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STANDARDS OF REVIEW, CIVIL

1. **Adoption.**

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 a 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.

2. **Administrative Law.**

Note: Standards of Review of agency decisions are set forth in the Montana Administrative Procedure Act, Mont. Code Ann. § 2-4-704. The agency listing below includes a standard only when it departs from MAPA.

a. Generally.

Denial of a petition for judicial review due to a petitioner's failure to comply with a procedural rule is a conclusion of law. We review a court's conclusions of law for correctness. *Jacky v. Avitus Group*, 2013 MT 296, ¶ 10, 372 Mont. 134, 311 P.3d 423.

The Supreme Court applies the same standard under MAPA that the district court applies, *viz.* "whether an agency's findings of fact are clearly erroneous and whether its conclusions of law were correct." *Whitehall Wind, LLC v. Montana Pub. Serv. Comm'n*, 2015 MT 119, ¶ 8, 379 Mont. 119, 347 P.3d 1273.

When reviewing a district court's decision regarding the review of an agency action, the Montana Administrative Procedure Act governs this Court's review, and the scope of review is limited. *Arlington v. Miller's Trucking, Inc.*, 2015 MT 68, ¶ 9, 378 Mont. 324, 343 P.3d 1222.

We review an agency decision not classified as a contested case to determine whether the decision was “arbitrary, capricious, unlawful, or not supported by substantial evidence.” *Clark Fork Coalition v. Mont. Dept. of Env'tl. Quality*, 2008 MT 407, ¶ 21, 347 Mont. 197, 197 P.3d 482 (quotation omitted). Whether an administrative proceeding is a contested case or a rulemaking proceeding is a question of law which we review for correctness.” *Core-Mark Int'l, Inc. v. Montana Bd. of Livestock*, 2014 MT 197, ¶ 20, 376 Mont. 25, 329 P.3d 1278.

The appropriate standard of review of an agency decision adversely affecting a person’s interest where no hearing or other administrative procedure is provided for is whether the agency decision was arbitrary, capricious, unlawful, or not supported by substantial evidence. *Johansen v. State*, 1999 MT 187, ¶ 11, 295 Mont. 339, 983 P.2d 962.

Whether an administrative regulation impermissibly conflicts with a statute is a question of law to be decided by the court. *Gold Creek Cellular of Montana Ltd. P'ship v. State, Dep't of Revenue*, 2013 MT 273, ¶ 9, 372 Mont. 71, 310 P.3d 533.

b. Deference to Agency’s Statutory Interpretation.

The interpretation of an administrative rule is a question of law. *St. Personnel Div. v. Child Support Investigators*, 2002 MT 46, ¶ 62, 308 Mont. 365, 43 P.3d 305. However, in determining whether an agency correctly interpreted its own rules, procedures, or policies, the agency’s interpretation should be afforded great weight, and the reviewing court should defer to that interpretation unless it is plainly *375 inconsistent with the spirit of the rule. *Mayer v. Bd. of Psychologists, Dep't of Labor & Indus.*, 2014 MT 85, ¶ 25, 374 Mont. 364, 374-75, 321 P.3d 819, 827 (citing *Knowles v. State ex rel. Lindeen*, 2009 MT 415, ¶ 22, 353 Mont. 507, 222 P.3d 595).

“We apply a deferential standard of review to an agency’s interpretation in matters of its expertise.” *Cruson v. Missoula*

Elec. Co-op, Inc., 2015 MT 309, ¶ 31

“[I]t is a well-accepted rule of statutory construction that the long and continued contemporaneous and practical interpretation of a statute by the executive officers charged with its administration and enforcement constitutes an “invaluable aid in determining the meaning of a doubtful statute.” Bartels, 145 Mont. at 122, 399 P.2d at 771. We also stated that where such an interpretation “has stood unchallenged for a considerable length of time it will be regarded as a great importance in arriving at the proper construction of a statute.” Bartels, 145 Mont. at 122, 399 P.2d at 771. We analogized this “deference” to an agency or officer's interpretation of a statute to estoppel, due to the reliance by the “public and those having an interest in the interpretation of the law.” Bartels, 145 Mont. at 122, 399 P.2d at 771.2 ¶ 25 Thus, the foregoing rule of deference applies, generally speaking, where the particular meaning of a statute has been placed in doubt, and where a particular meaning has been ascribed to a statute by an agency through a long and continued course of consistent interpretation, resulting in an identifiable reliance. Even then, such administrative interpretations are not binding on the courts; rather, they are entitled to “respectful consideration.” Doe v. Colburg (1976), 171 Mont. 97, 100, 555 P.2d 753, 754. Accordingly, the test of time and reliance may nevertheless yield to a judicial determination that construction is nevertheless wrong, based on “compelling indications.” D'Ewart, 228 Mont. at 340, 742 P.2d at 1018.” Montana Power Co. v. Montana Pub. Serv. Comm'n, 2001 MT 102, ¶¶ 24-25, 305 Mont. 260, 265-66, 26 P.3d 91.

c. Informal Administrative Decisions.

We review an agency decision not classified as a contested case under the Montana Administrative Procedure Act to determine whether the decision was arbitrary, capricious, unlawful or not supported by substantial law. *Clark Fork Coal. v. Dep't of Env'tl. Quality*, 2012 MT 240, ¶ 20, 366 Mont. 427, 288 P.3d 183.

d. Supplementing the Administrative Record.

The Court reviews a district court's decision exercise its statutory option to take evidence in addition to that before the administrative body for an abuse of discretion. *Arkell v. Middle Cottonwood Bd. of Zoning Adjustment*, 2007 MT 160, ¶ 14, 338 Mont. 77, 162 P.3d 856.

“The question of whether an employee has disregarded standards of behavior, been careless or negligent, or violated company rules is a question of fact. Whether those ‘facts’ then constitute “misconduct” involves interpretation and application of the Administrative Rules of Montana and is a legal conclusion reviewable by this Court. Therefore, we must determine whether the District Court's conclusion that Moody was discharged for ‘misconduct’ is correct.” *Moody v. Northland Royalty Co.*, 281 Mont. 26, 930 P.2d 1100 (1997) (citations omitted).

e. Commission on Practice. “This Court possesses ‘original and exclusive jurisdiction and responsibility’ in all matters involving the disciplining of attorneys in Montana. As a result, our review of the Commission’s findings of fact, conclusions of law, and recommendations is *de novo*. ‘Our duty includes weighing the evidence upon which the Commission’s findings rest.’ Matters of trial administration are reviewed for abuse of discretion. Further, despite our duty to weigh the evidence, ‘we remain reluctant to reverse the decision of the Commission when its findings rest on testimonial evidence. We recognize that the Commission stands in a better position to evaluate conflicting statements after observing the character of the witnesses and their statements.’” *In re Neuhardt*, 2014 MT 88, ¶ 16, 374 Mont. 379, 321 P.3d 833.

f. Conservation Districts. “[O]n judicial review may reverse or modify the conservation district's declaratory ruling only if substantial rights of the appellant have been prejudiced because the decision violates constitutional or statutory provisions; is in excess of statutory authority; is affected by error of law; or is

arbitrary or capricious, characterized by abuse of discretion or a clearly unwarranted exercise of discretion. *City of Livingston v. Park Conservation Dist.*, 2013 MT 234, ¶ 10, 371 Mont. 303, 307 P.3d 317.

- g. Health, County Board of. We review to determine whether the administrative agency's findings of fact are clearly erroneous and whether the agency correctly has interpreted the law. *Id.* We review for correctness a district court's conclusions of law. *Headapohl v. Missoula City-Cnty. Bd. of Health*, 2011 MT 209, ¶ 19, 361 Mont. 468, 260 P.3d 139.
- h. Human Rights Commission. "On appeal of a district court's ruling on a contested case affirmed by the Commission, 'we review findings of fact for clear error and conclusions of law for correctness.' 'This Court gives deference to interpretations of the Montana Human Rights Commission concerning the laws [that] it enforces.'" *Estate of Welch v. Holcim, Inc.*, 2014 MT 1, ¶ 17, 373 Mont. 181, 316 P.3d 823 (citations omitted).
- i. Insurance Commissioner.

Knowles v. State ex rel. Lindeen, 2009 MT 415, ¶¶ 20-21, 353 Mont. 507, 222 P.3d 595.
- j. Judicial Standards Commission.

We review the Judicial Standard Commission's proceedings *de novo*. *Inquiry Concerning Complaint of Judicial Standards Comm'n v. Not Afraid*, 2010 MT 285, ¶ 8, 358 Mont. 532, 245 P.3d 1116.
- k. Labor Appeals, Board of. When a district court reviews a decision by the Board of Labor Appeals, the court reviews conclusions of law for correctness. The same standard applies for this Court's later review of the district court decision. Whether the facts of a case demonstrate misconduct is a legal conclusion that is reviewed for correctness. *Roberts v. State Bd. of Labor*

Appeals, 2013 MT 328, ¶ 17, 372 Mont. 374, 313 P.3d 110 (citations omitted).

- l. Montana Environmental Policy Act (MEPA). “The standard of review for MEPA decisions is ‘whether the record establishes that the agency acted arbitrarily, capriciously or unlawfully.’ 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.’” *Montana Wildlife Federation v. Montana Board of Oil & Gas Conservation*, 2012 MT 128, ¶ 25, 365 Mont. 232, 280 P.3d 877; *Byrum v. Andren*, 2007 MT 107, ¶ 27, 337 Mont. 167, 159 P.3d 1062
- m. Natural Resources and Conservation, Department of.

Bostwick Properties, Inc. v. Montana Dep't of Natural Res. & Conservation, 2013 MT 48, ¶ 15, 369 Mont. 150, 296 P.3d 1154 (citation omitted).
- n. Oil and Gas Conservation, Board of.

Montana Wildlife Fed'n v. Montana Bd. of Oil & Gas Conservation, 2012 MT 128, ¶ 26, 365 Mont. 232, 280 P.3d 877 (quoting Mont. Code Ann. § 82–11–144(2)).
- o. Psychologists, Board of. The Montana Board of Psychologists is considered an “agency” for purposes of the Montana Administrative Procedure Act. *Mayer v. Bd. of Psychologists*, 2014 MT 85, ¶ 24, 374 Mont. 364, 321 P.3d 819.
- p. Public Employees Retirement Board.

Briese v. Montana Public Employees' Retirement Board, 2012 MT 192, ¶ 11, 366 Mont. 148, 285 P.3d 550.

- q. Public Health and Human Services, Department of.
Micone v. Department of Public Health & Human Services, 2011 MT 178, ¶ 10, 361 Mont. 258, 258 P.3d 403.
- r. Public Service Commission. The same standards of judicial review of a final agency decision apply to the district court and this Court. *Molnar v. Fox*, 2013 MT 132, ¶ 17, 370 Mont. 238, 301 P.3d 824; *Williamson v. Montana Public Service Commission*, 2012 MT 32, ¶ 25, 364 Mont. 128, 272 P.3d 71.
- s. State Land Leases. The court reviews a DNRC leasing decision under the standard of review set forth in § 2-4-704, MCA. *Grenz v. Montana Department of Natural Resources. & Conservation*, 2011 MT 17, ¶ 16, 359 Mont. 154, 248 P.3d 785.
- t. State Tax Appeals Board. *Department of Revenue v. Heidecker*, 2013 MT 171, ¶ 12, 370 Mont. 464, 304 P.3d 726.
- u. Subdivision Review. “While the standard of review we have adopted utilizes three terms, it breaks down into two basic parts. One part concerns whether the agency action could be held unlawful, and the other concerns whether it could be held arbitrary or capricious.” *Citizens for Responsible Development v. Board of County Commissioners of Sanders County*, 2009 MT 182, ¶ 8, 351 Mont. 40, 208 P.3d 876; *North Fork Preservation Assn. v. Dept. of State Lands*, 238 Mont. 451, 459, 778 P.2d 862, 867 (1989).
- v. County Superintendent of Schools. “The superintendent’s findings of fact are subject to a ‘clearly erroneous’ standard of review while the superintendent’s conclusions of law will be upheld if the interpretation of law is correct.” *Anaconda Public School, Board of Trustees of Anaconda Sch. Dist. No. 10 v. Whealon*, 2012 MT 13, ¶ 10, 363 Mont. 344, 268 P.3d 1258 (citations omitted).
- w. Unemployment Insurance. In unemployment insurance cases,

this Court reviews the factual findings to determine if they are supported by substantial evidence. *Gary & Leo's Fresh Foods, Inc. v. Department of Labor & Industry*, 2012 MT 219, ¶ 12, 366 Mont. 313, 286 P.3d 1218.

- x. Zoning Boards. “When reviewing a zoning decision, we ‘give deference to the decisions of the local board.’ Our review is limited to the question whether the zoning authority abused its discretion. To constitute an abuse of discretion, the zoning authority's decision must be based on information that is ‘so lacking in fact and foundation that it is clearly unreasonable.’ If the validity of the legislative classification for zoning purposes is ‘fairly debatable,’ then the legislative judgment of the zoning board controls. *Helena Sand & Gravel, Inc. v. Lewis & Clark Cnty. Planning & Zoning Comm'n*, 2012 MT 272, ¶ 15, 367 Mont. 130, 290 P.3d 691; *DeVoe v. City of Missoula*, 2012 MT 72, ¶ 10, 364 Mont. 375, 274 P.3d 752.

