CIVIL

Pre-Trial Decision

8. **Amended Complaints**

We review a district court's decision regarding a motion to amend a complaint for abuse of discretion. **Hickey v. Baker Sch. Dist. No. 12**, 2002 MT 322, ¶ 12, 313 Mont. 162, 60 P.3d 966 (citation omitted).

Rule 15(a), M. R. Civ. P., provides, in pertinent part, that: "A party may amend the party's pleading once as a matter of course . . . . In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." However, while Rule 15(a), M. R. Civ. P., dictates that leave to amend shall be freely granted, this Court has previously held that leave to amend is properly denied when the amendment is futile or legally insufficient to support the requested relief. **Hawkins v. Harney**, 2003 MT 58, ¶ 39, 314 Mont. 384, 66 P.3d 305 (citation omitted). We further held that although the merits of a proposed amended claim are generally not to be considered by the court, the merits of a claim are to be considered if the claim is frivolous, meritless, or futile. **Hawkins**, ¶ 39 (citation omitted; emphasis in original). The only exception to this abuse of discretion standard of review arises in cases where the district court's decision is rendered pursuant to M. R. Civ. P. 15(c), which addresses the relation back of amendments; in such cases, we review the legal question presented de novo. **Griffin v. Moseley,** 2010 MT 132, ¶ 22, 356 Mont. 393, 234 P.3d 869.

a. Futility of Amendment

It is not an abuse of discretion to deny a motion to amend for futility when it is clear that the complaint would not be saved by the amendment. **Advocates for Sch. Trust Lands v. State**, 2022 MT 46, ¶ 36, 408 Mont. 39, 505 P.3d 825. Conversely, it is an abuse of discretion to deny leave to amend [on grounds of futility] where it cannot be said that the pleader can develop no set of facts under its proposed amendment that would entitle the pleader to the relief sought. Advocates, ¶ 36. But the question of whether the proposed amendment entitles the plaintiff to relief (i.e., is or is not futile) is a question of law. Advocates, ¶ 36.