

THE YEAR IN REVIEW 2020

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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. Within each subject, the summaries are organized alphabetically.

ADMINISTRATIVE LAW

Baker v. Alaska State Commission for Human Rights

In *Baker v. Alaska State Commission for Human Rights*, 476 P.3d 1120 (Alaska 2020), the supreme court held a commission's dismissal of a discrimination complaint was not so arbitrary and capricious as to offend due process (id. at 1127) and there was no substantial evidence to support a retaliation complaint. (Id. at 1129). Baker, a pilot for Federal Express Corporation (FedEx), relocated to Hong Kong and elected to receive a relocation package that required the permanent relocation of one's spouse, if applicable. (Id. at 1121–22). Baker represented that his wife had moved to Hong Kong and collected the housing allowance payments. (Id. at 1122). Upon discovery that Baker's wife only spent nine days in Hong Kong throughout this period, FedEx notified Baker that he was under investigation for having improperly received the payments. (Id.). After Baker rejected a proposed settlement, a hearing officer recommended that his employment with FedEx be terminated. (Id. at 1123). Throughout these processes, Baker filed complaints with the Alaska State Commission on Human Rights alleging that FedEx engaged in marital status discrimination and that FedEx retaliated against him for filing a complaint. (Id. at 1121). Ultimately, the Commission found substantial evidence that FedEx had discriminated against married pilots, but dismissed the case, explaining that a hearing would not be the best use of its resources. (Id. at 1124). The supreme court upheld the dismissal as a valid exercise of the Commission's discretion. (Id. at 1127). It also found that, because Baker received the same procedural protections and disciplinary consequences as other similarly situated pilots, there was no evidence of a causal connection between his discharge and his complaint. (Id. at 1129). Affirming the superior court's decision, the supreme court held that the Commission's decision to dismiss the discrimination complaint was not so arbitrary and capricious as to offend due process (id. at 1127) and there was no substantial evidence to support a retaliation complaint. (Id. at 1129).

Basey v. State, Department of Public Safety

In *Basey v. State, Department of Public Safety*, the supreme court held that state employee disciplinary records are confidential and thus exempt from disclosure under the Alaska Public Records Act. After being convicted of federal crimes, Basey requested records related to his investigation, including disciplinary records for two Alaska State Troopers. Although the State initially denied these requests because they were related to an ongoing case, this argument was later rejected on appeal. On remand, the State claimed that the disciplinary records could not be produced because they were confidential personnel records under AS 39.25.080. Basey argued that the court should apply a timeliness rule similar to that required under the Freedom of Information Act and hold that the State had waived its right to assert this exemption by failing to raise it earlier. On appeal, the supreme court held that a timeliness rule did not apply here because the State's disclosure denial was not discretionary, it was required by statute, so if the court were to apply such a rule it would be requiring the State to break the law. Alternatively, Basey argued that only records related to an employee's personal life were protected from disclosure and that the purpose of the Alaska Public Records Act favors disclosure. The supreme court held that the "personnel records" category protected from disclosure under AS 39.25.080 should be interpreted broadly, aside from the few enumerated exceptions, and thus includes disciplinary records. Accordingly, the supreme court affirmed the lower court's decision to deny Basey's request to compel the disclosure of the Troopers' disciplinary records.

West v. Alaska Mental Health Trust Authority

In *West v. Alaska Mental Health Tr. Auth.*, 467 P.3d 1064 (Alaska 2020), the supreme court held that the Land Office of the Alaska Mental Health Trust Authority acted in the Trust's best interest when it sold five lots of land. (Id. at 1066). Louis and Stacy Oliva made an offer to purchase five lots from the Trust Authority and to also "pay reasonable compensation" for past use of one of the lots. (Id. at 1067). West also made an offer for only two lots and asked to purchases only a subdivision of one of them. (Id.). The Land Office accepted Oliva's proposal over West's, finding it to be "in the best interest of the Trust." (Id.). The superior court rejected West's argument that the Land Office did not act in its best interest because West failed to show how his offer would have provided a better return than Oliva's. (Id. at 1068). The supreme court reviewed this administrative appeal using the reasonable basis standard to determine if the agency's decision was supported by facts and was reasonable. (Id. at 1069). The court held that the Land Office's sale was in the Trust's best interest because the sale to Oliva would maximize long-term revenue. (Id. at 1070). The court relied on the fact that the Land Office received over \$17,000 more than forecasted through the Oliva sale and that West showed little evidence to support his argument that his offer would have provided more revenue. (Id. at 1071). Affirming the superior court, the supreme court held that the Land Office of the Alaska Mental Health Trust Authority acted in the Trust's best interest when it sold five lots of land to Oliva. (Id. at 1071).

ADMIRALTY LAW

Chaney v. State

In *Chaney v. State*, 478 P.3d 222, (Alaska Ct. App. 2020), the court of appeals held that a defendant was properly convicted of fishing with an overlength commercial salmon seine vessel and the regulation for measuring the length of vessels adopted by the State's Board of Fisheries, while inconsistent with federal regulations, is reasonable. (Id. at 225). Chaney bought his vessel in 2010; and based on federal regulations at the time of the sale, Chaney's vessel was recorded as 57.5 feet long. (Id. at 225). Later, the Board of Fisheries issued a regulation concerning the measurement of anchor rollers as part of a vessel's overall length that took effect in April 2017. (Id.). Chaney received a warning from a state trooper that his vessel was overlength on July 9, 2017. (Id.). On July 25, 2017, another state trooper warned Chaney that his vessel was overlength and measured the vessel to be 62.5 feet in length based on the new regulation. (Id. at 226). Chaney was observed seine fishing a few days later. (Id.). The State charged Chaney with fishing with an overlength vessel in violation of AS 16.05.835, and a jury convicted him of this offense. (Id.). On appeal, Chaney argued that the evidence presented at his trial was insufficient to establish that his vessel was overlength because an expert witness had testified that the state trooper's method of measuring his vessel could have a six-to-nine-inch variance. (Id. at 226–27). Chaney also argued that the new regulation for measuring vessels is inconsistent with the statute. (Id. at 227). The court found neither of these arguments to be persuasive. (Id. at 225). The court noted that the jury is tasked with assessing expert witnesses' credibility and that reasonable jurors could find the assembly of Chaney's anchor rollers was covered in the regulation, and, thus, his vessel could be considered overlength. (Id. at 226). The court also discussed the Board of Fisheries' broad grant of authority and expertise and the general presumption of validity of agency actions. (Id. at 227–28). As such, a court will defer to the agency's determination so long as it is reasonable. (Id.). Here, the court reasoned that the agency's decision to assess anchor rollers when measuring the length of a vessel is consistent with AS 16.05.835, which concerns

the maximum length for salmon seine vessels, and that the regulation is reasonable (Id. at 228). In summary, the court held that the regulation for measuring the length of vessels was reasonable and the evidence was sufficient to convict Chaney of fishing with an overlength vessel. (Id. at 225).

CIVIL PROCEDURE

Alleva v. Municipality of Anchorage

In *Alleva v. Municipality of Anchorage*, 467 P.3d 1083 (Alaska 2020), the supreme court held that the superior court properly considered a settlement agreement that plaintiffs referenced in but did not attach to their complaint in granting defendants' motion to dismiss, and that the settlement agreement prevented plaintiffs' suit. (Id. at 1091). The Allevas owned commercial property in downtown Anchorage and brought suit against a nearby charitable soup kitchen, a service provider operating a homeless shelter, and the Municipality of Anchorage in 2012, claiming trespass and nuisance based on the allegedly illegal activities of the kitchen and shelter's clients. (Id. at 1085). The parties entered into a settlement agreement, whereby the Allevas agreed to "further waive, release, and discharge any future claims arising out of or relating to the conduct of guests or invitees . . ." of defendants in exchange for a settlement sum. (Id. at 1085–86). However, in 2018, the Allevas filed another complaint against the same defendants, again alleging trespass and nuisance with similar language to the 2012 complaint. (Id. at 1086). The superior court granted defendants' motion to dismiss on the basis that the settlement agreement barred the Allevas' claims. (Id.). On appeal, the Allevas argued that the superior court should not have considered the settlement agreement in ruling on the motion to dismiss because the Allevas did not attach the settlement agreement to their complaint, rendering it "outside the pleadings." (Id. at 1087). The supreme court affirmed the superior court's decision, reasoning that because the Allevas' complaint referenced the settlement agreement and the authenticity of the agreement was not in doubt, the agreement was not outside the complaint. (Id. at 1088). The supreme court further determined that the settlement agreement explicitly released defendants from liability for trespass and nuisance claims, and it was "reasonably ascertainable" that the objectionable conduct would persist following the settlement agreement. (Id.). Because there were no public policy considerations counseling against enforcing the terms of settlement agreement, the supreme court determined that the settlement agreement barred the Allevas' complaint, affirming the superior court's granting of defendants' motion to dismiss. (Id. at 1091).

Norman v. State, Department of Health & Social Services

In *Norman v. State, Department of Health & Social Services*, the supreme court held that a court may not accept a party's offer as proof of the facts if the opposing party objects. The Department of Health & Social Services Office of Children's Services (OCS) initiated proceedings to terminate a father's parental rights. The father attended the initial proceeding and requested a trial for the following week, then left during a break in the proceedings. OCS proceeded with its offer of proof for terminating the father's rights, to which the father's attorney objected. Nevertheless, the court accepted the offer of proof, stating that the father's departure indicated he no longer wanted a trial. The court then terminated the father's rights. On appeal, OCS argued that the father had waived his due process rights by leaving the proceedings. The supreme court held that because the father's attorney objected to the offer of proof, the father had not waived

his rights. The attorney's objection indicated that the father wanted to go to trial and did not intend to relinquish his parental rights. The supreme court vacated the lower court's termination order and remanded the case, holding that a court may accept an offer of proof only if there is no objection from any of the parties present at the proceeding.

