



COURT OF APPEALS

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January 04, 2018

The Court of Appeals issued these opinions:

Sanjeev Sharma v. Providence Health & Services-Oregon
(A157739 - Jackson County Circuit Court)

Kevin Rains v. Stayton Builders Mart, Inc.
(A145916 - Marion County Circuit Court)

State of Oregon v. Dallas Urig
(A160695 - Washington County Circuit Court)

Danny Daniels v. Allstate Fire and Casualty Company
(A160873 - Multnomah County Circuit Court)

State of Oregon v. Clifford Allen Robertson
(A159507 - Coos County Circuit Court)

Mark Pilling v. Travelers Insurance Company
(A161600 - Workers' Compensation Board)

State of Oregon v. T. W. W.
(A159166 - Multnomah County Circuit Court)

Columbia Pacific Building Trades Council v. City of Portland
(A165618 - Land Use Board of Appeals)

The Court of Appeals issued these *per curiam* opinions:

State of Oregon v. Jonah Michael Fullerton
(A159775 - Deschutes County Circuit Court)

State of Oregon v. Lee Junior Williams, Jr.
(A162582 - Multnomah County Circuit Court)

State of Oregon v. L. D. M.
(A162645 - Deschutes County Circuit Court)

State of Oregon v. C. A. S.
(A163444 - Marion County Circuit Court)

State of Oregon v. Pavel Ion Perju
(A165257 - Multnomah County Circuit Court)

The Court of Appeals affirmed these cases without opinion:

State of Oregon v. Brian Peter Stentzel
(A161162 - Linn County Circuit Court)

Marques Paul Goei v. State of Oregon
(A161451 - Washington County Circuit Court)

Brian Scott McClatchey v. Jeri Taylor
(A161547 - Umatilla County Circuit Court)

Eric Brent Barbee v. Jeff Premo
(A161548 - Marion County Circuit Court)

Christopher Robin Gensler v. Mark Nooth
(A161550 - Malheur County Circuit Court)

Victor Asuncion Santos-Ek v. Mark Nooth
(A161820 - Malheur County Circuit Court)

Gerald Schram v. Corey Falls
(A161943 - Jackson County Circuit Court)

State of Oregon v. N. S. E.
(A161953 - Wallowa County Circuit Court)

State of Oregon v. G. M. A.
(A161959 - Hood River County Circuit Court)

Tara Davies v. Rob Persson
(A162060 - Washington County Circuit Court)

Niklas Goertzen v. Sisters School District #6
(A162220 - Deschutes County Circuit Court)

State of Oregon v. Samuel Leroy Hatfield, III
(A162307 - Lincoln County Circuit Court)

Laura L. Recore and Mark Steven Recore
(A162367 - Clackamas County Circuit Court)

State of Oregon v. J. R.
(A162376 - Washington County Circuit Court)

Timothy Shutoff v. Mark Nooth
(A162600 - Malheur County Circuit Court)

George Matthew Owen and Melinda Sue Sage
(A162693 - Clatsop County Circuit Court)

Jedadya Tamrin River Ferguson v. Brigitte Amsberry
(A163451 - Umatilla County Circuit Court)

Rhonda Shult v. Department of Human Services
(A163649 - Employment Relations Board)

State of Oregon v. K. S.
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State of Oregon v. C. L.
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State of Oregon v. D. C. H.
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Richard Salmon v. Brad Cain
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Ganz Law PC v. Robert M. Lyden
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Department of Human Services v. A. M. K.
(A165564 - Marion County Circuit Court)
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Department of Human Services v. J. B.
(A165603 - Deschutes County Circuit Court)
Department of Human Services v. J. E. M.
(A165604 - Jackson County Circuit Court)

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Sanjeev Sharma v. Providence Health & Services-Oregon
(Egan, C. J.)

Plaintiff appeals a general judgment dismissing all of his claims against defendants. In several assignments of error, plaintiff argues that the trial court erred in granting summary judgment because he raised genuine issues of material fact with respect to each element of his claims, which were for breach of contract, wrongful discharge, intentional misrepresentation, violations of ORS 659.815, intentional interference with economic relations, and intentional interference with prospective advantage. Held: The trial court did not err in granting summary judgment to defendants on all of plaintiff's claims because plaintiff failed to produce evidence raising a genuine issue of material fact on at least one challenged element of each of his claims. Affirmed.

Kevin Rains v. Stayton Builders Mart, Inc.
(Ortega, P. J.)

