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1. Admissibility of Evidence

The Supreme Court reviews a district court's evidentiary rulings for abuse of discretion. [*State v. Garding*](#), 2013 MT 355, ¶ 18, 373 Mont. 16, __ P.3d __.

The district court has broad discretion in determining the admissibility of evidence. [*Puccinelli v. Puccinelli*](#), 2012 MT 46, ¶ 12, 364 Mont. 235, 272 P.3d 117.

2. Administrative Agency Decisions Rulings Made Under MAPA

The Court's review of an agency decision is governed by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA. Under § 2-4-704(2), MCA, a court may reverse or modify the decision of an agency if substantial rights of the appellant have been prejudiced because:

- a. the administrative findings, inferences, conclusions, or decisions are:
 - i. in violation of constitutional or statutory provisions;
 - ii. in excess of the statutory authority of the agency;
 - iii. made upon unlawful procedure;
 - iv. affected by other error of law;
 - v. clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
 - vi. arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- b. findings of fact, upon issues essential to the decision, were not made although requested.

On appeal from a District Court's review of an agency decision, the Court applies the same standard as the district court, determining "whether an agency's findings of fact are clearly erroneous and whether its conclusions of law were correct." [Roos v. Kircher Pub. Sch. Bd. of Trs.](#), 2004 MT 48, ¶ 7, 320 Mont. 128, 86 P.3d 39 (citing [Baldwin v. Bd. of Chiropractors](#), 2003 MT 306, ¶ 10, 318 Mont. 188, 79 P.3d 810). [City of Bozeman v. Mont. Dep't of Nat. Res. & Conservation](#), 2020 MT 214, ____ Mont. ____, ____ P.3d ____.

3. Administrative Agency Decisions Non-MAPA Decisions

We review an agency decision not classified as a contested case under the Montana Administrative Procedure Act to determine whether the decision was "arbitrary, capricious, unlawful, or not supported by substantial evidence." [Johansen v. State](#), 1999 MT 187, ¶ 11, 295 Mont. 339, 983 P.2d 962. In reviewing an agency decision to determine if it survives the arbitrary and capricious standard, we consider whether the decision was "based on a consideration of the relevant factors and whether there has been a clear error of judgment." [North Fork Pres. Ass'n v. Dep't of State Lands](#), 238 Mont. 451, 465, 778 P.2d 862, 871 (1989) (quoting [Marsh v. Or. Nat. Resources Council](#), 490 U.S. 360, 378, 109 S. Ct. 1851-61, 104 L. Ed. 2d 377 (1989)). While our review of agency decisions is generally narrow, we will not "automatically defer to the agency 'without carefully reviewing the record and satisfying themselves that the agency has made a reasoned decision.'" [Friends of the Wild Swan v. DNRC](#), 2000 MT 209, ¶ 28, 301 Mont. 1, 6 P.3d 972 (quoting [Marsh](#), 490 U.S. at 378, 109 S. Ct. at 1861). [Clark Fork Coalition v. Mont. Dep't of Env'tl. Quality](#), 2008 MT 407, ¶ 21, 347 Mont. 197, 197 P.3d 482.

4. Plain Error

The Supreme Court will review claimed errors where failing to do so may result in a manifest miscarriage of justice, leave the question of fundamental fairness of the proceedings unsettled, or compromise the integrity of the judicial process. The Supreme Court uses its inherent power of common-law plain error review sparingly, on a case-by-case basis, and only in the aforementioned circumstances. [*State v. Rovin*](#), 2009 MT 16, ¶ 29, 349 Mont. 57; 201 P.3d 780; see also [*State v. Finley*](#), 276 Mont. 126, 137-38, 915 P.2d 208, 215 (1996), *overruled on other grounds*, *State v. Gallagher*, 2001 MT 39, 304 Mont. 215, 19 P.3d 817.