COMMERCIAL LAW

Beardsley v. Robert N. Jacobsen & Darlene F. Jacobsen Living Trust

In *Beardsley v. Robert N. Jacobsen & Darlene F. Jacobsen Living Trust*, 472 P.3d 500 (Alaska 2020), the supreme court held that a genuine dispute existed over whether a purchaser personally guaranteed the obligations of a bankrupt entity because the language in the guarantee was open to multiple interpretations, and therefore that summary judgment was inappropriate. (Id. at 510–11). In 2008, the purchasers made a deal with sellers to buy sellers' entire ownership stake in Alaska Juneau Aeronautics (AJA). (Id. at 502). This purchase included a guarantee agreement, which stated that the parties intended for the purchasers to guarantee payment and performance of transactions on behalf of the entity they established to complete the purchase. (Id.). The parties settled a suit between themselves in 2010 and produced a second guarantee which bound the purchasers to the debts of the entity that they established to complete the initial purchase. (Id. at 503). AJA later defaulted on aircraft lease payments and declared bankruptcy. (Id.). In superior court, the parties disputed whether the purchasers were personally liable for damages related to AJA's failure to make lease payments and granted the seller's motion for summary judgment. (Id. at 503–04). On appeal, the supreme court examined the language of the 2008 guarantee, the 2010 guarantee, and leases from 2012 and determined that a reasonable person could find either parties' arguments about whether the purchaser was personally liable to be true. (Id. at 505–10). Therefore, the supreme court held that there was disputed material facts sufficient to deny summary judgement, reversed the superior court's order of summary judgment, and remanded for further proceedings. (Id. at 511).

CONSTITUTIONAL LAW

Antenor v. State, Department of Corrections

In *Antenor v. State, Department of Corrections*, the supreme court held that denying an inmate access to a computer programming book based on security reasons did not violate the Alaska Constitution's free speech provision or the constitutional right to reformation. In 2017, inmate Antenor attempted to order a computer programming book in order to further self-study after taking an electronics class in prison. Department of Corrections (DOC) officials refused to accept the delivery of the book, stating that programming books were not allowed for security reasons. Antenor submitted a request for interview (RFI) challenging the rejection of the book and stating that a blanket ban on education books violates the Cleary consent decree. This RFI and a subsequent grievance were denied. Antenor then filed a motion to enforce the Cleary Final Settlement Agreement, alleging that the prison had implemented an "unwritten" standard operating procedure banning any computer based educational literature, which he argued constituted a content-based restriction on speech which also burdens a prisoner's right to rehabilitation. The superior court denied Antenor's motion to enforce. On appeal, the supreme court held that four factors are relevant to evaluating the reasonableness of a prison policy in regards to free speech claims: there must be a valid, rational connection between the regulation

and the justifying legitimate governmental interest, courts must consider the existence of alternative means of exercising the right, courts must assess the impact accommodation of the asserted constitutional right will have on guards and other inmates, and while the absence of ready alternatives is evidence of the reasonableness of a regulation, the existence of alternatives can indicate that the regulation is an exaggerated response to prison concerns. Based on these factors, the court concluded that denying Antenor access to the computer programing book did not violate the Alaska Constitution's free speech provision. The supreme court also held that because he was not being denied all rehabilitative opportunities, or even all rehabilitative opportunities in his area of interesting, denying him access to one specific book did not violate his constitutional right to reformation. Affirming the lower court's decision, the supreme court held that DOC's restrictions on programming-related books are rationally related to a legitimate interest, and therefore neither violate the Alaska Constitution's free speech provision nor infringe on the right of rehabilitation.

Barnebey v. Department of Administration, Division of Motor Vehicles

In *Barnebey v. Department of Administration, Division of Motor Vehicles*, the supreme court held that a Division of Motor Vehicles (DMV) hearing officer did not violate Barnebey's due process rights by revoking his driver's license because of his breath test results without considering margin of error evidence. A state trooper stopped Barnebey while he was driving and administered a DataMaster breath test which produced a result of 0.81, 0.01 over the legal limit of 0.8, entitling the DMV to revoke Barnebey's license unless he requested an administrative hearing. At his hearing, Barnebey argued that the breath-test result was within the margin of error for the DataMaster device, and that an independent chemical test taken 35 minutes after the breath test demonstrated he was under the legal limit. The hearing officer stated that the device was "within its working tolerances" and that the passage of time contributed to the difference between the two test results, upholding the revocation of Barnebey's license. The superior court rejected Barnebey's argument on appeal and awarded attorneys' fees to the DMV.

On appeal to the supreme court, Barnebey asserted that the DMV's failure to consider margin of error evidence before revoking his license violated his due process rights. The supreme court reasoned that although margin of error evidence is relevant to criminal prosecutions that premise liability solely on blood alcohol content, the DMV's revocation statute premises liability exclusively on the results of a breath test. Specifically, the statutory basis for revocation excludes margin-of-error evidence, and the supreme court noted that the statute's legislative history indicated a preference for a narrow, streamlined way to determine liability. Likewise, the court determined that substantial evidence supported the hearing officer's decision to accord more weight to the breath-test result than the chemical test. However, the supreme court noted that because Barnebey was a constitutional litigant, the superior court must determine on remand whether he had sufficient economic incentive to bring his appeal before imposing attorneys' fees. Accordingly, the supreme court held that the DMV hearing officer did not violate Barnebey's due process rights when by revoking his driver's license based on the results of a breath test without considering margin of error evidence.

Dalton v. State

In *Dalton v. State*, 477 P.3d 650 (Alaska App. Ct. 2020), the court of appeals held that prohibiting a paroled felon from accessing the internet without his probation officer's permission is an undue restriction on liberty. (Id. at 656). In 2017, Kevin Dalton sexually assaulted his

sleeping stepdaughter after using the internet to view pornography, including a video titled “Dad fucks sleeping step daughter 01.” (Id. at 651.) The trial court sentenced him to twenty years, with ten years suspended, and ten years of probation. (id.) As a condition of his future probation, Dalton would be forbidden from accessing the internet without his probation officer’s permission. (Id. at 652.) The Court of Appeals held that this condition unduly restricted Dalton’s First Amendment rights, because Dalton did not directly use the internet to commit his crime. (Id. at 655.) It also observed that internet access has become a practical necessity in contemporary society. (Id.) The court of appeals encouraged the trial court, on remand, to consider a more narrowly tailored limitation. (Id. at 656.) Accordingly, the court of appeals held that prohibiting a paroled felon from accessing the internet without his probation officer’s permission is an undue restriction on liberty. (Id.)

Forrer v. State

In *Forrer v. State*, 471 P.3d 569 (Alaska 2020), the supreme court held that a debt-creating statute was unconstitutional because (1) subject-to-appropriations bonds are “debt” for purposes of Article IX, section 8 of the Alaska Constitution—and thus require Alaska voters’ authorization—and (2) the legislative scheme authorizing the bonds did not qualify for an exemption to the public approval requirement. (Id. at 590, 596). The legislature created a public corporation, capable of borrowing up to \$1 billion of subject-to-appropriations bonds, to offset the future fiscal unpredictability that outstanding tax incentives imposed. (Id. at 573). A taxpayer sued, alleging various constitutional violations of the Alaska Constitution’s debt-limitation provisions in Article IX, section 8, and the State moved to dismiss for failure to state a claim. (Id. at 582). The superior court granted the motion to dismiss after finding that the enactment did not create “debt” within the meaning of section 8. (Id.). On appeal, the State argued for a narrow construction of “debt” that would have exempted the scheme from section 8’s public approval requirement, or alternatively that the enactment at issue qualified for an exemption. (Id. at 587, 595). After outlining the history of the Alaska Constitution’s debt-limitation provision, (id. at 574–77), the supreme court summarized the bond scheme’s legislative history, noting that the bill generated controversy due to its apparent conflict with section 8’s public authorization requirement. (Id. at 579–81). Illuminating the word “debt” through a holistic reading of the Alaska Constitution and its framers’ intent, the court found that subject-to-appropriation bonds fit squarely within that term and therefore required voters’ authorization. (Id. at 585–90.). The court found unpersuasive the State’s attempt to analogize the subject-to-appropriations bonds to debt instruments that had been found outside debt limitation provisions’ scope. (Id. at 590–95). Reversing the lower court’s decision, the supreme court held that the legislature’s provision of subject-to-appropriations bonds without Alaska voters’ authorization was unconstitutional because (1) subject-to-appropriations bonds are within the meaning of “debt” in Article IX, section 8, and thus require the public’s endorsement, and (2) the scheme did not qualify for any exemption from this requirement. (Id. at 590, 596).