This Court does not sit as a super-legislature or super-zoning board. *Englin v. Board of County Com'rs*, 2002 MT 115, ¶ 16, 310 Mont. 1, 48 P.3d 39; *Anderson Ins. v. City of Belgrade*, 246 Mont. 112, 120, 803 P.2d 648, 653 (1990).

Zoning designations are legislative acts that courts review for an abuse of discretion. *Plains Grains Ltd. Partnership v. Board of County Comm'rs of Cascade Cnty.*, 2010 MT 155, ¶ 21, 357 Mont. 61, 238 P.3d 332.

3. **Amendment of Pleadings** (Rule 15, Mont. R. Civ. P.).

- a. Generally.

This Court reviews a district court's decision on a motion under Rule 15, M.R.Civ. P. to file an amended pleading to determine whether there was an abuse of discretion. *Hansen v. Bozeman Police Dep't*, 2015 MT 143, ¶ 11, 379 Mont. 284, 350 P.3d 372.

b. Relation back.

A court's application of M.R. Civ. P. 15(c) to undisputed facts presents a question of law that is reviewed *de novo*. *H & H Dev., LLC v. Ramlow*, 2012 MT 51, ¶ 13, 364 Mont. 283, 272 P.3d 657.

4. **Appeals.**

Dismissal of an appeal for waiver is a matter for determination by this Court. *Tempel v. Benson*, 2015 MT 84, ¶ 7, 378 Mont. 401, 346 P.3d 342.

5. **Arbitration.**

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. *Roberts v. Lame Deer Public School Dist. No. 6*, 2013 MT 358, ¶ 7, 373 Mont. 49, 314 P.3d 647; *Hughes v. Hughes*, 2013 MT 176, ¶ 20, 370 Mont. 499, 305 P.3d 772.

We review *de novo* a district court's order to compel arbitration. *Kelker v. Geneva-Roth Ventures, Inc.*, 2013 MT 62, ¶ 9, 369 Mont. 254, 303 P.3d 777, *cert. dismissed*, 134 S. Ct. 734, 187 L. Ed. 2d 590 (2013).

We review a district court's conclusions of law regarding arbitrability like any other issue of contract interpretation; we determine whether the court is correct. *Hubner v. Cutthroat Communications, Inc.*, 2003 MT 333, ¶ 4, 318 Mont. 421, 80 P.3d 1256.

6. **Attorney fees.**

a. Generally.

A grant or denial of an application for attorney's fees is reviewed for

abuse of discretion. *Wohl v. City of Missoula*, 2013 MT 46, ¶ 28, 369 Mont. 108, 300 P.3d 1119.

b. Prevailing Party.

A “district court’s determination of ‘prevailing’ or ‘losing’ parties” is reviewed for an abuse of discretion. *Whipps, L.L.C. v. Kaufman, Vidal, Hileman & Ramlow, P.C.*, 2007 MT 66, ¶ 6, 336 Mont. 386, 156 P.3d 11.

c. Private Attorney General Doctrine.

An award of attorney’s fees under the private attorney general doctrine is reviewed for abuse of discretion. *Bitterroot River Protective Ass’n v. Bitterroot Conservation Dist.*, 2011 MT 51, ¶ 9, 359 Mont. 393, 251 P.3d 131 (citation omitted).

d. Eminent Domain.

“[A] grant of attorney’s fees and expenses to the prevailing property owner is mandatory. In such cases, the Supreme Court reviews a district court’s determination of which party prevailed for an abuse of discretion. *Wohl v. City of Missoula*, 2014 MT 310, ¶ 12, 377 Mont. 148, 339 P.3d 58.

e. Abuse of Discretion Defined.

“A district court has abused its discretion if its award of attorney fees is not supported by substantial evidence.” *In re Guardianship of A.M.M.*, 2015 MT 250, ¶ 18, ___ Mont. ___, ___ P.3d ___; *In re Marriage of Harkin*, 2000 MT 105, ¶ 70, 299 Mont. 298, 999 P.2d 969.

f. Authority to Award Fees.

“This Court reviews for correctness a district court’s decision as to whether legal authority exists to award attorney fees.” *Bennett v. Hill*, 2015 MT 30, ¶ 10, 378 Mont. 141, 342 P.3d 691; *Beebe v. Bd. of*

Directors of Bridger Creek Subdivision Cmty. Ass'n, 2015 MT 183, ¶ 13, 379 Mont. 484, 352 P.3d 1094; *Horace Mann Ins. Co. v. Hanke*, 2013 MT 320, ¶ 12, 372 Mont. 350, 312 P.3d 429.

g. Declaratory Judgment Act.

“The grant of attorney fees pursuant to § 27–8–313, MCA, of the UDJA, is within the discretionary province of the district court. We therefore review a court’s decision to award such fees for an abuse of discretion.” *Pub. Land/Water Access Ass’n, Inc. v. Jones*, 2015 MT 299, ¶ 17, ___ Mont. ___, ___ P.3d ___.

h. Contracts.

“[W]hen a contract ‘requires an award of attorney’s fees and the contract is conscionable, a district court lacks discretion to deny attorney’s fees.’” *Emmerson v. Walker*, 2010 MT 167, ¶ 20, 357 Mont. 166, 236 P.3d 598; *In re Szafryk*, 2010 MT 90, ¶ 19, 356 Mont. 141, 232 P.3d 361.

i. 42 U.S.C. § 1988.

We review a District Court’s award of attorney fees under 42 U.S.C. § 1988 for an abuse of discretion. *Ihler v. Chisholm*, 2000 MT 37, ¶ 24, 298 Mont. 254, 995 P.2d 439.

7. **Attorneys.**

a. Attorney-client Relationship.

“The existence of an attorney-client relationship is generally a question of fact.” *In re Marriage of Perry*, 2013 MT 6, ¶ 15, 368 Mont. 211, 293 P.3d 170 (citing *Krutzfeldt Ranch, LLC v. Pinnacle Bank*, 2012 MT 15, ¶ 14, 363 Mont. 366, 272 P.3d 635).

b. Termination of Attorney-client Relationship.

Application of the law concerning the termination of an

attorney-client relationship to a given set of facts is a question of law. *Krutzfeldt Ranch, LLC v. Pinnacle Bank*, 2012 MT 15, ¶ 15, 363 Mont. 366, 272 P.3d 635.

c. Disqualification of Counsel.

We review a district court's denial of a motion to disqualify counsel for an abuse of discretion. *In re Estate of C.K.O.*, 2013 MT 72, ¶ 15, 369 Mont. 297, 297 P.3d 1217; *Pro-Hand Servs. Trust v. Monthei*, 2002 MT 134, ¶ 9, 310 Mont. 165, 49 P.3d 56, *overruled on other grounds*, *In re Marriage of Perry*, 2013 MT 6, ¶ 19, 368 Mont. 211, 293 P.3d 170.

d. Attorney Discipline.

“Ultimately, it is this Court’s ‘constitutional mandate to fashion and interpret the Rules of Professional Conduct.’” *In re Marriage of Perry*, 2013 MT 6, ¶ 16, 368 Mont. 211, 293 P.3d 170.

“This Court ‘possesses original and exclusive jurisdiction and responsibility’ in all matters involving the disciplining of lawyers in the state of Montana. See Introduction, Montana Rules for Lawyer Disciplinary Enforcement (MRLDE). We review *de novo* the Commission's findings of fact, conclusions of law, and recommendations. We weigh the evidence upon which the Commission's findings rest.” *In re Engel*, 2008 MT 42, ¶ 3, 341 Mont. 360, 177 P.3d 502.

e. Character and Fitness Committee.

The standard of review used by this Court in reviewing Committee decisions to deny admission and certification to take the Montana bar examination is as follows: Upon reviewing a final decision of the Character and Fitness Committee we will conduct an independent review of the entire record to determine if the Committee erred. When the facts are admitted and uncontested, as they are in this case, we will give due consideration to the inferences drawn by the Committee, including inferences concerning rehabilitation and mitigation.

Consideration will be given to the recommendation of the Committee as to whether the applicant is of the requisite good moral character and fitness to be admitted to the Montana Bar. The Committee will have heard testimonial evidence and will have had the opportunity to observe the demeanor and judge the credibility of the applicant or other witnesses. However, inasmuch as we are designated by the Montana Constitution to ultimately make this decision, we will affirm the Committee's recommendation if we determine it was correct, and we will reverse if we determine the Committee erred. Our review will be in accordance with the existing standards for admission, taking into consideration the whole record. *Petition of Steele*, 262 Mont. 481, 487, 865 P.2d 285, 289 (1993); see Rules of Procedure of the Committee on Character and Fitness (1991), Section 3(a) (as amended June 9, 1992); now Section 4(a) (amended March 25, 1993).

8. Certified Questions.

“When answering a certified question from another qualifying court as permitted by M.R.App. P. 15(3), our review is ‘purely an interpretation of the law as applied to the agreed facts underlying the action.’” *Northern Pacific Ins. Co. v. Stucky*, 2014 MT 299, ¶ 18, 377 Mont. 25, 338 P.3d 56; *Van Orden v. United Servs. Auto. Ass’n*, 2014 MT 45, ¶ 10, 374 Mont. 62, 318 P.3d 1042 (quotations and citations omitted).¹

9. Certification under Rule 54(b).

“We review discretionary rulings under Rule 54(b) to determine if the district court abused its discretion.” *Bell & Marra, PLLC v. Sullivan*, 2003 MT 56, ¶ 7, 314 Mont. 378, 66 P.3d 294.

10. Certiorari, Writ of (Writ of Review).

“Because the District Court exercised its statutory option and took additional evidence before making its decision, we review the District Court's decision for an abuse of discretion.” *Sutey Oil Co. v. Anaconda-Deer Lodge Cnty. Planning Bd.*, 1998 MT 127, ¶ 14, 289 Mont. 99, 959 P.2d 496.

11. **Cities and Towns.**

a. Annexation.

“If there are no disputed issues of fact, this Court will review a district court’s decision on whether there was compliance with the law *de novo*. *Gregg v. Whitefish City Council*, 2004 MT 262, ¶ 20, 323 Mont. 109, 99 P.3d 151.

12. **Civil Commitments/Mental Health.**

a. Generally.²

“This Court reviews a district court’s civil commitment order ‘to determine whether the court’s findings of fact are clearly erroneous and its conclusions of law are correct.’” *In re M.K.S.*, 2015 MT 146, ¶ 10, 379 Mont. 293, 350 P.3d 27; *In re Mental Health of L.K.S.*, 2011 MT 21, ¶ 14, 359 Mont. 191, 247 P.3d 1100.

b. District Court Fact Findings.

“We require ‘strict adherence’ to the statutory scheme governing involuntary commitment due to the ‘critical importance’, of the constitutional rights at stake. Whether a district court’s findings of fact satisfy the statutory requirements is a question of law which we review for correctness.” *In re L.A.*, 2013 MT 327, ¶ 10, 372 Mont. 368, 313 P.3d 115.

c. Due process claims.

“Due process claims arising from involuntary civil commitments are subject to plenary review.” *In re N.A.*, 2014 MT 257, ¶ 10, 376 Mont. 379, 382, 334 P.3d 915.

d. Jury Verdict.

“[W]e will review the sufficiency of the evidence supporting a jury’s special verdict in a civil commitment case to determine whether any

rational trier of fact, viewing the evidence in a light most favorable to the State, could have found the essential elements necessary for commitment beyond a reasonable doubt.” *In re D.M.S.*, 2009 MT 41, ¶ 11, 349 Mont. 257, 203 P.3d 776.

13. **Class Actions** (Rule 23, Mont. R. Civ. P.).

Decisions on class certification are reviewed for an abuse of discretion. *Morrow v. Monfric, Inc.*, 2015 MT 194, ¶ 6, 380 Mont. 58, 354 P.3d 558; *Jacobsen v. Allstate Ins. Co.*, 2013 MT 244, ¶ 25, 371 Mont. 393, 310 P.3d 452.

“[O]ur discussion is not resolved by reference to the standard of review alone, and we offer guidance on the district court's exercise of its discretion where appropriate.” *Morrow v. Monfric, Inc.*, 2015 MT 194, ¶ 12, 380 Mont. 58, 354 P.3d 558 (citing *Maloney v. Home & Inv. Ctr., Inc.*, 2000 MT 34, ¶ 57, 298 Mont. 213, 994 P.2d 1124 (which was not a Rule 23 case)).

“[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 v. Montana Power Co.*, 2012 MT 318, ¶ 17, 368 Mont. 1, 291 P.3d 1209.

14. **Conflict of Laws.**

The Supreme Court reviews “*de novo* a district court’s conflict-of-laws determination of the law that will govern a case.” *Masters Group Int’l, Inc. v. Comerica Bank*, 2015 MT 192, ¶ 33, 380 Mont. 1, ___ P.3d ___; *Harrington v. Energy W. Inc.*, 2015 MT 233, ¶ 7, 380 Mont. 298, ___ P.3d ___.

“This Court reviews . . . *de novo* . . . decisions on choice of law” *Tidyman’s Management Services, Inc. v. Davis*, 2014 MT 205, ¶ 13, 376 Mont. 80, 330 P.3d 1139.

15. **Conservatorship.**

The choice of a conservator is reviewed for a clear abuse of discretion. *In re Guardianship of A.M.M.*, 2015 MT 250, ¶ 16, ___ Mont. ___, ___ P.3d ___; *but see In re J.A.L.*, 2014 MT 196, ¶ 11, 376 Mont. 18, 329 P.3d 1273 (reviewing the district court’s choice of a guardian/conservator for an abuse of discretion).

