

Montana Judicial Branch

Standards of Review Handbook

Introduction

Updated: 13DEC2025

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Introduction

This handbook does not express the opinion of the Montana Supreme Court and shall not be cited as authority. This handbook is issued only as a research tool for litigants, practitioners, and court staff regarding standards of review applied by the Court. It is not intended to be comprehensive, and parties involved in appeals should conduct their own independent research.

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Findings of Fact and Conclusions of Law

A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the court misapprehended the effect of the evidence or if, upon reviewing the record, this Court is left with the definite and firm conviction that the district court made a mistake. *In re S.T.*, 2008 MT 19, ¶ 8, 341 Mont. 176, 176 P.3d 1054 (citation omitted).

We review a district court's conclusions of law de novo to determine whether they are correct. *Giambra v. Kelsey*, 2007 MT 158, ¶ 28, 338 Mont. 19, 162 P.3d 134 (citations omitted).

This Court reviews mixed questions of law and fact de novo. *Stop Over Spending Mont. v. State*, 2006 MT 178, ¶ 10, 333 Mont. 42, 139 P.3d 788 (citation omitted). Mixed questions of law and fact are presented to this Court when the historical facts of a case are admitted or established, the applicable law is undisputed, and the issue is whether the facts satisfy the statutory standard. *Stop Over Spending Mont.*, ¶ 10 (citations omitted).

We review a district court's conclusions of law and interpretations of the Constitution or the rules of evidence de novo. *State v. Mizenko*, 2006 MT 11, ¶ 8, 330 Mont. 299, 127 P.3d 458 (citations omitted).

Interpretation and construction of a rule of procedure, like interpretation and construction of a statute, is a matter of law, which we review de novo, determining whether the court's

interpretation and construction of the rule is correct. *In re Estate of Strange*, 2008 MT 158, ¶ 6, 343 Mont. 296, 184 P.3d 1029.

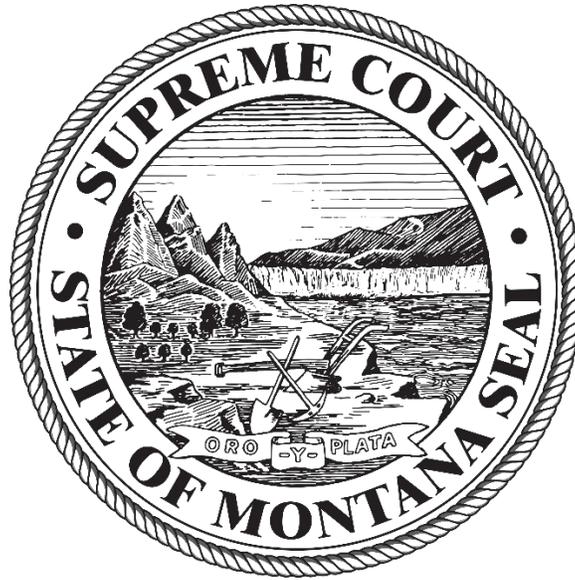
We review interpretation of the Montana Rules of Appellate Procedure the same as we review interpretation of the Rules of Civil Procedure and statutory interpretation, as a matter of law. *Nielson v. Brocksmith*, 2004 MT 259, ¶ 7, 323 Mont. 98, 99 P.3d 181.

Affirming on Alternate Grounds

The Montana Supreme Court “will affirm a district court's ruling if the court reached the correct result for the wrong reason.” *Haux v. Mont. Rail Link, Inc.*, 2004 MT 233, ¶ 28, 322 Mont. 456, 97 P.3d 540 (citation omitted).

Where the conclusion of the district court is correct, it is immaterial, for the purpose of affirming on appeal, what reasons the district court gives for its conclusion. If the Supreme Court reaches the same conclusion as the District Court, but on different grounds, it may affirm the district court's judgment. *Johnson Farms, Inc. v. Halland*, 2012 MT 215, ¶ 11, 366 Mont. 299, 291 P.3d 1096.

We may uphold a judgment on any basis supported by the record, even if the district court applied a different rationale. *Rooney v. City of Cut Bank*, 2012 MT 149, ¶ 25, 365 Mont. 375, 286 P.3d 241.



Montana Judicial Branch

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Civil: Pretrial Decisions

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Introduction

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This resource was compiled over many years by numerous individuals. Notably, some of the grammar and typography choices are less than ideal (*e.g.*, comma placement, two spaces after a period, etc.). In putting together this handbook, we have tried our best to clean up obvious errors, but it is incumbent upon individuals to (1) use the correct citation format in their pleadings, and more importantly, (2) look up the cases they are citing to confirm content.

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Affirmative Defenses

We review *de novo* a District Court’s decision to convert a counterclaim to an affirmative defense. *Johnson v. Dist. VII, Human Res. Dev. Council*, 2009 MT 86, ¶ 18, 349 Mont. 529, 204 P.3d 714; *Yellowstone Cnty. v. Drew*, 2007 MT 130, ¶ 11, 337 Mont. 346, 160 P.3d 557.

We review findings on the viability of an affirmative defense under an abuse of discretion standard. *Ammondson v. Nw. Corp.*, 2009 MT 331, ¶ 30, 353 Mont. 28, 220 P.3d 1. Under this standard, a district court abuses its discretion if it “acts arbitrarily without conscientious judgment or exceeds the bounds of reason resulting in substantial injustice.” *Ammondson*, ¶ 30 (internal citation omitted).

In *State ex rel. Farm Credit Bank of Spokane v. Dist. Court of Third Judicial Dist.*, the Montana Supreme Court reviewed a district court decision that a lender’s failure to comply with statutory provisions incorporated by reference into a mortgage instrument could constitute an affirmative defense to a subsequent foreclosure action. 267 Mont. 1, 21–24, 881 P.2d 594, 606–08 (1994). In this case, we determined that we would “not reverse the trial court unless its standard of review ha[d] been misapprehended or grossly misapplied.” *Farm Credit Bank*, 267 Mont. at 24, 881 P.2d at 608.

In *Chandler v. Madsen*, the Montana Supreme Court reviewed a district court decision that a counterclaim failed in the face of a “failure of consideration” affirmative defense. 197 Mont. 234, 241, 642 P.2d 1028, 1033 (1982). In this case, we determined that the district court decision “was unsupported by the evidence.” *Chandler*, 197 Mont. at 241, 642 P.2d at 1033. In *Chandler* the respondent did not affirmatively plead the “failure of consideration” defense and therefore could not rely upon the defense. *Chandler*, 197 Mont. at 241, 642 P.2d at 1033.

In *Plumb v. Fourth Judicial Dist. Court* the Montana Supreme Court concluded that a district court decision allowing a respondent to amend its answer and assert an affirmative defense was a conclusion of law and therefore reviewable for correctness. 279 Mont. 363, 371, 927 P.2d 1011, 1016 (1996) (superseded by statute on other grounds). In this case, a plaintiff brought a tort claim against the Southgate Mall arising out of a slip-and-fall incident. The Mall motioned to amend its answer, adding an affirmative defense alleging that an unnamed third party was negligent. *Plumb*, 279 Mont. at 371, 927 P.2d at 1016. We concluded that the district court order granting the Mall’s motion was “tantamount to a determination that the 1995 amendments to [the Montana Code] satisfied this Court’s constitutional concerns about the assignment of fault to unnamed and unrepresented third persons.” *Plumb*, 279 Mont. at 371, 927 P.2d at 1016. Because this was in effect a conclusion of law, we reviewed the conclusion for correctness. *Plumb*, 279 Mont. at 371, 927 P.2d at 1016.

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.

Amended Complaints: 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.

Answers

We review for abuse of discretion a district court's ruling on a motion to amend the pleadings. *Stipe v. First Interstate Bank–Polson*, 2008 MT 239, ¶ 10, 344 Mont. 435, 188 P.3d 1063 (citation omitted).

We review a district court's decision to strike an answer and enter default judgment as a discovery sanction for an abuse of discretion. *See Watson v. West*, 2009 MT 342, ¶ 17, 353 Mont. 120, 218 P.3d 1227 (citation omitted) (deciding whether the District Court abused its discretion by striking, as a sanction, West's answer to Watson's complaint and entering a default judgment in favor of Watson). This Court also reviews the sanction imposed for an abuse of discretion. *Watson*, ¶ 17.

Appointment of Counsel

This Court reviews denials of requests for the appointment of new counsel for abuse of discretion. *State v. Hammer*, 2013 MT 203, ¶ 12, 371 Mont. 121, 305 P.3d 843 (citation omitted).

We review a district court's ruling on requests to substitute counsel for abuse of discretion. *State v. Dethman*, 2010 MT 268, ¶ 11, 358 Mont. 384, 245 P.3d 30 (citation omitted).

Appointment of Guardian ad litem

A guardian ad litem is an officer of the court, assigned to represent the interests of a minor. Therefore, selection of a guardian ad litem is a matter which is committed largely to the discretion of the appointing judge. This Court will interfere with the exercise of that discretion only in a case of clear abuse. *In re Krause*, 2001 MT 37, ¶ 12, 304 Mont. 202, 19 P.3d 811 (citation omitted).

Arbitration

We review a district court's order regarding a motion to compel arbitration de novo. *Gordon v. Kuzara*, 2010 MT 275, ¶ 5, 358 Mont. 432, 245 P.3d 37 (citations omitted). When a district

court compels arbitration, or refuses to compel arbitration, the threshold inquiry remains whether the parties agreed to arbitrate. *Zigrang v. U.S. Bancorp Piper Jaffray, Inc.*, 2005 MT 282, ¶ 8, 329 Mont. 239, 123 P.3d 237 (citation omitted).

We review a district court's conclusions of law, including whether an arbitration award is valid, de novo. *Wells Fargo Bank v. Talmage*, 2007 MT 45, ¶ 12, 336 Mont. 125, 152 P.3d 1275.

Section 27-5-312, MCA, sets forth when the district court shall vacate an arbitration award. When a matter has been submitted to binding arbitration, courts are not permitted to review the merits of the controversy, but may only confirm, vacate, modify, or correct an arbitration award pursuant to §§ 27-5-311, -312, and -313, MCA. We review a trial court's decision to confirm an arbitration award to determine if the court abused its discretion. We can only review whether the District Court abused its discretion in confirming the arbitration award; we cannot review the merits of the controversy.

Roberts v. Lame Deer Pub. Sch. Dist. #6, 2013 MT 358, ¶ 7, 373 Mont. 49, 314 P.3d 647. See also *Colstrip Energy L.P. v. N.W. Corp.*, 2011 MT 99, ¶ 17, 360 Mont. 298, 253 P.3d 870.

Bifurcation

In order to avoid prejudice or for court convenience, a court may bifurcate a trial. M. R. Civ. P. 42(b). "The decision whether to bifurcate claims pursuant to this rule is a matter left to the broad discretion of the district court." *Eklund v. Trost*, 2006 MT 333, ¶ 48, 335 Mont. 112, 151 P.3d 870 (citations omitted). On appeal, we review a decision to bifurcate for abuse of discretion, the test for abuse of discretion. *Eklund*, ¶ 48 (citation omitted).

Case Management

District courts have broad discretion over the admissibility of evidence and control of pretrial and trial proceedings. *Stevenson v. Felco Indus.*, 2009 MT 299, ¶ 32, 352 Mont. 303, 216 P.3d 763.

We review a district court's decisions regarding management of litigation for an abuse of discretion. See *Fink v. Williams*, 2012 MT 304, ¶¶ 18, 20, 367 Mont. 431, 291 P.3d 1140 (citation omitted) (noting that "[t]he District Court has broad discretion in determining issues relating to trial administration and finding "no abuse of the court's discretion in its management of the trial"). Discretionary trial court rulings include such things as trial administration issues, scope of cross-examination, post-trial motions and similar rulings. *Fink*, ¶ 18 (citation and quotation marks omitted).

M. R. Civ. P. 16 (Rule 16) generally addresses a district court's pretrial case management functions. Rule 16(a) authorizes a court, in its discretion, to direct attorneys and unrepresented parties to appear for pretrial conferences. Rule 16(b) specifically addresses scheduling orders which follow such conferences. *Stevenson*, ¶ 32 (citation omitted).

Claim Preclusion

Cross-Reference: [Res Judicata](#)

We review de novo a district court's interpretation and application of a statute and a district court's conclusions of law. *Brilz v. Metro. Gen. Ins. Co.*, 2012 MT 184, ¶ 13, 366 Mont. 78, 285 P.3d 494 (citation omitted). This includes a district court's application of claim preclusion or issue preclusion, which is an issue of law that we review for correctness. *Brilz*, ¶ 13.

Class Actions

We review a district court's decision on a motion for class certification for an abuse of discretion. *Sangwin v. State*, 2013 MT 373, ¶ 10, 373 Mont. 131, 315 P.3d 279 (citing *Chipman v. N.W. Healthcare Corp.*, 2012 MT 242, ¶ 17, 366 Mont. 450, 288 P.3d 193). The question is not whether this Court would have reached the same decision, but whether the District Court acted arbitrarily without conscientious judgment or exceeded the bounds of reason. *Sangwin*, ¶ 10 (citation omitted). When reviewing a decision on class certification, we afford the trial court the broadest discretion because it "is in the best position to consider the most fair and efficient procedure for conducting any given litigation." *Sangwin*, ¶ 10 (citing *Jacobsen v. Allstate Ins. Co.*, 2013 MT 244, ¶ 25, 371 Mont. 393, 310 P.3d 452).

A court abuses its discretion if its certification order is premised on legal error. *Mattson v. Mont. Power Co.*, 2012 MT 318, ¶ 17, 368 Mont. 1, 291 P.3d 1209 (citation and quotation marks omitted). Likewise, when a district court's decision is not supported by findings as to the applicability of Rule 23 criteria, it is not entitled to the traditional deference given to determinations of class status. *Mattson*, ¶ 17 (citation and quotation marks omitted). To the extent that the ruling on a Rule 23 requirement is supported by a finding of fact, that finding, like any other finding of fact, is reviewed under the clearly erroneous standard. And to the extent that the ruling involves an issue of law, review is de novo. *Jacobsen*, ¶ 25 (citation and quotation marks omitted). Thus, for example, a ruling on numerosity, based on a finding of fact that is not clearly erroneous and with application of a legal standard that is correct, could be affirmed as within allowable discretion, in some circumstances, whether the ruling determined that this Rule 23 requirement was met or not met. *Mattson*, ¶ 17 (citation and internal quotation marks omitted).

We are particularly reluctant to interfere with discretionary orders in the early stages of litigation. *Diaz v. State*, 2013 MT 219, ¶ 20, 371 Mont. 214, 308 P.3d 38. Rule 23(c)(1)(C) preserves a trial court's flexibility to modify its certification orders, which are made at an early stage in the case, when the facts are disputed and discovery incomplete. *Diaz*, ¶ 20.

Collateral Estoppel

Where the determination that a claim is precluded by collateral estoppel forms part of the district court's rationale on summary judgment, the decision is reviewed de novo. *Lorang v. Fortis Ins.*

Co., 2008 MT 252, ¶ 54, 345 Mont. 12, 192 P.3d 186. The Court does not parse out aspects of a summary judgment ruling for differing standards of review. *Lorang*, ¶ 53.

Complaints

Complaints: Amendment

The decision to grant or deny a motion to amend lies within the discretion of the district court. *Farmers Coop. Ass'n v. Amsden*, 2007 MT 286, ¶ 12, 339 Mont. 445, 171 P.3d 690. A district court's denial of a motion to amend a pleading is reviewed for abuse of discretion. *Farmers Coop. Ass'n*, ¶ 12; *Smith v. Butte-Silver Bow County*, 266 Mont. 1, 9, 878 P.2d 870, 875 (1994).

Complaints: Dismissal

A complaint may be dismissed for failure to state a claim. M. R. Civ. P. 12(b)(6); *Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 10, 325 Mont. 148, 104 P.3d 445. The determination that a party has failed to state a claim is a conclusion of law, which is reviewed for correctness. *Snetsinger*, ¶ 11. When reviewing an order dismissing a complaint under Rule 12(b)(6), this Court construes the complaint in the light most favorable to the plaintiffs. *Jones v. Mont. Univ. Sys.*, 2007 MT 82, ¶ 15, 337 Mont. 1, 155 P.3d 1247.

A complaint may be dismissed for failure to comply with the rules or a court order. M. R. Civ. P. 41(b). Dismissal under Rule 41(b) is a harsh remedy, and district courts should refrain from its application unless there is no other adequate remedy available. *Nystrom v. Melcher*, 262 Mont. 151, 155, 864 P.2d 754 (1993). Despite this caution, the decision to dismiss under Rule 41(b) is within the discretion of the district court and is reviewed for abuse of discretion. *Nystrom*, 262 Mont. at 156, 864 P.2d at 757.

Consolidation

The decision to grant or deny a motion for consolidation rests within the discretion of the district court, and will not be overturned absent a clear abuse of discretion. *Tribby v. N.W. Bank of Great Falls*, 217 Mont. 196, 208, 704 P.2d 409 (1985). See also *In re Estate of McDermott*, 2002 MT 164, ¶ 14, 310 Mont. 435, 51 P.3d 486; *Env't'l Contractors, LLC v. Moon*, 1999 MT 178, ¶ 32, 295 Mont. 268, 983 P.2d 390; *contra Yellowstone County v. Drew*, 2007 MT 130, ¶ 11, 337 Mont. 346, 160 P.3d 557 (applying de novo standard to review of interpretation and application of procedural rules).