CRIMINAL LAW

Johnson v. Municipality of Anchorage

In *Johnson v. Municipality of Anchorage*, 475 P.3d 1128 (Alaska Ct. App. 2020), the court of appeals held that although a judge’s prior service as a municipal prosecutor did not disqualify her from presiding over a criminal case, her prior service as a municipal prosecutor on a particular

case disqualified her from presiding over later probation revocation hearings. (Id. at 1129). In 2014, District Court Judge Chung presided over Johnson's jury trial on charges of assault, family violence, and driving while his license was suspended or revoked. (Id.). Johnson's guilty verdict and his plea of no contest in a separate 2014 case led to the revocation of his probation in three prior assault cases—two from 2006 and one from 2012. (Id.). Johnson argued for Judge Chung's recusal prior to his jury trial because of her service as a supervising prosecutor in the Municipality's domestic violence unit and representation of the Municipality in his two 2006 cases. (Id. at 1129–30). Judge Chung declined to recuse herself and sentenced Johnson to a term of imprisonment. (Id.). On appeal, Johnson argued that although the judicial disqualification statutes, AS 22.20.020(a)(5)–(6), only disqualify a judge who previously served as an attorney against or for one of the parties if the service was within the previous two years, Judge Chung's prior service created the appearance of bias. (Id. at 1133). The court of appeals partially reversed the district court's decision, distinguishing between the three matters involving Johnson before Judge Chung that she did not prosecute and the two 2006 cases that she did. (Id.). The court upheld Judge Chung's decision not to recuse herself in the former three matters, reasoning that Alaska precedent counsels that prior service as a prosecutor generally is insufficient to disqualify a judge from presiding over a case. (Id.). However, the court determined that Judge Chung's service as a prosecutor over Johnson's 2006 cases warranted her recusal because the judicial disqualification statute and its legislative history prohibit a judge from presiding over the same lawsuit or controversy that she previously served as a prosecutor on. (Id. at 1134–35).

Kangas v. State

In *Kangas v. State*, the court of appeals held that judges may instruct a jury that mental state may be inferred from circumstantial evidence. A jury convicted Kangas to two 99-year consecutive sentences for the intentional killing of two state troopers whom he knew to be acting in performance of their duties. The judge instructed the jury that the State could use Kangas's actions as circumstantial evidence to infer his mental state of culpability. Kangas challenged the instruction on the grounds that it allowed inference of mental state from actions and that the criminal code's definitions of culpable mental states do not reference circumstantial proof. He further challenged the instruction as an improper judicial comment on the weight of the evidence. On appeal, the court of appeals held that the statutory definition of culpable mental states was intended to show what must be proved and that Alaska law makes no distinction between direct and circumstantial evidence. Had the legislature intended to restrict the allowable classes of evidence, it would have been explicit. Further, the court of appeals held that, while judges are prohibited from expressly or impliedly conveying their personal views on how the jury should rule, judges must inform juries of the law. The court of appeals found no evidence that the superior court judge provided a personal viewpoint; further, the court found that the instruction as a whole was a proper directive of the applicable law. Affirming the lower court's decision, the court of appeals held that judges may instruct a jury that circumstantial evidence may be used to infer mental state.

Karr v. State

In *Karr v. State*, the court of appeals held that the Covid-19 pandemic constituted new information for the purposes of considering a second or subsequent bail review hearing. James Karr, Darrell Sam, and Erwin Nashoanak each appealed their denial for applications for a second or subsequent bail review hearing after the superior court determined that the Covid-19

pandemic was not new information under AS 12.30.006(d)(1). Since their initial bail hearings, the CDC, the United States, and the State of Alaska each issued mandates designed to protect the public from the spread of Covid-19. On appeal, the court of appeals held that the Covid-19 pandemic qualified as new information justifying a second or subsequent bail review hearing under AS 12.30.006(d)(1) because it directly impacts the court's assessment of necessary bail conditions. Covid-19's effect on travel restrictions and social distancing requirements limits the defendant's flight risk and increases the public health risk to incarcerated individuals. Thus, the court of appeals reversed and remanded, holding that Covid-19 presents new information which justifies a second or subsequent bail review hearing.

Powell v. State

In *Powell v. State*, the court of appeals held that, in light of new case law, a Rule 60(b) motion may be filed to challenge erroneous procedural rulings in post-conviction relief proceedings, but final judgments are not entitled to relief based on prospective application of new case law. Following a jury trial in 2000, Powell received a twenty-six-year sentence for assault, reckless endangerment, and driving while intoxicated. Powell appealed his sentence, but not his conviction, which the court of appeals affirmed as reasonable. In 2004, two months after his sentence appeal was final, Powell applied for post-conviction relief, which the superior court dismissed as untimely under AS 12.72.020(a)(3)(A). Eighteen months after new case law expanded the understanding of AS 12.72.020(a)(3)(A) to include a one year period for filing post-conviction relief following a sentence appeal, Powell accordingly filed a motion under Rule 60(b) in his original post-conviction relief case. The court agreed that recent case law justified a Rule 60(b) motion to correct the erroneous procedural ruling which barred Powell's claim as untimely. However, the court did not agree that new case law should be prospectively applied under 60(b)(5) to grant Powell relief on the merits. The court also dismissed Powell's claims that the original judgment was void under 60(b)(4) and his argument that equities favored relief under 60(b)(6). The court of appeals affirmed, holding that while a 60(b) motion may be filed in post-conviction relief proceedings to correct erroneous procedural rulings, Powell was not entitled to relief of his final judgment on the merits.

CRIMINAL PROCEDURE

Ahvakana v. State

In *Ahvakana v. State*, 475 P.3d 1118 (Alaska Ct. App. 2020), the court of appeals held that Ahvakana's attorney provided him incompetent advice and remanded the case to determine if the advice prejudiced Ahvakana. (Id. at 1124, 1126). Ahvakana was indicted with, *inter alia*, first-degree assault and faced a mandatory 99-year sentence if convicted. (Id. at 1120–21). Ahvakana's attorney, however, erroneously concluded that he faced only 15 to 20 years if convicted, while the prosecutor informed Ahvakana that he faced a discretionary, not mandatory, 40 to 99-year sentence. (Id. at 1120). The prosecutor offered Ahvakana a plea agreement for 21 years with 4 years suspended, and Ahvakana rejected the plea offer. (Id. at 1121). Ahvakana filed an application for post-conviction relief, asserting that he would have accepted the plea agreement if he had understood the true nature of the 99-year sentence. (Id. at 1121). The superior court held that the prosecutor's and defense attorney's mutual mistake voided the plea offer and then concluded that Ahvakana was not entitled to specific performance of the agreement. (Id. at 1122). The court of appeals held that mutual mistake did not govern in this

case because there was no actual mutual mistake. (Id. at 1123). The prosecutor was aware that a 99-year sentence was still a possibility, while the defense attorney's mistake was "far more egregious" in believing it to be 15 to 20 years. (Id. at 1124). Furthermore, nothing in the record suggested that the prosecutor's mistake had a material effect on the prosecutor's plea offer. (Id.) The court remanded the case to determine if the advice prejudiced Ahvakana under Alaska's "reasonable possibility" of a different outcome standard. (Id. at 1125.) Vacating the superior court's decision, the court of appeals held that Ahvakana's attorney provided him incompetent advice and remanded the case to determine if the advice prejudiced Ahvakana. (Id. at 1124, 1126.

Akelkok v. State

In *Akelkok v. State*, 475 P.3d 1136 (Alaska Ct. App. 2020), the court of appeals held that the trial court did not violate Charles Akelkok's due process rights through its efforts to have Annie Sergio testify. (Id. at 1142). Akelkok was convicted of third-degree assault for attacking his daughter after she and Sergio, Akelkok's girlfriend at the time, found him with another woman. (Id. at 1137). The State subpoenaed Sergio as a witness for Akelkok's trial. (Id.). She appeared drunk on the first day of trial and failed to show the next day. (Id.). She regularly appeared drunk or did not appear to testify. (Id. at 1138–39). The court therefore ordered that she be taken into custody. (Id. at 1139). After detaining Sergio for only a few minutes, the court changed its mind and found her competent to testify. (Id. at 1140). She then testified before the jury. (Id.). Akelkok appealed his conviction, arguing that the trial court, by taking Sergio into custody, coerced her testimony, violating Akelkok's due process rights. (Id.). The court of appeals held that the trial court's actions were meant to ensure Sergio comply with her subpoena and be competent to testify. (Id. at 1142). The court reasoned that the record did not reflect an effort to compel Sergio to testify in a certain way. (Id.). Under the totality of the circumstances, the trial court's actions did not coerce Sergio as to affect the substance of her testimony. (Id.). Affirming the lower court's decision, the court of appeals held that the trial court did not violate Akelkok's due process rights through its efforts to have Sergio testify. (Id.).

Chilcote v. State

In *Chilcote v. State*, 471 P.3d 599 (Alaska Ct. App. 2020), the court of appeals held that neither Virginia's two-tiered adjudicated system, nor the failure to advise a defendant of their right to a jury trial, violates a defendant's fundamental rights in terms negating a "prior conviction" that increases an applicable mandatory minimum sentence. (Id. at 601). Chilcote was convicted of driving under the influence (DUI) and sentenced based on an elevated mandatory minimum sentence due to a prior misdemeanor DUI conviction from Virginia. (Id. at 600–01). She appealed and argued that her Virginia conviction should not qualify as a "prior conviction" for sentencing purposes. (Id.). First, she argued that Virginia's two-tiered adjudication system violated her due process rights under the Alaska Constitution because it permitted an increased sentence after the second-tier trial. (Id. at 601). Second, she argued that the failure by the Virginia court to advise her of her right to a jury trial violated her fundamental rights under the Alaska Constitution. (Id.). The court of appeals held that only an out-of-state conviction obtained in violation of a defendant's "fundamental" rights under the Alaska Constitution cannot be used as a "prior conviction" to enhance a defendant's minimum sentence on a subsequent conviction in Alaska. (Id. at 602). The only rights that have been recognized as "fundamental" in the context are the right to counsel and the right to a jury trial. (Id.) The court held that there was no plain error below in finding that the two-tiered adjudication system did not violate Chilcote's due

process rights because she did not discuss Virginia's sentencing law in the trial court proceedings. (Id. at 603). Next, the court held that the failure to advise a defendant of their right to a jury trial does not make a guilty plea "fundamentally flawed," and therefore should not be treated as a "fundamental" right in this context. (Id. at 604–05). Affirming the lower court's decision, the court of appeals held that neither Virginia's two-tiered adjudication system, nor the failure to advise a defendant of their right to a jury trial, violates a defendant's fundamental rights in terms negating a prior conviction that increases an applicable mandatory minimum sentence. (Id. at 601).