Trial courts’ rulings in estate administration are reviewed for abuse of discretion. *In re Johnson*, 2011 MT 255, ¶ 12, 362 Mont. 236, 262 P.3d 1105.

16. **Constitutionality of Statutes.**

Review of constitutional questions is plenary and the Court reviews the district court’s application of the Constitution to determine if it is correct. *City of Billings v. Albert*, 2009 MT 63, ¶ 11, 349 Mont. 400, 203 P.3d 828.

To determine whether the statutes comply with the constitutional mandates of the trust and the State’s fiduciary duties as trustee, we review a district court’s conclusions of law to determine whether they are correct. *Montanans for Responsible Use of School Trust v. Darkenwald*, 2005 MT 190, ¶ 22, 328 Mont. 105, 119 P.3d 27.

17. **Contempts.**

a. Generally.

There is no appeal from a contempt order, and the exclusive method of review in civil proceedings, apart from exceptions not applicable here, is by application for writ of certiorari also known as a writ of review. *Animal Foundation of Great Falls v. Montana Eighth Judicial District Court*, 2011 MT 289, ¶ 16, 362 Mont. 485 265 P.3d 659.

On a writ of review, “[t]his 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*

Foundation of Great Falls v. Montana Eighth Judicial District Court, 2011 MT 289, ¶ 16, 362 Mont. 485, 265 P.3d 659.

In reviewing an appeal from an order of contempt, this Court's standard of review is whether substantial evidence supports the judgment of contempt. *Morton v. Lanier*, 2002 MT 214, ¶ 27, 311 Mont. 301, 55 P.3d 380.

b. Violation of Family Court Order.

The Court reviews contempt orders imposed for violating an ancillary order in family law cases that affects the substantial rights of the parties involved to determine whether the district court acted within its jurisdiction, whether the evidence supports the contempt, and whether there has been a “blatant abuse of discretion.” *Novak v. Novak*, 2014 MT 62, ¶ 37, 374 Mont. 182, 320 P.3d 459.; *In re Marriage of Marez & Marshall*, 2014 MT 333, ¶ 23, 377 Mont. 304, 340 P.3d 520.

18. **Contracts.**

a. Generally.

“Both the existence of a contract and its interpretation are questions of law which we review for correctness.” *Chipman v. Northwest Healthcare Corp.*, 2014 MT 15, ¶ 12, 373 Mont. 360, 317 P.3d 182; *Hurly v. Lake Cabin Dev., LLC*, 2012 MT 77, ¶ 14, 364 Mont. 425, 276 P.3d 854.

The interpretation of an insurance contract’s terms presents a question of law, and we review a district court’s legal conclusions for correctness. *Cusenbary v. United States Fidelity & Guaranty Co.*, 2001 MT 261, ¶ 9, 307 Mont. 238, 37 P.3d 67.

The interpretation of a contract, including whether the contract is ambiguous, is a question of law, which we review for correctness. *Montana Health Network, Inc. v. Great Falls Orthopedic Associates*, 2015 MT 186, ¶ 12, 379 Mont. 513, 353 P.3d 483.

A district court's interpretation of a restrictive covenant is a conclusion of law reviewed to determine whether the court's conclusion is correct. *Bennett v. Hill*, 2015 MT 30, ¶ 10, 378 Mont. 141, 342 P.3d 691; *Clark v. Pennock*, 2010 MT 192, ¶ 23, 357 Mont. 338, 239 P.3d 922.

b. Settlement Agreements.

A settlement agreement is a contract. *Gamble v. Sears*, 2007 MT 131, ¶ 24, 337 Mont. 354, 160 P.3d 537. Interpretation of a settlement agreement is an issue of law reviewed *de novo*. *Kruer v. Three Creeks Ranch of Wyoming, L.L.C.*, 2008 MT 315, ¶ 16, 346 Mont. 66, 194 P.3d 634.

c. Reasonableness.

The question of whether a given length of time is reasonable can be either a question of fact or a question of law, depending upon the surrounding circumstances. *Dambrowski v. Champion International Corp.*, 2003 MT 233, ¶ 7, 317 Mont. 218, 76 P.3d 1080.

d. Breach.

The determination of whether a party materially breached a contract is a question of fact. *Eschenbacher v. Anderson*, 2001 MT 206, ¶ 22, 306 Mont. 321, 34 P.3d 87.

19. **Corporations.**

a. Dissenter's Rights. (Mont. Code Ann. § 35-1-838).

In an equitable action involving dissenters' rights, a district court's findings of fact must be upheld unless they are clearly erroneous. *Hansen v. 75 Ranch Co.*, 1998 MT 77, ¶ 20, 288 Mont. 310, 957 P.2d 32. We review conclusions of law to determine whether the court's interpretation of the law is correct. *Wyo-Ben, Inc. v. Bixby*, 2014 MT 334, ¶ 20, 377 Mont. 318, 339 P.3d 1255.

b. Piercing the corporate veil.

“While § 3–2–204(5), MCA, provides the applicable standard of review, it does not, as Meridian advocates, entitle Meridian to a *de novo* review of the evidence. This Court’s function in reviewing findings of fact in a civil action tried by a district court without a jury is not to substitute its judgment in place of the trier of facts but rather it is confined to determining whether the findings of fact are clearly erroneous.” *Meridian Minerals Co. v. Nicor Minerals, Inc.*, 228 Mont. 274, 282, 742 P.2d 456, 461 (1987)

20. **Costs.**

We review a district court’s award of costs to determine if the district court abused its discretion. *Carestia v. Robey*, 2013 MT 335, ¶ 7, 372 Mont. 438, 313 P.3d 169.

A district court’s application of §§ 25–10–101 and –102, MCA, or another standard, in determining whether a party is entitled to costs constitutes a question of law. *Williamson v. Montana Public Service Commission*, 2012 MT 299, ¶ 7, 367 Mont. 379, 291 P.3d 1116.

21. **Counterclaims.**

“We review *de novo* the District Court’s decision to convert HRDC’s counterclaim to an affirmative defense.” *Johnson v. Dist. VII*, 2009 MT 86, ¶ 18, 349 Mont. 529, 204 P.3d 714.

“The District Court’s decision to dismiss a complaint on the basis of Rule 13(a), M.R.Civ.P., is a conclusion of law. We review the legal conclusions of a trial court *de novo*. We simply determine whether the tribunal’s interpretation of the law is correct.” *Zimmerman v. Connor*, 1998 MT 131, ¶ 7, 289 Mont. 148, 958 P.2d 1195.

22. **Damages.**

a. Generally.

We review an award of damages to determine whether the trial court abused its discretion. *Wohl v. City of Missoula*, 2013 MT 46, ¶ 28, 369 Mont. 108, 300 P.3d 1119. A district court’s determination of damages is a factual finding that must be upheld if it is supported by substantial evidence.” We will not overturn a district court’s determination of damages unless it is clearly erroneous. *Owen v. Skramovsky*, 2013 MT 348, ¶ 18, 372 Mont. 531, 313 P.3d 205; *Lewistown Miller Construction Co. v. Martin*, 2011 MT 325, ¶ 16, 363 Mont. 208, 271 P.3d 48. The Court reviews a district court’s conclusions of law with respect to damages for correctness. *Mountain West Bank, N.A. v. Cherrad, LLC*, 2013 MT 99, ¶ 27, 369 Mont. 492, 499, 301 P.3d 796; *Lewistown*, ¶ 17.

b. Punitive Damages.

“This Court conducts plenary review of the district court’s application of the statutory requirements. We will reverse a district court’s award of punitive damages for an abuse of discretion. *Osman v. Cavalier*, 2011 MT 60, ¶ 7, 360 Mont. 17, 19, 251 P.3d 686 (quoting *Emmerson v. Walker*, 2010 MT 167, ¶¶ 39–40, 357 Mont. 166, 236 P.3d 598 (citation omitted)).

Punitive damages under the Consumer Protection Act are reviewed for abuse of discretion. *Plath v. Schonrock*, 2003 MT 21, ¶ 11, 314 Mont. 101, 64 P.3d 984.

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 Production Credit v. DeSaye*, 250 Mont. 320, 323, 820 P.2d 1285, 1287 (1991), to determine whether they are clearly erroneous. *Czajkowski v. Meyers*, 2007 MT 292, ¶ 14, 339 Mont. 503, 172 P.3d 94.

c. Statutory Caps.

“The District Court’s determination that the governmental liability cap of \$750,000 contained in § 2–9–108(1), MCA, does not apply in this case, is a conclusion of law” and the Court’s review is plenary. *Delaney*

& Co. v. City of Bozeman, 2009 MT 441, ¶ 15, 354 Mont. 181, 222 P.3d 618.

d. Emotional Distress.

“The District Court’s determination that Jacobsen was required to make a threshold showing of serious or severe emotional distress in order to present evidence of such damages to the jury was a conclusion of law. Our standard of review is therefore plenary.” *Jacobsen v. Allstate Ins. Co.*, 2009 MT 248, ¶ 61, 351 Mont. 464, 215 P.3d 649.

e. Fair Labor Standards Act.

“We review an award of liquidated damages under the FLSA utilizing multiple standards of review, although we have not previously stated them comprehensively. First, concerning the determination that an employer has or has not acted in good faith and on reasonable grounds, a district court's factual findings are reviewed for clear error and legal conclusions are reviewed de novo for correctness. *Tefft v. Montana*, 271 Mont. 82, 91–92, 894 P.2d 317, 323 (1995); *see also Rodriguez v. Farm Stores Grocery, Inc.*, 518 F.3d 1259, 1272 (11th Cir.2008) (citing 29 U.S.C. § 260). Then, if an employer has established good faith and reasonable grounds, we review the ultimate decision concerning an award of liquidated damages for an abuse of discretion. *Tefft*, 271 Mont. at 93, 894 P.2d at 324; *Rodriguez*, 518 F.3d at 1272.” *Tacke v. Energy W., Inc.*, 2010 MT 39, ¶ 25, 355 Mont. 243, 227 P.3d 601.

f. Negligent Misrepresentation.

“The District Court’s determination that Bokma Farms’ damages for negligent misrepresentation do not include its anticipated profits is a conclusion of law which we review to determine whether it is correct.” *Bokma Farms, Inc. v. State*, 2000 MT 298, ¶ 6, 302 Mont. 321, 14 P.3d 1199.

g. Compensatory Damages.

“We review a jury’s award of compensatory damages to determine if substantial credible evidence exists to support the jury’s award.” *Hager v. J.C. Billion, Inc.*, 2008 MT 167, ¶ 16, 343 Mont. 353, 184 P.3d 340.

h. Liquidated Damages.

“Whether a stipulated damages provision in a contract constitutes enforceable liquidated damages or an unenforceable penalty is question of law . . . which we review for correctness.” *Arrowhead Sch. Dist. No. 75, Park County v. Klyap*, 2003 MT 294, ¶ 10, 318 Mont. 103, 79 P.3d 250.

“What constitutes good faith and reasonable grounds, as those notions relate to the issue of liquidated damages, involves mixed questions of law and fact. To the extent that legal principles are involved, the standard of review is *de novo*, but to the extent that factual issues are involved, we will reverse the district court only for clear error. *Tefft v. State*, 271 Mont. 82, 91-92, 894 P.2d 317, 323 (1995).³

i. Collateral Source Doctrine.

“The reduction of a jury award based on a collateral source statute, as well as awarding judgment interest, which is also statutory, are questions of law, and therefore, we examine whether the district court was correct in its application of the law.” *Schuff v. A.T. Klemens & Son*, 2000 MT 357, ¶ 29, 303 Mont. 274, 16 P.3d 1002.

23. **Declaratory Judgment.**

a. Generally.

“This Court will not disturb a district court’s determination that declaratory relief is not necessary or proper unless the court abused its discretion.” *Murray v. Motl*, 2015 MT 216, ¶ 9, 380 Mont. 162, 354 P.3d 197; *Miller v. State Farm Mut. Auto. Ins. Co.*, 2007 MT 85, ¶ 5, 337 Mont. 67, 155 P.3d 1278.

Within the abuse of discretion standard, “Our standard of review pertaining to a district court’s conclusions of law, in rendering a declaratory judgment, is to determine if the court’s interpretation of the law is correct.” *Beebe v. Board of Directors of Bridger Creek Subdivision Cmty. Ass’n*, 2015 MT 183, ¶ 12, 379 Mont. 484, 352 P.3d 1094; *Skinner v. Allstate Ins. Co.*, 2005 MT 323, ¶ 10, 329 Mont. 511, 127 P.3d 359 (quoting *City of Great Falls v. Dir. of the Dep’t of Pub. Health & Human Services*, 2002 MT 108, ¶10, 309 Mont. 467, 47 P.3d 836).

b. Supplemental Relief.

“We review for an abuse of discretion a district court’s ruling granting or denying supplemental relief under § 27–8–313, MCA.” *Pub. Land/Water Access Association, Inc. v. Jones*, 2013 MT 31, ¶ 8, 368 Mont. 390, 300 P.3d 675.

c. Dismissal.

A district court exercises discretion in deciding whether to dismiss a complaint for declaratory judgment. *Tenas v. Progressive Preferred Ins. Co.*, 2008 MT 393, ¶ 13, 347 Mont. 133, 197 P.3d 990.⁴

24. **Default Judgment.**

a. Generally.

“We review a court’s decision to deny a motion to set aside a default judgment for only a slight abuse of discretion. A district court’s discretion to set aside an entry of default should be liberally exercised to facilitate a trial on the merits.” *In re Estate of Mills*, 2015 MT 245, ¶ 12, ___ Mont. ___, ___ P.3d ___, *McClurg v. Flathead County Commissioners*, 188 Mont. 20, 23, 610 P.2d 1153, 1155 (1980) (citation omitted).