"We will not undertake full analysis of the alleged error each time a party requests plain error review. [*State v. Griffin*](#), 2016 MT 231, ¶ 7, 385 Mont. 1, 386 P.3d 559. Conducting a full analysis in order to determine whether to find plain error would defeat the underlying rule that a party must object to error at trial, because errors should be brought to the attention of the trial court where they can be initially addressed. *Griffin*, ¶ 7."

5. Competency of an Expert Witness

The Supreme Court reviews a district court's determination regarding the qualification and competency of an expert witness for an abuse of discretion. [*State v. Jay*](#), 2013 MT 79, ¶ 15, 369 Mont. 332, 298 P.3d 396; see also *Nesbitt v. City of Butte*, 118 Mont. 84, 93, 163 P.2d 251, 256 (1945).

Trial courts are vested with great latitude in ruling on the admissibility of expert testimony. The Supreme Court reviews a district court's rulings on the admissibility of expert testimony for abuse of discretion. [*Cartwright v. Scheels All Sports, Inc.*](#), 2013 MT 158, ¶ 37, 370 Mont. 369, 310 P.3d 1080.

6. Conclusions of Law

The Supreme Court reviews a district court's conclusions of law de novo. [*State v. Steigelman*](#), 2013 MT 153, ¶ 10, 370 Mont. 352, 302 P.3d 396. The Supreme Court also reviews for correctness a district court's conclusion of law. [*Boyne USA, Inc. v. Spanish Peaks Dev., LLC*](#), 2013 MT 1, ¶ 28, 368 Mont. 143, 292 P.3d 432. Over the years, the Supreme Court has often used de novo and correctness interchangeably. Refer to the section on definitions for further discussion of de novo and correctness review and the difference between the two forms of review.

The following is a non-exhaustive list of contexts in which the Court has applied the de novo standard of review:

- Summary judgment. [*Siebken v. Voderberg*](#), 2012 MT 291, ¶ 16, 367 Mont. 344, 291 P.3d 572.
- Judgment as a matter of law. [*Johnson v. Costco Wholesale*](#), 2007 MT 43, ¶ 18, 336 Mont. 105, 152 P.3d 727.
- Statutory interpretation. [*LHC, Inc. v. Alvarez*](#), 2007 MT 123, ¶ 13, 337 Mont. 294, 160 P.3d 502; [*State v. Gallagher*](#), 2005 MT 336, ¶ 16, 330 Mont. 65, 125 P.3d 1141 (question of whether district court correctly designated defendant as a persistent felony offender was a question of statutory interpretation, reviewable de novo).
- Denial of motion to dismiss in a criminal case. [*State v. LeMay*](#), 2011 MT 323, ¶ 27, 363 Mont. 172, 266 P.3d 1278.
- Whether contract (plea agreement) was breached. [*State v. Shepard*](#), 2010 MT 20, ¶ 8, 355 Mont. 114, 225 P.3d 1217.
- Whether district court's action conforms to statutory requirements. [*Jacobsen v. Thomas*](#), 2006 MT 212, ¶ 13, 333 Mont. 323, 142 P.3d 859.
- Whether a waiver of right to trial by jury in justice court waives right to trial by jury in district court. [*Balyeat Law, P.C. v. Harrison*](#), 1999 MT 144, ¶ 18, 295 Mont. 13, 983 P.2d 902 (example of where the de novo and correctness standards are used interchangeably: "[w]e review a trial court's conclusions of law de novo to determine whether they are correct.").
- District Court's order granting a motion to compel arbitration. *Iwen v. US. West Direct*, 1999 MT 63, ¶ 17, 293 Mont. 512, 977 P.2d 989.
- District Court's determination as to whether a party is entitled to postjudgment interest. [*In re Marriage of Debuff*](#), 2002 MT 159, ¶ 15, 310 Mont. 382, 50 P.3d 1070.
- District court's ultimate finding of actual innocence. [*State v. Beach*](#), 2013 MT 130, ¶ 8, 370 Mont. 163, 302 P.3d 47.
- Issues of justiciability, such as standing, mootness, ripeness, and political question. [*Chipman v. Northwest Healthcare Corp.*](#), 2012 MT 242, ¶ 16, 366 Mont. 450, 288 P.3d 193.

