

Summaries of Published Opinions

May 21, 2018

2018 CO 36. No. 16SC377. Colorado Union of Taxpayers Foundation v. City of Aspen. *Taxation—Constitutional Law—Local Government Law.*

The Supreme Court considered whether a \$0.20 charge on paper bags is a tax subject to the Taxpayer's Bill of Rights (TABOR). The Court held that if the primary purpose of a charge is to raise revenue for the general expenses of government, the charge is a tax. Conversely, the Court concluded that a charge is not a tax if the primary purpose of a charge is to defray the reasonable direct and indirect costs of providing a service or regulating an activity, because such a charge does not raise revenue for the general expense of government.

After analyzing the charge in this case, the Court held that this charge is not a tax. Aspen imposed this charge as part of a regulatory program aimed at waste management, and the \$0.20 charge for the right to use a paper bag bears a reasonable relationship to Aspen's cost of permitting that use. Because this charge is not a tax, it is exempt from TABOR's requirements.

The Court of Appeals' judgment was affirmed.

2018 CO 37. No. 16SC851. City and County of Denver v. Dennis ex. rel. Heyboer. *Colorado Governmental Immunity Act—Sovereign Immunity.*

The Supreme Court considered whether the City and County of Denver waived its immunity under the Colorado Governmental Immunity Act (CGIA). After a motorcycle accident, plaintiff sued the City and County of Denver, and alleged that Denver had waived its immunity under the CGIA because the road on which plaintiff was

traveling constituted a dangerous condition that physically interfered with the movement of traffic. To prove a dangerous condition, a plaintiff must prove four elements, one of which is that the road constituted an unreasonable risk to the health and safety of the public.

The Court defined "unreasonable risk" in this context as a road condition that creates a chance of injury, damage, or loss that exceeds the bounds of reason. This determination will be fact specific, and in this case, the road did not create an unreasonable risk to the health and safety of the public. Nor did the condition of the road physically interfere with the movement of traffic.

The Court of Appeals' judgment was reversed.

2018 CO 38. No. 17SA5. Jim Hutton Educational Foundation v. Rein. *Water Law—Jurisdiction.*

The Jim Hutton Educational Foundation, a surface-water user, claimed that a statute prohibiting any challenge to a designated groundwater basin that would alter the basin's boundaries to exclude a permitted well is unconstitutional. The water court dismissed that claim for lack of subject matter jurisdiction, concluding that the surface-water user had to first satisfy the Colorado Groundwater Commission that the water at issue was not designated groundwater. The Supreme Court concluded that, because jurisdiction vests in the water court only if the Colorado Groundwater Commission first concludes that the water at issue is designated groundwater, the water court properly dismissed the constitutional claim for lack of subject matter jurisdiction.

The water court's ruling was affirmed.

2018 CO 39. No. 15SC472. State Farm Mutual Automobile Insurance Co. v. Fisher.

Insurance—Underinsured Motorist Benefits—Unreasonable Delay/Denial of Payment.

The Supreme Court held that under CRS § 10-3-1115 insurers have a duty not to unreasonably delay or deny payment of covered benefits, even though other components of an insured's claim may still be reasonably in dispute. Here, an insurer issued multiple underinsured motorist insurance policies that covered a driver who was injured by an underinsured motorist. Though the insurer agreed that its policies covered the driver's medical expenses, it refused to pay them because the insurer disputed other amounts (including lost wages) that the driver sought under the policies. A jury found that the insurer violated CRS § 10-3-1115, which provides that an insurer "shall not unreasonably delay or deny payment of a claim for benefits owed to or on behalf of any first-party [insured] claimant." Because the Court of Appeals properly upheld the driver's jury award, the Court affirmed its judgment.

2018 CO 40. No. 18SA24. People v. Ehrnstein. *Special Prosecutors—Colo. RPC 3.7—Post-Trial Proceedings.*

In this interlocutory appeal, the Supreme Court reviewed the trial court's order appointing a special prosecutor for the purpose of litigating defendant's post-trial motion for a new trial. In his motion, defendant alleged that the prosecution had improperly instructed a witness to evade a defense subpoena. The trial court concluded that the Colorado Rules of Professional Conduct compelled it to appoint a special prosecutor for the purposes of the hearing on this motion because, subject to exceptions not pertinent here, Colo. RPC 3.7 prohibits an attorney from acting as both an advocate and a witness during the same proceeding.

The Court concluded that the trial court abused its discretion in appointing a special prosecutor because that court misapplied the law when it found that Colo. RPC 3.7 required the appointment of a special prosecutor in the circumstances present here. Specifically, the rule serves to prevent prejudice that arises from jury confusion in cases in which an attorney serves as both counsel and witness. Because this proceeding arose in the context of a post-trial motion, that concern is not implicated.

