit 9 was inadmissible hearsay, and admitting it was an abuse of discretion.

Defendant also argued that because the only evidence at trial of the trailer's value was inadmissible, he could only be convicted of class 1 petty theft and his conviction must be reversed. Here, the jury heard no competent evidence of the trailer's value. Where a theft is established by the evidence, but the classification of the theft charged is not proven by competent evidence of value, the proper remedy is to remand for entry of judgment for the lesser offense.

Defendant further argued that the prosecution failed to prove that he proximately caused the trailer damage. Here, the damage was the natural and probable consequence of defendant's theft and would not have occurred but for his actions. The evidence presented at the restitution hearing was sufficient to support the trial court's restitution order.

The restitution order was affirmed. The judgment and sentence for the felony theft conviction was reversed, and the case was remanded for entry of judgment and resentencing on class 1 petty theft.

2018 COA 180. No. 16CA1134. People v. Garcia. *Criminal Procedure—Jury Selection—Challenge for Cause—Peremptory Challenge—Invited Error.*

Garcia became convinced that one of her children's friends, 12-year-old T.H., had stolen a bottle of nail polish from her home. Garcia drove to a local park and confronted T.H., who claimed that Garcia's daughter had given him the nail polish. A heated argument ensued in which Garcia threatened to assault T.H., causing T.H. to retreat. Garcia then returned to her SUV, started the car, accelerated over the curb in the direction of T.H., and drove across the park. T.H. testified that he had to hide behind a fence to avoid being hit by Garcia's car. At the time of the incident, many children were in the park. Some of those children testified at trial and were named victims in this case.

At trial, Garcia's attorney challenged a juror for cause, arguing that he could not fairly evaluate a child witness's credibility. The trial court denied the challenge. Garcia's counsel did not use a peremptory challenge to remove the juror, who then served in Garcia's trial. Garcia was found guilty of one count of felony menacing, seven counts of reckless endangerment, and one count of reckless driving.

On appeal, Garcia contended that the trial court erred in denying her challenge for cause because the juror's position on the credibility of children prevented him from being fair and impartial. The People argued that Garcia invited this error by failing to use a peremptory challenge to excuse the juror, and any potential error is not reviewable on appeal. The invited error doctrine is limited to situations where an error was caused by a party's affirmative, strategic conduct, not by the party's inaction or inadvertence. The doctrine prevents a party from taking a position on appeal that is inconsistent with the position taken at trial. The Court of Appeals concluded that (1) a defendant is not required to use a peremptory challenge against an objectionable juror to preserve her claim that the juror was biased and should not have participated in her trial; (2) a defendant does not take legally inconsistent positions where her challenge for cause is denied but she chooses not to use her peremptory challenges to excuse that juror; and (3) where the record

does not support an inference that defendant's counsel purposely failed to use a peremptory challenge to preserve an issue for appeal, counsel's failure to dismiss an objectionable juror does not demonstrate her affirmative acquiescence to the trial court's denial of her challenge for cause. Here, Garcia's position on appeal is not inconsistent with her position at trial, and the record contains no suggestion that Garcia's counsel purposely failed to use a peremptory challenge to preserve an issue for appeal. Invited error does not preclude review.

On the merits, Garcia argued that the juror did not adequately assure the trial court that he could put aside his bias and give her a fair trial because his statements were not sufficiently unequivocal. The trial court is in the best position to observe the juror's demeanor and credibility and may accept a juror's assurances that he can act fairly, even though his statements may be ambivalent or self-contradictory. Here, the trial court found that the juror did not make a statement that would show a significant doubt about his ability to follow the law and be fair. Accordingly, the trial court did not abuse its discretion.

The judgment was affirmed.