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. *JAS, Inc. v. Eisele*, 2014 MT 77, ¶ 20, 374 Mont. 312, 321 P.3d 113.

“We apply Rule 55(c) and the [good cause] standard set forth in *Cribb* when the clerk of the district court has entered a default, but where the district court has not entered a default judgment at the time the defending party appears.” *Engelsberger v. Lake County*, 2007 MT 211, ¶ 10, 339 Mont. 22, 167 P.3d 902; *Essex Ins. Co. v. Jaycie, Inc.*, 2004 MT 278, ¶ 12, 323 Mont. 231, 99 P.3d 651.⁵

25. **Due Process, Denial of.**

“Our review of whether a party was afforded due process is plenary.” *In re Marriage of Sampley*, 2015 MT 121, ¶ 6, 379 Mont. 131, 347 P.3d 1281.

26. **Discovery.**

a. Generally.

“We review a district court’s discovery ruling for an abuse of discretion.” *McCulley v. U.S. Bank of Montana*, 2015 MT 100, ¶ 22, 378 Mont. 462, 347 P.3d 247.

b. Abuse of Discovery.

Rulings on discovery abuse are reviewed for abuse of discretion. *Tempel v. Benson*, 2015 MT 84, ¶ 7, 378 Mont. 401, 346 P.3d 342.

c. Rule 37 Sanctions.

“We review a district court’s decision regarding the imposition of sanctions for alleged discovery abuse to determine whether the district court abused its discretion.” *Doherty v. Fed. Nat. Mortgage*

Association, 2014 MT 56, ¶ 12, 374 Mont. 151, 319 P.3d 1279 (citing *Richardson v. State*, 2006 MT 43, ¶ 21, 331 Mont. 231, 130 P.3d 634).

d. Independent Medical Examinations.

“We employ an abuse of discretion standard when reviewing a district court’s ruling on a request for an IME, pursuant to Rule 35, M.R.Civ.P.” *Pumphrey v. Empire Lath & Plaster*, 2006 MT 99, ¶ 16, 332 Mont. 116, 135 P.3d 797.

e. Sanctions Under Rule 26(g).

“Our standard of review of sanctions imposed for discovery requests under Rule 26(g), is whether the district court abused its discretion.” *Estate of Miles v. Miles*, 2000 MT 41, ¶ 53, 298 Mont. 312, 994 P.2d 1139 (modified, *Byrum v. Andren*, 2007 MT 107, ¶ 53, 337 Mont. 167, 159 P.3d 1062).⁶

27. **Directed Verdict.**

“We review *de novo* issues of law, including a trial court’s decisions on directed verdict.” *Newman v. Scottsdale Ins. Co.*, 2013 MT 125, ¶ 24, 370 Mont. 133, 301 P.3d 348.

28. **Motions to Dismiss.**

a. Lack of Subject Matter Jurisdiction. (Rule 12(b)(1), Mont. R. Civ. P.)

“We review a dismissal for lack of subject-matter jurisdiction *de novo*.” *Harrington v. Energy W. Inc.*, 2015 MT 233, ¶ 7, 380 Mont. 298, ___ P.3d ___, *In re Marriage of Sampley*, 2015 MT 121, ¶ 6, 379 Mont. 131, 347 P.3d 1281.

A district court’s determination of its jurisdiction [over an appeal from justice court] is a conclusion of law which we review to determine if the district court’s interpretation of law is correct.” *Guethlein v. Family Inn*, 2014 MT 121, ¶ 11, 375 Mont. 100, 324 P.3d 1194.

b. Political questions.

“Whether an issue presents a non-justiciable political question is a legal conclusion that this Court reviews *de novo*.” *Columbia Falls Elementary School Dist. No. 6 v. State*, 2005 MT 69, ¶ 12, 326 Mont. 304, 109 P.3d 257.

c. Jurisdiction Over the Person. (Rule 12(b)(2), Mont. R. Civ. P.)

“We review *de novo* a district court’s decision on a motion to dismiss for lack of personal jurisdiction, construing the complaint ‘in the light most favorable to the plaintiff.’” *Milky Whey, Inc. v. Dairy Partners, LLC*, 2015 MT 18, ¶ 7, 378 Mont. 75, 342 P.3d 13; *Semenza v. Kniss*, 2005 MT 268, ¶ 9, 329 Mont. 115, 122 P.3d 1203.

“If the trial court conducts a preliminary hearing and makes factual findings necessary to the determination of personal jurisdiction, we review those findings of fact to determine whether they are clearly erroneous.” *Tackett v. Duncan*, 2014 MT 253, ¶ 16, 376 Mont. 348, 334 P.3d 920.

d. Failure to State a Claim (Rule 12(b)(6), Mont. R. Civ. P.).

“We review *de novo* a district court’s ruling on a M.R. Civ. P. 12(b)(6) motion to dismiss . . . under the standards set forth in M.R. Civ. P. 12(b)(6).” *Victory Insurance Co. v. Montana State Fund*, 2015 MT 82, ¶ 11, 378 Mont. 388, 344 P.3d 977; *Plouffe v. State*, 2003 MT 62, ¶ 8, 314 Mont. 413, 66 P.3d 316.

e. Necessary Party (Rule 12(b)(7), Mont. R. Civ. P.).

“We review such discretionary rulings for an abuse of discretion.” *Williams v. Board of County Comm’rs of Missoula County*, 2013 MT 243, ¶ 21, 371 Mont. 356, 308 P.3d 88.

f. Voluntary Dismissal (Rule 41(a)(2), Mont. R. Civ. P.).

“We review for an abuse of discretion a district court’s discretionary

rulings, including the court's order granting voluntary dismissal under M.R. Civ. P. 41(a)(2). *Johnston v. Centennial Log Homes & Furnishings, Inc.*, 2013 MT 179, ¶ 26, 370 Mont. 529, 305 P.3d 781; *Lear v. Jamrogowicz*, 2013 MT 147, ¶ 16, 370 Mont. 320, 303 P.3d 790.

g. Failure to Prosecute a Claim.

“We review a dismissal for failure to prosecute to determine whether the district court abused its discretion. *Westland v. Weinmeister*, 259 Mont. 412, 415, 856 P.2d 1374, 1376 (1993). We will vacate the dismissal if, after reviewing the record, we are left with the ‘definite and firm conviction that the district court committed a clear error in weighing the relevant factors.’” *A.M. Welles, Inc. v. Montana Materials, Inc.*, 2015 MT 38, ¶ 5, 378 Mont. 173, 342 P.3d 987; *Doug Johns Real Estate, Inc. v. Banta*, 246 Mont. 295, 298, 805 P.2d 1301, 1303 (1990).⁷

h. Failure to Serve Summons. (Rule 41(e), Mont. R. Civ. P.)

“A district court's determination that a complaint must be dismissed for failure of the plaintiff to comply with Rule 41(e), M.R.Civ.P. is a conclusion of law.” *White v. Klosterman*, 1999 MT 316, ¶ 7, 297 Mont. 259, 990 P.2d 1249.

i. Absolute Immunity (Judicial).

“This Court reviews *de novo* a district court's decision on a motion to dismiss.” *Hartsoe v. Tucker*, 2013 MT 256, ¶ 6, 371 Mont. 539, 309 P.3d 39.

j. Qualified Immunity.

“Qualified immunity involves a determination of whether the rights in question were clearly established at the time of their alleged violation, and is a question of law, reviewable, *de novo*.” *Cassady v. Yellowstone County, Montana Sheriff Department*, 2006 MT 217, ¶ 17, 333 Mont. 371, 143 P.3d 148; *Boreen v. Christensen*, 280 Mont. 378, 382, 930

P.2d 67, 69 (1996).

29. **Dissolution of Marriage.**

a. Property Distribution.

“We generally review a district court’s valuation and distribution of a marital estate for an abuse of discretion.” *In re Marriage of Clark*, 2015 MT 263, ¶ 9, ___ Mont. ___, ___ P.3d ___, *In re Marriage of Thorner*, 2008 MT 270, ¶ 21, 345 Mont. 194, 190 P.3d 1063.

“In a dissolution proceeding, the test for an abuse of discretion is whether the district court acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in a substantial injustice.” *Patton v. Patton*, 2015 MT 7, ¶¶ 18-19, 378 Mont. 22, 340 P.3d 1242.

We review a district court’s distribution of marital property to determine whether the court’s findings of fact are clearly erroneous. *Smith v. Smith*, 2015 MT 256, ¶ 10, ___ Mont. ___, ___ P.3d ___; *In re Williams*, 2009 MT 282, ¶ 14, 352 Mont. 198, 217 P.3d 67.

“We review a district court’s conclusions of law regarding a division of marital assets to determine whether they are correct.” *Cadena v. Fries*, 2015 MT 90, ¶ 7, 378 Mont. 409, 346 P.3d 347 (application of law to pension).

b. Property Settlement Agreements.

“A district court’s determination of whether a property settlement agreement is unconscionable is presumed to be correct and will not be overturned unless there was an abuse of discretion.” *Tanascu v. Tanascu*, 2014 MT 293, ¶ 9, 377 Mont. 1, 338 P.3d 47.

“The construction and interpretation of a dissolution agreement is a question of law that we review for correctness.” *Cadena v. Fries*, 2015 MT 90, ¶ 7, 378 Mont. 409, 346 P.3d 347; *In re Marriage of Bushnell*, 2014 MT 130, ¶ 7, 375 Mont. 125, 328 P.3d 608.

c. Parenting Plans and Custody.

“When considering parenting plans, we review a district court’s findings of fact for clear error.” *In re S.E.L.*, 2015 MT 228, ¶ 9, 380 Mont. 256, ___ P.3d ___, *In re Banka*, 2009 MT 33, ¶ 9, 349 Mont. 193, 201 P.3d 830.

“Trial courts have broad discretion when considering the parenting of a child,’ and we will not disturb the court’s decision absent a clear abuse of that discretion.” *In re M.C.*, 2015 MT 57, ¶ 10, 378 Mont. 305, 343 P.3d 569.

“[W]e will affirm a district court’s custody decision unless we determine there has been a clear abuse of discretion.” *In re S.E.L.*, 2015 MT 228, ¶ 9, 380 Mont. 256, ___ P.3d ___; *In re Marriage of Oehlke*, 2002 MT 79, ¶ 9, 309 Mont. 254, 46 P.3d 49.

d. Changed Circumstances.

“We review a district court's determinations regarding substantial and continuing changed circumstances and unconscionability for an abuse of discretion.” *In re Marriage of Olson*, 2005 MT 57, ¶ 10, 326 Mont. 224, 108 P.3d 493.

e. Ex Parte Custody Proceedings.

“We review a district court's decision to decline jurisdiction [in an ex parte custody proceeding] for an abuse of discretion.” *In re Parenting of D.A.H.*, 2005 MT 68, ¶ 6, 326 Mont. 296, 109 P.3d 247; *In re Marriage of Fontenot*, 2003 MT 242, ¶ 11, 317 Mont. 298, 77 P.3d 206.

f. Child Support.

“We review for clear error a district court’s findings of fact in child support modification cases.” *In re Marriage of Damschen*, 2011 MT 297, ¶ 22, 363 Mont. 19, 265 P.3d 1245. We review de novo questions of law. *Wyrick v. Wyrick*, 2012 MT 244, ¶ 21, 366 Mont. 484, 288

P.3d 232.

g. Name Change.

“The district court’s determination of whether the best interest of the child will be served by a change in their last name is reviewed for an abuse of discretion.” *Tucker v. Tucker*, 2014 MT 115, ¶ 11, 375 Mont. 24, 326 P.3d 413.

h. Modification of Custody or Visitation.

“We will reverse a district court’s decision to modify custody or visitation only where an abuse of discretion is clearly demonstrated. *In re Arneson–Nelson*, 2001 MT 242, ¶ 15, 307 Mont. 60, 36 P.3d 874 (citations omitted). “Our review of conclusions of law is plenary.” *Steab v. Luna*, 2010 MT 125, ¶ 18, 356 Mont. 372, 233 P.3d 351.

i. Attorney Fees.

“We review a district court’s award of attorney fees to determine whether the court abused its discretion.” *Cadena v. Fries*, 2015 MT 90, ¶ 7, 378 Mont. 409, 346 P.3d 347; *Weibert v. Weibert*, 2015 MT 29, ¶ 8, 378 Mont. 135, 343 P.3d 563.

“A district court has abused its discretion if substantial evidence does not support its award of attorney’s fees.” *Weibert v. Weibert*, 2015 MT 29, ¶ 8, 378 Mont. 135, 343 P.3d 563.⁸

j. Construction of Decree.

“The construction of the Decree of Dissolution and the application of § 40–4–208, MCA, involve conclusions of law, which we review to determine whether they are correct.” *Pfeifer v. Pfeifer*, 2013 MT 129, ¶ 7, 370 Mont. 158, 301 P.3d 821.

k. Equitable Acts.

“A divorce court is also a court of equity, *Libra v. Libra*, 157 Mont.

252, 256, 484 P.2d 748 (1971), and when we consider matters of an equitable nature, we review findings of fact and conclusions of law with an eye towards doing ‘complete justice.’” *Simpson v. Simpson*, 2013 MT 22, ¶ 15, 368 Mont. 315, 294 P.3d 1212.