The Oregon Supreme Court remanded to the Court of Appeals to determine whether, in light of *Horton v. OHSU*, the \$500,000 statutory cap on noneconomic damages in ORS 31.710(1) is unconstitutional when applied to plaintiffs' noneconomic damages awards. Plaintiff Kevin Rains was severely injured by the failure of a defective wood board and filed a strict products liability claim against the retailer (Stayton Builders Mart) and manufacturer (Weyerhaeuser) of the board. Kevin's wife, plaintiff Mitzi Rains, filed a loss of consortium claim. The jury returned a verdict in favor of plaintiffs, and the trial court entered a limited judgment for plaintiffs that awarded Kevin \$6,272,025 and Mitzi \$759,375. Weyerhaeuser appealed. On appeal, the Court of Appeals concluded that, despite Article I, section 17, of the Oregon Constitution, ORS 31.710(1) could be applied to limit Kevin's noneconomic damages to \$500,000, but that Mitzi's noneconomic damages award could not be so limited. After the Supreme Court accepted review of that decision, it decided *Horton*, which

fundamentally shifted the legal framework for analyzing constitutional limitations on the legislature's ability to substantively alter or adjust a person's remedy for injuries to person, property, and reputation. Because of *Horton*, the Supreme Court remanded the noneconomic damages cap issue to the Court of Appeals for reconsideration. On remand, plaintiffs recognize that *Horton* foreclosed any argument that Article I, section 17, prohibited application of ORS 31.710(1) to their damages awards. Instead, plaintiffs argue that the remedy clause of Article I, section 10, of the Oregon Constitution precludes application of ORS 31.710(1). Weyerhaeuser asserts that plaintiffs forfeited that argument because they failed to raise it in their initial briefing on appeal. Weyerhaeuser also argues that the remedy clause does not protect Mitzi's damages award because loss of consortium is not a claim for injury to person, property, or reputation. Finally, Weyerhaeuser argues that ORS 31.710(1) provides plaintiffs with a substantial substitute remedy in the form of all of their economic damages plus \$500,000 in noneconomic damages. Held: Neither the "law of the case" doctrine, nor the "waiver rule" precluded consideration of plaintiffs' remedy clause challenge in the unique circumstances presented on remand. In addition, Mitzi's loss of consortium claim alleged an injury to person that is protected by the remedy clause. On the merits, given the nature of plaintiffs' injuries, the lack of any quid pro quo in ORS 31.710(1), and because the legislature's reason for enacting the noneconomic damages cap could not bear the weight of the dramatic reduction in noneconomic damages that the statute requires for the most grievously injured plaintiffs, reducing plaintiffs' noneconomic damages awards to \$500,000 would leave them without a "substantial" remedy as required by Article I, section 10. Plaintiffs' limited judgment affirmed; Stayton Builders Mart's limited judgment reversed; general judgment reversed.

State of Oregon v. Dallas Urig
(Ortega, P. J.)

Defendant challenges his conviction for seven counts of various drug-related offenses. He assigns error to the trial court's denial of his motion to suppress evidence obtained during what he contends was an unlawful extension of a traffic stop. Defendant concedes that he was lawfully stopped for a noncriminal traffic violation. However, defendant argues that the officer violated Article I, section 9, of the Oregon Constitution by calling his probation officer rather than processing the citation because that call was based on a notation on his record that was a constitutionally insufficient basis to extend the stop. According to defendant, because that call unlawfully extended the stop, the officer was able to obtain his consent to search his car and discover incriminating evidence that was used against him at trial. Held: The trial court did not err. The Court of Appeals need not resolve defendant's arguments under Article I, section 9, because they were predicated on the assumption that the traffic stop was actually extended. The trial court implicitly found that the stop was not extended, and there was sufficient evidence to support that finding. Affirmed.

Danny Daniels v. Allstate Fire and Casualty Company
(Lagesen, J.)

Plaintiff appeals, assigning error to the trial court's denial of his request for attorney fees and its decision to offset PIP benefits against the damages awarded by the jury in the tort action he brought against defendant, his insurer, for underinsured motorist benefits. Held: The trial court erred with respect to the denial of plaintiff's request for attorney fees. An insurer's commitment merely to concentrate on the issues of liability and damages is not enough to invoke the statutory safe harbor from attorney fees afforded to insurers, ORS 742.061(3), because the insurer must commit that those are the only issues, to the exclusion of all other issues. As to the offset of PIP benefits, the trial court did not err under *Cooksley v. Lofland*, 289 Or App 103, 107-08, ___ P3d ___ (2017). Reversed and remanded as to attorney fees; otherwise affirmed.

State of Oregon v. Clifford Allen Robertson

(Tookey, J.)

