



COURT OF APPEALS

Media Release

COPIES:

Copies of the slip opinions may be obtained from the Appellate Records Section, (503) 986-5555.
The full text of the opinions can be found at <http://www.courts.oregon.gov/publications>

CONTACT:

Daniel Parr
(503) 986-5589

August 10, 2022

The Court of Appeals issued these precedential opinions:

Sonja Bohr v. Tillamook County Creamery
(A175575 - Multnomah County Circuit Court)
Douglas R. Marteeny v. Katherine Brown
(A178127 - Marion County Circuit Court)
State of Oregon v. Leonard Dale Tow
(A170948 - Washington County Circuit Court)
Nationstar Mortgage LLC v. David M. Hinkle
(A173078 - Clackamas County Circuit Court)
K. R. M. and Kevin Paul Simon Baker*
(A173802 - Washington County Circuit Court)
David Paul Eaton
(A176428 - Marion County Circuit Court)
Hanley Engineering, Inc. v. Weitz & Company, Inc.
(A175597 - Baker County Circuit Court)
State of Oregon v. Michael John Hoffman
(A173684 - Washington County Circuit Court)

The Court of Appeals issued these nonprecedential memorandum opinions:

State of Oregon v. Loni Elizabeth Horner
(A169866 - Multnomah County Circuit Court)
Teresa Raiford v. City of Portland
(A170603 - Multnomah County Circuit Court)
Thomas L. Haymore, D. M. D. v. Board of Dentistry
(A170689 - Oregon Board of Dentistry)
State of Oregon v. Rico Orlando Cabrera
(A172840 - Washington County Circuit Court)

*This case title has been redacted in this media release and in the online version of the opinion, in compliance with 18 USC section 2265(d)(3).

Kimberly Nusbaum and Joseph Lee Stone, Jr.
(A173641 - Deschutes County Circuit Court)
State of Oregon v. Andre Richard Martin
(A173843 - Josephine County Circuit Court)
State of Oregon v. Thomas Edward Pfeifer
(A174759 - Grant County Circuit Court)
Rodney Shramek v. Two Rivers Homeowners' Cooperative
(A175494 - Clackamas County Circuit Court)
State of Oregon v. John Stanley Littlefoot Houck
(A175807 - Linn County Circuit Court)
State of Oregon v. Kiril Efimovich Martusheff
(A176152 - Linn County Circuit Court)
Amy Anne Slaughter and John B. Slaughter, Jr.
(A177148 - Multnomah County Circuit Court)
Department of Human Services v. A. A. D.
(A177380 - Marion County Circuit Court)
Department of Human Service v. C. L. L.
(A177412 - Coos County Circuit Court)
State of Oregon v. J. K.
(A177735 - Umatilla County Circuit Court)

* * * * *

Sonja Bohr v. Tillamook County Creamery
(Tookey, P. J.)

In this putative class action asserting claims under Oregon's Unfair Trade Practices Act, plaintiffs appeal a trial court order that granted in part defendant's motion to dismiss. On appeal, plaintiffs contend that the trial court erred because, given the nature of their claims, they were not required to plead reliance. Held: The trial court did not err. The complaint asserted a "price inflation" theory of causation of injury, which, given the allegations in the complaint and the products at issue in this case, was not a viable theory. The complaint also asserted an inducement theory of causation. That theory required plaintiffs to plead reliance. Finally, the complaint asserted what plaintiffs characterized as prohibited transaction claims. Given the nature of the unlawful trade practice at issue and the ascertainable loss asserted with respect to plaintiffs' prohibited transaction claims, plaintiffs' prohibited transaction claims required them to plead reliance. Trial court order dismissing claims affirmed; remanded.

Douglas R. Marteeny v. Katherine Brown
(James, P. J.)