30. **Driver’s License Reinstatement.**

“We review a district court’s ruling on a petition for reinstatement of a driver’s license to determine whether the court’s findings of fact are clearly erroneous and its conclusions of law correct.” “The suspension of a driver’s license is presumed to be correct, and the petitioner bears the burden of proving that the State’s action was improper.” *Ditton v. Department of Justice Motor Vehicle Div.*, 2014 MT 54, ¶ 14, 374 Mont. 122, 319 P.3d 1268; *Muri v. State*, 2004 MT 192, ¶ 5, 322 Mont. 219, 95 P.3d 149.

31. **Education Law/School Law.**

The district court reviews the decision of the county superintendent to grant or deny a territory transfer petition for an abuse of discretion. Section 20–6–105(9), MCA. *In re Petition to Transfer Territory from Poplar Elementary Sch. Dist. No. 9*, 2015 MT 278, ¶ 10, ___ Mont. ___, ___ P.3d ___.

32. **Election Contests.**

District court decisions on election contests are reviewed *de novo*. *Big Spring v. Jore*, 2005 MT 64, ¶ 15, 326 Mont. 256, 109 P.3d 219.

33. **Equity.**

a. Generally.

“In equity cases, we apply the standard of review set forth in § 3–2–204(5), MCA. *Quigley v. Acker*, 1998 MT 72, ¶ 19, 288 Mont. 190, ¶ 19, 955 P.2d 1377, ¶ 19. ‘Under § 3–2–204(5), MCA, we have a duty to determine all of the issues of the case and to do complete justice.’ *Quigley*, ¶ 19. This includes the power to fashion equitable

results.” *In re Marriage of Stoneman & Drollinger*, 2008 MT 448, ¶ 22, 348 Mont. 17, 199 P.3d 232; *Kauffman–Harmon v. Kauffman*, 2001 MT 238, ¶ 11, 307 Mont. 45, 36 P.3d 408.

b. Constructive Trusts.

“The standard of review governing proceedings in equity is codified at § 3-2-204(5), MCA, which directs the appellate court to review and determine questions of fact as well as questions of law.” *In re Estate of McDermott*, 2002 MT 164, ¶ 22, 310 Mont. 435, 51 P.3d 486.

c. Forfeitures.

“[R]elief from forfeiture is equitable in nature and, therefore, requires a more deferential standard of review. In equity cases, we apply the standard of review set forth in § 3–2–204(5), MCA. *Glacier Park Co. v. Mountain, Inc.* (1997), 285 Mont. 420, 427, 949 P.2d 229, 233. Under § 3–2–204(5), MCA, we have a duty to determine all of the issues of the case and to do complete justice.” *Quigley v. Acker*, 1998 MT 72, ¶ 19, 288 Mont. 190, 955 P.2d 1377.

34. **Evidence.**

a. Generally.

“Once an abuse of discretion is found, reversible error occurs ‘[w]here the impact of clearly inadmissible evidence is conceivably outcome-determinative,’ and ‘there is a reasonable possibility the inadmissible evidence might have contributed to the verdict.’ *Boude v. Union Pac. R.R. Co.*, 2012 MT 98, ¶ 21, 365 Mont. 32, 277 P.3d 1221.” *Masters Grp. Int’l, Inc. v. Comerica Bank*, 2015 MT 192, ¶ 35, 380 Mont. 1, 352 P.3d 1101.

“No reversible error occurs unless a substantial right of the appellant is affected, nor does reversible error occur unless the evidence in question was of such character as to have affected the outcome of the trial. *Martin v. BNSF Railway Co.*, 2015 MT 167, ¶ 10, 379 Mont. 423, 352 P.3d 598; *United Tool Rental, Inc. v. Riverside Contr., Inc.*, 2011

MT 213, ¶ 10, 361 Mont. 493, 260 P.3d 156.

b. Rule 702, Mont. R. Evid. testimony.

Rulings on the admissibility of expert testimony are reviewed for an abuse of discretion. *Sharbono v. Cole*, 2015 MT 257, ¶ 10, ___ Mont. ___, ___ P.3d ___; *Norris v. Fritz*, 2012 MT 27, ¶ 17, 364 Mont. 63, 270 P.3d 79.

c. Motions in Limine.

“Where a decision on a motion in limine involves the exercise of discretion, this Court will not overturn the district court absent an abuse of discretion. *State v. Weldele*, 2003 MT 117, ¶ 41, 315 Mont. 452, 69 P.3d 1162. Where a decision on a motion in limine involves a conclusion of law or interpretation of statute, we review to determine whether the result is correct.” *Meek v. Montana Eighth Judicial Dist. Court*, 2015 MT 130, ¶ 9, 379 Mont. 150, 349 P.3d 493; *State v. Petersen*, 2011 MT 22, ¶ 8, 359 Mont. 200, 247 P.3d 731.

d. Parole Evidence.

Whether extrinsic evidence is admissible is a question of law reviewed *de novo*. *Habets v. Swanson*, 2000 MT 367, ¶ 8, 303 Mont. 410, 16 P.3d 1035.

35. **Civil Forfeitures.**

“We review a district court’s grant of a forfeiture petition to determine if its findings of fact are clearly erroneous and its conclusions of law correctly interpret the law.” *State v. \$129,970.00 One Hundred Twenty Nine Thousand Nine Hundred Seventy Dollars in U.S. Currency*, 2007 MT 148, ¶ 22, 337 Mont. 475, 161 P.3d 816.

36. **Guardianship.**

a. Appointment.

“Subject to statutory restrictions, the selection of the person to be appointed guardian is committed largely to the discretion of the trial court, and this Court will only interfere with such an appointment in the case of a clear abuse of discretion.” *In re Guardianship of A.M.M.*, 2015 MT 250, ¶ 16, ___ Mont. ___, ___ P.3d ___; *In re Guardianship of Nelson*, 204 Mont. 90, 94, 663 P.2d 316, 318 (1983).⁹

“This Court reviews a district court’s appointment of a guardian and determination of the scope of the guardian’s responsibilities for an abuse of discretion.” *In re J.A.L.*, 2014 MT 196, ¶ 7, 376 Mont. 18, 329 P.3d 1273.

b. Venue.

“Changes of venue in guardianship cases are reviewed for abuse of discretion.” *In re Guardianship of H.O.*, 2014 MT 285, ¶ 7, 376 Mont. 519, 337 P.3d 91.

37. **Habeas Corpus.**

“[T]he District Court is given wide discretion in habeas corpus proceedings and we will not interfere unless there is a clear abuse of discretion.” *Korol v. Korol*, 188 Mont. 351, 355, 613 P.2d 1016, 1019 (1980)

38. **Injunction.**

a. Generally.

“[W]here a district court issues an injunction based on conclusions of law, we review those conclusions for correctness.” *Caldwell v. Sabo*, 2013 MT 240, ¶ 19, 371 Mont. 328, 308 P.3d 81.

“When the injunction is based solely upon conclusions of law, no discretion is involved and we review the district court’s conclusions of law to determine whether the interpretation of the law is correct.” *City of Whitefish v. Bd. of Cnty. Comm’rs of Flathead Cnty. ex rel.*

Brenneman, 2008 MT 436, ¶ 7, 347 Mont. 490, 199 P.3d 201.

b. Preliminary Injunctions.

“We will only disturb a district court’s decision regarding a preliminary injunction upon a showing of a manifest abuse of discretion.” *Caldwell v. Sabo*, 2013 MT 240, ¶ 18, 371 Mont. 328, 308 P.3d 81.

“This Court generally reviews a district court’s decision to grant a preliminary injunction for a manifest abuse of discretion, one that is ‘obvious, evident, or unmistakable.’ *State v. BNSF Ry. Co.*, 2011 MT 108, ¶ 16, 360 Mont. 361, 254 P.3d 561. To the extent that a preliminary injunction is based upon an interpretation of law, the district court’s conclusions of law are reviewed to determine whether they are correct. *Citizens for Balanced Use v. Maurier*, 2013 MT 166, ¶ 9, 370 Mont. 410, 414, 303 P.3d 794. We employ this standard of review in reviewing both mandatory and prohibitive injunctions.” *Cole v. St. James Healthcare*, 2008 MT 453, ¶ 9, 348 Mont. 68, 199 P.3d 810.

c. Modification.

“Whether a district court has the authority to modify or vacate part of its previous judgment granting an injunction is a question of law.” *Jefferson v. Big Horn County*, 2000 MT 163, ¶ 12, 300 Mont. 284, 4 P.3d 26.

39. **Insurance.**

a. Collateral Source Doctrine.

“We review de novo issues of law, including . . . collateral source offset.” *Newman v. Scottsdale Ins. Co.*, 2013 MT 125, ¶ 24, 370 Mont. 133, 301 P.3d 348.

40. **Interest on Judgment.**

“Determining the method to be used to calculate interest is an issue of law that this Court reviews to determine whether the district court’s application or interpretation of the law is correct.” *In re Marriage of Steab & Luna*, 2013 MT 124, ¶ 10, 370 Mont. 125, 300 P.3d 1168; *Weiss v. Weiss*, 2011 MT 240, ¶ 8, 362 Mont. 157, 261 P.3d 1034.

41. **Intervention** (Rule 24(a), Mont. R. Civ. P.).

a. Generally.

“Our review of a district court’s grant or denial of a motion to intervene as a matter of right under M. R. Civ. P. 24(a) is *de novo*.” *Loftis v. Loftis*, 2010 MT 49, ¶ 6, 355 Mont. 316, 227 P.3d 1030.

“This Court reviews a district court’s action on a motion to intervene for abuse of discretion.” *Abbey/Land LLC v. Interstate Mech., Inc.*, 2015 MT 77, ¶ 10, 378 Mont. 372, 345 P.3d 1032.¹⁰

“[W]e review a district court’s grant or denial of a motion for permissive intervention pursuant to M.R. Civ. P. 24(b), for an abuse of discretion.” *Loftis v. Loftis*, 2010 MT 49, ¶ 6, 355 Mont. 316, 227 P.3d 1030.

“[W]e review the timeliness of a motion under either M.R. Civ. P. 24(a) (intervention as a matter of right) or M.R. Civ. P. 24(b) (permissive intervention) for an abuse of discretion.” *Loftis v. Loftis*, 2010 MT 49, ¶ 6, 355 Mont. 316, 227 P.3d 1030.

42. **Joinder** (Rule 21, Mont. R. Civ. P.).

“Joinder of a party under Rule 21, M.R.Civ.P., is discretionary.” The standard of review of a district court’s order denying joinder is abuse of discretion. *Ioerger v. Reiner*, 2005 MT 155, ¶ 11, 327 Mont. 424, 114 P.3d 1028.

43. **Judgments.**

a. Interpretation of Judgments.

“Review of a district court's interpretation of a judgment presents an issue of law, and this Court reviews the district court's interpretation to determine whether it is correct.” *Levens v. Ballard*, 2011 MT 153, ¶ 10, 361 Mont. 108, 255 P.3d 195.

b. Consent Decrees.

The Supreme Court reviews a “decision by a district court to approve a CECRA consent decree for abuse of discretion.” *State ex rel. Department of Environmental Quality v. BNSF Ry. Co.*, 2010 MT 267, ¶ 24, 358 Mont. 368, 246 P.3d 1037.

c. Credits Against Judgments.

“A district court's application of a credit against judgment pursuant to § 26-1-706, MCA, is a conclusion of law. We review a conclusion of law as to whether the district court's interpretation is correct.” *O'Hern v. Pankratz*, 2001 MT 35, ¶ 9, 304 Mont. 194, 19 P.3d 807.

d. Claim Preclusion.

“The district court's determination that issue preclusion bars relitigation is reviewed *de novo*.” *Planned Parenthood of Montana v. State*, 2015 MT 31, ¶ 11, 378 Mont. 151, 342 P.3d 684.

“[C]laim preclusion or issue preclusion . . . is an issue of law that we review for correctness.” *Brilz v. Metro. Gen. Ins. Co.*, 2012 MT 184, ¶ 13, 366 Mont. 78, 285 P.3d 494.

e. Res Judicata.

“A district court's application of res judicata is an issue of law that we review for correctness.” *In re Estate of Benjamin*, 2014 MT 241, ¶ 6, 376 Mont. 300, 339 P.3d 1232; *Touris v. Flathead County*, 2011 MT

165, ¶ 10, 361 Mont. 172, 258 P.3d 1.

44. **Judgment on the Pleadings** (Rule 12(c), Mont. R. Civ. P.).

“A district court’s decision on a motion for judgment on the pleadings is a conclusion of law, which this Court reviews *de novo* to determine if the court’s decision was correct. *Firelight Meadows, LLC v. 3 Rivers Tel. Co-op., Inc.*, 2008 MT 202, ¶ 12, 344 Mont. 117, 186 P.3d 869.

45. **Judicial Admissions.**

“Whether a statement is one of fact or law, for the purpose of determining if the statement should be considered a judicial admission, is a question of law we review for correctness.” *Carle v. Steyh*, 2015 MT 193, ¶ 16, 380 Mont. 48, 353 P.3d 488; *Bilesky v. Shopko Stores Operating Co., LLC*, 2014 MT 300, ¶ 10, 377 Mont. 58, 338 P.3d 76.

Once a statement is determined to be a statement of fact, the “district court’s determination of whether a statement constitutes a judicial admission is reviewed for an abuse of discretion” *Carle v. Steyh*, 2015 MT 193, ¶ 16, 380 Mont. 48, 353 P.3d 488. “The district court’s discretion in this regard is not unlimited, however. *See Cox v. Myllymaki*, 231 Mont. 320, 322, 752 P.2d 1093, 1094 (1988) (trial courts’ discretion is not unlimited).” *Bilesky v. Shopko Stores Operating Co., LLC*, 2014 MT 300, ¶ 10, 377 Mont. 58, 338 P.3d 76.