The trial court's order was reversed, and the case was remanded for further proceedings.

2018 CO 41. No. 17SC406. Parocha v. Parocha. *Personal Jurisdiction.*

The Supreme Court considered whether and when a civil protection order is available to a victim of alleged domestic abuse who comes to Colorado seeking refuge from a nonresident. The Court concluded that an out-of-state party's harassment of, threatening of, or attempt to coerce an individual known by the nonresident to be located in Colorado is a tortious act sufficient to establish personal jurisdiction under the state's long-arm statute, CRS § 13-1-124. The Court also concluded that such conduct creates a sufficient nexus between the out-of-state party and Colorado to satisfy the requisite minimum contacts such that the exercise of jurisdiction by a Colorado court to enter a protection order comports with traditional notions of fair play and substantial justice.

The district court's order vacating the permanent civil protection order was reversed, and the case was remanded for further proceedings.

May 29, 2018

2018 CO 42. No. 15SC934. American Family Mutual Insurance Co. v. Barriga. *Unreasonable Delay and Denial of Insurance Benefits—Damages.*

The Supreme Court considered the operation of a statutory scheme that prohibits the unreasonable delay or denial of insurance benefits. Specifically, the Court considered whether an award of damages under CRS § 10-3-1116(1) must be reduced by an insurance

benefit unreasonably delayed but ultimately recovered by an insured outside of a lawsuit. The Court held that an award under CRS § 10-3-1116(1) must not be reduced by an amount unreasonably delayed but eventually paid by an insurer because the plain text of the statute provides no basis for such a reduction. The Court further concluded that the general rule against double recovery for a single harm does not prohibit a litigant from recovering under claims for both a violation of CRS § 10-3-1116(1) and breach of contract.

The Court of Appeals' judgment was affirmed.

2018 CO 43. No. 17SC2. Guarantee Trust Life Insurance Co. v. Estate of Casper. *Unreasonable Delay and Denial of Insurance Benefits—Abatement—Actual Damages.*

The Supreme Court considered the operation

of CRS § 13-20-101, Colorado's survival statute, and CRS § 10-3-1116(1), a statutory cause of action for the unreasonable delay or denial of insurance benefits. The Court also considered the scope of the trial court's authority to enter a final judgment nunc pro tunc.

The original plaintiff in this case died after receiving a favorable jury verdict but before that verdict had been reduced to a written and signed entry of final judgment. Defendant then moved to substantially reduce the jury award, arguing that the survival statute barred certain damages. The Court concluded that the survival statute does not limit the jury's verdict in favor of the original plaintiff. The Court further concluded that an award of attorney fees under CRS § 10-3-1116(1) is a component of the "actual damages" of a successful claim under that section and that, although the survival statute did not limit the damages awarded by the jury,



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the trial court abused its discretion by entering a final judgment nunc pro tunc.

The Court of Appeals' judgment was affirmed in part and reversed in part.

2018 CO 44. No. 17SA31. Rooftop Restoration, Inc. v. American Family Mutual Insurance Co. Unreasonable Delay and Denial of Insurance Benefits—Statute of Limitations—Statutory Interpretation.

The Supreme Court considered a certified question from the U.S. District Court for the District of Colorado. Specifically, the Court determined whether the one-year statute of limitations in CRS § 13-80-103(1)(d) governs actions under CRS § 10-3-1116(1), which creates a cause of action to address the unreasonable delay or denial of insurance benefits. The Court concluded that the one-year statute of limitations

does not apply to actions brought under CRS § 10-3-1116(1) because the legislature did not intend CRS § 10-3-1116(1) to operate as a penalty within the context of the statutory scheme.

The certified question was answered in the negative and the case was returned to the district court for further proceedings.

2018 CO 45. No. 15SC630. People v. Delage. Searches and Seizures—Consent—Voluntariness.

The Supreme Court considered whether the voluntariness of consent to a search in Colorado must be proven by “clear and convincing evidence” or by “a preponderance of the evidence.” The Court held that, to overcome a motion to suppress evidence obtained in a search, the People must prove by a preponderance of the evidence that a search was consented to voluntarily.

The case was remanded to the trial court to re-evaluate the voluntariness of Delage's consent to search. **CL**

These summaries of Colorado Supreme Court published opinions are provided by the Court; the CBA cannot guarantee their accuracy or completeness. Both the summaries and full opinions are available on the CBA website and on the Colorado Judicial Branch website.



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