Chinuhuk v. State

In *Chinuhuk v. State*, 472 P.3d 511 (Alaska 2020), the supreme court held that trial courts do not have the discretion to reduce probation if an offender was previously sentenced to the statutory minimum period of probation because the legislature intended for a sex offender's sentence to have a period of imprisonment along with a period of mandatory probation. (Id. at 512–13). This case concerns the consolidated claims of three sex offenders who were sentenced under AS § 12.55.125(o), which was in effect from April 2006 to July 2016. (Id. at 513). Each petitioner repeatedly violated his probation conditions and sought to vacate his probation by exchanging longer periods of incarceration for freedom from the supervision associated with probation. (Id. at 513–14). Their petitions were denied. (Id.). While their claims were on appeal, the legislature enacted Senate Bill 91, which repealed § 12.55.125(o). (Id. at 514). After the petitioners filed their motions with the court of appeals, but before the court issued its decision, the legislature passed Senate Bill 54, which had the effect of substantially reinstating the language of § 12.55.125(o). (Id.). In reviewing the text and legislative history behind § 12.55.125(o), the supreme court concluded the legislature intended for the petitioners to be sentenced to a period of imprisonment and a period of probation. (Id. at 517–19). The court noted how the legislative history emphasized the important role that mandatory probation plays in deterring repeat sexual offenders. (Id. at 518). The court also notes that Senate Bill 91 and the repeal of § 12.55.125(o) does not have a retroactive application for the petitioners' probation conditions because the petitioners' penalties were imposed at their sentencing and the state's saving statute prevents elimination of penalties through a repealed law. (Id. at 520–21). In affirming the court of appeals, the supreme court held the legislature intended for sex offenders' initial sentence to have two components: a period of imprisonment and mandatory probation; therefore, the petitioners remain subject to mandatory probation imposed under former § 12.55.125(o). (Id. at 512–13).

Hayes v. State

In *Hayes v. State*, 474 P.3d 1179 (Alaska Ct. App. 2020), the court of appeals held that the hearsay exception for a child crime victim's recorded statement in Alaska Evidence Rule 801(d)(3) covers statements where the victim is under sixteen years old at the time of the recording but over sixteen years old at the time of trial. (Id. at 1186). Hayes began living with his girlfriend and her five minor daughters in 2007 and started sexually abusing the oldest daughter, S.D., in 2008 when she was fourteen years old. (Id. at 1182). Hayes began sexually abusing two of the other daughters, N.E. and K.E., in subsequent years. (Id.) All three victims testified to his abuse at trial in 2016, and the State additionally presented video testimony that N.E., who was thirteen at the time, and K.E. gave in 2012. (Id.) The trial court admitted the video testimony under Alaska Evidence Rule 801(d)(3), which exempts "a recorded statement by the victim of a crime who is less than 16 years of age" from the hearsay prohibition. (Id. at 1183). On appeal,

Hayes argued that because N.E. was eighteen at the time of trial, the hearsay exception applies only if the victim is under sixteen at the time of trial and would thus preclude N.E.'s recorded statement. (Id.) The court of appeals disagreed, reasoning that while a court could read the present tense in the statute to refer to either the victim's age at the time of the statement or at the time of trial, the former reading is more natural. (Id. at 1183). The court further reasoned that the legislative history behind the hearsay exception supports this interpretation because of the dual purpose of the exception to both present evidence of abuse to the jury and minimize the trauma involved in testifying. (Id. at 1184–85). Accordingly, the court of appeals held that the hearsay exception to Alaska Evidence Rule 801(d)(3) that allows admission of a recorded statement by a victim under the age of sixteen refers to the victim's age at the time of the recording, not the time of trial. (Id. at 1186).

Hedrick v. State

In *Hedrick v. State*, 474 P.3d 4 (Alaska Ct. App. 2020), the court of appeals upheld a criminal defendant's waiver of his right to a jury trial because the trial judge had adequately advised him of his right. (Id. at 5). Hunter Hedrick was charged with multiple felony assaults for an unprovoked attack on a hotel security guard and concierge. (Id. at 5–6). During a status hearing, Hedrick's attorney indicated he wished to waive his right to a jury trial. (Id. at 6). The trial judge addressed Hedrick personally and determined he made "a free, voluntary, and knowing decision," and Hedrick signed a written waiver listing the offenses charged. (Id.). The judge ultimately found Hedrick guilty on all counts. (Id. at 7). On appeal, Hedrick argued his waiver was invalid because the trial judge failed to adequately advise him. (Id. at 5). Under Alaska Criminal Rule 23(a), criminal defendants may waive their constitutional right to a jury trial as long as there is a written waiver and "adequate personal inquiry" to ensure it is voluntary and knowing. (Id. at 7). Here, Hedrick executed both a written and oral waiver, and was personally and specifically instructed regarding the consequences of his decision. (Id. at 7–8). It was sufficient that the trial judge had explained that he was agreeing to have the judge decide his guilt; the court was not required to go into any more detail about the important features of a jury trial nor the specific elements of the charged offenses. (Id. at 8–9). Thus, the court of appeals held the trial judge had indeed adequately advised Hedrick of his right to a jury trial. (Id. at 5). In concurrence, Judge Wollenberg agreed with the holding but emphasized that, as a matter of best practice, trial judges are still strongly encouraged to describe all the salient features of a jury trial to criminal defendants. (Id. at 11 (Wollenberg, J. concurring))

EMPLOYMENT LAW

Adams v. State, Workers' Compensation Benefit Guaranty Fund

In *Adams v. State, Workers' Compensation Benefit Guaranty Fund*, 467 P.3d 1053 (Alaska 2020), the supreme court held that substantive evidence supported the finding that the property owner engaged in the "business or industry" of "buying, managing, and selling real estate" and that the carpenter's work was part of that business for the purpose of the workers' compensation case. (Id. at 1064). The Alaska Workers' Compensation Act (the Act) defines "employer" as "a person employing one or more persons in connection with a business or industry coming with the scope of this chapter and carried on in this state." (Id. at 1060). The supreme court has previously held that this definition "excludes private common law employees who are employed other than 'in connection with a business or industry.'" (Id.). The supreme court found substantial evidence to

support a decision that the property owner was an employer under the Act, including the property owner's deposition testimony that he was in the business of "buying, selling, and renting real estate," an expired business license with real estate listed as its business, and the property owner's ownership of other properties from which he collected rent. (Id. at 1062–63). The supreme court then declined an argument that having little income removed the business from the Act's "business or industry" requirement. (Id. at 1063). Therefore, the supreme court held that the property owner was engaged in the "business or industry" of real estate under the Act. (Id. at 1064).

James v. Alaska Frontier Constructors, Inc.

In *James v. Alaska Frontier Constructors, Inc.*, 468 P.3d 711 (Alaska 2020), the supreme court held that there was insufficient evidence to determine corporate relationships between three companies, and it was therefore inappropriate to grant summary judgement based on immunity under the Alaska Workers' Compensation Act's exclusive liability provision. (Id. at 714). James was injured while working on an ice road construction project for Northern Construction. (Id. at 715). James had been instructed to work at the direction of Pleas, who ordered him to conduct work in dangerous blizzard conditions. (Id. at 715). James received workers' compensation benefits from Northern Construction for the injury, and sued Nunuq and Alaska Frontier for his personal injuries, alleging that Pleas was an employee of either Nunuq or of Nunuq and Alaska Frontier operating as a joint venture. (Id. at 715). Nunuq and Alaska Frontier argued that, while no written contract existed, they were joint venturers and thus immune from personal injury liability under Alaska's Workers Compensation Act (AS 23.30.055), which is generally an employees' exclusive remedy against an employer or parties with a contractual relationship with the employer. (Id. at 715–18). The superior court granted summary judgement for Alaska Frontier and Nanuq, finding that (1) Alaska Frontier was immune since either Alaska Frontier and Northern Construction were a joint venture due to joint ownership, or Northern Construction was a subcontractor of Alaska Frontier, and (2) Nanuq was immune since Nanuq sub-contracted with Alaska Frontier, Alaska Frontier billed Nanuq for both Alaska Frontier's and Northern Construction's work, Northern Construction had a "casual temporary labor agreement relationship" with Alaska Frontier, and James was an employee of either Northern Construction or Alaska Frontier. (Id. at 716). The supreme court reversed, holding that that there was insufficient evidence to determine the corporate relationships between three companies, reasoning that joint ownership was not dispositive proof that a joint venture existed between Alaska Frontier and Northern Construction. (Id. at 719). The court further reasoned that because no evidence was presented that James was a general or special employee of Alaska Frontier, the superior court erred in concluding that James could have been an Alaska Frontier employee (Id. at 719). Lastly, the court reasoned that there was insufficient evidence to determine whether Alaska Frontier was actually a subcontractor or a vendor of Nanuq, and therefore it was impossible to determine what portion of Alaska Frontier's supposed subcontract could have been sub-subcontracted to Northern Construction. (Id. at 721). The supreme court overturned the lower court's grant of summary judgement, holding that there was insufficient evidence to determine corporate relationships between three companies, and it was therefore inappropriate to grant summary judgement based on immunity under the Alaska Workers' Compensation Act's exclusive liability provision. (Id. at 714).