Where error has been predicated on the determination of a judicial admission. . . we review a district court’s factual findings to determine whether they are clearly erroneous and its conclusions of law for correctness. Whether a statement is one of fact or law, for the purpose of determining if the statement should be considered a judicial admission, is a question of law. Ultimately, a district court’s determination whether a statement constitutes a judicial admission ‘depends upon the circumstances of each case.’ *Kohne v. Yost*, 250 Mont. 109, 113, 818 P.2d 360, 362 (1991). As such, we will review that determination for an abuse of discretion.” *Weaver v. State*, 2013 MT 247, ¶ 19, 371 Mont. 476, 310 P.3d 495. (citations omitted).¹¹

46. **Tribal v. State Court Jurisdiction.**

“Questions of state court jurisdiction are reviewed *de novo*.” *In re Hanna*, 2010 MT 38, ¶ 13, 355 Mont. 236, 227 P.3d 596.

“A district court's determination that it lacks subject matter jurisdiction is a conclusion of law which we review to ascertain whether the court's interpretation of the law is correct.” *Zempel v. Liberty*, 2006 MT 220, ¶ 11, 333 Mont. 417, 143 P.3d 123.

“[W]e review the District Court’s conclusion of law to determine whether it properly interpreted the law governing state/tribal civil jurisdiction.” *Nielsen v. Brocksmith Land & Livestock, Inc.*, 2004 MT 101, ¶ 7, 321 Mont. 37, 88 P.3d 1269.

47. **Juries.**

“The scope of our review of the jury’s verdict is narrow. We only determine whether there is substantial credible evidence in the record supporting the jury’s verdict.” *Avanta Fed. Credit Union v. Shupak*, 2009 MT 458, ¶ 21, 354 Mont. 372, 223 P.3d 863.

Denial of a mistrial because of bailiff misconduct is reviewed for abuse of discretion. *Allers v. Riley*, 273 Mont. 1 901 P.2d 600 (1995).

48. **Jury Information.**

“This Court reviews a district court’s decision to disallow a jury’s request to re-hear testimony for an abuse of discretion.” *Stockman Bank of Montana v. Potts*, 2006 MT 64, ¶ 13, 331 Mont. 381, 132 P.3d 546.

49. **Jury Instructions.**

a. Generally.

“We review for an abuse of discretion whether the district court correctly instructed the jury.’ In reviewing whether a particular

instruction was properly given, ‘we consider the instruction in its entirety, as well as in connection with the other instructions given and with the evidence introduced at trial.’” *Spotted Horse v. BNSF R.R. Co.*, 2015 MT 148, ¶ 16, 379 Mont. 314, 350 P.3d 52 (quoting *Tarlton v. Kaufman*, 2008 MT 462, ¶ 19, 348 Mont. 178, 199 P.3d 263 and *Murphy Homes, Inc. v. Muller*, 2007 MT 140, ¶ 74, 337 Mont. 411, 162 P.3d 106).

“The District Court’s challenged expert witness and jury instruction rulings involved conclusions of law which we review de novo for correctness.” *Kenser v. Premium Nail Concepts, Inc.*, 2014 MT 280, ¶ 22, 376 Mont. 482, 338 P.3d 37.

b. Special Verdict Form.

A district court’s use of a special verdict is reviewed for abuse of discretion. *Dean v. Sanders County*, 2009 MT 88, ¶ 23, 350 Mont. 8, 204 P.3d 722; *Ele v. Ehnes*, 2003 MT 131, ¶ 18, 316 Mont. 69, 68 P.3d 835.

50. **Jury Selection.**

a. Generally.

“We review a district court’s refusal to grant a challenge for cause for clear abuse of discretion. A court abuses its discretion if it fails to excuse a prospective juror whose actual bias is discovered during voir dire. *Peterson-Tuell v. First Student Transp., LLC*, 2014 MT 307, ¶ 9, 377 Mont. 113, 339 P.3d 16 (citing *Harris v. Hanson*, 2009 MT 13, ¶ 22, 349 Mont. 29, 201 P.3d 151).

b. *Batson* challenges.

“[W]e will defer to the district court’s findings of fact unless clearly erroneous, and will review the district court’s application of the law de novo.” *Casiano v. Greenway Enterprises, Inc.*, 2002 MT 93, ¶ 14, 309 Mont. 358, 47 P.3d 432, *overruled on other grounds*, *Giambra v. Kelsey*, 2007 MT 158, ¶ 14, 338 Mont. 19, 162 P.3d 134.

51. **Jury Verdict.**

“This Court will not reverse a jury verdict 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.”

“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.”

Peschke v. Carroll College, 280 Mont. 331, 335, 929 P.2d 874, 876-77 (1996) (quoting *Hansen v. Hansen*, 254 Mont. 152, 157, 835 P.2d 748, 750-51 (1992)).

52. **Justice Court Appeals.**

a. District Court Jurisdiction.

“A district court's determination of its jurisdiction [over an appeal from justice court] is a conclusion of law which we review to determine if the district court's interpretation of law is correct.” *Guethlein v. Family Inn*, 2014 MT 121, ¶ 11, 375 Mont. 100, 324 P.3d 1194.

b. Trial *de novo*.

“Whether a party has been afforded his or her constitutional and statutory right to a trial *de novo* is a question of law that we review for correctness.” *McDunn v. Arnold*, 2013 MT 138, ¶ 10, 370 Mont. 270, 303 P.3d 1279.

53. **Justiciability.**

a. Generally.

“Issues of justiciability are questions of law that we review *de novo*.” *Chipman v. Northwest Healthcare Corp.*, 2012 MT 242, ¶ 16, 366 Mont. 450, 288 P.3d 193; *In re T.D.H.*, 2015 MT 244, ¶ 19, ___ Mont. ___, ___ P.3d ___ (declaratory judgment).

Contra Murray v. Motl, 2015 MT 216, ¶ 9, 380 Mont. 162, 354 P.3d 197; *Miller v. State Farm Mut. Auto. Ins. Co.*, 2007 MT 85, ¶ 5, 337 Mont. 67, 155 P.3d 1278 (District Court’s determination that there was no justiciable issue under the Declaratory Judgment Act is reviewed for abuse of discretion.)

b. Standing.

“Standing is a threshold question that this Court determines as a matter of law and reviews *de novo*.” *Gazelka v. St. Peter’s Hospital*, 2015 MT 127, ¶ 10, 379 Mont. 142, 347 P.3d 1287; *Shockley v. Cascade County*, 2014 MT 281, ¶ 9, 376 Mont. 493, 336 P.3d 375; *Chipman v. Northwest Healthcare Corp.*, 2012 MT 242, ¶¶ 16, 19, 366 Mont. 450, 288 P.3d 193.

c. Political Question.

“Whether an issue presents a non-justiciable political question is a legal conclusion that this Court reviews *de novo*.” *Columbia Falls Elementary Sch. Dist. No. 6 v. State*, 2005 MT 69, ¶ 12, 326 Mont. 304, 109 P.3d 257.

d. Ripeness.

Issues of ripeness are reviewed *de novo*. *Reichert v. State ex rel. McCulloch*, 2012 MT 111, ¶ 20, 365 Mont. 92, 278 P.3d 455.

e. Mootness.

Issues of mootness are reviewed *de novo*. *Montanans Against Assisted Suicide v. Bd. of Med. Examiners, Montana Dep’t of Labor & Indus.*, 2015 MT 112, ¶ 7, 379 Mont. 11, 347 P.3d 1244; *Larson Lumber Co. v. Bilt Rite Const. & Landscaping LLC*, 2014 MT 61, ¶ 29, 374 Mont. 167, 320 P.3d 471.

f. Justiciability of an Appeal.

The justiciability of an appeal is a question committed solely to the

Supreme Court which exercises plenary jurisdiction over that question. “Whether an appeal is justiciable is a threshold question that this Court determines before proceeding to the merits.” *Serrania v. LPH, Inc.*, 2015 MT 113, ¶ 12, 379 Mont. 17, 347 P.3d 1237.

g. Dismissal of Appeal.

The same rule of plenary power applies to dismissal of an appeal for waiver. *Tempel v. Benson*, 2015 MT 84, ¶ 7, 378 Mont. 401, 346 P.3d 342.

54. **Laches.**

“[T]his Court has never adopted a standard of review by which to assess an appeal from an application of laches. We agree with the standards the Ninth Circuit Court of Appeals has adopted in reviewing summary judgment determinations on laches claims. We also review *de novo* whether laches is a valid defense to the particular cause of action. However, the district court’s application of the laches factors is entitled to deference, not to be reviewed *de novo*.” *In re Parenting of Strash*, 2005 MT 143N, ¶ 23, 327 Mont. 537, 115 P.3d 221 (citing *Grupo Gigante SA de CV v. Dallo & Co., Inc.*, 391 F.3d 1088, 1101 (9th Cir.2004) (quoting *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 833-34 (9th Cir.2002) (citations omitted)).

55. **Writ of Mandate/Mandamus.**

“A district court’s decision to issue or deny a writ of mandate represents a conclusion of law that we review for correctness.” *Western Montana Water Users Ass’n, LLC v. Mission Irrigation District*, 2013 MT 92, ¶ 14, 369 Mont. 457, 299 P.3d 346; *City of Deer Lodge ex rel., Matter of City of Deer Lodge Ordinances 130, 136 v. Chilcott*, 2012 MT 165, ¶ 12, 365 Mont. 497, 285 P.3d 418.

56. **Masters** (Rule 53, Mont. R. Civ. P.).

“This Court reviews a district court’s decisions *de novo* to determine whether it applied the correct standard of review to a master’s findings

of fact and conclusions of law.” *Patton v. Patton*, 2015 MT 7, ¶ 17, 378 Mont. 22, 340 P.3d 1242.

“In a case tried before a standing master, ‘we apply the same standard of review to an adopted master’s report that we do to any other district court order.’” *Patton v. Patton*, 2015 MT 7, ¶ 17, 378 Mont. 22, 340 P.3d 1242; *Maloney v. Home & Inv. Ctr., Inc.*, 2000 MT 34, ¶ 28, 298 Mont. 213, 994 P.2d 1124.

“The de novo standard for review of the proposed findings and recommendations of a federal magistrate judge found in 28 U.S.C. § 636 does not appear in Rule 53(e)(2) or § 3–5–126(2), MCA.” *In re G.J.A.*, 2014 MT 215, ¶ 13, 376 Mont. 212, 331 P.3d 835.

57. **Mistrial.**

a. Generally.

“We review a district court’s denial of a motion for a mistrial or a M.R. Civ. P. 59 motion for a new trial for a manifest abuse of discretion.” *O’Connor v. George*, 2015 MT 274, ¶ 17, ___ Mont. ___, ___ P.3d ___; *Willing v. Quebedeaux*, 2009 MT 102, ¶ 19, 350 Mont. 119, 204 P.3d 1248.

“A district court’s determination of whether to grant a motion for a mistrial must be based on whether the [moving party] has been denied a fair and impartial trial.” *Harding v. Deiss*, 2000 MT 169, ¶ 19, 300 Mont. 312, 3 P.3d 1286.

“When the basis of a motion for new trial is an irregularity in the proceedings, we review the denial of the motion for a manifest abuse of discretion.” *Murray v. Whitcraft*, 2012 MT 298, ¶ 8, 367 Mont. 364, 291 P.3d 587.

58. **Negligence.**

“The existence of duty is an issue of law, and this Court reviews a decision on an issue of law to determine whether it is correct.” *Kent v.*

City of Columbia Falls, 2015 MT 139, ¶ 20, 379 Mont. 190, 350 P.3d 9.

Foreseeability is a question of law reviewed *de novo*. *Newman v. Lichfield*, 2012 MT 47, ¶ 23, 364 Mont. 243, 272 P.3d 625.

59. **New Trial** (Rule 59).

a. Generally.

“We review a district court’s denial of a motion for a new trial made pursuant to M.R. Civ. P. 59 on the grounds enumerated in § 25–11–102, MCA, for an abuse of discretion.” “The abuse of discretion must be so significant as to materially affect the substantial rights of the complaining party.” *In re Guardianship of A.M.M.*, 2015 MT 250, ¶ 15, ___ Mont. ___, ___ P.3d ___; *Lopez v. Josephson*, 2001 MT 133, ¶ 16, 305 Mont. 446, 30 P.3d 326.

b. Insufficiency of the Evidence.

“We also review *de novo* a Rule 59 motion where the alleged insufficiency of the evidence provides the basis for the motion.” *Barile v. Butte High School*, 2013 MT 263, ¶ 16, 372 Mont. 1, 309 P.3d 1009.

c. Irregularity in proceedings or surprise.

“When the basis of a motion for a new trial is an irregularity in the proceedings or surprise, we review the denial of the motion for a manifest abuse of discretion.” *Styren Farms, Inc. v. Roos*, 2011 MT 299, ¶ 12, 363 Mont. 41, 265 P.3d 1230.

d. Juror Misconduct.