The following is a non-exhaustive list of contexts in which the Court has applied the correctness standard of review:

- Arbitrability. [*Ratchye v. Lucas*](#), 1998 MT 87, ¶ 14, 288 Mont. 345, 957 P.2d 1128.

- Failure to state a claim upon which relief may be granted. [*Snetsinger v. Mont. Univ. Sys.*](#), 2004 MT 390, ¶ 11, 325 Mont. 148, 104 P.3d 445; [*Finstad v. W.R. Grace & Co. Conn.*](#), 2000 MT 228, ¶ 24, 301 Mont. 240, 8 P.3d 778.
- District Court's legal conclusion that agency's conclusions of law were correct. See [*Bitterroot River Protective Ass'n v. Bitterroot Conservation Dist.*](#), 2008 MT 377, ¶ 18, 346 Mont. 507, 198 P.3d 219.
- Whether agency's conclusion of law is correct. [*Baldrige v. Bd. of Trustees*](#), 264 Mont. 199, 205, 870 P.2d 711, 714-15 (1993).
- Question of constitutional law. [*Schuff v. A.T. Klemens & Son*](#), 2000 MT 357, ¶ 28, 303 Mont. 274, 16 P.3d 1002 (citing [*State v. Schnittgen*](#), 277 Mont. 291, 295-96, 922 P.2d 500, 503 (1996)).
- Whether District Court correctly applied statute. See [*Schuff*](#), ¶ 29.
- Whether District Court correctly interpreted statute. [*Kreger v. Francis*](#), 271 Mont. 444, ___, 898 P.2d 672, 674 (1995).
- Attorney fees recoverable as an element of damages. [*Jacobsen v. Allstate Ins. Co.*](#), 2009 MT 248, ¶ 17, 351 Mont. 464, 215 P.3d 649.
- Whether District Court properly applied the correct standard of review to an administrative decision. [*State Pers. Div. v. Dep't of Pub. Health & Human Servs., Child Support Div.*](#), 2002 MT 46, ¶ 61, 308 Mont. 365, 43 P.3d 305.
- Existence of a legal duty. [*Jackson v. Dept. of Family Servs.*](#), 1998 MT 46, ¶ 31, 287 Mont. 473, 956 P.2d 35.
- Interpretation of an insurance contract. [*Travelers Cas. & Sur. Co. v. Ribi Immunochem Research*](#), 2005 MT 50, ¶ 14, 326 Mont. 174, 108 P.3d 469.
- Decision to issue or deny a writ of mandamus. [*Bostwick Props. v. Mont. Dep't of Natural Res. & Conservation*](#), 2009 MT 181, ¶ 15, 351 Mont. 26, 208 P.3d 868.
- Judgment as a matter of law. [*McDaniel v. State*](#), 2009 MT 159, ¶ 13, 350 Mont. 422, 208 P.3d 817.
- Denial of a motion to dismiss in a criminal trial. [*State v. Dodson*](#), 2009 MT 419, ¶ 31, 354 Mont. 28, 221 P.3d 687.
- Conclusions of law relating to the division of marital property. [*Harper v. Harper*](#), 1999 MT 321, ¶ 17, 297 Mont. 290, 994 P.2d 1.
- Lack of subject matter jurisdiction. [*Burchett v. Mastec N. Am., Inc.*](#), 2004 MT 177, ¶ 9, 322 Mont. 93, 93 P.3d 1247.