ETHICS & PROFESSIONAL RESPONSIBILITY

Carr v. Alaska Bar Association

In *Carr v. Alaska Bar Association*, 475 P.3d 269 (Alaska 2020), the supreme court held that health concerns related to the COVID-19 pandemic did not warrant allowing bar applicants to practice law without taking and passing the bar examination. (Id. at 269.). Seven applicants for the Alaska bar examination, which had been rescheduled from July to September 2020 on account of the global pandemic, applied to be admitted to practice law without taking and passing the exam. (Id.). The court denied the applicants' requests. (Id.). The applicants argued (1) that sitting for the exam would expose them to undue health risks and (2) that granting them diploma privilege would sufficiently ensure their competency to practice law. (Id. at 270.). The court justified its denials on the core function of attorney licensure: protecting the integrity of the profession and the public from attorneys who are unqualified to assume a position of trust. (Id.). The court emphasized that the bar association had already instituted several safety precautions to protect bar applicants' health and had allowed recent graduates to practice without passing the bar for one year under the supervision of a licensed attorney. (Id. at 269–70.). Prioritizing the public's trust in the legal profession, the supreme court held that the COVID-19 pandemic's health risks did not warrant bar applicants' circumvention of the bar examination considering the precautions the state bar had established. (Id. at 270.).

In re Brion

In *In re Brion*, the supreme court held that the current procedures for disciplinary and reinstatement hearings for disbarred attorneys do not violate their due process rights. In 2009, a Hearing Committee found that Brion had violated his duties of diligence, communication, and handling client funds, and recommended disbarment. In 2010, the Disciplinary Board adopted the Hearing Committee's recommendation for disbarment. The Disciplinary Board also issued reinstatement conditions, which included a forensic audit of Brion's firm to determine if client funds were allocated correctly and refunded. In 2018, the Hearing Committee held a hearing on Brion's reinstatement petition, in which Bar Counsel took no position on the petition. The Hearing Committee's report determined that Brion had not met the reinstatement conditions related to the forensic audit and client repayments, and further, that he had failed to prove with clear and convincing evidence that his reinstatement would not be detrimental to the Bar Association, the administration of justice, or the public interest. In 2019, Bar Counsel adopted the recommendation of the Hearing Committee and denied Brison's reinstatement petition. On appeal, Brion argued that Bar Counsel's failure to take a position on his reinstatement petition's merits constituted a denial of due process by depriving him of the opportunity to fully confront issues in his petition. The supreme court denied reinstatement, reasoning that Brion's due process was satisfied because he had the opportunity to be "heard in court at a meaningful time and in a meaningful manner[,]" and the procedure for reinstatement under Alaska Bar Rule 29(c)(3) does not require or prevent Bar Counsel from taking a position on a reinstatement petition. The court also noted that it is well established that the petitioner bears the burden of proof in reinstatement proceedings and Bar Counsel bears the burden of proof in disciplinary proceedings. Denying the reinstatement of a disbarred attorney, the supreme court held the procedures for disciplinary and reinstatement hearings do not undermine the due process rights of disbarred attorneys.

In re Disciplinary Matter Involving Stockler

In *In re Disciplinary Matter Involving Stockler*, the supreme court held that suspension was the appropriate sanction for an attorney's misconduct, since willfully failing to file income tax returns was a violation of ALASKA RULES OF PROF'L CONDUCT 8.4(b) ("a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer"), but did not qualify as a "serious crime" under ALASKA RULES OF BAR 26(b). In 2014, Stockler plead guilty to three misdemeanor counts of willful failure to file returns for tax years 2006, 2008, and 2009, in violation of 26 U.S.C. § 7203. He was sentenced to 14 months imprisonment, a \$10,000 fine, and \$886,058 in restitution to the IRS. Stockler and the Alaska Bar Association's Disciplinary Board entered into a stipulation for discipline by consent for violation of Alaska R. Prof. Conduct Rule 8.4(b), which deems it professional misconduct for a lawyer to commit a "criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Prior to the stipulation, the supreme court held that willfully failing to file income tax returns was not a "serious crime" under ALASKA RULES OF BAR 26(b). However, the supreme court agreed that Stockler violated ALASKA RULES OF PROF'L CONDUCT 8.4(b), reasoning that his repeated failure to file tax returns reflected a disrespect for the law and undermined the public confidence in the integrity of officers of the court, and that a tax loss of \$886,058.00 was an actual injury to the United States Treasury and citizens. The supreme court suspended Stockler for eighteen months, with six months suspended. Agreeing with the Bar Association's Disciplinary Board, the supreme court held that willfully failing to file income tax returns was a violation of ALASKA RULES OF PROF'L CONDUCT 8.4(b), and that suspension was the appropriate sanction.

Lovely v. Baker Hughes, Inc.

In *Lovely v. Baker Hughes, Inc.*, the supreme court held that for purposes of the Alaska Workers' Compensation Act (AWCA), a project owner must actually contract with a person to perform specific work as well as enjoy the beneficial use of that work. Several construction workers received workers' compensation from their employer after exposure to a hazardous chemical working on a facility. The workers separately brought a negligence action against three related corporations: Baker Hughes Oilfield Operations, Inc. (construction), Baker Petrolite Corporation (operations), and Baker Hughes, Inc. (parent corporation). The superior court granted the three corporations' motions for summary judgment, rejecting the workers' argument that to be protected under the exclusive liability provision of the AWCA as a project owner each corporation needed to be party to the contract with their employer, and accepting the corporations' argument that they were protected due to indemnity provisions in the contract. The supreme court rejected the superior court's interpretation of the statute, holding instead that to "engag[e] the services of a contractor" requires actually contracting for the specific work. Furthermore, it held that contractual provisions assigning liability for securing payment of compensation had no bearing on whether someone was a project owner. Thus, the supreme court reversed the lower court and remanded for consideration of whether each corporation was party to the contract, because the meaning of "project owner" under Alaska's Worker's Compensation Act was limited to someone who actually contracts with a person to perform specific work.

FAMILY LAW

Angelica C. v. Jonathan C.

In *Angelica C. v. Jonathan C.*, the supreme court held it was legal error to ignore the father's sexual abuse of the mother when analyzing factors to determine best interests of the child in awarding custody. Jonathan pleaded guilty to attempted sexual abuse of a minor in the second degree after sexually abusing and impregnating Angelica when she was only thirteen. Their son was born while Jonathan was incarcerated in 2010. Later, Jonathan sought full custody of the child. In considering Jonathan's motion, the superior court recognized Jonathan's history of domestic violence evidenced by his prior conviction, but ruled that it only formed a rebuttable presumption of ineligibility for custody. The court then conducted a factor-by-factor best interests analysis and, finding all factors either favored Jonathan or were neutral, granted him sole custody. On appeal, the supreme court concluded the superior court committed legal error by failing to account for the "defining fact" of the case—Jonathan's sexual abuse of Angelica—in its weighing of two statutory factors. The superior court should have considered the underlying fact of sexual abuse and therefore excluded all evidence of Angelica and her parents' unwillingness to foster a relationship between Jonathan and the child. Additionally, when weighing the domestic violence factor, the court made findings on the absence of domestic violence in the respective homes of the parents, but incorrectly ignored Jonathan's abuse of Angelica. Thus, the supreme court held it was legal error for the lower court to fail to consider the father's sexual abuse of the mother when conducting a best interests analysis for awarding custody.

C.D. v. State

In *C.D. v. State*, the supreme court held that fairness required the court to establish an exclusionary rule whereby a minor's own testimonial evidence at a waiver hearing could not subsequently be used against him as evidence in juvenile adjudication or adult criminal proceedings. 15-year-old C.D. was charged with first degree murder and vehicle theft after he allegedly shot and killed his mother and sister. The State filed a petition for the court to waive juvenile jurisdiction, citing a state statute that holds that under certain conditions, the State may establish a rebuttable presumption that a minor will not be amenable to treatment in the juvenile system. Before the waiver hearing, C.D. had already stipulated that there was probable cause to say he was a delinquent, so the superior court held that the State had established its burden of creating a rebuttable presumption to waive jurisdiction. C.D. tried to rebut this presumption by presenting evidence concerning his background and testimony from people in his life as to his character, but he himself did not testify. The court granted the waiver, emphasizing the fact that C.D. had not provided evidence of his motivation. On appeal, the supreme court reversed the order, pointing out that C.D. had a property interest in being considered a juvenile which could not be taken away without due process. The court noted that the Alaska Constitution privilege against self-incrimination also applied in this situation. The court noted that much of the testimony that C.D. may have given in his defense at a waiver hearing could potentially be used by the State in any further proceedings against him. Since this would be fundamentally unfair, the court determined that it would need to use its "inherent supervisory powers" to keep the State from using such testimony later on, and to ensure the minor knows that his testimony cannot be used against him in this way. Vacating the petition of waiver, the supreme court held

that testimony presented by a minor at a waiver hearing cannot be used as evidence against him at either a subsequent criminal proceeding or juvenile adjudication.

