



COURT OF APPEALS

Media Release

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MESSAGE FROM THE CHIEF JUDGE

The Court of Appeals is receiving a rapidly escalating number of filings that contain fabricated legal authority likely produced by the use of generative artificial intelligence. These filings are being submitted by lawyers and self-represented litigants alike. They create a significant drain on court resources that, at present, appears to be growing. In light of these circumstances, the Court has posted information on its website addressing both (1) the risks associated with the use of generative artificial intelligence to prepare legal briefs; and (2) the range of sanctions that may result from the submission of fabricated legal authority to the court. The information is accessible from two separate places: from the "Rules and Resources" sidebar on the court's [website](#), and also from the "[Resources for Self-Represented Litigants](#)" section of the court's website.

In addition, to get a concrete sense of how much time the submission of fabricated authority likely produced by generative artificial intelligence is syphoning from the Court of Appeals' core work of deciding cases, I have directed our staff and judges to track the time spent addressing fabricated authority so that Oregonians can have an accounting of the resources consumed in the event the situation does not resolve promptly.

Erin C. Lagesen
Chief Judge
Oregon Court of Appeals

The Court of Appeals issued these precedential opinions:

State of Oregon v. Robert Paul Keegan
(A181630 - Jackson County Circuit Court)

Isa Dean v. Multnomah County
(A181645 - Workers' Compensation Board)

Northwest Environmental Advocates v. Department of Environmental Quality
(A181715 - Office of Administrative Hearings)

Mark S. Mooney v. Legacy Health
(A182837 - Workers' Compensation Board)
State of Oregon v. C. T. B.
(A186491 - Coos County Circuit Court)
State of Oregon v. Samuel Warren Rich
(A181996 - Multnomah County Circuit Court)
Cook v. Stanley G. Alexander, Inc.
(A186105 - Multnomah County Circuit Court)
State of Oregon v. Douglas Nelson Myers II
(A180770 - Multnomah County Circuit Court)
Nour Eddine Mouktabis v. Sandra M. Faber
(A180428 - Washington County Circuit Court)
State of Oregon v. Anthony Ross Minneci
(A182877 - Jackson County Circuit Court)
Estens v. Wells
(A184366 - Benton County Circuit Court)
Von Radics and Von Radics
(A184464 - Jackson County Circuit Court)

The Court of Appeals issued these nonprecedential memorandum opinions:

Kyle Steven Lute v. Cascadia Tower Incorporated
(A179964 - Marion County Circuit Court)
State of Oregon v. Austin John Bergevin
(A180174 - Washington County Circuit Court)
State of Oregon v. Jack William Moran, Jr.
(A181045 - Harney County Circuit Court)
State of Oregon v. Timothy John Hoard
(A181421 - Lane County Circuit Court)
State of Oregon v. Michael David Workover
(A182875 - Lane County Circuit Court)
State of Oregon v. Rose, Jr.
(A183169 - Polk County Circuit Court)
State of Oregon v. Anderson
(A183292 - Linn County Circuit Court)
State of Oregon v. Hoberecht
(A184599 - Crook County Circuit Court)
State of Oregon v. Whaley
(A184994 - Lane County Circuit Court)
J. J. M. v. Northcutt*
(A185281 - Multnomah County Circuit Court)
State of Oregon v. Campbell
(A185533 - Multnomah 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).

State of Oregon v. E. E. C.
(A185933 - Coos County Circuit Court)
Department of Human Services v. C. D. H.
(A186326 - Umatilla County Circuit Court)
Clavette v. Clavette
(A186987 - Clackamas County Circuit Court)
Department of Human Services v. A. C. E.
(A188453 - Lane County Circuit Court)
Department of Human Services v. S. Z.
(A188960 - Douglas County Circuit Court)
Department of Human Services v. M. J. S.
(A189060 - Lane County Circuit Court)

The Court of Appeals affirmed these cases without opinion:

State of Oregon v. Stephen Wayne Manley
(A182753 - Jefferson County Circuit Court)
State of Oregon v. Lylah Michele Katz
(A182762 - Linn County Circuit Court)
State of Oregon v. Harkey
(A184905 - Lane County Circuit Court)
Craig v. Miller
(A185087 - Malheur County Circuit Court)
Oz Equity Partners, LLC v. Lopez
(A185120 - Washington County Circuit Court)
State of Oregon v. Plunk
(A185377 - Lane County Circuit Court)
State of Oregon v. Burkhaw
(A185623 - Curry County Circuit Court)
State of Oregon v. Murray
(A185713 - Douglas County Circuit Court)
Nguyen v. The Bank of New York Mellon Trust Company, N. A.
(A185878 - Multnomah County Circuit Court)
Barnett v. Wagner
(A186199 - Marion County Circuit Court)
Price v. Teacher Standards and Practices Commission
(A186339 - Teacher Standards and Practices Commission)
Bennett v. Psychiatric Security Review Board
(A186446 - Psychiatric Security Review Board)
Walker v. Board of Parole and Post-Prison Supervision
(A186600 - Board of Parole and Post-Prison Supervision)
State of Oregon v. N. P.
(A187589 - Deschutes County Circuit Court)

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State of Oregon v. Robert Paul Keegan

(Egan, Judge)

Defendant appeals his convictions for second-degree assault, ORS 163.175; manslaughter in the first degree, ORS 163.118; unlawful possession of a firearm, ORS 166.250; and recklessly endangering another person, ORS 163.195. Defendant challenges the trial court's jury instruction on the "combat by agreement" limitation to self-defense under ORS 161.215(1)(c) and the prosecutor's closing argument relying on that instruction. Held: The Court of Appeals concluded that the trial court erred in instructing the jury on the "combat by agreement" limitation to self-defense, because statutory construction of "combat by agreement" did not allow the statute's application where there was no evidence that such conduct occurred, and that erroneous instruction was not harmless. Reversed and remanded.

Isa Dean v. Multnomah County

(Egan, Judge)

Claimant seeks judicial review of an order of the Workers' Compensation Board affirming an order of an Administrative Law Judge (ALJ) upholding an order of the Appellate Review Unit. Claimant contends that the board's order is not supported by substantial evidence or substantial reason, because the medical arbiters' causation premise directly contradicts the scope of the accepted occupational disease, as established in an earlier compensability determination by the ALJ. Respondents contend that the board correctly relied on the arbiters' report, because impairment must be "due to" the accepted condition, and the arbiter panel unambiguously concluded that claimant's impairment findings were unrelated to the accepted lumbar strain. Held: The Court of Appeals concluded that because the board relied on a medical arbiter report that rested on a premise inconsistent with the adjudicated scope of claimant's accepted occupational disease--and failed to explain that inconsistency--its decision eliminating claimant's impairment award is not supported by substantial evidence and substantial reason. Reversed and remanded.

Northwest Environmental Advocates v. Department of Environmental Quality

(Egan, Judge)

In this administrative law case, Northwest Environmental Advocates (NWEA) seeks judicial review of a final order entered by the Environmental Quality Commission approving National Pollutant Discharge Elimination System (NPDES) permit no. 100985, issued as a renewal by the Oregon Department of Environmental Quality (DEQ) to the City of Medford for the operation of a wastewater treatment facility that discharges treated wastewater into the Rogue River. NWEA raises five assignments of error: (1) EQC erred by applying the wrong burden of proof to NWEA's permit challenges; (2) and (3) evidence does not support EQC's conclusion that the permit will ensure compliance with the biocriteria standard or Oregon's narrative water quality standards in the Rogue River; (4) EQC erred by ruling that the removal from the new permit of a narrative prohibition on discharges that cause or contribute to violations of water quality standards found in the old permit did not constitute backsliding under the Clean Water Act; and (5) EQC abused its discretion by admitting expert opinion testimony from two unqualified witnesses and failing to explain in the final order how it weighed competing expert testimony. The city and DEQ (respondents) oppose each of those arguments but first argue that judicial review of NWEA's assignments of error should be disallowed because NWEA failed to exhaust available administrative remedies. Held: NWEA adequately exhausted its administrative remedies by

raising at the contested case the issues it raised on judicial review, with the exception of part of its fifth assignment of error. On its first assignment of error, any standard-of-proof error was invited by NWEA. On the merits, substantial evidence supported EQC's determination that the permit will ensure compliance with the biocriteria standard, OAR 340-041-001, and the state-wide narrative criteria standard, OAR 340-041-0007(9); removal of the end-result provision from the 2011 version of the permit did not constitute backsliding under the Clean Water Act; and EQC did not abuse its discretion in admitting the expert opinion of two of respondents' witnesses. Affirmed.