Constitutionality of Regulations

We review rulings on the constitutionality of regulations for correctness. *Ap, Inc. v. Mont. Dep't of Revenue*, 2000 MT 160, ¶ 20, 300 Mont. 233, 4 P.3d 5. The Montana Supreme Court has plenary power to review questions of constitutional law. *Bryan v. Yellowstone County*

Elementary Sch. Dist. No. 2, 2002 MT 264, ¶ 16, 312 Mont. 257, 60 P.3d 381 (internal citations omitted) “A district court’s resolution of an issue involving a question of constitutional law is a conclusion of law which we review to determine whether the conclusion is correct.” *Bryan*, ¶ 16 (internal citations omitted).

In *Ap, Inc. v. Mont. Dep’t of Revenue* the Montana Supreme Court reviewed a district court holding that Admin. R. M. 42.2.791(2002) did not violate the Montana Constitution, Article II, Section 9. 2000 MT 160, ¶ 21, 300 Mont. 233, 4 P.3d 5. Applying review for correctness, we determined that the district court ruling was incorrect, and that the rule was unconstitutional on its face. *Ap, Inc.* at ¶ 28.

Constitutionality of Statutes

The Court’s review of constitutional questions is plenary. *Williams v. Bd. of County Comm’rs*, 2013 MT 243, ¶ 23, 371 Mont. 356, 308 P.3d 88. Legislative enactments are presumed to be constitutional, and the party challenging the provision has the burden of proving beyond a reasonable doubt that it is unconstitutional. *Williams*, ¶ 23. The severability of an unconstitutional provision from a statute is a matter of statutory interpretation, which we review for correctness. *Williams*, ¶ 23.

Contempt

In reviewing a contempt appeal, this Court’s standard of review is whether substantial evidence supports the judgment of contempt. *State ex rel. O’Connor v. Dist. Ct.*, 245 Mont. 88, 97, 799 P.2d 1056, 1062 (1990) (citation omitted). In civil contempt proceedings, the type, character, and extent of punishment rests in the court’s discretion as measured by the showing made. *O’Connor*, 245 Mont. at 97, 799 P.2d at 1062.

We review a judgment of contempt to determine whether there is substantial evidence to support it. *In re Marriage of Ramstad*, 2003 MT 39N, ¶ 8, 315 Mont. 538, 66 P.3d 324 (citing *Morton v. Lanier*, 2002 MT 214, ¶ 27, 311 Mont. 301, 55 P.3d 380.) On reviewing a contempt citation by writ of certiorari, the Supreme Court is limited to the following considerations: whether the lower court had jurisdiction to issue the order and secondly, whether there is evidence supporting the same. *State ex rel., Foss v. District Court*, 216 Mont. 327, 331, 701 P.2d 342, 345 (1985).

The Montana Supreme Court reviews a contempt order to “determine whether substantial evidence supports the judgment of contempt, and whether the district court had jurisdiction to issue the order.” *Malee v. Dist. Court for the Second Judicial Dist.*, 275 Mont. 72, 75, 911 P.2d 831, 832 (1996).

There is no appeal from a contempt order, and the exclusive method of review in civil proceedings, apart from exceptions listed in M. R. App. P. 6(3)(j), is by application for writ of certiorari, also known as a writ of review. Section 3-1-523, MCA. This Court reviews contempt orders to first determine whether the court acted within its jurisdiction and second whether there is evidence to support the finding of contempt. *Animal Found. of Great Falls v. Mont. Eighth*

Judicial Dist. Court, 2011 MT 289, ¶ 16, 362 Mont. 485, 265 P.3d 659; *Jones v. 19th Jud. Dist. Ct.*, 2001 MT 276, ¶ 16, 307 Mont. 305, 37 P.3d 682; *Kauffman v. 21st Jud. Dist. Ct.*, 1998 MT 239, ¶ 16, 291 Mont. 122, 966 P.2d 715.

Contempt: Inherent Powers

When a trial court uses its inherent powers to issue pre-trial sanctions against “willful or reckless conduct, especially when combined with frivolousness, harassment, or improper purpose,” the Montana Supreme Court reviews these rulings for an abuse of discretion. *Boushie v. Windsor*, 2014 MT 153, ¶¶ 8, 19, 21, 375 Mont. 301, 328 P.3d 631.

Continuances

We review a district court’s decision to grant or deny a motion for a continuance for abuse of discretion. *In re Marriage of Eslick*, 2013 MT 53, ¶ 10, 369 Mont. 187, 304 P.3d 372 (citations omitted). Any motion for a continuance is within the sound discretion of the district court, and we will not overrule a district court’s decision to deny a request for a continuance unless there is an affirmative showing that he or she has suffered prejudice. *Eslick*, ¶ 10 (citations omitted).

Counterclaims

A ruling that a claim is barred as a compulsory counterclaim is a conclusion of law and is reviewed for correctness. *Peters v. State*, 285 Mont. 345, 349–53, 948 P.2d 250 (1997).

A ruling that a counterclaim fails to state a claim is a conclusion of law which is reviewed for correctness. *Bar Ok Ranch Co. v. Ehlert*, 2002 MT 12, ¶ 31, 308 Mont. 140, 40 P.3d 378.

A district court’s denial of a motion to amend a counterclaim is reviewed for abuse of discretion. *First Sec. Bank v. Ranch Recovery, L.L.C.*, 1999 MT 43, ¶ 23–24, 293 Mont. 363, 976 P.2d 956; see also *Bar Ok Ranch Co. v. Ehlert*, 2002 MT 12, ¶ 30, 308 Mont. 140, 40 P.3d 378.

It is within the trial court’s discretion to refuse to allow a party to assert an omitted counterclaim. *Edgewater Townhouse Homeowners Ass’n v. Holtman*, 256 Mont. 182, 187, 845 P.2d 1224, 1227 (1993). We review these decisions under an abuse of discretion standard, although the rule is “generally applied liberally.” *Edgewater*, 256 Mon. at 187, 845 P.2d at 1227 (internal citation omitted).

The Montana Supreme Court reviews a district court’s ruling on a motion for summary judgment on a counterclaim de novo, using the same M. R. Civ. P. 56 (Rule 56) criteria used by the district court. *Stockman Bank of Mont. v. Potts*, 2002 MT 178, ¶ 3, 311 Mont. 12, 52 P.3d 920); *Chapman v. Maxwell*, 2014 MT 35, ¶ 7, 374 Mont. 12, 14, 322 P.3d 1029, 1031; see also *SVKV, L.L.C. v. Harding*, 2006 MT 297, ¶ 1, 334 Mont. 395, 396, 148 P.3d 584, 585.

It is within the trial court's discretion to deny a motion to dismiss a counterclaim. *Lohmier v. Mont. Eighteenth Judicial Dist.*, 2007 Mont. LEXIS 197, 4. We will exercise supervisory control to review these decisions only if "a mistake of law has been established which, if left uncorrected, would cause a significant injustice for which there is no adequate remedy of appeal." *Lohmier*, 2007 Mont. LEXIS at 4 (internal citation omitted).

Declaratory Relief

As a general rule, this Court will not disturb a district court's determination that declaratory relief is not necessary or proper unless the district court abused its discretion. *Donaldson v. State*, 2012 MT 288, ¶ 7, 367 Mont. 228, 292 P.3d 364 (citations omitted). We review the court's interpretations of law to determine whether they are correct. *Donaldson*, ¶ 7 (citation omitted).

Discovery

We review a district court's rulings on discovery matters for an abuse of discretion. *Draggin' Y Cattle Co. v. Addink*, 2013 MT 319, ¶ 17, 372 Mont. 334, 312 P.3d 451 (citation omitted).

Discovery: [Sanctions](#)

A trial court has authority to impose discovery sanctions pursuant to Mont. R. Civ. P. 37. The Montana Supreme Court reviews sanctions imposed pursuant to Mont. R. Civ. P. 37 for an abuse of discretion. *Maloney v. Home & Inv. Ctr., Inc.*, 2000 MT 34, ¶ 27, 298 Mont. 213, 994 P.2d 1124. See also *Kraft v. High Country Motors, Inc.*, 2012 MT 83, ¶ 23, 364 Mont. 465, 276 P.3d 908.

The Court's concern with crowded dockets and efficient judicial administration requires "judicial intolerance of discovery abuses". *McKenzie v. Scheeler*, 285 Mont. 500, 506, 949 P.2d 1168, 1171 (1997) (citing *Smith v. Butte-Silver Bow Cnty.*, 276 Mont. 329, 332, 916 P.2d 91, 92-93 (1996)). For this reason, we regard the decision to impose sanctions for failure to comply with discovery procedures favorably. *McKenzie*, 285 Mont. 500 at 506, 949 P.2d at 1172 (citing *Huffine v. Boyland*, 239 Mont. 515, 517, 782 P.2d 77, 78 (1989)).

We generally defer to the trial court's judgment on the decision to impose sanctions for discovery violations because "the trial court is in the best position to know whether parties are disregarding the rights of opposing parties in the course of litigation and which sanctions for such conduct are most appropriate." 285 Mont. at 506, 949 P.2d at 1172 (citing *Smith*, 276 Mont. at 332, 916 P.2d at 93). See also *Linn v. Whitaker*, 2007 MT 46, ¶ 13, 336 Mont. 131, 152 P.3d 1282.

Discovery: Protective Orders

The standard of review concerning a district court's ruling on a discovery matter, including the grant or denial of a motion for a protective order, is whether the court abused its discretion. See e.g. *In re S.C.*, 2005 MT 241, ¶¶ 16, 18, 328 Mont. 476, 121 P.3d 552.

Dismissal

Dismissal for Failure to Comply with the Montana Rules of Civil Procedure and failure to comply with an order of the court:

Our standard of review in discretionary trial court rulings is whether the court abused its discretion. We encourage the cautious exercise of that discretion in involuntary dismissal actions, but will reverse the district court only if the court has abused its discretion in dismissing the action. A district court has discretion to dismiss the entire action and is not bound to dismiss only those claims which are related to the court order with which the plaintiff failed to comply. *Nystrom v. Melcher*, 262 Mont. 151, 157, 864 P.2d 754, 758 (1993) (citations omitted).

Dismissal as a Sanction for Discovery Abuses:

We review a district court's imposition of discovery sanctions for an abuse of discretion. *Xin Xu v. McLaughlin Research Inst. For Biomedical Sci., Inc.*, 2005 MT 209, ¶¶ 17, 31, 328 Mont. 232, 119 P.3d 100.

Dismissal: Involuntary Dismissal Under M. R. Civ. P. 41(b):

It is undisputed that it is within the sound discretion of a district court to dismiss an action under M. R. Civ. P. 41(b), and we will only reverse a district court if it abused its discretion in dismissing the action. *Chisholm v. First Nat'l Bank*, 235 Mont. 219, 225, 766 P.2d 868, 872 (1988) (citations omitted).

Dismissal: Motion to Dismiss in a Criminal Case:

A district court's grant or denial of a motion to dismiss in a criminal case is a question of law which we review de novo. *State v. Rensvold*, 2006 MT 146, ¶ 14, 332 Mont. 392, 139 P.3d 154 (citation omitted).

Disqualifying Counsel

The grant or denial of a lawyer's motion to withdraw is within the discretion of the district court. We review such discretionary matters to determine whether the court abused its discretion. *State v. Jones*, 278 Mont. 121, 125, 923 P.2d 560, 562 (1996).

Disqualifying the Judge ([Recusal](#))

The well-established common law rule is that recusal is required when a judge has a direct, personal, substantial, or pecuniary interest in a case. “In Montana, such matters are addressed and governed by the 2008 Montana Code of Judicial Conduct. And ‘[b]ecause the codes of judicial conduct provide more protection than due process requires, most disputes over disqualification will be resolved without resort to the Constitution. Application of the constitutional standard . . . will thus be confined to rare instances.’” Montana’s Code of Judicial Conduct Rule 2.12 requires that a judge disqualify himself “in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.” A judge shall also disqualify himself if the judge “served as a lawyer in the matter in controversy.”

Bullman v. State, 2014 MT 78, ¶ 14, 374 Mont. 323, 321 P.3d 121 (citations omitted).

Equitable Estoppel and Equitable Tolling

Equitable estoppel is not favored and will be sustained only upon clear and convincing evidence. *Bruner v. Yellowstone Co.*, 272 Mont. 261, 268, 900 P.2d 901, 905 (1995) (citation omitted).

We review a district court’s conclusion that a party failed to meet the requirements of equitable estoppel to determine if it is correct. See *Bruner v. Yellowstone Co.*, 272 Mont. 261, 268-69, 900 P.2d 901, 906 (1995).

We review de novo whether the factual circumstances warrant the grant of an equitable exception to a statutory filing deadline. *Brilz v. Metro. Gen. Ins. Co.*, 2012 MT 184, ¶ 13, 366 Mont. 78, 285 P.3d 494 (citation omitted).

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.

Exhaustion

We review a district court's grant of a motion for summary judgment based on a party's failure to exhaust administrative remedies de novo. Our de novo standard of review of a summary judgment is the same standard used by a district court considering a motion for summary judgment pursuant to M. R. Civ. P. 56(c). *Offerdahl v. State*, 2002 MT 5, ¶¶ 11–12, 308 Mont. 94, 43 P.3d 275.

We review a district court's dismissal of a complaint for lack of subject matter jurisdiction based on failure to exhaust administrative remedies for correctness. *Schuster v. N.W. Energy Co.*, 2013 MT 364, ¶ 6, 373 Mont. 54, 314 P.3d 650 (citing *Mt. Water. Co. v. Mont. Dep't of Pub. Serv. Reg.*, 2005 MT 84, ¶¶ 8, 18, 326 Mont. 416, 110 P.3d 20 (citation omitted) (“[T]his Court reviews the conclusions upon which [the dismissal of a complaint for declaratory relief] is based, which in this case is the District Court's determination that it lacked subject matter jurisdiction, to determine whether the court's interpretation of the law is correct.”)).

Failure to State a Claim

We review de novo a district court's ruling on a motion to dismiss pursuant to M. R. Civ. P. 12(b)(6). *Western Sec. Bank v. Eide Bailly LLP*, 2010 MT 291, ¶ 18, 359 Mont. 34, 249 P.3d 35 (citation omitted).

A district court's determination that a complaint has failed to state a claim for which relief can be granted is a conclusion of law which we review for correctness. *Sinclair v. Burlington Northern & Sante Fe Ry.*, 2008 MT 424, ¶ 25, 347 Mont. 395, 200 P.3d 46 (citation omitted).

We construe the complaint in the light most favorable to the plaintiffs when reviewing an order dismissing a complaint under M. R. Civ. P. 12(b)(6). A court should not dismiss a complaint for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. *Jones v. Mont. Univ. Sys.*, 2007 MT 82, ¶ 15, 337 Mont. 1, 155 P.3d 1247 (citations omitted).

A district court may dismiss a petition for postconviction relief as a matter of law for failure to state a claim pursuant to § 46-21-201(1)(a), MCA, and we review a court's conclusions of law for correctness. *Herman v. State*, 2006 MT 7, ¶ 13, 330 Mont. 267, 127 P.3d 422.

Forum Non Conveniens / Inconvenient Forum

Section 25-2-201(3), MCA, which governs motions to change venue within Montana on the ground of convenience of witnesses and the ends of justice, reflects the principles of forum non conveniens. We have held that § 25-2-201(3), MCA, grants the district court wide discretion, and we will not disturb the court's decision absent a clear abuse of that discretion. Because a

forum non conveniens analysis turns on similar considerations, we review a district court's determination on a motion to dismiss under forum non conveniens for an abuse of discretion. *Harrington v. Energy West, Inc.*, 2017 MT 141, ¶ 11, 387 Mont 497, 396 P.3d 114.

Forum Selection Clauses

A district court's conclusion that it lacks jurisdiction due to a forum selection clause is a conclusion of law that the Montana Supreme Court reviews for correctness. *Milanovich v. Schnibben*, 2007 MT 128, ¶¶ 7–8, 337 Mont. 334, 160 P.3d 562.

Frivolousness

A district court's finding that an action was frivolous or in bad faith will not be disturbed where the district court is acting as the trier of fact and there is substantial evidence to support the decision of the district court. *Dept. of Revenue v. New Life Fellowship*, 217 Mont. 192, 194, 703 P.2d 860, 861 (1985). A claim is frivolous if it is outside the bounds of legitimate argument on a substantial issue on which there is a bona fide difference of opinion. *Armstrong v. Dept. of Justice*, 250 Mont. 468, 469-70, 820 P.2d 1273, 1274 (1991). A district court's conclusion of law that a filing violates M. R. Civ. P. 11 is reviewed de novo. *Park County Concerned Citizens v. Depuy*, 2008 MT 246, ¶ 15, 344 Mont. 504, 190 P.3d 293. A district court's imposition of sanctions for frivolousness under M. R. Civ. P. 11 is reviewed for abuse of discretion. *Morin v. State Farm Mut. Auto. Ins. Co.*, 2013 MT 146, ¶ 33, 370 Mont. 305, 302 P.3d 96.

Immunities

Whether a party is entitled to statutory or common law immunity is a conclusion of law reviewed for correctness. *Dorwart v. Caraway*, 2002 MT 240, ¶ 29, 312 Mont. 1, 58 P.3d 128. Common law doctrines of immunity are creatures of court decision and subject to change by the courts. *Miller v. Fallon County*, 222 Mont. 214, 217, 721 P.2d 342, 344 (1986).

Impleader

Impleader is governed by the Montana Rules of Civil Procedure. *State Farm Mut. Auto. Ins. Co. v. Solem*, 191 Mont. 156, 158, 622 P.2d 682, 683 (1981). Our interpretation of the Montana Rules of Civil Procedure is subject to the same canons of construction as our interpretation of a statute. *Rich v. State Farm Mut. Auto. Ins. Co.*, 2003 MT 51, ¶ 11, 314 Mont. 338, 66 P.3d 274.

