CIVIL

Pre-Trial Decision

34. **Evidentiary Hearings**

The decision to hold an evidentiary hearing in a postconviction relief proceeding is discretionary and is reviewed for abuse of discretion. **Ford v. State**, 2005 MT 151, ¶ 6, 327 Mont. 378, 114 P.3d 244 (citation omitted).

Note that there seems to be some inconsistency about the standard of review for civil cases. In **Stewart v. Rogers**, 2004 MT 138, 321 Mont. 387, 92 P.3d 615, the Court phrased the issue as "[w]hether the District Court erred in denying Appellant's request for an evidentiary hearing" but concluded that the District Court did not abuse its discretion in denying Appellant's motion seeking an evidentiary hearing. **Stewart**, ¶¶ 13, 18.

In **Mack T. Anderson Ins. Agency v. Belgrade**, 246 Mont. 112, 121, 803 P.2d 648, 653-54 (1990), the Court held the District Court did not abuse its discretion when it granted summary judgment in favor of the defendants without first conducting an evidentiary hearing. In **Aspen Trails Ranch, LLC v. Simmons**, 2010 MT 79, ¶ 53, 356 Mont. 41, 230 P.3d 808, on the other hand, the Court concluded that the District Court did not err when it conducted an evidentiary hearing.