Mark S. Mooney v. Legacy Health
(Egan, Judge)

Claimant seeks review of an order of the Workers' Compensation Board that upheld employer's denial of his previously accepted combined condition consisting of an accepted work-related C7 radiculopathy injury and a pre-existing cervical condition consisting of a spinal fusion and Brown-Sequard Syndrome. Claimant argued that the board erred in failing to consider, in evaluating the denial of the combined condition, the benefits awarded in the notice of closure for disability on the accepted C7 radiculopathy. Held: The Court of Appeals concluded that there was no inconsistency between the notice of closure's award of disability benefits for the C7 radiculopathy and the previous denial of the combined condition, and the board did not err in declining to take the apportionment into account in addressing claimant's challenge to the combined condition denial. Affirmed.

State of Oregon v. C. T. B.
(Egan, Presiding Judge)

In this civil commitment proceeding, appellant appeals from a limited judgment ordering him to participate in assisted outpatient treatment (AOT). Appellant raises three assignments of error: (1) that the trial court erred by continuing the proceedings to dates more than seven days after the civil commitment hearing, contrary to the statutory time limits governing assisted outpatient treatment proceedings; (2) that the court plainly erred by ordering him to remain confined for five additional days after the court had determined that he was not a person with mental illness; and (3) that the court erred by conducting a subsequent hearing at which he appeared without appointed counsel having been present. The state contends that the appeal is moot. Held: The appeal was not moot. On the merits, the court plainly erred in ordering appellant confined for five days after determining that he was not "a person with a mental illness" under ORS 426.005(1)(f). Because that conclusion required reversal of the judgment, appellant's other arguments were not reached. Reversed.

State of Oregon v. Samuel Warren Rich
(Shorr, Presiding Judge)

Defendant appeals from a judgment of conviction for charges related to injuries he caused to his girlfriend's two-year-old son, and a supplemental judgment ordering restitution. Defendant was convicted on some charges in a jury trial and entered a conditional no contest plea to others on which the jury could not reach a verdict and the state sought to retry him. He raises nine assignments of error in which he asserts that (1) principles of issue preclusion and double jeopardy limited the state's ability to retry him on one of the hung counts or use certain evidence in a subsequent prosecution, and the trial court therefore erred in denying his motion to dismiss and

his motion to limit the use of certain evidence; (2) the trial court erred by imposing departure sentences on two counts when the state had not pleaded enhancement factors; (3) the trial court erred in failing to merge two counts of criminal mistreatment; (4) the trial court erred during sentencing with respect to calculating defendant's criminal history score on various counts; (5) defendant was entitled to a jury trial on the issue of restitution; and (6) the trial court erred in imposing restitution for future medical expenses. Held: The Court of Appeals agreed with defendant that the trial court erred in failing to merge two counts of criminal mistreatment, concluding that the record did not contain evidence of a sufficient pause. The court also accepted the state's concession that the trial court erred by imposing departure sentences on two counts when the state had not pleaded enhancement factors. The court otherwise rejected defendant's arguments, concluding that the jury's verdict did not bar the state from retrying defendant or using the challenged evidence; the trial court did not err in the way urged by defendant in calculating his criminal history score; defendant was not entitled to a jury trial on the restitution issue; and defendant did not present any reversible error regarding the imposition of restitution. Convictions for Count 2 and Count 7 reversed and remanded for entry of a judgment of a single conviction for criminal mistreatment in the first degree; remanded for resentencing; otherwise affirmed.

Cook v. Stanley G. Alexander, Inc.
(Shorr, Presiding Judge)

Defendants appeal from an interlocutory order denying their motion to compel arbitration of plaintiff's employment discrimination and retaliation claims. Defendants contend that the trial court incorrectly concluded that the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA), 9 USC §§ 401 and 402, barred enforcement of arbitration where plaintiff alleged retaliation for participating in a workplace sexual harassment investigation. Held: The trial court did not err in denying defendant's motion to compel arbitration based on the EFAA. The EFAA applies not only to victims of workplace sexual harassment, but also to reporters of workplace sexual harassment, which includes those who report witnessing sexual harassment during an investigation. Affirmed.