Cora G. v. State, Department of Health & Social Services

In *Cora G. v. State, Department of Health & Social Services*, the supreme court held that in child in need of aid (CINA) matters, an expert witness providing a statutorily-required opinion must be offered and affirmatively accepted as a qualified expert witness. The Office of Child Services (OCS) petitioned to terminate the parental rights of the mother and father of an eight-year-old child under Alaska Stat. § 47.10.011(8) (2020), alleging that parental conduct or conditions caused the child “mental injury,” that the parents had not remedied the conduct or conditions placing him at substantial risk of harm, and that OCS made reasonable reunification efforts. At the termination trial, the superior court terminated parental rights based on the testimony of the OCS supervisor, the child’s second therapist, the mother’s therapist, an OCS caseworker, and both parents. OCS at no point expressly offered the child’s second therapist as an expert witness or asked the court to qualify her as an expert witness regarding mental injury to children. On appeal, the supreme court vacated the termination of parental rights, reasoning that since Alaska Stat. § 47.17.290(10) requires the opinion of a “qualified expert witness” for a finding of mental injury, the trial court erred by not expressly qualifying the testifying therapist as an expert witness to testify about the child’s mental injury. The supreme court further reasoned that this error was not harmless because there was no ready indication that the child’s second therapist (who held a master’s degree in marriage and family therapy) could have been qualified as an expert in diagnosing complex mental injury to a child or opining on the cause of such an injury. Vacating the termination of parental rights and remanding, the supreme court held that that in CINA matters, an expert witness providing a statutorily-required opinion must be offered and affirmatively accepted as a qualified expert witness.

In re Tiffany O.

In *In re Tiffany O.*, 467 P.3d 1076 (Alaska 2020), the supreme court held that removing a guardian who relied on prayer instead of other reasonable forms of health care did not violate the Alaska Constitution’s free exercise clause due to the state’s compelling interest in protecting the ward. (Id. at 1078). Rachel was appointed guardian of her mother Tiffany, who suffered from epilepsy and intellectual disability, in 2011. (Id.). Rachel saw herself as her mother’s “spiritual authority” and relied on prayer in lieu of other medical care, for example praying when her mother had seizures and declining to administer her medications. (Id. at 1078–79). In 2017, both the Office of Public Advocacy and Tiffany’s other daughter filed petitions for review of the guardianship, alleging Rachel was financially exploiting her mother and either physically abusing her or failing to keep her safe. (Id.). The court removed Rachel as guardian because although a “faith-based, holistic view” was not necessarily incompatible with the role, Rachel’s “intractable belief system” and hostility towards outside resources prevented her from seeking reasonable care options. (Id.). On appeal, the supreme court agreed, holding it was not abuse of discretion to conclude Rachel’s beliefs and behavior prevented her from making “objective decisions” as guardian. (Id. at 1080). Under the Alaska Constitution’s free exercise clause, a facially neutral statute that interferes with religious-based conduct must be justified by a compelling state interest. (Id. at 1082). Here, the guardianship statute reflected a strong interest in protecting the health and safety of vulnerable individuals, such as Tiffany’s, which would suffer if Rachel were not removed. (Id.). Thus, the supreme court held even though free exercise

is a fundamental right under the Alaska Constitution, removing the guardian was justified by a compelling interest in the ward's health and safety. (Id.).

M.M. through his next friend Kirkland v. State, Department of Administration

In *M.M. ex rel. Kirkland v. State, Department of Administration*, the supreme court held that (1) the Office of Public Advocacy (OPA) could contract with third-party service providers to fulfill its duty of providing wards with in-person quarterly visits, and (2) a “next friend” could not be held personally liable for attorneys’ fees in an action involving an incompetent plaintiff. M.M., an incapacitated individual, filed a class action complaint through his mother, as next friend, against OPA. M.M.’s OPA guardian contracted with a service provider to provide him with care and visits at an assisted living home. M.M. argued that Alaska law required his public guardian, not a contracted party, to provide at least one in-person visit every quarter. The superior court held that OPA was properly contracting for services that assisted public guardians with carrying out their duties and that M.M.’s next friend was personally liable for attorneys’ fees. On appeal, the supreme court affirmed the lower court’s holding permitting the OPA to contract with service providers to provide quarterly ward visits. The court reasoned that the statute’s plain language allowed OPA to hire a service provider to provide quarterly visits as a way to “contract for services necessary to carry out” its duties. Furthermore, legislative history supported the State’s argument, along with public policy to allow OPA to provide the best care as possible for its wards. The court reversed and remanded the attorneys’ fees awards, as the statute was not clear that a next friend could be held personally liable for attorneys’ fees. Affirming in part and reversing and remanding in part the superior court’s decision, the supreme court held that (1) the Office of Public Advocacy (OPA) could contract with third-party service providers to fulfill its duty of providing wards with in-person quarterly visits and that (2) a “next friend” could not be held personally liable for attorneys’ fees in an action involving an incompetent plaintiff.

Mauritsen v. Mauritsen

In *Mauritsen v. Mauritsen*, the supreme court held that courts should interpret the phrase “presently resides” in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) consistently with “residency” in AS 01.10.055. In 2016, the superior court entered a custody agreement that provided equal shared physical custody between Mauritsen and Mauritsen (n/k/a) Taubert when the two lived in the same community and primary custody to Mauritsen if the two lived a “significant distance apart.” In 2018, while both parties were living in South Carolina, Mauritsen filed a motion with the superior court concerning a dispute over custody arrangements during Thanksgiving break. Observing there was no indication that either party had registered the custody order in South Carolina, the superior court asserted its continuing jurisdiction over the matter. In a motion to clarify, Taubert stated she had registered the custody order in South Carolina, leading the superior court to conclude it did not have jurisdiction because neither the parents nor children “presently reside[d]” in Alaska. Mauritsen argued in his motion for reconsideration that he retained Alaska residency because he only intended to stay in South Carolina temporarily before returning to Alaska. The superior court denied his motion on the basis that none of the parties physically resided in Alaska. On appeal, the supreme court reversed, reasoning that “presently resides” accords with the definition of “residency” in AS 01.10.055, which considers factors including intent to return to Alaska. Noting that courts in other states have adopted inconsistent interpretations of “presently resides,” the supreme court determined that an inquiry that looks beyond technical domicile best addresses concerns of

forum shopping, child abduction, the relitigation that the UCCJEA seeks to avoid. The supreme court additionally observed that the superior court did not sufficiently examine the issue of whether it should decline jurisdiction on forum non conveniens grounds and could therefore explore the issue further on remand. Accordingly, the supreme court vacated the superior court's orders and remanded, holding that courts should interpret "presently resides" harmoniously with "residency" under Alaska law.

Roman v. Karren

In *Roman v. Karren*, the supreme court held that Alaska was the appropriate forum for deciding a child custody case, even though none of the parties lived in Alaska at the time. Roman and Karren are the mother and father, respectively, of a girl born in 2012 in Washington, D.C. They moved to Anchorage in April, 2013. The two filed for dissolution (subsequently converted to divorce) in Anchorage in May, 2015. By July, both had moved out of Alaska: Karren to the District of Columbia, and Roman to Washington State. Their daughter lived with Roman. Initially, Roman claimed Alaskan residency and the case proceeded in Alaska, with the parties participating remotely. In 2018, she motioned for the court to transfer jurisdiction to Washington State, on grounds of inconvenient forum. The superior court denied the motion, observing that a trial was scheduled for the following month. On appeal, the supreme court affirmed, holding that the superior court's decision was not clearly unreasonable. The court noted that, although it was beyond dispute that neither of the parties were current Alaska residents, moving the trial to Washington State would significantly delay proceedings and risk exposing both parties to extensive attorney's fees. Accordingly, the supreme court held that Alaska was the appropriate forum for deciding the case.

Rosenbaum v. Shaw

In *Rosenbaum v. Shaw*, the supreme court held that a father was not entitled to credit or reimbursement for overpaid child support when the mother was receiving children's insurance benefit (CIB) payments from the Social Security Administration (SSA) in addition to the regular monthly child support payments from the father. In 2012, when Rosenbaum began receiving Social Security retirement benefits, the daughter for whom he had been paying child support became eligible to receive CIB payments. Rosenbaum received and retained these payments on her behalf until 2014, when Shaw, the child's mother, requested SSA to redirect future payments to her. Rosenbaum continued to pay child support while Shaw was receiving CIB payments, unaware that the CIB payments could be credited against his child support. In 2016, the Alaska Department of Revenue, Child Support Services Division (CSSD) informed Rosenbaum that he had an overbalance of \$47,432. The superior court denied entry of judgment to recover this overpaid child support. On appeal, Rosenbaum argued that Alaska case law dictates that an overpayment resulting from combined normal child support payments and CIB payments is not to be treated as a gratuity to the child, and that national trends, public policy, and constitutional principles supported his position. The supreme court held that if a parent has no arrearages and makes duplicative child support payments even after SSA began making CIB payments, those duplicative payments shall be treated as gratuity, and such overpayment may not be recovered in the future. The supreme court reasoned that public policy supported allocating the risk of loss to Rosenbaum. The supreme court affirmed, holding that a parent was not entitled to credit or reimbursement for overpaid child support when the other parent was receiving CIB payments in addition to regular monthly payments.