Injunctions

This Court will not disturb a district court's decision to grant or deny a preliminary injunction unless a manifest abuse of discretion has been shown. *Doe v. Cmty. Med. Ctr., Inc.*, 2009 MT 395, ¶ 14, 353 Mont. 378, 221 P.3d 651. Where the district court issues an injunction based on conclusions of law, those conclusions are reviewed de novo for correctness. *Doe*, ¶ 14. A court

has the inherent power to modify or vacate an injunction as equity demands, or when the law upon which the injunction was based has changed by subsequent judicial interpretation. *Jefferson v. Big Horn County*, 2000 MT 163, ¶ 17, 300 Mont. 284, 4 P.3d 26.

Interlocutory Appeals

The Montana Supreme Court does not favor appellate review of an interlocutory order by a district court because due appeal is normally an adequate remedy. *State ex rel. First Bank Sys. v. Dist. Court*, 240 Mont. 77, 84, 782 P.2d 1260, 1264 (1989) (internal citation omitted). The court accepts supervisory control and reviews the interlocutory order when “due appeal is an inadequate remedy” and supervisory control will “prevent extended and needless litigation.” *First Bank Sys.*, 240 Mont. at 84, 782 P.2d at 1264. We do a “case by case analysis” and accept review in appropriate cases. *First Bank Sys.*, 240 Mont. at 84–85, 782 P.2d at 1264.

When reviewing an interlocutory order on a decision to certify a class, we “afford trial courts the broadest discretion.” *Jacobsen v. Allstate Ins. Co.*, 2013 MT 244, ¶ 25, 371 Mont. 393, 310 P.3d 452 (citing *Sieglock v. Burlington N. & Santa Fe Ry. Co.*, 2003 MT 355, ¶ 8, 319 Mont. 8, 81 P.3d 495). The trial court is “in the best position to consider the most fair and efficient procedure for conducting any given litigation.” *Chipman v. Nw. Healthcare Corp.*, 2012 MT 242, ¶ 17, 366 Mont. 450, 288 P.3d 193. Therefore, a district court ruling on class certification will stand, absent an abuse of discretion. *Jacobsen*, ¶ 25.

When reviewing an interlocutory order granting qualified immunity and thereby effectively dismissing the case, we review the decision de novo. *Boreen v. Christensen*, 280 Mont. 378, 382, 930 P.2d 67, 69 (1996) (internal citations omitted).

When reviewing an interlocutory order on a motion for change of venue, the standard of review depends on the justification for the transfer. *Burlington N. & Santa Fe Ry. Co. v. State ex rel. Dep’t of Env’tl. Quality*, 2010 MT 46, ¶ 7, 355 Mont. 296, 228 P.3d 1115. If the district court grants the transfer because the petitioner filed the complaint in an improper county, that is a conclusion of law which is reviewed de novo. *Burlington*, ¶ 7. If the district court grants the transfer for the “convenience of the witnesses and ends of justice,” that is a discretionary ruling which is reviewed for abuse of discretion. *Burlington*, ¶ 7. Transfer of venue for convenience of witnesses and ends of justice is not subject to interlocutory appeal. *Burlington*, ¶ 12.

Intervention

We review a district court’s order granting or denying a motion to intervene for abuse of discretion. *Connell v. Dept. of Soc. & Rehab. Servs.*, 2003 MT 361, ¶ 13, 319 Mont. 69, 81 P.3d 1279. Under M. R. Civ. P. 24, intervention may be either as a matter of right or by permission of the court. *In re C.C.L.B.*, 2001 MT 66, ¶ 14, 305 Mont. 22, 22 P.3d 646. A party seeking intervention as a matter of right must make a prima facie showing of a direct, substantial, legally protectable interest in the proceedings. *In re C.C.L.B.*, ¶ 16. A district court’s determination regarding whether a party has made this showing is a conclusion of law which we review for correctness. *In re C.C.L.B.*, ¶ 16. When intervention is sought by permission of the court,

timeliness is a threshold issue. *In re C.C.L.B.*, ¶ 22. The district court's determination of timeliness is reviewed for abuse of discretion. *In re C.C.L.B.*, ¶ 23.

Involuntary Dismissal

The district court's decision regarding involuntary dismissal will not be disturbed unless the court clearly abuses its discretion. *Doug Johns Real Estate v. Banta*, 246 Mont. 295, 298, 805 P.2d 1301, 1303 (1990). Because an involuntary dismissal is a severe result, courts should refrain from dismissing a claim unless there is no other adequate remedy available and the facts call for such a result. *Doug Johns Real Estate*, 246 Mont. at 298, 805 P.2d at 1303.

Issue Preclusion

The application of issue preclusion is a conclusion of law reviewed for correctness. *Brilz v. Metro. Gen. Ins. Co.*, 2012 MT 184, ¶ 13, 366 Mont. 78, 285 P.3d 494.

Joinder/Indispensable Party

The district court's ruling on a motion to dismiss due to the absence of an indispensable party is reviewed for an abuse of discretion. *Blaze Constr. v. Glacier Elec. Coop.*, 280 Mont. 7, 10, 928 P.2d 224, 225 (1996).

Judgment on the Pleadings

We review for correctness a district court's grant of judgment on the pleadings. *N. Cheyenne Tribe v. Roman Catholic Church*, 2013 MT 24, ¶ 21, 368 Mont. 330, 296 P.3d 450; *Firelight Meadows, LLC v. 3 Rivers Telephone Coop.*, 2008 MT 202, ¶ 12, 344 Mont. 117, 186 P.3d 869.

Judicial Estoppel

The application of judicial estoppel is a conclusion of law reviewed for correctness. *Vogel v. Intercontinental Truck Body, Inc.*, 2006 MT 131, ¶ 16, 332 Mont. 322, 137 P.3d 573; *In re Raymond W. George Trust*, 1999 MT 223, ¶ 14, 296 Mont. 56, 986 P.2d 427.

Judicial Notice

A district court's decision to take judicial notice of facts and law is reviewed for an abuse of discretion. *In re Marriage of Steab*, 2013 MT 124, ¶ 11, 370 Mont. 125, 300 P.3d 1168.

Jurisdiction

A court's determination as to its jurisdiction is a conclusion of law, which is reviewed de novo. *Bunch v. Lancair Intl., Inc.*, 2009 MT 29, ¶ 15, 349 Mont. 144, 202 P.3d 784; *Stanley v. Lemire*, 2006 MT 304, ¶ 52, 334 Mont. 489, 148 P.3d 643. A court may address the question of its jurisdiction sua sponte. *Stanley*, ¶ 32.

Jury Demand

Whether a party has waived the right to a jury trial is a question of law, which we review de novo. *Balyeat Law, P.C. v. Harrison*, 1999 MT 144, ¶ 18, 295 Mont. 13, 983 P.2d 902. When a demand for jury trial is untimely, the district court's decision to grant or deny the demand is reviewed for abuse of discretion. *Sebena v. AAA*, 280 Mont. 305, 309, 930 P.2d 51, 53 (1996).

Laches

Laches is an equitable doctrine. *Wicklund v. Sundheim*, 2016 MT 62, ¶ 9, 383 Mont. 1, 367 P.3d 403 (citing *Cole v. State ex rel. Brown*, 2002 MT 32, ¶ 24, 308 Mont. 265, 42 P.3d 760). When a district court exercises its equitable powers, we review its determinations of fact under a clearly erroneous standard and its interpretations of law for correctness. *Wicklund*, ¶ 9 (citing *LeMond v. Yellowstone Dev., LLC*, 2014 MT 181A, ¶22, 375 Mont. 402, 334 P.3d 366).

"The question of laches is addressed to the sound legal discretion of the chancellor, and his decision will not be disturbed on appeal unless it is so clearly wrong as to amount to an abuse of discretion." *Williard v. Campbell Oil Co.*, 77 Mont. 30, 44, 248 P. 219, 224 (1926).

Lack of Prosecution

The action of a trial court on a motion for dismissal for lack of prosecution is addressed to the trial court's sound discretion. It is presumed that the trial court acted correctly, and its decision will not be overturned absent an abuse of that discretion. *Peters v. Newkirk*, 194 Mont. 223, 226, 633 P.2d 1210, 1212 (1981) (citations omitted).

Law of the Case

Under the doctrine of the law of the case, issues addressed by this Court in a previous appeal in the same case are binding on the trial court and the parties in subsequent proceedings on remand. *In re Marriage of Pfeifer*, 1998 MT 228, ¶ 22, 291 Mont. 23, 965 P.2d 895. In other words, once we have rendered a decision on a particular issue between the same parties in a case, that issue cannot be relitigated in a subsequent appeal. *Pfeifer*, ¶ 22. A district court exceeds its jurisdiction on remand by ignoring the law of the case. *Pfeifer*, ¶ 9. The law of the case doctrine applies only to principles or rules of law necessary to our decision in the previous appeal. *Pfeifer*, ¶ 22. We review a district court's conclusions of law to determine whether they are correct. *Pfeifer*, ¶ 9.

Leave to Amend

M. R. Civ. P. 15(a) of the Montana Rules of Civil Procedure states that leave to amend should be freely given by the district courts. *Griffin v. Moseley*, 2010 MT 132, ¶ 22, 356 Mont. 393, 234 P.3d 869 (citing *Upky v. Marshall Mtn., LLC*, 2008 MT 90, ¶ 18, 342 Mont. 273, 180 P.3d 651). While amendments are not permitted in every circumstance, they may be allowed when they would not cause undue prejudice to the opposing party. *Griffin*, ¶ 22 (citing *Upky*, ¶ 18). We generally review a district court’s decision denying leave to amend for an abuse of discretion. *Griffin*, ¶ 22 (citing *Deschamps v. Treasure State Trailer Court, Ltd.*, 2010 MT 74, ¶ 18, 356 Mont. 1, 230 P.3d 800). “Although leave to amend is properly denied when the amendment is futile or legally insufficient to support the requested relief, it is an abuse of discretion to deny leave to amend 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.” *Griffin*, ¶ 22 (citing *Deschamps*, ¶ 18). 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*, ¶ 22 (citing *Deschamps*, ¶ 19).

Mandamus

The issuance of a writ of mandamus is a legal conclusion this Court reviews de novo. *Jefferson Co. v. Dept. of Env’tl. Quality*, 2011 MT 265, ¶ 16, 362 Mont. 311, 264 P.3d 715 (citation omitted). The writ is available only when the applicant is entitled to the performance of a clear legal duty against whom the writ is sought and there is no speedy and adequate remedy in the ordinary course of law. *Jefferson Co.*, ¶ 16 (citation omitted).

Mootness

Mootness is a question of law we review de novo. *Alexander v. Bozeman Motors, Inc.*, 2012 MT 301, ¶ 20, 367 Mont. 401, 291 P.3d 1120 (citation omitted).

Personal Jurisdiction

A court’s determination as to its jurisdiction is a conclusion of law, which is reviewed de novo to determine whether the court’s interpretation of the law is correct. *Bunch v. Lancair Int’l, Inc.*, 2009 MT 29, ¶ 15, 349 Mont. 144, 202 P.3d 784 (citation omitted).

Preemption

We review a district court’s legal conclusion de novo, seeking to determine whether the court correctly interpreted the law. *In re Strong*, 2000 MT 178, ¶ 11, 300 Mont. 331, 8 P.3d 763 (citation omitted). A finding of federal preemption will be sustained in the area of domestic

relations only where “Congress has positively required by direct enactment that state law be preempted.” *Strong*, ¶ 11 (citation and internal quotation marks omitted).

Preliminary Injunctions

This Court will not disturb a district court’s decision to grant or deny a preliminary injunction unless a manifest abuse of discretion has been shown. *Doe v. Cmty. Med. Ctr., Inc.*, 2009 MT 395, ¶ 14, 353 Mont. 378, 221 P.3d 651. Where the district court issues an injunction based on conclusions of law, those conclusions are reviewed de novo for correctness. *Doe*, ¶ 14. A court has the inherent power to modify or vacate an injunction as equity demands, or when the law upon which the injunction was based has changed by subsequent judicial interpretation. *Jefferson v. Big Horn County*, 2000 MT 163, ¶ 17, 300 Mont. 284, 4 P.3d 26.

Pretrial Conferences

District courts have broad discretion over the admissibility of evidence and control of pretrial and trial proceedings. M. R. Civ. P. 16(a) authorizes a court, in its discretion, to direct attorneys and unrepresented parties to appear for pretrial conferences. *Stevenson v. Felco Indus.*, 2009 MT 299, ¶ 32, 352 Mont. 303, 216 P.3d 763.

A district court has broad discretion in sanctioning pretrial conduct, and we generally defer to its decisions in such matters. *Vermeer of Wash., Inc. v. Jones*, 2004 MT 77, ¶ 7, 320 Mont. 435, 87 P.3d 516. We review a trial court’s imposition of sanctions for abuse of discretion. *Vermeer*, ¶ 7 (citations omitted).

Pretrial Order

We review a ruling on whether offered evidence is within the scope of the issues presented in the pretrial order for abuse of discretion. See *Lopez v. Josephson*, 2001 MT 133, ¶ 14, 305 Mont. 446, 30 P.3d 326; see also *Point Serv. Corp. v. Myers*, 2005 MT 322, ¶ 18, 329 Mont. 502, 506, 125 P.3d 1107, 1111. A pretrial order supersedes the pleadings. *Siegle v. Helmuth*, 2009 MT 447N, ¶ 1.

We review a district court’s discretionary rulings, such as denying a motion to amend the pretrial order, for an abuse of discretion. *Hobble-Diamond Cattle Co. v. Triangle Irrigation Co.*, 249 Mont. 322, 323, 815 P.2d 1153, 1154 (1991) (“The sole issue on appeal is whether the [d]istrict [c]ourt abused its discretion in denying Hobble-Diamond’s motion to amend . . . the pretrial order . . .”).

It is well established that courts may impose sanctions for a party’s failure to obey a pretrial order. In cases involving a failure to comply with a pretrial order, pursuant to Rule 16(f), M.R.Civ.P., we have stated that the proper standard of review is whether the District Court abused its discretion. See *Watson v. West*, 2009 MT 342, ¶ 17, 353 Mont. 120, 218 P.3d 1227.

Pretrial orders should be liberally construed, and district court decisions in this context are reviewed for abuse of discretion. See *Hallenberg v. Gen. Mills Operations, Inc.*, 2006 MT 191, ¶ 1, 333 Mont. 143, 144, 141 P.3d 1216, 1218. *Hjartarson v. Hjartarson*, 2006 MT 273, ¶ 33, 334 Mont. 212, 220, 147 P.3d 164, 170-71 (“The pretrial order should be construed liberally, but the theory or issue must be included, at least implicitly, in the pretrial order.”)

Protective Orders

The standard of review concerning a district court’s ruling on a discovery matter, including the grant or denial of a motion for a protective order, is whether the court abused its discretion. See e.g. *In re S.C.*, 2005 MT 241, ¶¶ 16, 18, 328 Mont. 476, 121 P.3d 552.

Qualified Immunity

We review a district court’s determination of qualified immunity de novo. *Losleben v. Oppedahl*, 2004 MT 5, ¶ 13, 319 Mont. 269, 83 P.3d 1271 (citation omitted).

Recusal

The well-established common law rule is that recusal is required when a judge has a direct, personal, substantial, or pecuniary interest in a case. “In Montana, such matters are addressed and governed by the 2008 Montana Code of Judicial Conduct. And ‘[b]ecause the codes of judicial conduct provide more protection than due process requires, most disputes over disqualification will be resolved without resort to the Constitution. Application of the constitutional standard . . . will thus be confined to rare instances.’” Montana’s Code of Judicial Conduct Rule 2.12 requires that a judge disqualify himself “in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.” A judge shall also disqualify himself if the judge “served as a lawyer in the matter in controversy.” *Bullman v. State*, 2014 MT 78, ¶ 14, 374 Mont. 323, 321 P.3d 121 (2014) (citations omitted).

Reinstatement of Driver’s License

The denial of a petition to reinstate a driver’s license presents a mixed question of law and fact. *Widdicombe v. State ex rel. Lafond*, 2004 MT 49, ¶ 7, 320 Mont. 133, 85 P.3d 1271 (internal citation omitted). We review a trial court’s findings of fact to determine whether they are clearly erroneous and conduct plenary review of a district court’s conclusions of law to determine whether they are correct. *Kummerfeldt v. State*, 2015 MT 109, ¶ 8, 378 Mont. 522, 347 P.3d 1233 (internal citations omitted). See also *Brown v. State*, 2009 MT 64, ¶ 8, 349 Mont. 408, 203 P.3d 842. Because the suspension of a driver’s license is presumed to be correct, the petitioner bears the burden of proving that the State’s action was improper. *Brown*, ¶ 8.

Res Judicata ([claim preclusion](#))

We review de novo a district court’s interpretation and application of a statute and a district court’s conclusions of law. *Brilz v. Metro. Gen. Ins. Co.*, 2012 MT 184, ¶ 13, 366 Mont. 78, 285 P.3d 494 (citations omitted). This includes a district court’s application of claim preclusion or issue preclusion, which is an issue of law that we review for correctness. *Brilz*, ¶ 13 (citations omitted).

Ripeness

Issues of justiciability—such as standing, mootness, ripeness, and political question—are questions of law, for which appellate review is de novo. *Reichert v. State*, 2012 MT 111, ¶ 20, 365 Mont. 92, 278 P.3d 455.