State of Oregon v. Douglas Nelson Myers II
(Powers, Presiding Judge)

In this criminal case, defendant appeals from a judgment of conviction for reckless driving and a supplemental judgment awarding restitution. In his first assignment of error, defendant challenges the trial court's denial of his motion to suppress, asserting that he was in compelling circumstances when the officer asked him questions and that he was too intoxicated to waive his Miranda rights and to consent to a blood test. In his second assignment, defendant contends that the court erred in ordering restitution without a jury trial, in violation of Article I, section 17, of the Oregon Constitution. Held: First, the trial court did not err in denying defendant's motion to suppress because, given the circumstances, there was not a "police-dominated atmosphere" such that Miranda warnings were required. Further, the state carried its burden of proving that, although defendant was undisputedly intoxicated, he nonetheless waived his rights. Second, the trial court did not err in denying defendant's motion for a jury trial on restitution because the restitution proceeding in ORS 137.106 is not a "civil" case for purposes of Article I, section 17. Affirmed.

Nour Eddine Mouktabis v. Sandra M. Faber

(Pagán, Judge)

A trial court found plaintiff to be a vexatious litigant after he repeatedly sued the lawyers who had represented his ex-wife in a dissolution proceeding. As a result, the court imposed a restriction on plaintiff in the form of an injunction: that before any future lawsuit he filed against his ex-wife's lawyers could proceed, he was required to submit the proposed complaint and evidence to the presiding judge of a county where the case has venue to determine whether the claim was frivolous. Plaintiff appeals the judgment that imposed the injunction, which also dismissed plaintiff's latest lawsuit against one of his ex-wife's lawyers. Plaintiff raises two assignments of error. In his first assignment of error, plaintiff asserts that the trial court erred by imposing the injunction on him. In his second assignment of error, plaintiff asserts that the trial court erred by granting a special motion to strike and dismissing the lawsuit. Held: The trial court acted within its discretion to designate plaintiff as a vexatious litigant. The trial court did not err by granting the special motion to strike because the claims--including one regarding a notice of lis pendens--arose from matters submitted to a judicial body or in connection with an issue under consideration by a judicial body. Affirmed.

State of Oregon v. Anthony Ross Minneci

(Pagán, Judge)

Defendant appeals his convictions, after a conditional guilty plea, of felon in possession of a firearm, ORS 166.270, and possession of a restricted firearm, ORS 166.272, challenging in a single assignment of error the trial court's order denying his motion to suppress evidence seized in the execution of a search warrant. Defendant argues that the warrant statutes impose a requirement that the executing officer and issuing judge obtain, serve, and keep a single version of the search warrant. Held: Although the warrant that was returned was not the same as the warrant that issued, the difference was merely ministerial and not grounds for invalidating the search. Because any error did not result in the seizure of evidence, the trial court did not err by denying the motion to suppress. Affirmed.

Estens v. Wells

(Pagán, Judge)

Mother appeals from a supplemental judgment that modified an existing joint custody award to instead award custody of the child to father. Mother raises two assignments of error. In her first assignment of error, she asserts that the trial court failed to determine a "primary caregiver" and afford them the appropriate preference. In her second assignment of error, she asserts that the trial court erred when it determined that mother had committed abuse by verbally gaslighting father. Held: The trial court failed to determine a primary caregiver and afford them the appropriate preference. As to the second assignment, because the relevant definitions of abuse did not apply to the sort of verbal misconduct alleged here, the trial court erred by finding that mother had abused father. Reversed and remanded.

Von Radics and Von Radics

(O'Connor, Judge)

Husband appeals from a judgment of dissolution of marriage and money award. In his first assignment of error, he argues that the trial court erred when it denied his request for indefinite maintenance spousal support of \$2,500 a month, contending that the trial court could not award a business to him in lieu of support because it was not an income-generating property. In his second assignment of error he challenges the trial court's decision to award wife her separately held, inherited account. In his third assignment of error, he asserts that the trial court erred when it equally divided an investment account held in his name. Held: The Court of Appeals concluded that the trial court erred when it exercised its discretion to award spousal support based on a predicate legal error. The business was a non-income-generating property and thus could not be awarded in lieu of awarding maintenance spousal support. The court affirmed the trial court's treatment of wife's account because separately held, inherited property is not subject to the presumption of equal contribution under ORS 107.105(1)(f)(D). The court rejected husband's argument as to the treatment of his own investment account as unreserved. Reversed and remanded.

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