- Award of prejudgment interest. [*In re Marriage of Debuff*](#), ¶ 15.
- Whether a prior conviction can be used to enhance a criminal sentence. [*State v. Allen*](#), 2009 MT 124, ¶ 9, 350 Mont. 204, 206 P.3d 951.
- District Court's determination as to whether or not a defendant's privilege against self-incrimination is triggered. [*State v. Hill*](#), 2009 MT 134, ¶ 21, 350 Mont. 296, 207 P.3d 307.
- Criminal defendant's due process rights. [*State v. Simmon*](#), 2000 MT 329, ¶ 9, 303 Mont. 60, 15 P.3d 408.
- A district court's interpretation of a restrictive covenant. [*Wagner v. Woodward*](#), 2012 MT 19, ¶ 17, 363 Mont. 403, 270 P.3d 21.
- The court's determination of the appropriate measure of restitution. [*In re K.E.G.*](#), 2013 MT 82, ¶ 9, 369 Mont. 375, 298 P.3d 1151.
- Whether a party has been afforded his or her constitutional and statutory right to a trial de novo. [*McDunn v. Arnold*](#), 2013 MT 138, ¶ 10, 370 Mont. 270, 303 P.3d 1279.

7. Construction and Interpretation of Contracts

The construction and interpretation of a contract is a question of law that the Supreme Court reviews for correctness. [*Johnston v. Centennial Log Homes & Furnishings, Inc.*](#), 2013 MT 179, ¶ 25, 370 Mont. 529, 305 P.3d 781.

8. Construction and Interpretation of Statutes

The Supreme Court reviews de novo a district court's interpretation and application of a statute. [*Dick Irvin Inc. v. State*](#), 2013 MT 272, ¶ 18, 372 Mont. 58, 310 P.3d 524.

9. Denial of a Motion

The Supreme Court's review depends explicitly upon the type of motion presented. See Civil and Criminal for more specific information about particular motions.

10. Denial of a Writ

The Supreme Court's review depends explicitly upon the type of motion presented. See Extraordinary Writs for more specific information about particular motions.

11. Discretionary Rulings

The Supreme Court reviews for an abuse of discretion a district court's discretionary rulings. [*Williams v. Bd. of Cnty. Comm'rs of Missoula Cnty.*](#), 2013 MT 243, ¶ 21, 371 Mont. 356, 308 P.3d 88.

12. Findings of Fact

The Supreme Court reviews for clear error a district court's findings of fact. [*Roland v. Davis*](#), 2013 MT 148, ¶ 21, 370 Mont. 327, 302 P.3d 91. Clear error exists if substantial, credible evidence fails to support the findings of fact, if the district court misapprehended the evidence's effect, or if we have a definite and firm conviction that the district court made a mistake. [*Roland v. Davis*](#), 2013 MT 148, ¶ 21, 370 Mont. 327, 302 P.3d 91.

13. Judicial Standard Commission Proceedings

We review the Judicial Standard Commission's proceedings de novo. [*Judicial Stds. Comm'n v. Not Afraid*](#), 2010 MT 285, ¶ 8, 358 Mont. 532, 245 P.3d 1116.

14. Jury Instructions

We review jury instructions for an abuse of discretion, considering the instructions as a whole and in light of the evidence. [*Vincent v. BNSF Ry.*](#), 2010 MT 57, ¶ 14, 355 Mont. 348, 228 P.3d 1123; [*Edie v. Gray*](#), 2005 MT 224, ¶ 12, 328 Mont. 354, 121 P.3d 516.

15. Voir Dire

We review a court's control of voir dire for abuse of discretion. [*Young v. Horton*](#), 259 Mont. 34, 39, 855 P.2d 502, 505 (1993); [*Priest v. Taylor*](#), 227 Mont. 370, 382, 740 P.2d 648, 655 (1987). See also [*Eklund v. Wheatland Co.*](#), 2009 MT 231, ¶ 15, 351 Mont. 370, 212 P.3d 297 (abuse of discretion review of decision on challenge of juror for cause).

A court abuses its discretion if it makes a ruling arbitrarily, unreasonably, or without employing conscientious judgment, resulting in substantial prejudice. [*Cooper v. Hanson*](#), 2010 MT 113, ¶ 28, 356 Mont. 309, 234 P.3d 59.