Defendant appeals a judgment of conviction for unlawful delivery of methamphetamine (Count 1), ORS 475.890, and endangering the welfare of a minor (Count 4), ORS 163.575. Defendant raises six assignments of error. In defendant's first assignment of error, he argues that the trial court plainly erred by failing to acquit him, sua sponte, on the count of endangering the welfare of a minor in light of the Supreme Court's recent decision in *State v. Gonzalez-Valenzuela*, 358 Or 451, 365 P3d 116 (2016). Defendant contends in his second through sixth assignments of error that the trial court erred in denying his discovery request for material related to a confidential informant (CI). Defendant also asserts that it was error for the trial court to refuse to conduct in camera review of the requested material or to place the requested material under seal for appellate review. Held: The trial court did not plainly err by failing to sua sponte acquit defendant for endangering the welfare of a minor because a jury could "draw competing inferences from the facts" as to whether defendant's residence "qualifies as a 'place' where unlawful drug activity is 'maintained or conducted.'" *Gonzalez-Valenzuela*, 358 Or at 473 (quoting ORS 163.575(1)(b)). The trial court did not err in denying defendant's discovery requests. The trial court determined that defendant's discovery requests risked revealing the CI's identity and, thus, the court did not commit legal error in concluding that the OEC 510 privilege applied. Additionally, the trial court was not required to order the state to disclose the identity of the informant, review the requested information in camera, or seal and preserve any record thereof for appellate review, because the trial court was "satisfied that the information was received from an informer reasonably believed to be reliable or credible." OEC 510(4)(c). Affirmed.

Mark Pilling v. Travelers Insurance Company

(Tookey, J.)

Claimant seeks review of an order of the Workers' Compensation Board (the board) holding that he is not a subject worker entitled to workers' compensation coverage for a work-related injury, because he was a partner in the business at the time of injury and had not applied for or made an election of coverage. Claimant contends that the board erred in determining that he was a partner in a partnership. He contends, in the alternative, that an application for workers' compensation insurance filed for the business by his spouse and partner constituted an election of coverage. Held: The board's finding that claimant was in a partnership is supported by substantial evidence. The application for insurance filed by claimant's spouse and partner listed claimant as an employee and did not provide the required notification to the insurer that the application was seeking coverage for a partner. Affirmed.

State of Oregon v. T. W. W.

(Garrett, J.)

Appellant seeks reversal of a judgment authorizing his involuntary commitment for mental-health treatment for up to 180 days based on the trial court's conclusion that appellant was a "person with mental illness" within the meaning of former ORS 426.005(1)(e) (2014), amended by Or Laws 2015, ch 433, § 1, renumbered as ORS 426.005(1)(f) (2015). The trial court so concluded based on findings that, as a result of a mental disorder, appellant was a danger to others and was unable to meet his own basic health and safety needs. On appeal, appellant argues that neither of those findings is supported by legally sufficient evidence. Held: The trial court erred by authorizing appellant's involuntary commitment because the record is insufficient to support either of its underlying findings. The record lacks information sufficient to permit a finding by clear and convincing evidence that appellant was a danger to others. There was no evidence of previous violence or threats of violence at any time relevant to the hearing, and the trial court's description of appellant's demeanor as "agitated" was insufficient to provide the necessary foundation to predict that actual violence by appellant was highly likely. With respect to appellant's health and safety needs, the fact that

appellant ate and drank sporadically did not permit an inference that his near-term survival was imminently threatened. Medical testing revealed that he was neither malnourished nor dehydrated, and no other evidence supported a nonspeculative inference that appellant's delusions about food and water posed an imminent threat to his survival. Further, appellant's inability to accept assistance or discuss a plan for his release, without more, was insufficient to establish that he was unlikely to survive in the near term. Reversed.

Columbia Pacific Building Trades Council v. City of Portland
(Shorr, J.)

The City of Portland (city) and Columbia Riverkeeper (Riverkeeper), among others, petition for judicial review of an order by the Land Use Board of Appeals (LUBA) that reversed City Ordinance No. 188142 (the ordinance). That ordinance amended the city's zoning code and, with some exceptions, prohibited new fossil-fuel terminals and caps the size of existing terminals within the city. On judicial review, the city and Riverkeeper argue that LUBA erred in concluding that the ordinance violates the dormant Commerce Clause of the United States Constitution; Statewide Planning Goal 2, OAR 660-015-0000(2); and Statewide Planning Goal 12, OAR 660-015-0000(12). Held: First, LUBA erred in concluding that the ordinance violated the dormant Commerce Clause. The ordinance did not discriminate between in-state and out-of-state economic actors, and respondents failed to meet their burden to demonstrate that the ordinance's burdens on interstate commerce were clearly excessive in relation to its putative local benefits. LUBA also erred in holding that the ordinance violated Goal 12. LUBA concluded that the ordinance did not degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the city's transportation system plan (TSP) in violation of OAR 660-012-0060, but nevertheless then incorrectly concluded that the ordinance still potentially affected whether that TSP remained in compliance with Goal 12. Finally, LUBA did not err in concluding that the ordinance violated Goal 2. Nothing in the record was so at odds with LUBA's conclusion that the Court of Appeals could infer that LUBA misunderstood or misapplied the substantial evidence standard. Reversed and remanded in part.

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