Sanctions

The Montana Supreme Court reviews a trial court’s decision to impose sanctions for an abuse of discretion. *Stafford v. Fockaert*, 2016 MT 28, ¶ 15, 382 Mont. 178, 366 P.3d 673 (citing *Watson v. West*, 2009 MT 342, ¶ 17, 353 Mont. 120, 218 P.3d 1227). We also review “the sanction imposed for an abuse of discretion.” *Watson*, ¶ 17 (citing *McKenzie v. Scheeler*, 285 Mont. 500, 511, 949 P.2d 1168, 1174 (1997)). See also *Hobble-Diamond Cattle Co. v. Triangle Irrigation Co.*, 272 Mont. 37, 40, 899 P.2d 531, 534 (1995) (reviewing for abuse of discretion trial court sanctions imposed for failure to prosecute).

Sanctions: [Contempt](#)

[Sanctions: Contempt: Inherent Powers](#)

Sanctions: [Discovery Sanctions](#)

Sanctions: Rule 11

The Montana Supreme Court reviews a trial court’s decision to impose sanctions for violations of Mont. R. Civ. P. 11 for an abuse of discretion. *Davenport v. Odlin*, 2014 MT 109, ¶ 9, 374 Mont. 503, 327 P.3d 478.

We review de novo the trial court’s “determination that the pleading, motion or other paper violates Rule 11.” *Davenport*, ¶ 9 (quoting *Byrum v. Andren*, 2007 MT 107, ¶ 19, 337 Mont. 167, 159 P.3d 1062).

We review a trial court’s “findings of fact underlying [a] conclusion that a pleading violates Rule 11] to determine whether such findings are clearly erroneous.” *Davenport*, ¶ 9 (quoting *Byrum*, ¶ 19).

We review a trial court’s “choice of sanction for [an] abuse of discretion.” *Davenport*, ¶ 9 (quoting *Byrum*, ¶ 19).

Service of Process

This Court reviews a district court’s conclusions of law regarding sufficiency of service to determine whether they are correct. The Court reviews related findings of fact to determine whether they are clearly erroneous. *Cascade Dev., Inc. v. City of Bozeman*, 2012 MT 79, ¶ 8, 364 Mont. 442, 276 P.3d 862.

Severance

We review the denial of a motion to sever counts into separate trials for abuse of discretion. *State v. Freshment*, 2002 MT 61, ¶ 25, 309 Mont. 154, 43 P.3d 968 (citation omitted).

Sovereign Immunity

A court’s determination of a motion to dismiss based on a claim of sovereign immunity is a legal question over which our review is plenary. *Thompson v. Crow Tribe of Indians*, 1998 MT 161, ¶ 10, 289 Mont. 358, 962 P.2d 577.

Special Masters

Mont. R. Civ. P. 53(e)(2) allows a district court to appoint a master in complicated cases to examine the matter and make a report thereupon. In non-jury actions, the trial court shall accept the master’s findings of fact unless clearly erroneous. The burden of challenging the master’s findings is on the party objecting; the related burden of establishing that a finding is clearly erroneous also is on the party objecting. We apply the same standard of review to an adopted master’s report that we do to any other district court order. We review the findings of a court to determine if the court’s findings are clearly erroneous, and we review a district court’s conclusions of law to determine whether those conclusions are correct. *Maloney v. Home & Inv. Ctr., Inc.*, 2000 MT 34, ¶ 28, 298 Mont. 213, 994 P.2d 1124 (citations omitted).

Standing

The determination of a party’s standing to maintain an action is a question of law, as is the interpretation of a statute. We review such questions de novo. *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 28, 360 Mont. 207, 255 P.3d 80 (citations omitted).

Stare Decisis

Stare Decisis is a fundamental doctrine which reflects our concerns for stability, predictability and equal treatment. *State v. Fischl*, 94 Mont. 92, 20 P.2d 1057 (1933). Under this Court’s policy of stare decisis, we keep faith with precedent “unless it is demonstrably made to appear that” our precedent “manifestly is wrong.” *State ex rel. Perry v. Dist. Ct.*, 145 Mont. 287, 310, 400 P.2d 648, 660 (1965) (citation omitted); see also *Beach v. State*, 2015 MT 118, ¶ 29, 379 Mont. 74, 85, 348 P.3d 629, 637. The burden of this demonstration is on the party seeking to overturn the precedent. See *In re McCabe*, 168 Mont. 334, 337, 544 P.2d 825, 827 (1975) (noting the petitioner’s failure to “demonstrate any sufficient reason for this Court to overturn” its prior construction). *Beach*, ¶ 29.

Statute of Limitations

Statute of limitations is a question of law. We review for correctness the district court’s application of the statute of limitations. *Gulf Ins. Co. v. Clark*, 2001 MT 45, ¶ 13, 304 Mont. 264, 20 P.3d 780; see also *Johnson v. Dist. VII, Human Res. Dev. Council*, 2009 MT 86, ¶ 18, 349 Mont. 529, 533, 204 P.3d 714, 717; see also *Grant Creek Heights, Inc. v. Missoula Cnty.*, 2012 MT 177, ¶ 13, 366 Mont. 44, 47, 285 P.3d 1046, 1048.

Stay Orders

A stay order is not an appealable order. *Lamb v. Dist. Court of the Fourth Judicial Dist. of Mont.*, 2010 MT 141, ¶ 11, 356 Mont. 534, 234 P.3d 893. See also Mont. R. App. P. 6(3) (listing appealable orders in civil cases).

A litigant may request review of a trial court’s decision to grant or deny a stay order under Mont. R. App. P. 22. Under Rule 22, the Montana Supreme Court reviews a trial court’s decision to grant or deny a stay of proceedings for an abuse of discretion. *City of Missoula v. Mountain Water Co., et al.*, No. DA 15-0375, Or. (Mont. Aug 18, 2015).

A litigant may also seek review of a trial court’s decision to grant or deny a stay order through a writ of supervisory control. *Lamb*, ¶ 11. When reviewing a trial court’s decision to grant or deny a stay order under a writ of supervisory control, our standard of review is for an abuse of discretion. *Lamb*, ¶ 14. To the extent that the decision to grant or deny the stay order is based upon a conclusion of law, however, our review is plenary. *Lamb*, ¶ 14.

Striking

The rulings of the trial court on motions to strike are not, as a rule, reversible for error. *Rosberg v. Montgomery Ward & Co.*, 110 Mont. 154, 169, 99 P.2d 979, 985 (1940).

Subject Matter Jurisdiction

We review de novo a district court's ruling on a motion to dismiss for lack of subject matter jurisdiction. *In re Estate of Big Spring*, 2011 MT 109, ¶ 20, 360 Mont. 370, 255 P.3d 121 (citation omitted). A district court must determine whether the complaint states facts that, if true, would vest the court with subject matter jurisdiction. *Big Spring*, ¶ 20 (citation omitted). This determination by a district court is a conclusion of law that we review for correctness. *Big Spring*, ¶ 20 (citation omitted).

Summary Judgment

We review district court summary judgment rulings de novo for conformance to the applicable standards specified in M. R. Civ. P. 56. *Dick Anderson Constr., Inc. v. Monroe Prop. Co.*, 2011 MT 138, ¶ 16, 361 Mont. 30, 255 P.3d 1257. Summary judgment is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. M. R. Civ. P. 56(c)(3). A genuine issue of material fact is a fact materially inconsistent with proof of an essential element of a claim or defense at issue. *Mt. W. Bank, N.A. v. Mine & Mill Hydraulics, Inc.*, 2003 MT 35, ¶ 28, 314 Mont. 248, 64 P.3d 1048. The party seeking summary judgment has the initial burden of showing a complete absence of any genuine issue of material fact on the Rule 56 record and that the movant is accordingly entitled to judgment as a matter of law. *Weber v. Interbel Tel. Coop.*, 2003 MT 320, ¶ 5, 318 Mont. 295, 80 P.3d 88. The Rule 56 factual record includes “the pleadings, the discovery and disclosure materials on file, and any [supporting] affidavits” submitted. M. R. Civ. P. 56(c)(3). The burden then shifts to the opposing party to either show the existence of a genuine issue of material fact precluding summary judgment or that the moving party is nonetheless not entitled to judgment as a matter of law. *Osterman v. Sears, Roebuck & Co.*, 2003 MT 327, ¶ 17, 318 Mont. 342, 80 P.3d 435 (citing *Bruner v. Yellowstone Cty.*, 272 Mont. 261, 264, 900 P.2d 901, 903 (1995)).

To meet the responsive Rule 56 burden of demonstrating that a genuine issue of material fact precludes summary judgment, the non-moving party must in proper form, and by more than mere denial, speculation, or pleading allegation, “set out specific facts” showing the existence of a genuine issue of material fact. M. R. Civ. P. 56(e)(2). See also *Grimsrud v. Hagel*, 2005 MT 194, ¶ 14, 328 Mont. 142, 119 P.3d 47; *Osterman*, ¶ 34; *Old Elk v. Healthy Mothers, Healthy Babies, Inc.*, 2003 MT 167, ¶¶ 15-16, 316 Mont. 320, 73 P.3d 795; *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262, 1266 (1997); *Mysse v. Martens*, 279 Mont. 253, 262, 926 P.2d 765, 770 (1996); *Eitel v. Ryan*, 231 Mont. 174, 178, 751 P.2d 682, 684 (1988). The court must view the Rule 56 factual record in the light most favorable to the non-moving party, with all reasonable inferences drawn in favor thereof. *Weber*, ¶ 5; *Gamble Robinson Co. v. Carousel Properties*, 212 Mont. 305, 312, 688 P.2d 282, 286-87 (1984). The court has no duty, however, to anticipate or speculate regarding contrary material facts. *Gamble*, 212 Mont. at 312, 688 P.2d at 287 (internal citations omitted). Whether a genuine issue of material fact exists or whether a party is entitled to judgment as a matter of law are conclusions of law reviewed de novo for correctness. *Ereth v. Cascade Cty.*, 2003 MT 328, ¶ 11, 318 Mont. 355, 81 P.3d 463. See also *Speer v. Mont. Dep't of Corrections*, 2020 MT 45, ¶ 17, 399 Mont. 67, 458 P.3d 1016 (applications and conclusions of law are subject to de novo review for correctness).

Summary Judgment: Related Decisions

We review for abuse of discretion a district court's ruling on a motion for additional discovery pursuant to M. R. Civ. P. 56(f). *Stanley v. Holms*, 1999 MT 41, ¶ 19, 293 Mont. 343, 975 P.2d 1242. A district court does not abuse its discretion in denying a Rule 56(f) motion where the party opposing the motion for summary judgment fails to establish how the proposed discovery could preclude summary judgment. *Stanley*, ¶ 19; see also *Richards v. Cnty. of Missoula*, 2009 MT 453, ¶ 33, 354 Mont. 334, 340, 223 P.3d 878, 882-83.

We review evidentiary rulings made in the context of a summary judgment proceeding de novo, in order to determine whether the evidentiary requirements for summary judgment have been satisfied. *PPL Mont., L.L.C. v. State*, 2010 MT 64, ¶ 85, 355 Mont. 402, 229 P.3d 421; see also *In re Estate of Harmon*, 2011 MT 84A, ¶ 14, 360 Mont. 150, 153.

We generally review an evidentiary ruling for an abuse of discretion. *Harris v. Hanson*, 2009 MT 13, ¶ 18, 349 Mont. 29, 201 P.3d 151. Rulings on the admissibility of evidence sometimes implicate summary judgment. To the extent that the expert testimony ruling is based purely on an interpretation of the evidentiary rules, however, we review that interpretation, like any other question of law, for correctness. *In re T.W.*, 2006 MT 153, ¶ 8, 332 Mont. 454, 139 P.3d 810. *McClue v. Safeco Ins. Co.*, 2015 MT 222, ¶ 14.

We review evidentiary rulings made in the context of a summary judgment proceeding de novo, and need not defer to the judgments and decision of the district court in order to determine whether evidentiary requirements for summary judgment have been satisfied. *Smith v. Farmers Union Mut. Ins. Co.*, 2011 MT 216, ¶ 15, 361 Mont. 516, 260 P.3d 163; *Harmon*, ¶ 14; *PPL Mont., L.L.C. v. State*, 2010 MT 64, ¶ 84, 355 Mont. 402, 229 P.3d 421, rev'd on other grounds in *PPL Mont., LLC v. Montana*, 565 U.S. 576, 132 S. Ct. 1215 (2010); *Boyne USA, Inc. v. Lone Moose Meadows, LLC*, 2010 MT 133, ¶ 11, 356 Mont. 408, 235 P.3d 1269.

Summons

An appellate court reviews a district court's conclusions of law to determine whether the court's interpretation of the law is correct. *Quamme v. Jodsaas*, 1998 MT 341, ¶ 12, 292 Mont. 342, 970 P.2d 1049 (at issue was the district court's dismissal of Quamme's claims for improper service of summons).

Supplemental Complaints

We review a district court's denial of a motion to file a supplemental pleading for an abuse of discretion. *First Security Bank of Missoula v. Ranch Recovery Ltd.*, 1999 MT 43, ¶ 24, 293 Mont. 363, 370, 976 P.2d 956; see also *Hughes v. Pullman*, 2001 MT 216, ¶ 40, 306 Mont. 420, 428, 36 P.3d 339, 345.

Venue

The determination of whether a county represents the proper place for trial presents a question of law that involves the application of the venue statutes to pleaded facts. The Supreme Court's review of a district court's grant or denial of a motion to change venue is plenary, and the Supreme Court determines whether the district court's ruling was legally correct. *Deichl v. Savage*, 2009 MT 293, ¶ 6, 352 Mont. 282, 216 P.3d 749 (citations omitted).

A district court exercises its discretion when transferring venue from one proper county to another proper county for the convenience of witnesses and the ends of justice, and we will not disturb such a decision absent an abuse of discretion. *Wagman v. Motl*, 2015 MT 168, P6, 379 Mont. 439, 352 P.3d 609 (citing *In re Marriage of Lockman*, 266 Mont. 194, 201, 879 P.2d 710, 715 (1994)).

Vexatious Litigants

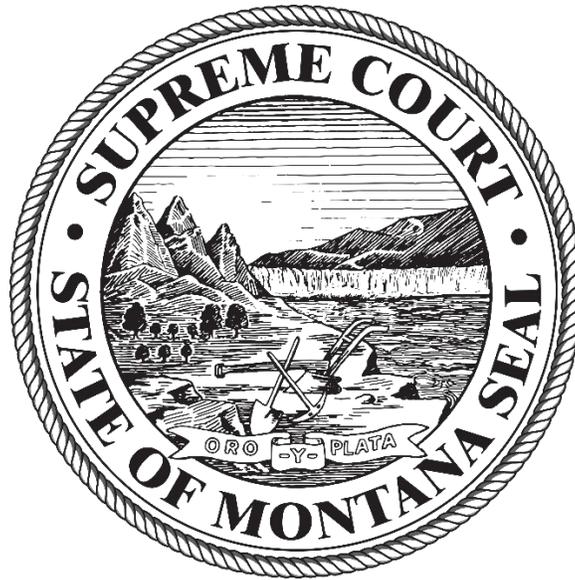
We review a pre-filing order entered against a vexatious litigant for abuse of discretion. *Boushie v. Windsor*, 2014 MT 153, ¶ 8, 375 Mont. 301, 328 P.3d 631 (2014) (citation omitted). The question under this standard is not whether we would have reached the same decision as the trial judge, but whether the trial judge acted arbitrarily without conscientious judgment or exceeded the bounds of reason. *Boushie*, ¶ 8 (citation omitted).

Voir Dire

It is well established that absent an abuse of discretion, the trial judge has great latitude in controlling voir dire. *State v. Michaud*, 2008 MT 88, ¶ 13, 342 Mont. 244, 180 P.3d 636 (citation Tomitted). We review a trial court's conduct during voir dire for an abuse of discretion. *Michaud*, ¶ 13.

Voluntary Dismissal

It is clear that the granting of a motion for voluntary dismissal under Mont. R. Civ. P. 41(a)(2) is within the sound discretion of the trial court and is reviewable only for an abuse of discretion. *Petritz v. Albertsons, Inc.*, 187 Mont. 102, 107, 608 P.2d 1089, 1092 (1980).



Montana Judicial Branch

Standards of Review Handbook

Civil: Trial Decisions

Updated: 23DEC2025

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Alter Ego

We have applied a general clear error standard to facts and correctness standard to conclusions of law in a case where we applied the multi-factor test for determining whether a party was an alter ego. *Peschel Family Trust v. Colonna*, 2003 MT 216, ¶¶ 19, 25, 317 Mont. 127, 75 P.3d 793.

Authentication

Our Rule on authentication states that “the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Rule 901(a), M.R.Evid. The letter here in question, which was printed on attorney Massman’s letterhead paper, was attached to Massman’s deposition as part of his file on Fedder and Foss’s dissolution of marriage, which he produced for his deposition. We hold that the exhibit was properly authenticated and supported the District Court’s finding number 21, which was not otherwise clearly erroneous. *Farmers Plant Aid, Inc. v. Fedder*, 2000 MT 87, ¶ 32, 299 Mont. 206, 999 P.2d 315, 2000 Mont. LEXIS 93, 57 Mont. St. Rep. 375 (Mont. 2000); See also *McCormick v. Brevig*, 2004 MT 179, ¶ 31, 322 Mont. 112, 96 P.3d 697, 2004 Mont. LEXIS 361 (Mont. 2004).

Bench Trials

“We review findings of fact in a civil bench trial to determine if they are supported by substantial credible evidence. *DeNiro v. Gasvoda*, 1999 MT 129, ¶ 9, 294 Mont. 478, 982 P.2d 1002. This Court ‘must view the evidence in the light most favorable to the prevailing party.’ *DeNiro*, ¶ 9. Conclusions of law in this context are also reviewed for correctness. *DeNiro*, ¶ 9.” *JTL Group, Inc. v. New Outlook, LLP*, 2010 MT 1, ¶ 30, 355 Mont. 1, 223 P.3d 912.