2018 COA 181. No. 17CA1690. People v. Vargas-Reyes. *Criminal Procedure—Jurisdiction—County Court.*

In 2000, Vargas-Reyes pleaded guilty in county court to two misdemeanors, one of which was a misdemeanor drug conviction. Six years later, Vargas-Reyes filed a Crim. P. 35(c) motion asserting that the U.S. Citizenship and Immigration Services had denied his application to adjust his status to a lawful permanent resident due to the misdemeanor drug conviction, and claiming that his guilty plea was not voluntary, knowing, and intelligent. The county judge denied the motion as time barred, and the order was not appealed. In 2017, after Vargas-Reyes was charged in federal court with illegal entry into the United States, he filed another Crim. P. 35(c) motion in county court alleging ineffective assistance of counsel, which was also denied.

On appeal, the People argued that the Court of Appeals lacks jurisdiction to hear this

appeal because the appeal was from the county court rather than the district court. Appellate jurisdiction over county court decisions rests with the district court for the judicial district in which the relevant county court sits. Here, the matter was filed and remained in county court at the time of the judgment of conviction. Thus, any postconviction challenges must remain in county court, and appellate jurisdiction lies with the district court for the First Judicial District.

The appeal was dismissed.

2018 COA 182. No. 17CA2104. Trujillo v. Regional Transportation District. *Civil Litigation—Colorado Governmental Immunity Act—Waiver.*

Trujillo filed a complaint alleging that she was injured while attempting to catch a shuttle bus at the Mall Bus Turnaround at Civic Center Station in downtown Denver. RTD filed a CRCP 12(b)(1) motion to dismiss based on its assertion of governmental immunity pursuant to the Colorado Governmental Immunity Act (CGIA). The motion was denied.

On appeal, RTD contended that the trial court erred in denying its CRCP 12(b)(1) motion by finding that the walkway on which Trujillo was allegedly injured met the statutory definition of a sidewalk, thereby waiving RTD's entitlement to governmental immunity. A sidewalk is defined as a certain portion of a public roadway. RTD asserted that the Turnaround is not a public roadway because only RTD buses, not the general public, are allowed to drive there. However, the Mall Bus Turnaround serves the general public and is a necessary link in Denver's transportation system. Thus it is a public roadway within the meaning of the CGIA. But the limit of the public roadway determines only one side of the sidewalk; the other side is determined by the property lines. Here, the record does not indicate where the property lines are, where the boundary of the sidewalk is, and whether this incident occurred within that boundary.

The part of the order finding that the Mall Bus Turnaround is a public roadway was affirmed. The part of the order denying RTD's request for a hearing was reversed and the case was remanded for further proceedings.

2018 COA 183. No. 18CA0160. In re Estate of Rabin. *Probate—Personal Representative—Attorney-Client Privilege—Legal Files—Attorney Fees.*

Freirich represented Louis Rabin in over 40 separate matters over the course of many years. Under the terms of Louis's will, Louis's wife Claudine was named his personal representative. In probate proceedings, Claudine issued a subpoena demanding Freirich produce Louis's entire file. Freirich refused, claiming the documents were confidential and privileged, and filed a motion to quash the subpoena. The trial court ruled in favor of Freirich and awarded him attorney fees.

On appeal, Claudine asserted that the trial court erred in granting the motion to quash because as personal representative, she has a right to possession of all legal files relating to Freirich's representation of Louis. Freirich countered that Claudine's request would violate Louis's attorney-client privilege, which survives his death. As personal representative of the estate, Claudine steps into Louis's shoes; she is the rightful owner of the files and holds the attorney-client privilege. Therefore, the trial court erred in granting the motion to quash.

Further, because the trial court's decision regarding the personal representative's right to take possession of a decedent's files was reversed, it cannot be said that Claudine's position lacked substantial justification.

The order quashing the subpoena and the award of attorney fees were reversed. ^{CL}

These summaries of published Court of Appeals opinions are written by licensed attorneys Teresa Wilkins (Englewood) and Paul Sachs (Steamboat Springs). They are provided as a service by the CBA and are not the official language of the Court; the CBA cannot guarantee their accuracy or completeness. The full opinions, the lists of opinions not selected for official publication, the petitions for rehearing, and the modified opinions are available on the CBA website and on the Colorado Judicial Branch website.