“When the basis of the motion for a new trial is alleged juror misconduct, we will not disturb a district court's decision absent a manifest abuse of discretion.” *Fish v. Harris*, 2008 MT 302, ¶ 8, 345 Mont. 527, 192 P.3d 238.

e. **Alter or Amend Judgment.**

“The decision to grant or deny a motion to alter or amend a judgment is within the sound discretion of a district court. Thus, we review whether the District Court abused its discretion when it denied the motion to alter or amend its judgment.” *Morris v. State*, 2001 MT 13, ¶ 4, 304 Mont. 114, 18 P.3d 1003, *abrogated on other grounds*, *State v. Flynn*, 2011 MT 48, 359 Mont. 376, 251 P.3d 143.

60. **Non-jury Trials.**

“We review a district court’s findings of fact to determine whether they are clearly erroneous. The district court is in the best position to observe and determine the credibility of witnesses and we will not second guess its determination regarding the strength and weight of conflicting testimony. *Lyndes v. Green*, 2014 MT 110, ¶ 15, 374 Mont. 510, 325 P.3d 1225.

61. **Open Meeting and Right to Know.**

“We review for abuse of discretion a district court’s determination whether to void a decision made in violation of Montana’s open meeting laws.” *Citizens for Open Gov’t, Inc. v. City of Polson*, 2015 MT 55, ¶ 11, 378 Mont. 293, 343 P.3d 584.

62. **Orders of Protection.**

“This Court will not overturn a district court’s decision to continue, amend, or make permanent an order of protection absent an abuse of discretion.” *Boushie v. Windsor*, 2014 MT 153, ¶ 8, 375 Mont. 301, 328 P.3d 631.

63. **Prejudgment Interest.**

“We review a district court’s grant or denial of prejudgment interest to determine if the district court’s interpretation of the law is correct.” *Fitterer Sales Montana, Inc. v. Mullin*, 2015 MT 272, ¶ 16, ___ Mont. ___, ___ P.3d ___; *Tidyman’s Management Services Inc. v. Davis*, 2014

MT 205, ¶ 13, 376 Mont. 80, 330 P.3d 1139; *Swank Enter., Inc. v. All Purpose Serv., Ltd.*, 2007 MT 57, ¶ 14, 336 Mont. 197, 154 P.3d 52.

64. **Quash Service.**

“The question of whether a court properly refused to quash service of process presents an issue of law.” *Bryden v. Lakeside Ventures, LLC*, 2009 MT 320, ¶ 17, 352 Mont. 452, 218 P.3d 61.

65. **Record on Appeal.**

“We review a district court’s order requiring additional transcripts pursuant to M.R.App. P. 8(3)(b) for an abuse of discretion, and we retain plenary power to determine whether the transcripts actually ordered on appeal provide a sufficient basis for ruling on the issues raised.” *Schindler v. United Service Automobile Ass’n Inc.*, 2011 MT 129, ¶ 20, 360 Mont. 528, 254 P.3d 583.

66. **Real Property.**

a. Quiet Title.

“Quiet title actions are actions in equity. 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. We determine if the court’s interpretation of the law is correct.” *LeMond v. Yellowstone Dev., LLC*, 2014 MT 181, ¶ 22, 375 Mont. 402, 336 P.3d 345 (citation omitted).

“An action to quiet title is a proceeding in equity. In equity cases, we apply the standard of review set forth in § 3-2-204(5), MCA, which requires this Court to determine all of the issues of the case and to do complete justice.” *Montana Earth Res. Ltd. Partnership v. N. Blaine Estates, Inc.*, 1998 MT 254, ¶ 17, 291 Mont. 216, 967 P.2d 376.

b. Partition.

“When the referees in a partition action submit their final report to the district court, the court ‘may confirm, change, modify, or set aside the report. . . .’ We review the district court’s findings of fact in a partition action ‘to determine whether they are clearly erroneous.’ We review the district court’s conclusions of law to determine ‘whether they are correct.’” *Britton v. Brown*, 2013 MT 30, ¶ 20, 368 Mont. 379, 300 P.3d 667 (citations omitted).

c. Transfers.

“A transfer of property is to be interpreted in like manner with contracts in general. The construction and interpretation of a contract is a question of law.” *Wills Cattle Co. v. Shaw*, 2007 MT 191, ¶ 19, 338 Mont. 351, 167 P.3d 397 (citations omitted).

d. Restrictive covenants.

“A district court’s interpretation of a restrictive covenant is a conclusion of law which we review for correctness.” *Wagner v. Woodward*, 2012 MT 19, ¶ 17, 363 Mont. 403, 270 P.3d 21.

67. **Receivers.**

“We review a district court’s decision to appoint a receiver under the abuse of discretion standard.” *Johnson v. Booth*, 2008 MT 155, ¶ 12, 343 Mont. 268, 184 P.3d 289.

68. **Relief from Judgment or Order** (Rule 60(b), Mont. R. Civ. P.).

a. Generally.

“We review a district court’s ruling on a Rule 60(b)(2) motion for manifest abuse of discretion.” *In re S.E.L.*, 2015 MT 228, ¶ 9, 380 Mont. 256, ___ P.3d ___; *Essex Ins. Co. v. Moose’s Saloon, Inc.*, 2007 MT 202, ¶ 16, 338 Mont. 423, 166 P.3d 451.

“We review a district court’s ruling on a motion pursuant to M.R. Civ. P. 60(b) based upon the nature of the final judgment, order, or proceeding from which relief is sought and the specific basis of the motion. Generally, we review the district court’s ruling for an abuse of discretion. Exceptions to the general rule include motions made under Rule 60(b)(2), (b)(4), or where relief from a default judgment is sought.” *Locke v. Estate of Davis*, 2015 MT 141, ¶ 14, 379 Mont. 256, 350 P.3d 33.

b. Void Judgments.

“Where a movant seeks relief under subsection (4) of Rule 60(b), the standard of review is *de novo*, since the determination that a judgment is or is not void is a conclusion of law.” *In re Marriage of Wendt*, 2014 MT 174, ¶ 7, 375 Mont. 388, 329 P.3d 567; *Greater Missoula Area Federation of Early Childhood Educators v. Child Start, Inc.*, 2009 MT 362, ¶ 18, 353 Mont. 201, 219 P.3d 881.

69. **Remand.**

“Whether the District Court has complied with the remand instructions is a question of law, which we review for correctness.” *Brown & Brown of MT, Inc. v. Raty*, 2013 MT 338, ¶ 8, 372 Mont. 463, 313 P.3d 179.

70. **Sanctions.**

a. Spoliation of Evidence.

“We review a District Court’s decision to impose or decline to impose sanctions [for spoliation of evidence] for an abuse of discretion.” *Spotted Horse v. BNSF R.R. Co.*, 2015 MT 148, ¶ 15, 379 Mont. 314, 350 P.3d 52.

b. Rule 11.

“[W]e 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." *Kristine Davenport v. Odlin*, 2014 MT 109, ¶ 9, 374 Mont. 503, 327 P.3d 478 *Byrum v. Andren*, 2007 MT 107, ¶ 19, 337 Mont. 167, 159 P.3d 1062.

"This Court reviews a district court's decision on Rule 11 sanctions to determine whether the findings of fact are clearly erroneous, and whether the conclusions constitute an abuse of discretion." *In re Morin*, 2013 MT 146, ¶ 33, 370 Mont. 305, 302 P.3d 96.

"[I]f Rule 11 has been violated the district court must impose sanctions on the offending party, his counsel, or both; and . . . failure to impose sanctions where the Rule has been violated will be deemed reversible error." *Fjelstad v. State Through Dep't of Highways*, 267 Mont. 211, 226, 883 P.2d 106, 114-15 (1994) (*dicta*), Rule 26(g) holding modified by *Byrum v. Andren*, 2007 MT 107, 337 Mont. 167, 159 P.3d 1062.

c. Rule 37 Sanctions.

"We review a district court's decision regarding the imposition of sanctions for alleged discovery abuse to determine whether the district court abused its discretion." *Doherty v. Fed. Nat. Mortgage Association*, 2014 MT 56, ¶ 12, 374 Mont. 151, 319 P.3d 1279 (citing *Richardson v. State*, 2006 MT 43, ¶ 21, 331 Mont. 231, 130 P.3d 634).

d. Rule 16, Mont. R. Civ. P.

"We also review a district court's decision to impose sanctions for failure to comply with a M.R. Civ. P. 16 scheduling order for abuse of discretion." *Stevenson v. Felco Indus., Inc.*, 2009 MT 299, ¶ 17, 352 Mont. 303, 216 P.3d 763.

71. **Severance of Trials.** (Rule 42(b), Mont. R. Civ. P.).

A district court's decision whether to sever is reviewed for an abuse of

discretion. *Masters Group. International, Inc. v. Comerica Bank*, 2015 MT 192, ¶ 32, 380 Mont. 1, 352 P.3d 1101; *State ex rel. Gadbow v. Montana Eighth Judicial Dist. Court*, 2003 MT 127, ¶ 12, 316 Mont. 25, 75 P.3d 1238.

“We review a district court’s denial of a motion to consolidate for an abuse of discretion.” *In re East Bench Irrigation District*, 2009 MT 135, ¶ 21, 350 Mont. 309, 207 P.3d 1097.

The Court reviews the district court’s interpretation and application of a procedural rule (Rule 42(a), *de novo*. *Yellowstone County v. Drew*, 2007 MT 130, ¶ 11, 337 Mont. 346, 160 P.3d 557.

72. **Small Claims Court.**

“Although the district court review of [of small claims court decisions] is limited to questions of law, the question of whether the small claims court’s findings of fact were clearly erroneous is such a question of law.’ *Spence v. Ortloff*, 271 Mont. 533, 535, 898 P.2d 1232, 1233 (1995). This Court applies the same standard as the district court.” *Brown v. MacDonald*, 2007 MT 197, ¶ 7, 338 Mont. 390, 165 P.3d 1125.

73. **Statute of Limitations.**

a. Generally.

The issue of whether a district court properly applied the statute of limitations and granted a motion for judgment on the pleadings presents a question of law. *Montana Interventional & Diagnostic Radiology Specialists, PLLC v. St. Peter's Hospital*, 2015 MT 258, ¶ 12.

“[T]he district court’s factual findings will not be disturbed unless they are clearly erroneous.” *BNSF Ry. Co. v. Cringle*, 2012 MT 143, ¶ 16, 365 Mont. 304, 281 P.3d 203.

b. Equitable tolling.

“We conclude that *de novo* review applies to determine whether the facts found by the District Court warrant a conclusion that BNSF presented circumstances sufficient to grant it an equitable exception from the statutory filing deadline.” *BNSF Ry. Co. v. Cringle*, 2012 MT 143, ¶ 16, 365 Mont. 304, 281 P.3d 203.

“We also 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.

“We review *de novo* a trial court’s decision to deny a motion for equitable tolling where the underlying facts are undisputed.” *Davis v. State*, 2008 MT 226, ¶ 10, 344 Mont. 300, 187 P.3d 654.

74. **Statute, Application.**

“The interpretation and application of a statute to a particular set of circumstances are questions of law subject to *de novo* review for correctness.” *Finn v. Dakota Fire Ins. Co.*, 2015 MT 253, ¶ 6; ___ Mont. ___, ___ P.3d ___; *Ramsey v. Yellowstone Neurosurgical Assocs.*, 2005 MT 317, ¶ 18, 329 Mont. 489, 125 P.3d 1091.¹²

“We review a district court’s interpretation and application of statutes for correctness.” *In re C.A.G.*, 2014 MT 290, ¶ 10, 376 Mont. 540, 337 P.3d 751; *Polasek v. Omura*, 2006 MT 103, ¶ 8, 332 Mont. 157, 136 P.3d 519 (citations omitted).

75. **Statutory Construction and Interpretation.**

“The interpretation of a statute is a question of law that we review for correctness.” *Montana Department of Revenue v. Priceline.com, Inc.*, 2015 MT 241, ¶ 6, 380 Mont. 352, 354 P.3d 631; *City of Missoula v. Iosefo*, 2014 MT 209, ¶ 8, 376 Mont. 161, 330 P.3d 1180.

“[S]tatutory interpretation is a conclusion of law, which we review to

determine whether a district court has correctly interpreted the law.” *Zinvest, LLC v. Anderson*, 2015 MT 204, ¶ 7, 380 Mont. 139, 353 P.3d 1192.

76. **Stays.**

“The district court’s ruling on motions for stay of proceedings are reviewed for an abuse of discretion.” *Ternes v. State Farm Fire & Cas. Co.*, 2011 MT 156, ¶ 17, 361 Mont. 129, 257 P.3d 352; *Sourdough Protective Ass’n, Inc. v. Bd. of County Commissioners of Gallatin County*, 253 Mont. 325, 327, 833 P.2d 207, 208 (1992).

77. **Motions to Strike.**

a. Pre-trial Order.

“Because the District Court granted the motion to strike based on its determination that the Weavers would be prejudiced by the State’s failure to raise the issue until three weeks before trial, we review its determination for abuse of discretion as a matter of trial administration.” *Weaver v. State*, 2013 MT 247, ¶ 32, 371 Mont. 476, 310 P.3d 495.

78. **Substitution of and Disqualification of Judges** (Mont. Code Ann. § 3-1-804(1)(a)).

a. Substitution.

“A district court’s determination of whether to substitute a judge is a question of law.” *Mines Mgmt., Inc. v. Fus*, 2014 MT 256, ¶ 5, 376 Mont. 375, 334 P.3d 929; *Mattson v. Montana Power Co.*, 2002 MT 113, ¶ 7, 309 Mont. 506, 48 P.3d 34.