Best Evidence Rule

The Best Evidence Rule is a rule pertaining to “admissibility of evidence when the content of a document is in dispute.” *Gochanour v. Gochanour*, 2000 MT 156, ¶ 20, 300 Mont. 155, 4 P.3d 643. The Montana Supreme Court leaves rulings on admissibility of evidence to the discretion of the district court, and only reviews those decisions for abuse of discretion. *Watkins v. Williams*, 265 Mont. 306, 311, 877 P.2d 19, 21–22 (1994).

Bifurcation

Under M. R. Civ. P. 42(b), the decision as to whether to bifurcate a trial is a matter left to the “broad discretion” of the district court. *Malta Pub. Sch. Dist. A & 14 v. Montana Seventeenth Jud. Dist. Ct.*, 283 Mont. 46, 50, 938 P.2d 1335, 1338 (1997) (citation omitted).

Choice of Laws

We review de novo issues of law, including a trial court’s decisions on directed verdict, choice of law, and collateral source offset. *Newman v. Scottsdale Ins. Co.*, 2013 MT 125, ¶ 24, 370 Mont. 133, 301 P.3d 348 (citation omitted).

Closing Arguments

The standard of review of discretionary trial court rulings is abuse of discretion. Discretionary trial court rulings include such things as trial administration issues, scope of cross-examination, post-trial motions, and similar rulings. *Harwood v. Glacier Elec. Coop.*, 285 Mont. 481, 492, 949 P.2d 651, 658 (1997) (holding the district court did not abuse its discretion by its interruption and admonition during plaintiffs’ closing argument).

We review a district court’s ruling on an objection to closing arguments for an abuse of discretion. Closing argument statements are considered in the context of the entire argument. The defendant must make a timely objection to closing argument statements or the objection is deemed to be waived. We will undertake plain error review of closing argument objections not stated at trial if we are persuaded that the prosecutor’s comments resulted in a manifest miscarriage of justice, undermined the fundamental fairness of the trial, or compromised the integrity of the judicial process. *State v. Cooksey*, 2012 MT 226, ¶ 40, 366 Mont. 346, 286 P.3d 1174 (citations omitted).

Credibility Findings

We review a court’s findings of fact to determine if they are supported by substantial evidence. We have defined “substantial evidence” as consisting of “more than a mere scintilla of evidence but may be somewhat less than a preponderance.” Furthermore, “where the findings are based on conflicting evidence, the Court’s function is to determine whether there is substantial evidence to support the findings and not to determine whether there is sufficient evidence to support contrary findings.” We will not substitute our judgment for that of a trial court when the issue concerns the weight given to certain evidence or the credibility of witnesses. *Walls v. Travelers Indem. Co.*, 281 Mont. 106, 110-11, 931 P.2d 712, 715 (1997) (citations omitted).

Cross-Examination

The latitude of cross-examination is largely within the discretion of the trial court, with which the reviewing court will not interfere unless there has been a manifest abuse of discretion. N. *Plains Resource Council v. Bd. of Nat. Resources and Conserv.*, 181 Mont. 500, 533, 594 P.2d 297, 315 (1979) (citations omitted).

Directed Verdict

M. R. Civ. P. 50 “was amended by order of the Montana Supreme Court, effective March 26, 1993, to do away with the terms ‘directed verdict’ and ‘judgment notwithstanding the verdict.’ ‘Judgment as a matter of law’ is now the proper term.” *Giambra v. Kelsey*, 2007 MT 158, ¶ 2 n.1, 338 Mont. 19, 162 P.3d 134.

Evidentiary Rulings

We review evidentiary rulings for abuse of discretion. *State v. Bonamarte*, 2009 MT 243, ¶ 13, 351 Mont. 419, 213 P.3d 457 (citations omitted).

Evidentiary Rulings: Attorney Testimony

District courts have broad discretion to determine the admissibility of evidence, including oral testimony, and we review for abuse of discretion. *In re Perry*, 2013 MT 6, ¶ 15, 368 Mont. 211, 293 P.3d 170 (citations omitted).

Evidentiary Rulings: Best Evidence Rule

Regarding questions concerning the admissibility of evidence, the questions must in every case be left largely to the sound discretion of the trial court, subject to review only in case of manifest abuse. *Watkins v. Williams*, 265 Mont. 306, 311, 877 P.2d 19, 21-22 (1994) (citation omitted).

We generally review a district court’s evidentiary rulings for an abuse of discretion. A district court abuses its discretion if it acts arbitrarily without the employment of conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice. Notwithstanding this deferential standard, however, judicial discretion must be guided by the rules and principles of law; thus, our standard of review is plenary to the extent that a discretionary ruling is based on a conclusion of law. In such circumstance, we must determine whether the court correctly interpreted the law. *State v. McOmer*, 2007 MT 340, ¶ 10, 340 Mont. 262, 173 P.3d 690 (citations and quotation marks omitted).

Evidentiary Rulings: Extra-Record Evidence

This Court reviews evidentiary rulings going directly towards the propriety of summary judgment de novo, in order to determine whether the evidentiary requirements for summary judgment have been satisfied. *Heffernan v. Missoula City Council*, 2011 MT 91, ¶¶ 53, 55, (citation omitted) (holding in part that the district court’s rationale for striking an affidavit on the ground that it contained extra-record evidence was misplaced but holding the error was harmless).

Evidentiary Rulings: Hearsay

The question of admissibility of testimony under a hearsay exception is left to the sound discretion of the trial court. We will not overrule a district court’s decision that a hearsay exception applies absent an abuse of discretion. *State v. Hamby*, 1999 MT 319, ¶ 13, 297 Mont. 274, 992 P.2d 1266.

Evidentiary Rulings: Witness Sequestration

“Rule 615 ‘is not permissive’ but ‘mandates that witnesses be excluded’ absent a valid exception.” *State v. Wilson*, 2022 MT 11, ¶ 32, 407 Mont. 225, 502 P.3d 679 (quoting *State v. Osborne*, 1999 MT 149, ¶ 28, 295 Mont. 54, 982 P.2d 1045). “[W]hen a party requests an exclusion, and no exception applies, the decision is not committed to the trial court’s discretion.” *Wilson*, ¶ 32 (citation omitted). “But the decision ‘whether a Rule 615 exception applies is reviewed for abuse of discretion.’” *Wilson*, ¶ 32 (emphasis in original).

Experts

In regard to evidentiary matters, it is within the district court’s discretion to determine whether or not evidence is relevant and admissible. District courts are vested with great latitude in ruling on the admissibility of expert testimony. Absent a showing of an abuse of discretion, we will not overturn a district court’s determinations on evidentiary matters. *State v. Hocevar*, 2000 MT 157, ¶ 54, 300 Mont. 167, 7 P.3d 329 (citation and quotation marks omitted).

Hearsay

We will review a district court’s evidentiary decision to determine whether the court abused its discretion. *State v. Mizenko*, 2006 MT 11, ¶ 8, 330 Mont. 299, 127 P.3d 458 (citation omitted).

Judgment as a Matter of Law

The Montana Supreme Court’s “standard of review of appeals from district court orders granting or denying motions for judgment as a matter of law is identical to that of the district court.”

Johnson v. Costco Wholesale, 2007 MT 43, ¶ 14, 336 Mont. 105, 152 P.3d 727. The Court has been inconsistent about if this standard of review is de novo or abuse of discretion. *Johnson*, ¶¶ 14–16. Recently, we have clarified that “whether a judgment as a matter of law should be granted or denied is a question of law” and therefore the appropriate standard of review is de novo. *Johnson*, ¶ 18.

Juror Partiality, Bias, and Misconduct

An appellate court reviews a district court’s decision to deny a motion for a new trial on the grounds enumerated in § 25-11-102, MCA, for an abuse of discretion. The decision to grant or deny a new trial is within the sound discretion of a trial judge and will not be disturbed absent a showing of manifest abuse of that discretion. That standard requires that the abuse of discretion be so significant as to materially affect the substantial rights of a complaining party. *Cooper v. Hanson*, 2010 MT 113, ¶ 28, 356 Mont. 309, 234 P.3d 59 (citations and quotation marks omitted).

We review denial of a challenge to dismiss a juror for cause for abuse of discretion. Dismissal for cause is favored when a serious question arises about the juror’s ability to be impartial. Disqualification based on a juror’s alleged prejudice is necessary only where jurors form fixed opinions on the guilt or innocence of the defendant which they would not be able to lay aside and render a verdict based solely on the evidence presented in court. Abuse of discretion occurs if a court fails to excuse a prospective juror if actual bias is discovered during voir dire. Further, coaxed recantations of admissions of bias are merely fodder for appeal. It is not a district court’s role to rehabilitate jurors whose spontaneous, and thus most reliable and honest, responses on voir dire expose a serious question about their ability to be fair and impartial. *State v. Freshment*, 2002 MT 61, ¶ 11, 309 Mont. 154, 43 P.3d 968 (citations and quotation marks omitted).

When a trial court fails to dismiss a biased juror, such an error is structural because the error precedes the presentation of evidence, affects the framework of the trial, and the error cannot be qualitatively or quantitatively weighed against the evidence. Therefore, such an abuse of discretion is conclusively prejudicial and requires automatic reversal if: (1) a district court abuses its discretion by denying a challenge for cause to a prospective juror; (2) the objecting party uses one of his or her peremptory challenges to remove the disputed juror; and (3) the objecting party exhausts all of his or her peremptory challenges. *State v. Freshment*, 2002 MT 61, ¶ 11, 309 Mont. 154, 43 P.3d 968 (citations and quotation marks omitted).

The Montana Supreme Court’s standard of review of a district court’s denial of a motion for a new trial depends on the basis of the motion. When the basis of a motion for a new trial is alleged jury misconduct, this Court will not disturb a district court’s decision absent a manifest abuse of discretion. A manifest abuse of discretion is one that is obvious, evident, or unmistakable. The Supreme Court will give considerable weight to the determination of the district court because it is in the best position to observe the jurors and determine the potential for prejudice when allegations of jury or bailiff misconduct are raised, and the district court will have significant latitude when ruling on these matters. *Stebner v. Associated Materials, Inc.*, 2010 MT 138, ¶ 11, 356 Mont. 520, 234 P.3d 94 (citations omitted).

Jury Instructions

Decisions on jury instructions are within the trial court's discretion, and the Montana Supreme Court will only reverse the decision if the trial court has abused its discretion. *Cechovic v. Hardin & Assocs.*, 273 Mont. 104, 116, 902 P.2d 520, 527 (1995). When reviewing a trial court's decision on jury instructions, we consider the "instructions in their entirety and in connection with other instructions given and the evidence introduced at trial." *Story v. City of Bozeman*, 259 Mont. 207, 222, 856 P.2d 202, 211 (1993) (overruled on other grounds). See also *Busta v. Columbus Hosp*, 276 Mont. 342, 359–60, 916 P.2d 122, 132 (1996).

Although a trial court has broad discretion, the principle that "jury instructions must fully and fairly instruct the jury regarding the applicable law" limits its discretion. *Goles v. Neumann*, 2011 MT 11, ¶ 9, 359 Mont. 132, 247 P.3d 1089.

A trial court's refusal to give an offered instruction only constitutes reversible error when "such refusal affects the substantial rights of the party proposing the instruction, thereby prejudicing him." *Busta*, 276 Mont. 359–60, 916 P. 2d 133. The party assigning error must show prejudice. *Tarlton v. Kaufman*, 2008 MT 462, ¶ 19, 348 Mont. 178, 199 P.3d 263. If "the jury instructions in their entirety state the applicable law of the case," we will not find prejudice. *Peterson v. St. Paul Fire & Marine Ins. Co.*, 2010 MT 187, ¶ 22, 357 Mont. 293, 239 P.3d 904.

If the "subject matter of the instruction is not applicable to the pleadings and facts, or not supported by the evidence introduced at trial, or the subject matter is adequately covered by other instructions submitted to the jury," a failure to give the offered instruction will not constitute prejudice. *Busta*, 276 Mont. 359–60, 916 P. 2d 133.

Jury Instructions: Supplemental

We review a district court's evidentiary rulings, including the admissibility of expert testimony, and rulings on jury instructions for an abuse of discretion. *Doyle v. Clark*, 2011 MT 117, ¶ 22, 360 Mont. 450, 254 P.3d 570 (citation omitted).

Jury Selection

Juries must be selected in substantial compliance with the law, and any material deviation or departure is a denial of fundamental constitutional rights. *Tribby v. Northwestern Bank*, 217 Mont. 196, 206, 704 P.2d 409 (1985). A jury selection process that undermines the fair cross-section guarantee is structural error, not trial error, and cannot be considered harmless. *State v. LaMere*, 2000 MT 45, ¶ 42, 298 Mont. 358, 2 P.3d 204. The denial of a motion to strike the jury panel is a conclusion of law reviewed for correctness. *LaMere*, ¶ 13.

Jury Verdicts

We will review a trial court's decision to reduce, increase, or affirm the jury's verdict regarding punitive damages to determine whether the trial court abused its discretion. *Cartwright v. Equitable Life Assur. Socy. of the U.S.*, 276 Mont. 1, 37, 914 P.2d 976, 998 (1996).

We review a jury's verdict in a civil case to determine if it is supported by substantial credible evidence. Substantial credible evidence is such evidence which a reasonable mind could accept as adequate to support a conclusion. Evidence is considered substantial even if it is contradicted by other evidence, somewhat less than a preponderance, or inherently weak. *D.R. Four Beat Alliance, LLC v. Sierra Prod. Co.*, 2009 MT 319, ¶ 23, 352 Mont. 435, 218 P.3d 827 (citations and quotation marks omitted).

Whether a jury verdict is unanimous constitutes a question of constitutional law. Our review of questions of constitutional law is plenary. *State v. Pyatt*, 2000 MT 136, ¶ 3, 300 Mont. 25, 1 P.3d 953.

Montana Rules of Civil Procedure

Interpretation and construction of a rule of procedure, like interpretation and construction of a statute, is a matter of law, which we review de novo, determining whether the court's interpretation and construction of the law is correct. *Miller v. Eighteenth Jud. Dist. Ct.*, 2007 MT 149, ¶ 22, 337 Mont. 488, 162 P.3d 121.

Negligence

The existence of duty is an issue of law reviewed for correctness. *Newman v. Lichfield*, 2012 MT 47, ¶ 23, 364 Mont. 243, 272 P.3d 625; *Town & Country Foods v. Bozeman*, 2009 MT 72, ¶ 12, 349 Mont. 453, 203 P.3d 1283; see also *Gatlin-Johnson v. City of Miles City*, 2012 MT 302, ¶ 11, 367 Mont. 414, 291 P.3d 1129. Negligence actions ordinarily involve questions of fact, though "when reasonable minds cannot differ, questions of fact can be determined as a matter of law." *Poole v. Poole*, 2000 MT 117, ¶ 14, 299 Mont. 435, 1 P.3d 936. We review a district court's findings of fact for clear error and conclusions of law for correctness. *Cenex Pipeline LLC v. Fly Creek Angus, Inc.*, 1998 MT 334, ¶ 22, 292 Mont. 300, 971 P.2d 781; *LaMere v. Farmers Ins. Exch.*, 2011 MT 272, ¶ 13, 362 Mont. 379, 265 P.3d 617.

Parol Evidence

A district court's refusal to consider parol evidence is reviewed for an abuse of discretion. *Deschamps v. Treasure State Trailer Court, Ltd.*, 2010 MT 74, ¶ 30, 356 Mont. 1, 230 P.3d 800 ("we conclude the District Court did not abuse its discretion in holding that the parol evidence rule precluded Deschamps' claims.") See also *Savik v. Entech, Inc.*, 278 Mont. 152, 159, 923 P.2d 1091, 1096 (1996).

Proximate Cause

While proximate cause is ordinarily a question of fact for the trier of fact, it may be determined as a matter of law where reasonable minds can reach but one conclusion regarding causation. *Riley v. Am. Honda Motor Co.*, 259 Mont. 128, 130, 856 P.2d 196, 197 (1993). On appeal, the findings of the trial court are presumed to be correct if supported by substantial evidence. The appellate court will not reverse the trial court absent a showing that its determinations are clearly erroneous. Mont. R. Civ. P. 52(a). *Young v. Flathead Cnty.*, 232 Mont. 274, 276, 757 P.2d 772, 773 (1988). See also *Riley v. Am. Honda Motor Co.*, 259 Mont. 128, 133, 856 P.2d 196, 199 (1993) *Krueger v. General Motors Corps.*, 240 Mont. 266, 278, 783 P.2d at 1348 (1989) (“On appeal, we determined that substantial evidence supported the jury’s finding of proximate cause.”).

Regulations

An agency’s interpretation of its rule is afforded great weight, and we will defer to that interpretation unless it is plainly inconsistent with the spirit of the rule. We will sustain an agency’s interpretation of a rule so long as it lies within the range of reasonable interpretation permitted by the wording. Of course, we need not defer to an incorrect agency interpretation. *Clark Fork Coalition v. Dep’t of Env’tl. Quality*, 2012 MT 240, ¶ 19, 266 Mont. 427, 288 P.3d 183 (citations omitted).

Statutes

The interpretation and construction of a statute is a matter of law, and we review whether the district court interpreted and applied a statute correctly de novo. *State v. Triplett*, 2008 MT 360, ¶ 13, 346 Mont. 383, 195 P.3d 819.