In 2020 and 2021, Oregon Governor Kate Brown granted clemency to approximately 1,026 convicted felons, comprising three groups: (1) individuals "vulnerable to the effects of COVID-19," (2) individuals who had fought "the historic wildfires that ravaged the state around Labor Day 2020," and (3) 73 individuals who were sentenced as juveniles before the passage of Senate Bill (SB) 1008 (2019), section 25 of which was codified as ORS 144.397. SB 1008 made substantial changes to the prosecution and sentencing of juvenile offenders,

including providing for early release hearings, conducted by the Board of Parole and Post-Prison Supervision, after 15 years of incarceration. The legislature did not make SB 1008 retroactive. The effect of the Governor's commutation order for these 73 individuals was to afford them the same procedure, under ORS 144.397, that would be afforded to a juvenile offender convicted today. Two groups of relators--Douglas Marteeny, Linn County District Attorney, and Patricia Perlow, Lane County District Attorney, and four family members of victims of the crimes of which some of the youth prisoners were convicted--petitioned the Marion County Circuit Court for a writ of mandamus directing the Governor, the Department of Corrections, the Oregon Youth Authority, and the Board of Parole and Post-Prison Supervision "to honor and follow all procedural and substantive provisions of Oregon law." In their legal arguments, relators argue that the commutations here were procedurally flawed, and unlawful for a variety of reasons. But underlying those technical arguments exists a palpable emotion that deserves acknowledgement: relators feel that they have been denied justice. Held: The Court of Appeals explained that clemency power of presidents and governors traces its origins to the earliest days of English common law. The arguments and emotions present in this case echo through the centuries. The power to pardon, sitting within a singular executive--be they monarch, president, or governor--has always been controversial, seemingly at odds with legislative determination and judicial decision-making. Whenever it has been used, it has been lauded by some, and condemned by others. The court was not called on to judge the wisdom of the Governor's clemency of these 1,026 individuals; that is a political question. The court was tasked solely with determining her authority to do so under Oregon law. And on that narrow question, the court concluded that the commutations at issue were a lawful exercise of the broad clemency power afforded Oregon governors by constitution and statute. Reversed on appeal; affirmed on cross-appeal.

State of Oregon v. Leonard Dale Tow
(Powers, J.)

Defendant seeks reconsideration of State v. Tow, 318 Or App 566, 507 P3d 295 (2022), in which the Court of Appeals affirmed defendant's conviction of resisting arrest, ORS 162.315, as well as the trial court's finding that he violated the terms of his probation, in light of the recent decision in State v. Prophet, 318 Or App 330, 507 P3d 735 (2022). On reconsideration, defendant reasserts in supplemental briefing that the trial court erred in failing to instruct the jury that resisting arrest requires a mental state for the element of creating a substantial risk of physical injury. Defendant also contends that the recent cases provide an alternative ground for reversal and requests that the court conduct plain-error review. Held: In light of recent cases on the law of culpable mental states, the trial court plainly erred when it did not instruct the jury that it had to find that defendant acted with a culpable mental state with respect to "the substantial risk of physical injury" element in ORS 162.315(2)(c). Reconsideration allowed; former disposition withdrawn; reversed and remanded.

Nationstar Mortgage LLC v. David M. Hinkle
(Powers, P. J.)

During the pendency of this judicial foreclosure action, plaintiff transferred the note and deed of trust to a third-party mortgage servicer. The trial court denied plaintiff's motion for leave to amend the complaint to allege facts showing the transfer and substitute the third-party mortgage servicer as plaintiff, concluding that the proposed amendment was futile because the new note holder could not be substituted as a matter of law. The trial court then granted defendants' motion for summary judgment, concluding that plaintiff was not the real party in interest because of the transfer. Plaintiff appeals, assigning error to those rulings. Held: The trial court erred in granting summary judgment for defendants, because the undisputed facts showed that plaintiff held the note and had the right to enforce it when it filed the complaint. The trial court also abused

its discretion in denying leave to amend the complaint. The proposed amendment was not futile because, under ORCP 34 E, the trial court had discretion to substitute the third-party mortgage servicer as plaintiff. Reversed and remanded.