State, Department of Health & Social Services v. Dara S

In *State, Department of Health & Social Services v. Dara S.*, the supreme court held that the superior court did not clearly err by reinstating a mother's parental rights, finding that this was in the best interest of the child. In a previous decision, the supreme court held that a superior court is able to vacate an order involuntarily terminating a parent's parental rights if the child has not been adopted and the parent shows that reinstatement of their parental rights is in the best interest of the child, including that they can provide for the moral, emotional, mental, and physical welfare of the child. Here, the superior court reinstated a mother's parental rights after finding that she was best able to provide for her child's emotional well-being. In doing so, the superior court discounted the credibility of testimony by an Office of Children's Services (OCS) caseworker. The superior court made findings of fact that the child lived with his mother for the first three years of his life and that his caregivers were unable to provide for his emotional well-being. On appeal, OCS argued that the superior court's findings of fact were clearly erroneous and therefore that the conclusion that reinstating the mother's parental rights was in the best interest of the child was clearly erroneous as well. The supreme court reviewed the superior court's decision for clear error, refusing to overturn the superior court's factual findings based on conflicting evidence or re-weighing the evidence. The supreme court affirmed the lower court's decision, reasoning that the superior court's findings were not clearly erroneous. The court further reasoned that the superior court was entitled to discount the caseworker and psychologist's testimony and refused to make new credibility determinations. Affirming the superior court's decision, the supreme court held that the superior court did not clearly err in holding that reinstating a mother's parental rights was in the best interest of the child.

Vogus v. Vogus

In *Vogus v. Vogus*, the supreme court held that when a superior court imputes income to an obligor parent, the court may base its calculation on either (1) concrete evidence of the obligor's historical earnings—unless the obligor demonstrates that she is unable to achieve similar income—or (2) its specific findings of the obligor's work history, qualifications, and job opportunities pursuant to Alaska Rule of Civil Procedure 90.3(a)(4). A superior court modified the custody arrangement between a divorced couple, Eric and Amanda Vogus, and required Amanda to document her earnings for child support. At a hearing, Amanda presented evidence that her highest earnings to date came from two years' experience as a massage therapist, which entailed 20 to 25 hours of work per week, at \$19.00 per hour. The superior court found that Amanda was voluntarily and unreasonably underemployed, as required by Rule 90.3(a)(4), and that she could work a 40-hour week. Based on an Alaska labor statistics table, the court then imputed to Amanda a \$32.52 hourly rate, which, in conjunction with the imputed 40-hour week, more than doubled Amanda's historical annual income. On appeal, Amanda challenged the resulting child support order, arguing that evidence of her historical income did not support the superior court's calculation. The supreme court agreed and vacated the lower court's order, clarifying that if a court's income imputation goes beyond what the unrebutted *prima facie* evidence establishes is a realistic income expectation, then the presiding court must make the specific, necessary findings articulated in Rule 90.3(a)(4) to support its calculation. If the superior court's imputation is in harmony with the recorded evidence, then the presiding court need not make the Rule 90.3(a)(4) findings. The supreme court further explained that a superior court may not disregard evidence of historical earnings on the basis of labor statistics alone, as such reliance is arbitrary in the face of individualized evidence. Vacating the superior court's

order, the supreme court held that an income imputation must either reflect the reality of the *prima facie* evidence presented—if not rebutted by the obligor—or find support in the court’s specific Rule 90.3(a)(4) findings.

HEALTH LAW

In re Necessity for the Hospitalization of Rabi R.

In *In re Necessity for the Hospitalization of Rabi R.*, 468 P.3d 721 (Alaska 2020), the supreme court held that the lower court’s failure to order a screening investigation upon receipt of a petition for involuntary detention for psychiatric evaluation was harmless error because the later proceedings presented sufficient evidence to support the detention. (Id. at 726–27). A man who had been previously diagnosed with schizophrenia sought treatment at a hospital for sunburns, and the hospital filed a petition for detention because the man was covered in vomit, sunburns, open sores on his inner thighs, and feces. (Id. at 727). The superior court granted this petition based on the hospital’s allegations without ordering a screening. (Id.). After commitment hearings, the standing master granted a petition for involuntary medication and recommended the man be committed for thirty days. (Id. at 729). Upon review, the superior court found clear and convincing evidence that the man was not fully aware of his condition and would not be able to care for himself in a socially acceptable manner, so commitment was the least restrictive means of treatment. (Id. at 729–30). On appeal, the man argued that the court initially erred by failing to order a screening investigation and by allowing consideration of some facts present in the petition but not entered into evidence. (Id. at 731–32). The supreme court affirmed the lower court’s decision, reasoning that while these were errors they were harmless because the overall record and proceedings supported the finding that detention, commitment, and medication were in the man’s best interests. (Id. at 727). The court further explained that any evaluations conducted before the filing of a petition for involuntary detention cannot satisfy the requirement for a screening investigation. (Id. at 731). Affirming the lower court’s decision, the supreme court held that the errors were harmless and that the court did not err in granting the detention, commitment, and medication orders. (Id. at 727).

Israel v. State, Department of Corrections

In *Israel v. State, Department of Corrections*, the supreme court held that a diagnosis of paranoid schizophrenia based on delusions was correct as a matter of law when the diagnosed party’s evidence was “too incredible to be believed” and therefore insufficient to defeat a summary judgment motion. Psychiatrists from the Alaska Department of Corrections (DOC) diagnosed Israel with paranoid schizophrenia partially based on his belief that he had a genetic trait allowing him to see poltergeists. The DOC chief medical officer testified as an expert witness that two DOC psychiatrists diagnosed Israel with paranoid schizophrenia. Delusions are a key element of paranoid schizophrenia. Israel argued that he was misdiagnosed because he could not conduct an insects-in-jars demonstration to prove that he could actually see poltergeists. The superior court granted the DOC’s summary judgment motion when it found that the standard of care was not violated. On appeal, the supreme court affirmed. Israel had the burden of proving the relevant standard of care, that the psychiatrists failed to meet that standard, and that he was proximately harmed. The court held that Israel’s proposed insects-in-jars demonstration as an offer of proof for his belief, along with the belief itself, were “too incredible to be believed.” The court further held that, because Israel did not offer any psychiatric expert testimony, there was no

genuine issue of material fact; therefore, granting summary judgment was proper. Affirming the lower court's decision, the supreme court held that a diagnosis of paranoid schizophrenia based on delusions was correct as a matter of law when the diagnosed party's evidence was "too incredible to be believed" and therefore insufficient to defeat a summary judgment motion.

Matter of Arthur A.

In *Matter of Arthur A.*, the supreme court held that an individual subject to involuntary commitment proceedings has an implied statutory right to self-representation, and if the individual clearly and unequivocally invokes this right—though not absolute—the superior court must hold a preliminary hearing and consider the factors outlined in *McCracken v. State* to determine whether self-representation should be allowed. After law enforcement brought Arthur A. to Fairbanks Memorial Hospital (FMH) following a public altercation, FMH staff found that Arthur met the criteria for involuntary hospitalization, which the superior court approved for evaluation purposes. FMH's mental health professionals subsequently filed a petition for a 30-day involuntary commitment. The superior court held a hearing on the petition, at which Arthur expressed his desire to represent himself. Based on the petition's allegations and the direct testimony of FMH's treating psychiatrist, the superior court denied Arthur's request. The hearing proceeded to collect evidence and the superior court granted the commitment petition. On appeal, the State argued that the superior court did not abuse its discretion in finding that Arthur was unfit to represent himself. The supreme court vacated the lower court's order, however, interpreting the involuntary commitment statute as impliedly granting individuals a qualified right to self-representation that is entitled to *McCracken*'s procedural safeguards. The court further emphasized the need for a lower court to engage directly with the affected individual during the *McCracken* inquiry, noting that reliance on external evidence such as medical opinions alone is insufficient for a finding of incompetence to self-represent. Vacating the superior court's 30-day commitment order, the supreme court held that individuals have an implied, qualified statutory right to self-representation, which, if clearly invoked by an affected individual, requires a preliminary hearing consistent with *McCracken*.

INSURANCE LAW

Downing v. Country Life Insurance Company

In *Downing v. Country Life Insurance Company*, 473 P.3d 699 (2020), the Supreme Court of Alaska affirmed the superior court's decision that a mother's interpretation of her late daughter's life insurance policy was unreasonable, and that the insurance company had paid out the proper amount upon the daughter's death. (Id. at 700). In 2015, the daughter had purchased a whole life insurance policy worth \$500,000, and a "Paid-Up Additions Rider" (PUAR) worth up to \$1,079,014 after 34 years of payments. (Id. at 700–01). The insurance agent explained to the daughter that the PUAR system worked differently than a whole life insurance policy, because the former acted as an investment opportunity, increasing in cash value over time as payments were made. (Id. at 701). In 2016, her mother took over payments of the insurance policy and the PUAR, and four months later, the daughter passed away in an accident. (Id.). The insurance company paid the mother the \$500,000, and an additional \$108,855 from the payments made on the PUAR policy at that point. (Id.). The mother brought suit, arguing that the insurance policy was reasonably interpreted as offering a flat payout of \$1,095,741 upon death. (Id.). The superior court granted summary judgment for the insurance company, holding that though the terms of the

policy may have been somewhat confusing, the only reasonable interpretation of the terms was that the PUAR policy did not provide a flat payment. (Id. at 702). The mother argued that the court should look only to the first page of the policy agreement, which did suggest that the payout amount of the PUAR policy would be over a million dollars, making her expectation of this payment reasonable. (Id. at 704). The court rejected this argument. (Id. at 704–05). The court noted the other provisions of the agreement, including illustrations of how the payments would be made, and the consultation the daughter had with the insurance agent when she purchased the policies. (Id. at 705). The court reasoned that these factors precluded the interpretation that a flat payment would be made on the PUAR policy for the maximum possible value in the second year of owning that policy. (Id. at 706). Thus, the supreme court affirmed the judgment of the superior court that the mother’s interpretation of the insurance policy terms was unreasonable. (Id.).