Substantive Areas of Law

Bankruptcy

In order for a court to act within its jurisdiction, it must have: (1) cognizance of the subject matter; (2) presence of the proper parties; and (3) the court’s action must be invoked by proper pleadings and the judgment within the issues raised. A court lacks or exceeds such jurisdiction by “any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis.” *Lee v. Lee*, 2000 MT 67, ¶ 20, 299 Mont. 78, 996 P.2d 389 (citations and quotation marks omitted). It is well established that a state district court has concurrent jurisdiction with a federal bankruptcy court to determine the issue of the dischargeability of debts pursuant to 11 U.S.C.S. § 523(a), other than those found under 11 U.S.C.S. §523(2), (4), and (6). Even so, the court is bound to enforce the laws the United States under the Supremacy Clause. A district court’s failure to do so would result in it exceeding its jurisdiction. *Lee*, ¶ 52 (quotation marks omitted).

Constitutional Law

This Court will exercise plenary review of constitutional issues, and a district court's decisions on constitutional issues are reviewed for correctness. *State v. Egdorf*, 2003 MT 264, ¶ 12, 317 Mont. 436, 77 P.3d 517. Legislative enactments are presumed to be constitutional, and the party challenging the provision bears the burden to prove beyond a reasonable doubt that it is unconstitutional. *Egdorf*, ¶ 12. The presumption of constitutionality applies to city ordinances. *ASUM v. City of Missoula*, 261 Mont. 231, 235, 862 P.2d 380, 382 (1993); see also *DeVoe v. City of Missoula*, 2012 MT 72, ¶ 12, 364 Mont. 375, 274 P.3d 752.

Contracts

The construction and interpretation of a written agreement are questions of law that we review for correctness. See *Ophus v. Fritz*, 2000 MT 251, ¶ 19, 301 Mont. 447, 11 P.3d 1192; see also *Mary J. Baker Revocable Trust v. Cenex Harvest States, Coops., Inc.*, 2007 MT 159, ¶ 19, 338 Mont. 41, 50, 164 P.3d 851, 857. Whether an ambiguity exists in a contract is also a question of law reviewed for correctness. *Doble v. Bernhard*, 1998 MT 124, ¶ 19, 289 Mont. 80, 959 P.2d 488; see also *Johnston v. Centennial Log Homes & Furnishings, Inc.*, 2013 MT 179, ¶ 25, 370 Mont. 529, 537, 305 P.3d 781, 787.

The determination of whether a party materially breached a contract is a question of fact. See *Flaig v. Gramm*, 1999 MT 181, ¶ 25, 295 Mont. 297, 983 P.2d 396; see also *Norwood v. Serv. Distrib., Inc.*, 2000 MT 4, ¶ 35, 297 Mont. 473, 485, 994 P.2d 25, 33. We review a district court's findings of fact to determine whether they are clearly erroneous. See *Cut Bank School Dist. No. 15 v. Rummel*, 2002 MT 248, ¶ 5, 312 Mont. 143, 58 P.3d 159; see also *CNJ Distrib. Corp. v. D&F Farms, Inc.*, 2013 MT 267, ¶ 34, 372 Mont. 28, 33, 309 P.3d 1002, 1006.

Defamation

A district court's ruling that a statement was not defamatory is a matter of law reviewed for correctness. *McConkey v. Flathead Elec. Coop.*, 2005 MT 334, ¶¶ 44, 51, 330 Mont. 48, 125 P.3d 1121 ("We conclude that the District Court was correct in its holding that, as a matter of law, McConkey failed to produce any publications bearing a defamatory meaning.")

Employment Discrimination

A district court's underlying findings of fact in employment discriminations actions are reviewed to determine whether they are clearly erroneous. *State Dep't of Natural Resources and Conservation v. Montana Power Co.*, 284 Mont. 59, 63, 943 P.2d 1251, 1254 (1997). See also *Powers v. Interbel Tel. Coop.*, 2000 MT 315N, ¶ 23, 303 Mont. 538 ("We conclude that the District Court's finding that Powers was not retaliated against in violation of § 49-2-301 was supported by substantial evidence and, therefore, was not clearly erroneous.")

Environmental Law

The standard of review for Montana Environmental Policy Act (“MEPA”) decisions is “whether the record establishes that the agency acted arbitrarily, capriciously or unlawfully.” *Ravalli County Fish & Game Assn. v. Mont. Dept. of State Lands*, 273 Mont. 371, 377, 903 P.2d 1362, 1366 (1995) (quoting *N. Fork Preservation Assn. v. Dept. of State Lands*, 238 Mont. 451, 458-59, 778 P.2d 862, 867 (1989)). A review under the arbitrary and capricious standard “does not permit a reversal merely because the record contains inconsistent evidence or evidence which might support a different result. Rather, the decision being challenged must appear to be random, unreasonable or seemingly unmotivated based on the existing record.” *Hobble Diamond Ranch, LLC v. State*, 2012 MT 10, ¶ 24, 363 MT 310, 268 P.3d 31; see also *Mont. Wildlife Fed’n v. Mont. Bd. of Oil & Gas Conservation*, 2012 MT 128, ¶ 25, 365 Mont. 232, 280 P.3d 877.

Family Law

Family Law: Adoption

We review a district court’s findings of fact in a parental termination case to determine whether the findings are clearly erroneous. *In re B.J.T.H.*, 2015 MT 6, ¶ 10, 378 Mont. 14, 340 P.3d 557. A court’s conclusions of law in such a case are reviewed for correctness, and its decision to terminate parental rights is a discretionary ruling reviewed for an abuse of discretion. *B.J.T.H.*, ¶ 10.

A parent or legal guardian’s right to revoke a relinquishment and consent to adoption is dictated by statute. Section 42-2-410, MCA. A district court’s interpretation and application of statute is a conclusion of law. We review a district court’s conclusions of law for correctness. *In re Adoption of S.R.T.*, 2011 MT 219, ¶ 11, 362 Mont. 39, 260 P.3d 177.

Family Law: Child Support

This Court reviews a child support award for abuse of discretion. *Stevens v. Stevens*, 2011 MT 106, ¶ 6, 360 Mont. 344, 253 P.3d 877. A presumption exists in favor of the trial court’s determination of child support and we will not overturn its findings unless the court abused its discretion. *Stevens*, ¶ 6.

Family Law: Child Support Modification

In child support modification cases, a district court’s findings of fact are reviewed to determine whether the court’s findings are clearly erroneous. We review a district court’s conclusions of law to determine whether the district court’s conclusions are correct. In *Marriage of Damschen*, 2011 MT 297, ¶ 22, 363 Mont. 19, 265 P.3d 1245. Where a modification of child support is made pursuant to § 40-4-208(2)(b)(i), MCA, a district court’s determinations regarding substantial and continuing changed circumstances and

unconscionability are discretionary. As a result, we review those determinations for abuse of discretion. *Damschen*, ¶ 22.

Family Law: Common Law Marriage

This Court reviews a district court's findings of fact to determine whether they are clearly erroneous. *In re Estate of Ober*, 2003 MT 7, ¶ 7, 314 Mont. 20, 62 P.3d 1114. When reviewing a district court's conclusions of law, we determine whether the court's interpretation of the law is correct. *Ober*, ¶ 7.

Family Law: Emancipation

For purposes of Section 40-4-208(5), MCA, the question of whether a child is emancipated is a question of fact to be determined by the court. If emancipation can be established, a parent generally will have no further duty to support the child. Prior to the age of eighteen, however, there is a presumption against the emancipation of a child, and the burden of establishing emancipation is on the party asserting it. *In re Marriage of Bordner*, 220 Mont. 339, 343, 715 P.2d 436, 438, (1986).

Family Law: Dissolution

We review the district court's findings of fact in a dissolution proceeding to determine whether they are clearly erroneous. *In re Marriage of Crilly*, 2005 MT 311, ¶ 10, 329 Mont. 479, 124 P.3d 1151. Absent clearly erroneous findings, we will affirm a district court's division of property and award maintenance unless we identify an abuse of discretion. *Crilly*, ¶ 10.

Family Law: Distribution of Marital Property

The district court's apportionment of the marital estate will stand unless there has been a clear abuse of discretion as manifested by a substantially inequitable division of the marital assets resulting in substantial injustice. *Richards v. Trusler*, 2015 MT 314, ¶ 11, 381 Mont. 357, 360 P.3d 1126.

Section 40-4-202, MCA, vests the district court with broad discretion to apportion the marital estate in a manner equitable to each party under the circumstances. We review a district court's division of marital property to determine whether the court's findings of fact are clearly erroneous and the conclusions of law are correct. Absent clearly erroneous findings, we will affirm a district court's division of property and award of maintenance unless we identify an abuse of discretion. As we have stated previously, each case must be examined individually, with an eye to its unique circumstances. *In re Funk*, 2012 MT 14, ¶ 6, 363 Mont. 352, 270 P.3d 39

Family Law: Maintenance Awards

The standard of review for maintenance awards is whether the district court's findings are clearly erroneous. The amount and period of maintenance must be determined in accordance with § 40-4-203(2), MCA. *In re Marriage of Haines*, 2002 MT 182, ¶ 15, 311 Mont. 70, 53 P.3d 378.

Family Law: Penalty for Failure to Disclose

We review a District Court's ruling on a motion to set aside a judgment or part of a judgment made pursuant to § 40-4-253(5), MCA, for an abuse of discretion. *In re Marriage of Kelly & Camp*, 2025 MT 263, ¶ 14, -- Mont. --, -- P.3d --. Section 40-4-253(5), MCA, only authorizes the District Court to set aside a judgment or part of the judgment when the parties exchanged final financial disclosure statements and a party committed perjury in the final disclosure statement. *Marriage of Kelly & Camp*, ¶¶ 20-21.

Family Law: Valuation of Marital Estate

A district court may value marital property based on expert testimony, lay testimony, documentary evidence, or any combination thereof, as long as the valuation is reasonable in light of the evidence submitted. Thus, we will only disturb a court's valuation and allocation if it abuses its discretion or its findings are clearly erroneous. *Novak v. Novak*, 2014 MT 62, ¶ 16, 374 Mont. 182, 320 P.3d 459.

The factors listed in § 40-4-202, MCA, must be considered and referred to in the district court's findings and conclusions and there must be competent evidence presented on the values of the property. *In re Funk*, 2012 MT 14, ¶ 7, 363 Mont. 352, 270 P.3d 39.

Family Law: Parenting Plans

We review a district court's findings of fact supporting a parenting plan to determine whether they are clearly erroneous. We review a district court's conclusions of law to determine if they are correct. *In re the Parenting of C.J.*, 2016 MT 93, ¶ 12, 383 Mont. 197, 369 P.3d 1028. A district court has broad discretion when considering the parenting of a child, and we must presume that the court carefully considered the evidence and made the correct decision. *C.J.*, ¶ 13. Accordingly, absent clearly erroneous findings, we will not disturb a district court's decision regarding parenting plans unless there is a clear abuse of discretion. *C.J.*, ¶ 13.

Because the district court is in a superior position to weigh the evidence, we will not overturn the court in child custody matters unless we determine that there has been a clear abuse of discretion. *Czapranski v. Czapranski*, 2003 MT 14, ¶ 10, 314 Mont. 55, 63 P.3d 499.

A district court is required to determine child custody matters in accordance with the best interests of the child, taking into consideration a variety of statutory factors including, but not

limited to, the parents' wishes, the interaction and interrelationship of the child with the child's parents, continuity and stability of care, and whether the child has frequent and continuing contact with both parents. Section 40-4-212(1), MCA; *In re Marriage of Fishbaugh*, 2002 MT 175 ¶ 20, 310 Mont. 519, 52 P.3d 395. While a court must consider the factors enumerated in § 40-4-212(1), MCA, it need not make specific findings relating to each. *Fishbaugh*, ¶ 20.

Family Law: Parenting Plan Modifications

We review the underlying findings in support of a district's decision to modify a parenting plan under the clearly erroneous standard. *Guffin v. Plaisted-Harman*, 2010 MT 100, ¶ 20, 356 Mont. 218, 232 P.3d 888. If the underlying findings are not clearly erroneous, then we will overturn the district court only if there is a clear abuse of discretion. *In re D'Alton*, 2009 MT 184, ¶ 7, 351 Mont. 51, 209 P.3d 251.

Family Law: Standing Master

Two standards of review are relevant in a case involving both a standing master and the district court: the standard the district court applies to the master's report and the standard we apply to the district court's decision. *In re the Marriage of Davis*, 2016 MT 52, ¶ 4, 382 Mont. 378, 367 P.3d 400. We review a district court's decision de novo to determine whether it applied the correct standard of review to a standing master's findings of fact and conclusions of law. *Davis*, ¶ 4. A district court reviews a standing master's findings of fact for clear error, and its conclusions of law to determine if they are correct. *Davis*, ¶ 4.

Family Law: Termination of Parental Rights

We review a district court's findings of fact to determine whether those findings are clearly erroneous. We review the court's conclusions of law to determine whether the court correctly interpreted and applied the law. We review a district court's ultimate decision to terminate parental rights to determine whether the court abused its discretion. *In re A.N.W.*, 2006 MT 42, ¶¶ 28-29, 331 Mont. 208, 130 P.3d 619; *In re J.B.*, 2016 MT 68, ¶ 9, 383 Mont. 48; 368 P.3d 715

We review the district court's findings of fact for clear error, its conclusions of law for correctness, and the court's ultimate decision regarding adjudication for abuse of discretion. *In re K.H.*, 2012 MT 175, ¶ 19, 366 Mont. 18, 285 P.3d 474. We also review for abuse of discretion a district court's determination that a child is abused or neglected. *K.H.*, ¶ 19. The standard of review does not depend on whether the district court grants or denies a petition to adjudicate a youth in need of care. *K.H.*, ¶ 19.

In a case governed by ICWA, we will uphold the district court's termination of parental rights if a reasonable fact-finder could conclude beyond a reasonable doubt that continued custody by the parent is likely to result in serious emotional or physical damage to the child. *In re H.T.*, 2015 MT 41, ¶ 11, 378 Mont. 206, 343 P.3d 159.

Whether a district court violated a parent's constitutional right to fundamentally fair proceedings is a question of constitutional law for which this Court's review is plenary. *In re B.W.S.*, 2014 MT 198, ¶ 10, 376 Mont. 43, 330 P.3d 467.

Labor Law

Labor Law: Arbitration

We review a court's refusal to modify or vacate an arbitration award to determine if the court abused its discretion. *Terra W. Townhomes, L.L.C. v. Stu Henkel Realty*, 2000 MT 43, ¶ 22, 298 Mont. 344, 996 P.2d 866; *Paulson v. Flathead Conservation Dist.*, 2004 MT 136, ¶ 18, 321 Mont. 364, 91 P.3d 569. The scope of judicial review of an arbitration award is strictly limited to the statutory provisions governing arbitration. *Duchscher v. Vaile*, 269 Mont. 1, 4, 887 P.2d 181, 183 (1994); see *Paulson*, ¶ 24; *Terra W.*, ¶ 22. After a matter has been submitted to binding arbitration, district courts "are not permitted to review the merits of the controversy, but may only confirm, vacate, modify, or correct an arbitration award pursuant to §§ 27-5-311, -312, and -313, MCA." *Teamsters Union Local No. 2, Int'l Bhd. of Teamsters v. C.N.H. Acquisitions, Inc.*, 2009 MT 92, ¶ 14, 350 Mont. 18, 204 P.3d 733; see also *City of Livingston v. Mont. Pub. Emples. Ass'n ex rel. Tubaugh*, 2014 MT 314, ¶ 10, 377 Mont. 184, 187-88, 339 P.3d 41, 45 ("Because the District Court's decision in this case turns on whether it correctly applied the statutory provisions governing review of arbitration awards, we apply de novo review to the District Court's ruling").

We review a district court's order regarding a motion to compel arbitration de novo. *State ex rel. Bullock v. Philip Morris, Inc.*, 2009 MT 261, P 14, 352 Mont. 30, 217 P.3d 475 (citing *Martz v. Beneficial Montana*, 2006 MT 94, P 10, 332 Mont. 93, 135 P.3d 790); see also *Gordon v. Kuzara*, 2010 MT 275, ¶ 5, 358 Mont. 432, 245 P.3d 37.

Labor Law: Collective Bargaining Agreement

The interpretation of a collective bargaining agreement provision presents a question of law that this Court reviews to determine if it is correct. *Bonner Sch. Dist. No. 14 v. Bonner Educ. Ass'n*, 2008 MT 9, ¶ 15, 341 Mont. 97, 176 P.3d 262 (citation omitted).

Land Use Planning

A governing body's decision to amend or revise a growth policy or a zoning designation constitutes a legislative act. *N. 93 Neighbors, Inc. v. Bd. of Cnty. Comm'rs*, 2006 MT 132, ¶ 18, 332 Mont. 327, 137 P.3d 557; *Citizens for a Better Flathead v. Bd. of Cnty. Comm'rs*, 2016 MT 256, ¶ 11, 385 Mont. 156, 381 P.3d 555 (2016). We review such a decision for an abuse of discretion. *N. 93 Neighbors, Inc.*, ¶ 18; *Citizens for a Better Flathead*, ¶ 11.

The applicable standard of review is whether the information upon which the governing body based its decision is so lacking in fact and foundation that it is clearly unreasonable and constitutes an abuse of discretion. *Lake Cnty. First v. Polson City Council*, 2009 MT 322, ¶ 34, 352 Mont. 489, 218 P.3d 816.

Supervising Trials

A district court has broad discretion in determining issues relating to trial administration. Discretionary trial court rulings include such things as trial administration issues, scope of cross-examination, post-trial motions, and similar rulings. *Fink v. Williams*, 2012 MT 304, ¶ 18, 367 Mont. 431, 291 P.3d 1140 (citations omitted).