K. R. M. and Kevin Paul Simon Baker
(Powers, J.)

In this domestic relations case, respondent appeals from a Family Abuse Prevention Act (FAPA) restraining order, seeking review of the order and the award of attorney fees in a supplemental judgment. On appeal, respondent requests de novo review and raises four assignments of error, including that the trial court erred in not enforcing a settlement agreement, which contemplated, among other provisions, dismissing the FAPA order. Citing ORS 107.104, he contends that there is a strong public policy supporting the enforcement of agreements between divorcing parties and that it would be inequitable not to enforce such agreements. Held: The Court of Appeals declined to take de novo review. Further, because continuing the FAPA restraining order fell within the trial court's range of discretion and the application of ORS 107.104 did not compel a different result, the court concluded that respondent has not identified any reversible error. Affirmed.

David Paul Eaton
(Powers, J.)

Petitioner appeals from a judgment denying a petition for a simultaneous change of name and legal change of sex. Petitioner asserts, among other arguments, that the trial court erred when it failed to liberally construe the pleadings and when it failed to disregard any error or defect in the pleadings that did not affect the substantial rights of an adverse party when it denied the petition based on its determination that petitioner was requesting only a future name change. Held: The pleadings were susceptible to more than one interpretation, including one in which petitioner was expressing a preference as to when the name change took effect rather than requesting only a future name change. Because the pleadings could be understood in a way that did not contemplate only a future change, the trial court erred in failing to liberally construe the pleadings and in subsequently denying the petition based on its construction of the pleadings rather than reaching the merits of the petition. Reversed and remanded.

Hanley Engineering, Inc. v. Weitz & Company, Inc.
(Mooney, J.)

Defendants appeal an order denying their Motion to Set Aside Extension of Foreign Judgment. The judgment was rendered in favor of plaintiff in Idaho on November 4, 2010, and was filed in Oregon on December 15, 2010, pursuant to Oregon's Uniform Enforcement of Foreign Judgments Act. On December 8, 2020, plaintiff filed a certificate of Extension of Judgment before the expiration of Oregon's ten-year statute of limitations for judgment remedies. Defendants contend that the trial court erred in denying their motion because the judgment remedies had expired in Idaho under its five-year statute of limitations, so it was no longer due full faith and credit under the United States Constitution and could not be extended in Oregon. Held: Once a foreign judgment has been filed in Oregon, the judgment becomes an Oregon judgment, and is enforced under Oregon law. Affirmed.

State of Oregon v. Michael John Hoffman
(Hellman, J.)

Defendant appeals his conviction for driving under the influence of intoxicants (DUII). On appeal, he asserts three assignments of error. First, he assigns error to the trial court's grant of the state's motion for a postponement of the trial. Second, he assigns error to the denial of his motion to suppress evidence of his blood-alcohol test results (medical blood draw), arguing that the hospital staff's disclosure of those results in compliance with ORS 676.260 infringed on his Fourth Amendment privacy interests. Third, he challenges the denial of his motion in limine to exclude the medical blood draw evidence, contending that the state did not establish an adequate chain of custody. Held: The trial court did not abuse its discretion in granting the state's motion for a continuance. The trial court did, however, err in denying defendant's motion in limine to exclude the medical blood draw based on defendant's objection to the inadequate chain of custody, which was not harmless with respect to the DUII conviction. Finally, as explained in *State v. Miller*, 284 Or App 818, 395 P3d 584, vac'd, 362 Or 300, 408 P3d 1079 (2017), which controls in this case, defendant does not have a privacy interest in his blood-alcohol test results under the Fourth Amendment, and the trial court did not err in denying defendant's motion to suppress on that basis. Conviction on Count 1 reversed and remanded; remanded for resentencing; otherwise affirmed.

[End of Document]