NATIVE LAW

Matter of April S.

In the *Matter of April S.*, 467 P.3d 1091 (Alaska, 2020), the supreme court ruled that an out-of-state mental health professional qualified as an expert under the Indian Child Welfare Act (ICWA), given the severity of the child’s psychiatric conditions. The ICWA requires state agencies to present testimony from a “qualified expert witness” before placing a Native child in foster care. (Id. at 1097). Binding federal regulation states that, with few exceptions, a qualified witness should have knowledge of the child’s tribal culture. (Id. at 1097–98). Here, the Office of Children’s Services (OCS) moved April, a seventeen-year-old Native Alaskan girl in its custody, to an inpatient psychiatric facility in Utah, where a staff member hurt her already-broken arm. (Id. at 1093). At a subsequent hearing, a mental health counselor from the Utah facility testified that it was too dangerous to discharge April, but admitted she knew nothing about Alaska Native culture. (Id. at 1094–94). On the basis of this testimony, the trial court declined to return April to her mother. (Id. at 1096). April appealed, arguing that the Utah-based witness lacked necessary knowledge of her Native culture. (Id.). The supreme court disagreed, holding that Native culture was irrelevant to April’s psychiatric diagnoses. (Id. at 1099). Justices Winfree and Carney were concerned that OCS provided no evidence of how April’s Native community addresses juvenile mental health. (Id. at 1100 (Winfree, J., concurring)). They observed that, under the ICWA, the burden is on OCS to prove that cultural knowledge is irrelevant in a particular case. (Id.). Accordingly, the court ruled that an out-of-state mental health professional qualified as an expert under the Indian Child Welfare Act (ICWA), given the severity of the child’s psychiatric conditions.

Peidlow v. Williams

In *Peidlow v. Williams*, 459 P.3d 1136 (Alaska 2020), the supreme court held that the Indian Child Welfare Act (ICWA) requires a superior court that receives a tribal court order to first determine whether the order was issued in an ICWA child custody proceeding, and if it was, to follow the full faith and credit mandate of the ICWA. The Native Village of Barrow (NVB) took emergency custody of a child in September 2015. In November 2015, the superior court recognized that NVB had initiated a child in need of aid (CINA) case. Still, in April 2016, the superior court issued a final custody order that did not consider granting full faith and credit to the tribal court’s custody orders. In 2017, the tribal court requested to register a tribal court ICWA custody order. The superior court held the tribal court’s order was unenforceable because NVB

lacked jurisdiction over the child and was not a party in the custody case before the superior court. The superior court also denied NVB's additional motion to intervene in the custody case due to lack of jurisdiction. On appeal, the supreme court vacated the denial of the tribal court's custody order, reasoning that the full faith and credit mandate of the ICWA requires states to grant full faith and credit to the judicial proceedings of any Indian tribe applicable to custody proceedings of any Indian child to the same extent of that the state gives full faith and credit to any other entity. The court further reasoned that Alaska CINA Rule 24(d)(1)-(2) provides that once the superior court received the request to register a tribal court ICWA custody decision from the tribal court, the superior court should have filed the order as a foreign judgment and distributed notice to relevant parties. The supreme court also noted that if the superior court had followed the correct procedure, then the parties in the custody case could have requested a hearing where the nature of the tribal court's jurisdiction could have been raised. Vacating the superior court's denial of the tribal court's custody order, the supreme court outlined that when a superior court receives a tribal court order, it must first determine if the order was issued in an ICWA child custody proceeding, and if so, is required to follow the full faith and credit mandate of the ICWA.

PROPERTY LAW

Anderson v. Alaska Housing Finance Corp.

In *Anderson v. Alaska Housing Finance Corp.*, the supreme court held that a foreclosure was a deprivation of the borrower's property, and that the borrower therefore constitutionally entitled to a pre-deprivation opportunity to be heard. The borrower borrowed from Wells Fargo Bank, N.A. to purchase a home, which then assigned the note and deed to AHFC. After AHFC accelerated the debt, the borrower defaulted, and AHFC instructed Wells Fargo to proceed with a foreclosure sale. After the borrower sued Wells Fargo and AHFC to enjoin the sale, Wells Fargo settled, and the borrower's due process claim for AHFC's failure to provide him a pre-foreclosure opportunity to be heard remained. The superior court granted AHFC's motion for summary judgment and the borrower appealed. On appeal, the supreme court noted that the Alaska constitution requires that a due process claimant prove the existence of state action and the deprivation of a sufficient individual interest to warrant constitutional protection. The supreme court found ruled that AHFC was a state actor because it was created by the legislature to further governmental objectives (addressing low- and middle-income housing shortages) and was wholly controlled by the State because its board was comprised of governmental officials. The court further found that the borrower's interest in his home was a sufficient property interest to invoke due process protections, including a pre-deprivation hearing. Accordingly, the court found that the borrower did not receive a constitutionally sufficient opportunity to be heard. The court also found that the borrower did not need to demonstrate prejudice because the right to be heard does not require that one will prevail at the hearing. Reversing the lower court's decision, the supreme court held that the foreclosure was a deprivation of the borrower's property and the borrower was constitutionally entitled to a pre-deprivation hearing.

Seater v. Estate of Seater

In *Seater v. Estate of Seater*, the Alaska Supreme Court held that a superior court judge misinterpreted a different superior court judge's decision when she stated that it required a property owner to remove all boulders he had placed on his property below the "extreme high

“water line” rather than the mean high water line. In 2012, Lee Seater and Ronald Seater had their property, previously held as tenants in common, partitioned into two approximately equal lots. Later that year, Ronald received an express easement for ingress and egress over Lee’s property. In 2015, Lee was granted a reciprocal easement, with instructions from the superior court that neither side could block the paths of ingress and egress for the purpose of denying the use of the easement. Then, in 2016, Lee moved for an enforcement of the easement, arguing that Ronald had placed boulders in the path to frustrate her use. In 2017, the superior court ordered Ronald to remove the boulders he had placed below the “high water line” without further instruction as to where that line was. After Lee again moved for an enforcement of the easement, a second judge, reviewing the first judge’s 2017 order, held that he intended the high water line to mean the “extreme” high water line. On appeal, the court reasoned that the first judge repeatedly (though inconsistently) used words like ‘median’ and ‘mean’ when describing the high water line in his order. Accordingly, the supreme court vacated the second judge’s opinion, holding that the first judge intended the cutoff point to be the mean high water line, not the extreme high water line.

TORT LAW

McCormick v. Chippewa, Inc.

In *McCormick v. Chippewa, Inc.*, the supreme court held that the superior court did not abuse its discretion when it limited discovery to documents created in the time period surrounding the settlement agreement in question. In 2007, McCormick was injured while working on a vessel owned by Chippewa, Inc. After learning of Chippewa’s policy limit of \$500,000 per occurrence less the cost of any investigation or defense, McCormick offered to settle in exchange for policy limits. McCormick’s settlement offer detailed two accidents, and the parties ultimately came to an agreement for policy limits. However, after settlement, the parties came to disagree about whether Chippewa was to pay the policy limit for a single accident or multiple accidents. McCormick then initiated a lawsuit for enforcement of the settlement as inclusive of multiple accidents. Chippewa moved for the enforcement of the settlement as inclusive of a single accident, and the court converted this motion to one for summary judgment. The lower court granted summary judgment. On appeal, the supreme court reversed to allow discovery. Discovery included Chippewa’s correspondence with counsel and internal insurance documents up until the time of trial. McCormick moved to extend discovery to include documents dating after the initiation of his lawsuit, which the court denied. Following summary judgment against him, McCormick argued that the superior court abused its discretion by denying his request to expand discovery. The supreme court affirmed the superior court’s decision. The supreme court reasoned that it instructed the superior court to give effect to the intent of the settlement through the consideration of circumstances at the time of settlement negotiation. Because Chippewa provided its relevant documents dating to the striking of the settlement agreement and the time period prior to the initiation of litigation, the superior court did not abuse its discretion in limiting discovery. The supreme court remanded the case for trial to resolve genuine issues of material fact. However, the supreme court affirmed the lower court’s discretion to limit discovery to the temporal period surrounding the settlement agreement in question.

Sampson v. Alaskan Airlines, Inc.

In Sampson v. Alaskan Airlines, Inc., 467 P.3d 1072 (Alaska 2020), the supreme court held that a special verdict form requiring proof by a “reasonable degree of certainty,” instead of the correct standard of “reasonably probable,” did not constitute plain error. (Id. at 1075). After Sampson sustained substantial injuries from slipping and falling on unsalted ice outside an Alaskan Airlines terminal, she sued Alaskan Airlines for economic and non-economic damages. (Id. at 1073). A jury verdict found in favor of Sampson’s claim for economic damages but found that she had not proven her non-economic damages to a reasonable degree of certainty, as stated in the special jury form. (Id. at 1074). Sampson appealed, claiming the jury form’s use of reasonable degree of certainty, rather than reasonably probable, constituted plain error. (Id.). The supreme court held that because the court has a history of using both terms interchangeably and because Sampson affirmed the special jury instruction prior to its issuance, the instruction was not clearly erroneous. (Id. at 1075). While acknowledging that confusion may theoretically result from these terms, the supreme court held that the jury instruction did not create a high likelihood of the jury following an erroneous theory resulting in a miscarriage of justice, therefore no plain error occurred. (Id.).