16. Workers' Compensation Court

We review findings of fact made by the Workers Compensation Court (WCC) to determine whether those findings are supported by substantial, credible evidence, and we review conclusions of law made by the WCC to determine if those conclusions are correct. In reviewing the WCC's factual findings, we will not resolve conflicts in the evidence or consider whether the evidence supports findings that are different from those made by the WCC. Instead, we will confine our review to determining whether substantial credible evidence supports the findings of the WCC. In addition, we will defer to the WCC's findings concerning credibility and the weight to be accorded to the testimony of witnesses who testify in person at trial. But, because we are in as good a position as the WCC to assess deposition testimony presented at trial, we will review such deposition testimony de novo. Nevertheless, "even where we conduct de novo review of deposition testimony, we are ultimately restricted to determining whether substantial credible evidence supports the WCC's findings." [*Montana State Fund v. Grande*](#), 2012 MT 67, ¶ 19, 364 Mont. 333, 274 P.3d 728 (internal citations omitted).

We review for correctness the WCC's conclusion of law that involves constitutional issue. [*Caldwell v. Maco Workers' Comp. Trust*](#), 2011 MT 162, ¶ 8, 361 Mont. 140, 256 P.3d 923

17. State Tax Appeal Board

We defer to STAB's findings unless they are clearly erroneous, because STAB is particularly suited for settling disputes over the appropriate valuation of property. [*Puget Sound Energy, Inc. v. State*](#), 2011 MT 141, ¶ 16, 361 Mont. 39, 255 P.3d 171 (citing [*PacifiCorp v. State*](#), 2011 MT 93, ¶ 15, 360 Mont. 259, 253 P.3d 847).

On judicial review of a decision of the State Tax Appeal Board concerning a Department of Revenue appraisal of real property, the appraisal reached by the Montana Department of Revenue is presumed to be correct, and the burden is upon the taxpayer to overcome this presumption. [*Peretti v. DOR*](#), 2016 MT 105, ¶ 14; [*Farmers Union Central Exchange v. DOR*](#), 272 Mont. 471, 476, 901 P.2d 561, 564 (1995).

Courts should not act as an authority on tax matters because tax appeal boards "are particularly suited for settling disputes over the appropriate valuation of a given piece of property, and the judiciary cannot interfere with that function." [*DOR v. Grouse Mtn. Development*](#), 218 Mont. 353, 355, 707 P.2d 1113, 1115 (1985).

A district court should review a STAB decision to determine whether the Board's findings of fact are clearly erroneous and whether its conclusions of law are correct. We apply these

same standards when reviewing the district court's decision on appeal. [Peretti v. DOR](#), 2016 MT 105, ¶ 15; [Robinson v. DOR](#), 2012 MT 145, ¶ 10, 365 Mont. 336, 281 P.3d 218.

18. Water Court

Water Court Order Only:

This Court applies the same standards of review to decisions of the Water Court as it does to decisions of a district court. We review the Water Court's findings of fact to determine if they are clearly erroneous. We review the Water Court's conclusions of law to determine if they are correct. [In re Crow Water Compact](#), 2015 MT 217, ¶ 19, 380 Mont. 168, 354 P.3d 1217.

Water Court Order & Water Master's Report:

In a case involving both a Water Master and the Water Court, two standards of review are applicable: the standard the water judge applies to the Master's report and the standard we apply to the Water Court's opinion. The Water Court reviews the Master's findings of fact for clear error and the Master's conclusions of law to determine whether they are correct. Applying these standards of review, the water judge may adopt, modify, or reject the Master's report, in whole or in part, or may receive further evidence or recommit it with instructions.

We review the Water Court's order de novo, to determine whether it correctly applied the clear error standard of review to the Master's findings of fact and whether its conclusions of law were correct. Whether the standard of review was applied correctly is a question of law. We review the Water Court's findings to determine whether they are clearly erroneous. [Skelton Ranch, Inc. v. Pondera County Canal & Reservoir Co.](#), 2014 MT 167, ¶¶ 25-26, 375 Mont. 327, 328 P.3d 644.

19. Waiver

Dismissal of an appeal for waiver is a matter for determination by the Supreme Court. [Tempel v. Benson](#), 2015 MT 84, ¶ 7, 378 Mont. 401, 346 P.3d 342.