Tribal Courts

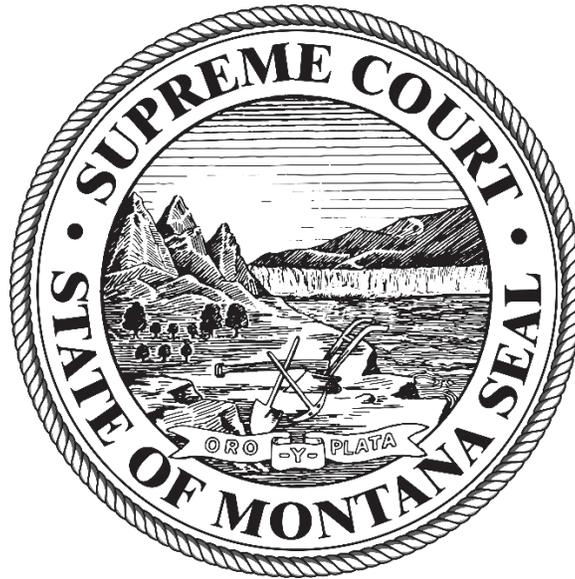
Whether a state court has the power to utilize state law and execution procedures to enforce a tribal court judgment within the exterior boundaries of an Indian reservation is a question of law. We review legal questions de novo. We determine simply whether the court's interpretation of the law is correct. *Anderson v. Engelke*, 1998 MT 24, ¶ 9, 287 Mont. 283, 954 P.2d 1106 (citations omitted).

We review a district court's conclusions of law to determine whether the court's interpretation of the law is correct, including an interpretation of the law governing state/tribal civil jurisdiction. *West v. Koyama Farms, Inc.*, 281 Mont. 167, 170-71, 933 P.2d 808, 810 (1997) (citations omitted).

Verdict Forms

Our scope of review of jury is necessarily very limited. This Court will not reverse a jury which is supported by substantial credible evidence. This Court has defined substantial credible evidence as evidence which a reasonable mind might accept as adequate to support a conclusion. The evidence may be inherently weak and conflicting, yet it may still be considered substantial. It is well established that if the evidence is conflicting, it is within the province of the jury to determine the weight and credibility to be afforded the evidence. Finally, upon reviewing a jury verdict to determine if substantial credible evidence exists to support the verdict, this Court must view the evidence in the light most favorable to the prevailing party. *Kneeland v. Luzenac Am., Inc.*, 1998 MT 136, ¶ 45, 289 Mont. 201, 961 P.2d 725 (citations and quotation marks omitted).

The use of a special verdict form is left to the discretion of the trial court. "While it is within the trial court's discretion to structure the form and frame the questions of a special verdict, the interrogatories must be adequate to enable the jury to determine the factual issues essential to judgment." *Baldauf v. Arrow Tank & Eng'g Co.*, 1999 MT 81, ¶ 49, 294 Mont. 107, 979 P.2d 166 (citations omitted).



Montana Judicial Branch

Standards of Review Handbook

Civil: Post-Trial Decisions

Updated: 23DEC2025

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Post-Trial Decisions in Civil Cases: Generally

The standard of review of a trial court's discretionary ruling is for abuse of discretion. *Mont. Rail Link v. Byard*, 260 Mont. 331, 337, 860 P.2d 121, 125 (1993). This standard may be applied to rulings on post-trial motions, which “encompass the power of choice among several courses of action, each of which is considered permissible.” *Steer, Inc. v. Dep't of Revenue*, 245 Mont. 470, 474, 803 P.2d 601, 603 (citations omitted) (1990); see also *Johnson v. Hamilton*, 2003 MT 199, ¶ 9, 317 Mont. 24, 27, 75 P.3d 778, 780.

Attorney's Fees

Attorney's Fees: Civil Rights

We review a district court's award of attorney fees under § 49-2-505(7), MCA, of the Montana Human Rights Act, to determine whether the court abused its discretion. *Laudert v. Richland County Sheriff's Department*, 2000 MT 218, ¶ 48, 301 Mont. 114, 7 P.3d 386. A district court abuses its discretion if its fee award is based on an inaccurate view of the law or a finding of fact is clearly erroneous. *Ihler v. Chisholm*, 2000 MT 37, ¶ 24, 298 Mont. 254, 995 P.2d 439. *Laudert v. Richland Cnty. Sheriff's Dep't*, 2001 MT 287, ¶ 12, 307 Mont. 403, 38 P.3d 790.

Attorney's Fees: Class Actions

The Montana Supreme Court reviews a trial court's ruling awarding attorney's fees in a 42 U.S.C. §1983 class action lawsuit for an abuse of discretion. *Germann v. Stephens*, 2006 MT 130, ¶ 22, 332 Mont. 303, 137 P.3d 545 (citing *Ihler v. Chisholm*, 2000 MT 37, ¶ 24, 298 Mont. 254, 995 P.2d 439). “A district court abuses its discretion if it bases its fee award upon an inaccurate view of the law or a clearly erroneous finding of fact.” *Germann*, ¶ 22.

Attorney's Fees: Decisions to Grant or Deny Attorney's Fees

“If legal authority exists to award attorney's fees, we review for abuse of discretion [a district court's] decision to grant or deny the fees.” *Wohl v. City of Missoula*, 2013 MT 46, ¶ 29, 369 Mont. 108, 300 P.3d 1119; see also *Chamberlin v. Puckett Constr.*, 277 Mont. 198, 206, 921 P.2d 1237, 1242 (1996); *Boehm v. Cokedale, L.L.C.*, 2011 MT 224, ¶ 12, 362 Mont. 65, 261 P.3d 994.

Attorney's Fees: Legal Authority to Award Attorney's Fees

A determination that the legal authority exists to award attorney's fees is a conclusion of law which the Montana Supreme Court reviews for correctness. *Mlekush v. Farmers Ins. Exch.*, 2015 MT 302, ¶ 8, 381 Mont. 292, 358 P.3d 913; see also *Houden v. Todd*, 2014 MT 113, ¶ 19, 375

Mont. 1, 324 P.3d 1157; *Chase v. Bearpaw Ranch Ass'n*, 2006 MT 67, ¶ 14, 331 Mont. 421, 133 P.3d 190. “Our review of a district court’s legal conclusion that no basis for attorney fees exists is plenary.” *Tanner v. Dream Island*, 275 Mont. 414, 429, 913 P.2d 641, 650 (1996) (internal citations omitted).

Montana follows the American Rule regarding attorney’s fees that “in the absence of a specific contractual or statutory grant . . . the prevailing party in an action is not entitled to an award of attorney fees either as costs of the action or as an element of damages.” *Foy v. Anderson*, 176 Mont. 507, 511, 580 P.2d 114, 116 (1978). Although, exceptions exist to this rule. The district courts have equity power to grant complete relief, including attorney’s fees, absent statutory authority on a case-by-case basis. *Foy*, 176 Mont. at 511, 580 P.3d at 116–117. We have narrowly construed this exception to apply only to cases “where the action into which the prevailing party has been forced is utterly without merit or frivolous.” *Erker v. Kester*, 1999 MT 231, ¶ 44, 296 Mont. 123, 988 P.2d 1221. See *Foy v. Anderson*, 176 Mont. 507, 580 P.2d 114 (1978) (awarding attorney’s fees where a litigant sought to join respondent as a third party in a lawsuit alleging that respondent had filed a claim against him when in fact she had filed no such claim); *Holmstrom Land Co. v. Hunter*, 182 Mont. 43, 595 P.2d 360 (1979) (awarding attorney’s fees where a landowner sued a water commissioner when the commissioner shut off the landowner’s headgate at the court’s order); *Stickney v. State, Cnty. of Missoula*, 195 Mont. 415, 636 P.2d 860 (1981) (awarding attorney’s fees where courtroom spectators sued a justice of the peace where no basis for personal liability existed). Award of attorney’s fees under this exception is discretionary and is therefore reviewed for abuse of discretion. *Boehm v. Cokedale, LLC*, 2011 MT 224, ¶¶ 24–29, 362 Mont. 65, 261 P.3d 994.

We have upheld a grant of attorney’s fees as a measure of damages in a case where a litigant took “reprehensible” self-help action in a water dispute. *Cate v. Hargrave*, 209 Mont. 265, 274–75, 680 P.2d 952, 957 (1984). We have upheld a grant of attorney’s fees in a contempt action to enforce the terms of a divorce decree. *In re Marriage of Redfern*, 214 Mont. 169, 692 P.2d 468 (1984).

A second exception to the American rule is the insurance exception. *Winters v. State Farm Mut. Auto. Ins. Co.*, 2014 MT 168, 375 Mont. 351, 328 P.3d 665. Under this exception “an insured is entitled to recovery attorney fees . . . when the insurer forces the insured to assume the burden of legal action to obtain the full benefit of the insurance contract.” *Mountain West Farm Bureau Mut. Ins. Co. v. Brewer*, 2003 MT 98, ¶ 36, 315 Mont. 231, 69 P.3d 652. “Such award is not discretionary, and as such does not require a lower court to consider the issue in the first instance.” *Winters*, ¶ 32. This exception applies to situations where an insurer breaches its duty to defend as well as situations where an insurer breaches its duty to indemnify. *Mountain West*, ¶ 36.

“Whether an injured third-party claimant who prevails in an insurance coverage action against a motor vehicle liability insurer may recover his or her attorney fees is a question of law” which is reviewed for correctness. *Mountain West*, ¶ 7. We have held that the insurance exception applies only to direct beneficiaries of the insurance contract. *Mountain West*, ¶ 40.

Bonds

This Court reviews a district court's decision to forfeit a bond for abuse of discretion. The test is whether the court acted arbitrarily. *State v. Seybert*, 231 Mont. 372, 374, 753 P.2d 325, 326 (1988).

Certified Appeals

While it is within the discretion of the district court to grant or deny a request for a Rule 54(b) certification, "the decision allowing an appeal to proceed in such a situation should not be entered lightly." *Roy v. Neibauer*, 188 Mont. 81, 85, 610 P.2d 1185, 1188 (1980). We review discretionary rulings to determine if the district court abused its discretion. See *Montana Rail Link v. Byard*, 260 Mont. 331, 337, 860 P.2d 121, 125 (1993). Our standard of review of a court's conclusions of law is whether its interpretation of the law is correct. See *Bar OK Ranch, Co. v. Ehlert*, 2002 MT 12, ¶ 31, 308 Mont. 140, 40 P.3d 378. *Bell & Marra, pllc v. Sullivan*, 2003 MT 56, ¶ 7, 314 Mont. 378, 380-81, 66 P.3d 294, 296.

If a district court abuses its discretion in certifying an order as final under Rule 54(b), this Court is without jurisdiction to entertain the appeal. See *Weinstein v. University of Montana at Missoula*, 271 Mont. 435, 440, 898 P.2d 101, 104 (1995). If we determine that an order was either certified in error or not certified at all, our general practice is to dismiss the appeal without prejudice. See *Trombley v. Mann*, 2001 MT 154, ¶ 11, 306 Mont. 80, 30 P.3d 355; *Weinstein*, 271 Mont. at 443, 898 P.2d at 106; *Roy*, 188 Mont. at 88, 610 P.2d at 1189. *Bell & Marra*, ¶ 8.

Costs

We review a district court's award of costs to determine if the district court abused its discretion. *Mularoni v. Bing*, 2001 MT 215, ¶ 22, 306 Mont. 405, 34 P.3d 497; see also *Carestia v. Robey*, 2013 MT 335, ¶ 7, 372 Mont. 438, 440, 313 P.3d 169, 171.

We review a court's order concerning costs for an abuse of discretion, and a district court's application of a statute in determining entitlement to costs is a question of law reviewed for correctness. *Total Indus. Plant Servs. v. Turner Indus. Grp., LLC*, 2013 MT 5, ¶ 61, 368 Mont. 189, 294 P.3d 363.

Damages

We review a district court's award of damages for abuse of discretion. *Czajkowski v. Meyers*, 2007 MT 292, ¶ 13, 339 Mont. 503, 172 P.3d 94; see also *Mustang Holdings, LLC v. Zaveta*, 2010 MT 139N, ¶ 17, 236 P.3d 3. The decision of the district court will not be disturbed "unless the amount awarded is so grossly out of proportion to the injury as to shock the conscience." *Harding v. Savoy*, 2004 MT 280, ¶ 45, 323 Mont. 261, 100 P.3d 976 (internal citations omitted). Further, while a damages judgment "must be supported by substantial evidence that is not mere guess or speculation," "mathematical precision is not required." *In re Mease*, 2004 MT 59, ¶ 42, 320 Mont. 229, 92 P.3d 1148. Finally, "proof of damages must consist of a reasonable basis for

computation and the best evidence obtainable under the circumstances which will enable a judge to arrive at a reasonably close estimate of the loss.” *In re Mease*, ¶ 42; see also *Tractor & Equip. Co. v. Zerbe Bros.*, 2008 MT 449, ¶ 27, 348 Mont. 30, 199 P.3d 222.

Damages: Liquidated

Whether a stipulated damages provision in a contract constitutes enforceable liquidated damages or an unenforceable penalty is question of law. Therefore, when the underlying facts are not in dispute, this determination is a conclusion of law which we review for correctness. *Arrowhead Sch. Dist. No. 75 v. Klyap*, 2003 MT 294, ¶ 10, 318 Mont. 103, 79 P.3d 250; see also *Highway Specialties, Inc. v. State*, 2009 MT 253, ¶ 10, 351 Mont. 527, 215 P.3d 667.

Damages: Punitive

We review a district court’s punitive damages findings made pursuant to § 27-1-221, MCA, under the three-part test set forth in *Interstate Prod. Credit v. DeSaye*, 250 Mont. 320, 323, 820 P.2d 1285, 1287 (1991), to determine whether they are clearly erroneous. *Marie Deonier v. Paul Revere Life Ins. Co.*, 2004 MT 297, ¶ 39, 323 Mont. 387, 101 P.3d 742. To determine whether the court’s findings are clearly erroneous, we will first review the record to see if the findings are supported by substantial evidence. Second, if the findings are supported by substantial evidence we will determine if the trial court has misapprehended the effect of the evidence. Third, if substantial evidence exists and the effect of the evidence has not been misapprehended, this Court may still find that a finding is clearly erroneous when, although there is evidence to support it, a review of the record leaves us with the definite and firm conviction that a mistake has been committed. *Deonier*, ¶ 39; see also *Czajkowski v. Meyers*, 2007 MT 292, ¶ 14, 339 Mont. 503, 507-08, 172 P.3d 94, 98.

Damages: Remittitur

Our scope of review of jury verdicts is limited. *Onstad v. Payless Shoesource*, 2000 MT 230, ¶ 50, 301 Mont. 259, 9 P.3d 38 (overruled on other grounds). “Only when the amount awarded is so grossly out of proportion to the injury as to shock the conscience will an appellate court intervene.” *Onstad*, ¶ 50 (internal citation omitted); see also *Frisnegger v. Gibson*, 183 Mont. 57, 67, 598 P.2d 574, 580 (1979).

A district court’s refusal to lower a jury verdict on damages is reviewed for an abuse of discretion. *Kiely Constr. L.L.C. v. City of Red Lodge*, 2002 MT 241, ¶¶ 102–06, 312 Mont. 52, 57 P.3d 836. The award “must be reduced when it substantially exceeds that which the evidence can sustain.” *Kiely*, ¶ 102 (citing *Onstad*).

Default

We have set forth two different standards of review of motions seeking to set aside a default judgment, depending upon the disposition of the motions in the district court. If the district court

grants the motion and opens up the action for a trial on the merits, we will set aside the district court's order only "upon a showing of manifest abuse" of discretion. If the district court denies a motion to set aside a default judgment, only a "slight abuse" of discretion need be shown to warrant reversal. *Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶ 17, 338 Mont. 423, 166 P.3d 451; see also *JAS, Inc. v. Eisele*, 2014 MT 77, ¶ 20, 374 Mont. 312, 321 P.3d 113.

We review a district court's denial of a motion for default judgment for a manifest abuse of discretion. *Carter v. Badrock Rural Fire Dist.*, 2021 MT 280, ¶ 11, 406 Mont. 174, 512 P.3d 241.

Equitable Relief

Our standard of review in equity cases is set forth in § 3-2-204(5), MCA. Under that provision, we have a "duty to determine all of the issues of the case and to do complete justice." *Glacier Park Co. v. Mountain, Inc.*, 285 Mont. 420, 427, 949 P.2d 229, 233 (1997). In reviewing a district court's exercise of its equitable powers, this Court is required to review "all questions of fact arising upon evidence presented in the record" to determine if the court's findings are clearly erroneous. *Kauffman-Harmon v. Kauffman*, 2001 MT 238, ¶ 11, 307 Mont. 45, 36 P.3d 408 (citation omitted). We determine if the court's interpretation of the law is correct. *Kauffman*, ¶ 11; see also *LeMond v. Yellowstone Dev., LLC*, 2014 MT 181, ¶ 22, 375 Mont. 402, 336 P.3d 345.

Excusable Neglect

Mont. R. Civ. P. 6 provides an excusable neglect standard. Rule 6 is a general rule which governs the computation and extension of time for the rules, court orders, or statutes that do not specify a method of computing time. Mont. R. Civ. P. 6(a). *Brookins v. Mote*, 2012 MT 283, ¶ 1, 367 Mont. 193, 292 P.3d 347. There is a difference between good cause and excusable neglect, as "[g]ood cause is a more liberal standard than excusable neglect." *N.W. Truck & Trailer Sales, Inc. v. Dvorak*, 265 Mont. 327, 333, 877 P.2d 31, 34 (1994) (noting that "good cause" was used instead of "excusable neglect" in rule of appellate procedure to "provide greater flexibility to district courts in reviewing motions for extending time for filing a notice of appeal."). *Brookins*, ¶ 26.

Family Law

Dissolution: Penalty for Failure to Disclose

We review a District Court's ruling on a motion to set aside a judgment made pursuant to § 40-4-253(5), MCA, for an abuse of discretion. *In re Marriage of Kelly & Camp*, 2025 MT 263, ¶ 14, - Mont. --, -- P.3d --.

Fines

The question of whether a fine is constitutionally excessive calls for the application of a constitutional standard to the facts of a particular case, and in this context de novo review of that question is appropriate. *State v. Forfeiture of 2003 Chevrolet Pickup*, 2009 MT 25, ¶ 5, 349 Mont. 106, 202 P.3d 782.

Interest

The decision to grant or deny pre-judgment interest is reviewed to determine whether the district court correctly interpreted the law. *DiMarzio v. Crazy Mt. Constr., Inc.*, 2010 MT 231, ¶ 23, 358 Mont. 119, 243 P.3d 718; *Tidyman's Mgmt. Servs. v. Davis*, 2014 MT 205, ¶ 13, 376 Mont. 80, 90, 330 P.3d 1139, 1147.

Whether a party is entitled to post-judgment interest is a conclusion of law which we review de novo. *Tipp v. Skjelset*, 1998 MT 263, ¶ 11, 291 Mont. 288, 967 P.2d 787; see also *In re Marriage of Debuff*, 2002 MT 159, ¶ 15, 310 Mont. 382, 50 P.3d 1070.

Judgments

Our standard of review of a district court's ruling on a motion pursuant to M. R. Civ. P. 60(b) depends on the nature of the final judgment and the specific basis of the Rule 60(b) motion. See *In re Marriage of Barnes*, 251 Mont. 334, 336, 825 P.2d 201, 203 (1992) ("The scope of our review of a decision to grant or deny a Rule 60(b) motion depends on the issues involved."). As a general rule, the district court's ruling is reviewed for abuse of discretion. See *Heller v. Gremaux*, 2002 MT 199, ¶ 7, 311 Mont. 178, 53 P.3d 1259; *Hall v. Heckerman*, 2000 MT 300, ¶ 12, 302 Mont. 345, 15 P.3d 869. But where, for instance, the movant sought relief under subsection (2) of Rule 60(b) based on newly discovered evidence, we have stated that we will review the district court's ruling for manifest abuse of discretion. See *Fjelstad v. State, Through Dept. of Highways*, 267 Mont. 211, 220, 883 P.2d 106, 111 (1994). By contrast, where the movant sought relief under subsection (4) of Rule 60(b) on the ground that the judgment is void, the standard of review is de novo, since the determination that a judgment is or is not void is a conclusion of law. *Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶ 16, 338 Mont. 423, 166 P.3d 451; see also *Hicklin v. CSC Logic, Inc.*, 283 Mont. 298, 940 P.2d 447 (1997).

Another exception to the general rule applies in cases where the movant sought relief from a default judgment. There are two standards of review with respect to such motions. *Lords v. Newman*, 212 Mont. 359, 363, 688 P.2d 290, 293 (1984). When a trial court has granted a motion to set aside the default and opened up the action for a trial on the merits, the court’s ruling “will only be set aside upon a showing of manifest abuse”; but when the trial court has denied a motion to set aside the default, “no great abuse of discretion need be shown to warrant reversal” (*i.e.*, “only ‘slight abuse’ is sufficient to reverse an order refusing to set aside a default.”). *Lords*, 212 Mont. at 363-64, 688 P.2d at 293; *Matthews v. Don K Chevrolet*, 2005 MT 164, ¶ 9, 327 Mont. 456, 115 P.3d 201; *Empire Lath & Plaster v. American Cas.*, 256 Mont. 413, 416, 847 P.2d 276, 278 (1993); *Blume v. Metropolitan Life Ins. Co.*, 242 Mont. 465, 467, 791 P.2d 784, 785 (1990); *cf. Skogen v. Murray*, 2007 MT 104, ¶ 11, 337 Mont. 139, 157 P.3d 1143; *Karlen v. Evans*, 276 Mont. 181, 185, 915 P.2d 232, 235 (1996).

The denial of a motion for relief under M. R. Civ. P. 60(b) is generally reviewed for abuse of discretion. *Essex Ins. Co.*, ¶ 16.

This Court reviews a district court’s denial of a M. R. Civ. P. 59(g) motion to amend for abuse of discretion. *Lee v. USAA Cas. Ins. Co.*, 2001 MT 59, ¶ 27, 304 Mont. 356, 22 P.3d 631 (citation omitted); see also *Stockman Bank of Mont. v. Mon-Kota, Inc.*, 2008 MT 74, ¶ 12, 342 Mont. 115, 180 P.3d 1125.

The reopening of a case for the introduction of further evidence after it has been closed is within the discretion of the trial court. Its ruling upon the request to reopen will not be disturbed by the appellate court, unless there has been a clear abuse of discretion. *Stavenjord v. Mont. St. Fund*, 2003 MT 67, ¶ 19, 314 Mont. 466, 67 P.3d 229 (citation and quotation omitted); see also *Pinnacle Gas Res., Inc. v. Diamond Cross Props., LLC*, 2009 MT 12, ¶ 17, 349 Mont. 17, 201 P.3d 160.

Judgment Notwithstanding the Verdict

M.R. Civ. P. 50 “was amended by order of the Montana Supreme Court, effective March 26, 1993, to do away with the terms ‘directed verdict’ and ‘judgment notwithstanding the verdict.’ Judgment as a matter of law’ is now the proper term.” *Giambra v. Kelsey*, 2007 MT 158, ¶ 2 n.1, 338 Mont. 19, 162 P.3d 134.

See II-107 Judgment as a Matter of Law

Motions for Reconsideration

Post final judgment motions for reconsideration do not exist under Montana law. *Horton v. Horton*, 2007 MT 181, ¶ 7, 338 Mont. 236, 165 P.3d 1076; *Jones v. Montana University System*, 2007 MT 82, ¶ 13, 337 Mont. 1, 155 P.3d 1247.

In determining whether a “motion for reconsideration” is in substance a Rule 59 motion to alter or amend, we will look to whether one of four bases—one of which is to correct manifest errors of law or fact—are raised and, if so, we would be more likely to conclude the motion is actually

a motion to alter or amend judgment. *Nelson v. Driscoll*, 285 Mont. 355, 360, 948 P.2d 256, 259 (1997). We also provided guidance regarding what a motion to alter or amend is not. A motion to alter or amend is “not intended to relitigate old matters[;]” nor should it present arguments which the court has already considered and rejected. *Nelson*, 285 Mont. at 360-61, 948 P.2d at 259 (citations omitted); see also *ABC Collectors, Inc. v. Birnel*, 2006 MT 148, ¶ 15, 332 Mont. 410, 138 P.3d 802.

New Trials

We review a district court’s decision to deny a motion for a new trial on the grounds enumerated in § 25-11-102, MCA, for an abuse of discretion. *Willing v. Quebedeaux*, 2009 MT 102, ¶ 19, 350 Mont. 119, 204 P.3d 1248; see also *Cooper v. Hanson*, 2010 MT 113, ¶ 28, 356 Mont. 309, 234 P.3d 59. “The decision to grant or deny a new trial is within the sound discretion of the trial judge and will not be disturbed absent a showing of manifest abuse of that discretion. ‘The standard requires that the abuse of discretion be so significant as to materially affect the substantial rights of the complaining party.’” *Willing*, ¶ 19 (quoting *Lopez v. Josephson*, 2001 MT 133, ¶ 16, 305 Mont. 446, 30 P.3d 326).

Permanent Injunction

While the denial of a temporary or permanent injunction is reviewed for “manifest abuse of discretion,” deference is not applied to the district court’s conclusions of law, which are reviewed de novo to determine whether its interpretation of the law is correct. *City of Whitefish v. Bd. of Co. Comm’rs of Flathead Co.*, 2008 MT 436, ¶ 7, 347 Mont. 490, 199 P.3d 201; *Jefferson Co. v. Dep’t of Env’tl. Quality*, 2011 MT 265, ¶ 16, 362 Mont. 311, 264 P.3d 715; see also *Krutzfeldt Ranch, LLC v. Pinnacle Bank*, 2012 MT 15, ¶ 13, 363 Mont. 366, 272 P.3d 635.

Post-Judgment Orders Pending Appeal

We review the denial of an M. R. Civ. P. 62.1 motion for indicative ruling as though it serves as a denial of an M. R. Civ. P. 60(b) motion on the merits. *Moore v. Frost*, 2021 MT 74, ¶ 7, 403 Mont. 483, 483 P.3d 1090. We review the denial of an M. R. Civ. P. 62.1 motion for an indicative ruling based on a claim of newly discovered evidence for a manifest abuse of discretion. *Moore v. Frost*, 2021 MT 74, ¶ 7, 403 Mont. 483, 483 P.3d 1090 (citing *Essex Ins. Co. v. Moose’s Saloon, Inc.*, 2007 MT 202, ¶ 16, 338 Mont. 423, 166 P.3d 451).

Reopening or Supplementing the Record

The decision to reopen a case for the introduction of further evidence after it has been closed is within the discretion of the trial court. “Its ruling upon the request to reopen will not be disturbed by the appellate court, unless there has been a clear abuse of discretion.” *Stavenjord v. Mont. St. Fund*, 2003 MT 67, ¶ 19, 314 Mont. 466, 67 P.3d 229; see also *Pinnacle Gas Res., Inc. v. Diamond Cross Props., LLC*, 2009 MT 12, ¶ 17, 349 Mont. 17, 201 P.3d 160.

We treat the District Court’s decision denying the parties’ request to supplement the record the same as any other discretionary post-trial court ruling. We review discretionary trial court rulings to determine whether a district court abused its discretion. *Johnson v. Hamilton*, 2003 MT 199, ¶ 9, 317 Mont. 24, 75 P.3d 778; see also *Pub. Lands Access Ass’n v. Jones*, 2004 MT 394, ¶ 17, 325 Mont. 236, 104 P.3d 496.

Sanctions

The Montana Supreme Court adopted the following standard of review for a trial court’s decision to grant sanctions pursuant to M. R. Civ. P. 26(g):

- “1. The district court’s findings of fact will not be overturned unless clearly erroneous.
2. The district court’s conclusion that the facts do or do not constitute a violation of Rule 26(g) will not be reversed absent an abuse of discretion.
3. If the district court concludes that Rule 26(g) has been violated, sanctions must be imposed upon the offending party and failure to do so will be deemed reversible error.
4. The nature and extent of sanctions imposed by the district court pursuant to a violation of Rule 26(g) will not be reversed absent an abuse of discretion.”

Fjelstad v. State ex rel. Dep’t of Highways, 267 Mont. 211, 226–27, 883 P.2d 106, 115 (1994).

Sanctions: Contempt

We review a judgment of contempt to determine whether there is substantial evidence to support the judgment. *Morton v. Lanier*, 2002 MT 214, ¶ 13, 311 Mont. 301, 55 P.3d 380.

There is no appeal from a contempt order, and the exclusive method of review in civil proceedings, apart from exceptions listed in M. R. App. P. 6(3)(j), is by application for writ of certiorari, also known as a writ of review. Section 3-1-523, MCA. This Court reviews contempt orders to first determine whether the court acted within its jurisdiction and second whether there is evidence to support the finding of contempt. *Animal Found. of Great Falls v. Mont. Eighth Judicial Dist. Court*, 2011 MT 289, ¶ 16, 362 Mont. 485, 265 P.3d 659; *Jones v. 19th Jud. Dist. Ct.*, 2001 MT 276, ¶ 16, 307 Mont. 305, 37 P.3d 682; *Kauffman v. 21st Jud. Dist. Ct.*, 1998 MT 239, ¶ 16, 291 Mont. 122, 966 P.2d 715.

Sanctions: Discovery

The Montana Supreme Court reviews a trial court’s rulings on post-trial motions for abuse of discretion. *Weaver v. State*, 2013 MT 247, ¶ 52, 371 Mont. 476, 310 P.3d 495. We “will reverse a trial court’s refusal to invoke M. R. Civ. P. 37 sanctions ‘only when the trial court’s judgment

materially affected the substantial rights of the parties or allowed a possible miscarriage of justice.” *Weaver*, ¶ 52 (citing *State ex rel. State Compen. Mut. Ins. Fund v. Berg.*, 279 Mont. 161, 175, 927 P.2d 975, 983 (1996)).

Sanctions: Rule 11

“We review de novo the district court’s determination that the pleading, motion or other paper violates Rule 11. We review the district court’s findings of fact underlying that conclusion to determine whether such findings are clearly erroneous. If the court determines that Rule 11 was violated, then we review the district court’s choice of sanction for abuse of discretion.” *Byrum v. Anderson*, 2007 MT 107, ¶ 19, 337 Mont. 167, 159 P.3d 1062. “A district court retains the necessary flexibility to deal appropriately with violations of Rule 11 and has discretion to tailor sanctions to the particular facts of the case.” *In re Guardianship and Conservatorship of A.M.M.*, 2015 MT 250, ¶ 73, 380 Mont. 452, 356 P.3d 474 (quoting *Davenport v. Odlin*, 2014 MT 109, ¶ 9, 374 Mont. 503, 327 P.3d 478).

Settlements

We review a district court’s determination of whether a property settlement agreement is unconscionable for abuse of discretion. See *In re Marriage of Rolf*, 2000 MT 361, ¶ 20, 303 Mont. 349, 16 P.3d 345, (citations omitted); see also *In re Marriage of Gorton*, 2008 MT 123, ¶ 20, 342 Mont. 537, 182 P.3d 746.

Workers’ Compensation Court decisions denying lump sum settlements will not be interfered with on appeal unless there is an abuse of discretion. *Byrd v. Ramsey Engineering*, 217 Mont. 18, 21-22, 701 P.2d 1385, 1387 (1985); *Kent v. Sievert*, 158 Mont. 79, 81, 489 P.2d 104, 105 (1971). The Workers’ Compensation Court’s findings are presumed to be correct and will be affirmed if supported by substantial evidence. *Sullivan v. Aetna Life & Cas.*, 271 Mont. 12, 15, 894 P.2d 278, 280 (1995).

Settlement agreements are contracts, subject to the provisions of contract law. *Murphy v. Home Depot*, 2012 MT 23, ¶ 8, 364 Mont. 27, 270 P.3d 72; see also *Kluver v. PPL Mont., LLC*, 2012 MT 321, ¶ 31, 368 Mont. 101, 293 P.3d 817. The interpretation of a contract is a question of law reviewed for correctness. *Hurly v. Lake Cabin Dev., LLC*, 2012 MT 77, ¶ 14, 364 Mont. 425, 276 P.3d 854.

Supersedeas Bonds

This Court reviews a district court’s award of costs and its discretionary rulings on trial administration matters under the abuse of discretion standard. In evaluating abuse of discretion, we look to whether the district court acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice. *In re Inquiry into A.W.*, 2000 MT 311, ¶4, 302 Mont. 447, 14 P.3d 1252 (internal citation omitted).

Vacatur

Section 27-5-312, MCA, sets forth when the district court shall vacate an arbitration award. When a matter has been submitted to binding arbitration, courts are not permitted to review the merits of the controversy, but may only confirm, vacate, modify, or correct an arbitration award pursuant to §§ 27-5-311, -312, and -313, MCA. We review a trial court's decision to confirm an arbitration award to determine if the court abused its discretion. The test for an abuse of discretion is whether the trial court acted arbitrarily, without employment of conscientious judgment, or exceeded the bounds of reason resulting in substantial injustice. We can only review whether the District Court abused its discretion in confirming the arbitration award; we cannot review the merits of the controversy. *Roberts v. Lame Deer Pub. Sch. Dist. #6*, 2013 MT 358, ¶ 7, 373 Mont. 49, 314 P.3d 647 (2013). See also *Colstrip Energy L.P. v. N.W. Corp.*, 2011 MT 99, ¶ 17, 360 Mont. 298, 253 P.3d 870.

A district court may vacate a jury's verdict and grant a new trial when the evidence presented is insufficient to justify the verdict. Section 25-11-102(6), MCA. Conversely, where substantial evidence supports a verdict, the verdict generally cannot be overturned or vacated. The decision of a district court to grant or deny a motion for a new trial will not be reversed absent a manifest abuse of the court's discretion. If there is conflicting evidence on an issue, it is an abuse of the district court's discretion to grant a new trial. *Thompson v. City of Bozeman*, 284 Mont. 440, 442, 945 P.2d 48, 49 (1997) (citations omitted).

In reviewing a default judgment, we are guided by the principle that every litigated case should be decided on its merits; judgments by default are not favored. When appeal is from a denial of a motion to set aside a default judgment, our standard of review is that only a slight abuse of discretion need be shown to warrant reversal. The party seeking to set aside a default judgment has the burden of proof. *Sun Mt. Sports, Inc. v. Gore*, 2004 MT 56, ¶ 10, 320 Mont. 196, 85 P.3d 1286 (citations omitted).

Void Judgments

Our standard of review of a district court's ruling on a motion pursuant to M. R. Civ. P. 60(b) depends on the nature of the final judgment, order, or proceeding from which relief is sought and the specific basis of the Rule 60(b) motion. "[W]here the movant sought relief under subsection (4) of Rule 60(b) on the ground that the judgment is void, the standard of review is de novo, since the determination that a judgment is or is not void is a conclusion of law." *Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶ 16, 338 Mont. 423, 166 P.3d 451 (citations omitted). See also *Greater Missoula Area Fedn. of Early Childhood Educators v. Child Start, Inc.*, 2009 MT 362, ¶ 18, 353 Mont. 201, 219 P.3d 881.