“A district court’s decision on whether a motion for substitution of a judge is timely is a conclusion of law that this Court reviews for correctness.” *In re Estate of Quirin*, 2013 MT 231, ¶ 9, 371 Mont. 284, 309 P.3d 975.

b. Disqualification.

“A district court’s denial of a motion to disqualify is reviewed for an abuse of discretion.” *In re Marriage of Perry*, 2013 MT 6, ¶ 15, 368 Mont. 211, 293 P.3d 170 (citing *Krutzfeldt Ranch, LLC v. Pinnacle Bank*, 2012 MT 15, ¶ 13, 363 Mont. 366, 272 P.3d 635).

79. **Summary Judgment.**

a. Generally.

“We review a district court’s ruling on motions for summary judgment *de novo*, using the same M.R.Civ.P. 56 (Rule 56) criteria used by the district court.” *Chapman v. Maxwell*, 2014 MT 35, ¶ 7, 374 Mont. 12, 322 P.3d 1029.

“[O]ur *de novo* standard of review of summary judgment decisions allows us to review the record and make our own determinations regarding the existence of disputed issues of fact and entitlement to judgment as a matter of law.” *Chapman v. Maxwell*, 2014 MT 35, ¶ 12, 374 Mont. 12, 322 P.3d 1029.

b. Cross Motions.

“Where there is a cross-motion for summary judgment, we review a district court’s decision to determine whether its conclusions were correct.” *Catherine E.W. Hansen Trust v. Ward*, 2015 MT 131, ¶ 15, 379 Mont. 161, 349 P.3d 500 *Baxter v. State*, 2009 MT 449, ¶ 8, 354 Mont. 234, 224 P.3d 1211.

“[T]he fact that both parties moved for summary judgment does not establish the absence of genuine issues of material fact.” *Phillips v. City of Whitefish*, 2014 MT 186, ¶ 16, 375 Mont. 456, 330 P.3d 442 (quoting *Steadele v. Colony Ins. Co.*, 2011 MT 208, ¶ 14, 361 Mont. 459, 260 P.3d 145).

c. Evidentiary rulings.

“We also apply de novo review to a district court’s evidentiary rulings made while resolving a motion for summary judgment.” *In re Estate of Mead*, 2014 MT 264, ¶ 14, 376 Mont. 386, 336 P.3d 362; *In re Estate of Harmon*, 2011 MT 84, ¶ 14, 360 Mont. 150, 253 P.3d 821.

“We review evidentiary rulings made in the context of a summary judgment proceeding *de novo*, and need not defer to the judgments and decisions 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 163.¹³

d. Hearing.

“We review for abuse of discretion a district court’s decision to deny a hearing on a summary judgment motion.” *Miller v. Goetz*, 2014 MT 150, ¶ 9, 375 Mont. 281, 327 P.3d 483; *SVKV, L.L.C. v. Harding*, 2006 MT 297, ¶ 19, 334 Mont. 395, 148 P.3d 584.

“[T]he District Court’s decision whether to allow Claver to testify at the summary judgment hearing was a discretionary ruling and is therefore subject to review for an abuse of discretion.” *Konitz v. Claver*, 1998 MT 27, ¶ 32, 287 Mont. 301, 954 P.2d 1138.

e. Rule 56(f) Motions.

“Denial of a Rule 56(f) motion also is reviewed for abuse of discretion.” *Miller v. Goetz*, 2014 MT 150, ¶ 9, 375 Mont. 281, 327 P.3d 483; *Rosenthal v. Coounty of Madison*, 2007 MT 277, ¶ 23, 339 Mont. 419, 170 P.3d 493.

f. Motion to Dismiss treated as Motion for Summary Judgment.

“When a district court converts a motion to dismiss into a motion for summary judgment, we use the same [*de novo*] standard of review applied to an appeal from a grant or denial of summary judgment.” *Day v. CTA, Inc.*, 2014 MT 119, ¶ 6, 375 Mont. 79, 324 P.3d 1205.

80. Termination of Parental Rights.

a. Generally.

“We review a district court’s decision to terminate parental rights for abuse of discretion.” *In re T.D.H.*, 2015 MT 244, ¶ 18, ___ Mont. ___, ___ P.3d ___; *In re L.N.*, 2014 MT 187, ¶ 12, 375 Mont. 480, 329 P.3d 598.

“[W]e review the district court’s findings for clear error, its conclusions of law for correctness, and the court’s ultimate decision regarding adjudication and disposition for abuse of discretion.” *In re M.J.*, 2013 MT 60, ¶ 16, 369 Mont. 247, 296 P.3d 1197.

“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.” *In re K.H.*, 2012 MT 175, ¶ 19, 366 Mont. 18, 285 P.3d 474.

“We review a district court’s findings of fact for clear error.” *In re T.D.H.*, 2015 MT 244, ¶ 18, ___ Mont. ___, ___ P.3d ___.

b. Appointment of Counsel.

Decisions to appoint or rescind appointments of counsel are reviewed for abuse of discretion. *In re T.D.H.*, 2015 MT 244, ¶ 20, ___ Mont. ___, ___ P.3d ___.¹⁴

c. Assistance of Counsel in Parental Termination Cases.

“This Court exercises plenary review of whether a parent was denied effective assistance of counsel in termination proceedings.” *In re T.N.-S.*, 2015 MT 117, ¶ 17, 379 Mont. 60, 347 P.3d 1263; *In re C.M.C.*, 2009 MT 153, ¶ 20, 350 Mont. 391, 208 P.3d 809.¹⁵

d. Statutory Due Process.

“Compliance with state statutory requirements presents a question of law that we review for correctness.” *In re H.T.*, 2015 MT 41, ¶ 10, 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.

e. Transfer to Tribal Court.

“The district court’s interpretation of the Indian Child Welfare Act is reviewed *de novo*. The district court’s decision to transfer or not transfer the case to tribal court is reviewed for abuse of discretion.” *In re S.B.C.*, 2014 MT 345, ¶ 20, 377 Mont. 400, 340 P.3d 534.

“We review a district court’s decision on a motion to decline jurisdiction for an abuse of discretion.” *In re A.R.B.*, 2013 MT 310, ¶ 14, 372 Mont. 274, 312 P.3d 425.

f. Indian Child Welfare Act.

“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 K.B.*, 2013 MT 133, ¶ 18, 370 Mont. 254, 301 P.3d 836.

g. Grandparent-grandchild visitation.

“We review for correctness a district court’s interpretation and application of statutes.” *Snyder v. Spaulding*, 2010 MT 151, ¶ 8, 357 Mont. 34, 235 P.3d 578.

81. **Trial Administration.**

a. Generally.

“This Court reviews a court’s orders related to trial administration,

such as a motion to stay proceedings, for an abuse of discretion.” *In re Crow Water Compact*, 2015 MT 217, ¶ 20, 380 Mont. 168, ___ P.3d ___; *Wamsley v. Nodak Mut. Ins. Co.*, 2008 MT 56, ¶ 23, 341 Mont. 467, 178 P.3d 102.

b. Extension or Enlargement of time.

“We review for an abuse of discretion a district court’s decision to grant or deny an enlargement of time pursuant to M.R. Civ. P. 6(b).” *Pesarik v. Perjessy*, 2008 MT 337, ¶ 9, 346 Mont. 236, 194 P.3d 665.

“We will not disturb a district court’s decision to grant or deny an extension of time absent a manifest abuse of discretion. *Lynes v. Helm*, 2007 MT 226, ¶ 18, 339 Mont. 120, 168 P.3d 651.

c. Trial Continuance.

“We review a district court’s decision to continue a trial for an abuse of discretion.” “We will not overturn a court’s decision to deny a motion for a continuance absent a showing of both an abuse of discretion and prejudice to the complaining party.” *McCormack v. Andres*, 2008 MT 182, ¶ 23, 343 Mont. 424, 185 P.3d 973.

“Because the facts in this case are undisputed with respect to the request for a continuance, we simply review whether the District Court correctly interpreted the requirements of § 37–61–405, MCA, and U. Dist. Ct. R. 10.” *In re Marriage of Hardin*, 2008 MT 154, ¶ 12, 343 Mont. 254, 184 P.3d 1012.

d. Reopening Case to Receive Additional Evidence.

“Whether to reopen a case for the introduction of further evidence after the case has been submitted to the court is within the discretion of the trial court. Its ruling, upon the request to reopen, will not be disturbed by this Court unless there has been a clear abuse of discretion.” *Stavenjord v. Montana State Fund*, 2003 MT 67, ¶ 15, 314 Mont. 466, 67 P.3d 229.

82. **Usury.**

“The District Court’s calculation of the usury penalty is a question of law reviewed *de novo*.” *Confederated Tribes of Grand Ronde Cmty. of Oregon v. Quantum Five, Inc.*, 2004 MT 140, ¶ 8, 321 Mont. 396, 91 P.3d 1255.

83. **Venue.**

a. For convenience of parties and witnesses.

Decisions on motions for change of venue under Mont. Code Ann. §§ 25-2-201(3), “for the convenience of witnesses and the ends of justice” are reviewed for an abuse of discretion. *Wagman v. Motl*, 2015 MT 168, ¶ 6, 379 Mont. 439, 352 P.3d 609; *In re Marriage of Lockman*, 266 Mont. 194, 201, 879 P.2d 710, 715 (1994).

b. Proper place of trial.

“Our review of a district court’s grant or denial of a motion to change venue is plenary; we merely determine whether the court’s decision is legally correct.” *In re S.C.B.*, 2015 MT 19, ¶ 7, 378 Mont. 89, 342 P.3d 46.¹⁶

“Whether a county designated in the complaint is a proper place for trial is a question of law.” *Ward v. Johnson*, 2012 MT 96, ¶ 7, 365 Mont. 19, 277 P.3d 1216.

“The determination of proper venue is a question of law involving the application of Montana’s venue statutes to the pleaded facts. Our review of a district court’s grant or denial of a motion to change venue is plenary; we merely determine whether the court’s decision is legally correct. *Circle S Seeds of Montana, Inc. v. Montana Merchandising, Inc.*, 2006 MT 311, ¶ 5, 335 Mont. 16, ¶ 5, 157 P.3d 671, ¶ 5 (citations omitted).” *In re Custody & Parenting Plan of B.C.B.W.*, 2008 MT 147, ¶ 6, 343 Mont. 215, 185 P.3d 327.

Changes of venue in guardianship cases are reviews for abuse of

discretion. *In re Guardianship of H.O.*, 2014 MT 285, ¶ 7, 376 Mont. 519, 337 P.3d 91.

The Supreme Court reviews application of the Uniform Probate Code's venue provision *de novo*. *In re Estate of Strange*, 2008 MT 158, ¶ 6, 343 Mont. 296, 184 P.3d 1029.

84. **Vexatious Litigants.**

"We also 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.

85. **Water Court.**

"This Court reviews a Water Court decision under the same standards applied to District Court decisions." *Eldorado Co-op Canal Co. v. Lower Teton Joint Objectors*, 2014 MT 272, ¶ 22, 376 Mont. 420, 337 P.3d 74; *Marks v. 71 Ranch, LP*, 2014 MT 250, ¶ 13, 376 Mont. 340, 334 P.3d 373.¹⁷

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

86. **Wills and Estates.**

a. Interpretation and Construction of Will.

"The interpretation and construction of a will presents a question of law, which we review for correctness." *Estate of Hedrick v. Lamach*, 2014 MT 118, ¶ 7, 375 Mont. 74, 324 P.3d 1202.

b. Appointment of Personal Representative.

“We review the appointment of a personal representative according to § 72–3–502, MCA, to determine whether a district court has correctly interpreted the law.” *In re Estate of McMurchie*, 2004 MT 98, ¶ 7, 321 Mont. 21, 89 P.3d 18.

“This Court reviews a district court’s decision regarding the removal of a personal representative to determine whether the district court abused its discretion.” *In re Estate of Bennett*, 2013 MT 228, ¶ 5, 371 Mont. 270, 312 P.3d 400; *In re Estate of Hannum*, 2012 MT 171, ¶ 18, 366 Mont. 1, 285 P.3d 463.

“First, whether Bowers and White have statutory priority for appointment as personal representatives of the Estate in Montana as a result of their appointment as personal representatives of the Estate in New York, as well as a coincident right to obtain removal of the special administrator, is a legal question which we review to determine whether the court correctly interpreted the law. *See In re Estate of Peterson* (1994), 265 Mont. 104, 110, 874 P.2d 1230, 1233. The District Court’s determination that Bowers and White renounced their right to appointment involved the interpretation and application of the statute governing renunciation. Questions of statutory interpretation and application are reviewed for correctness. *See, e.g., In re A.W.*, 1999 MT 42, ¶ 6, 293 Mont. 358, ¶ 6, 975 P.2d 1250, ¶ 6. Lastly, with regard to whether Bowers and White have a conflict with Shannon which prevents them from being appointed personal administrators, we review a district court’s refusal to appoint a personal administrator to determine whether the court abused its discretion.” *In re Estate of Kuralt*, 2001 MT 153, ¶ 11, 306 Mont. 73, 30 P.3d 345.

c. Trust Agreement.

“The District Court’s interpretation of a trust agreement ‘presents a question of law, which we review for correctness.’” *Lane v. Caler*, 2013 MT 108, ¶ 9, 370 Mont. 30, 299 P.3d 827.

d. Fees of Personal Representative.

“The review of fees paid or taken by a personal representative is left to the sound discretion of the District Court. We will not overturn that decision absent a showing of abuse of discretion, and the court’s findings of fact will be upheld unless clearly erroneous.” *Matter of Estate of Stone*, 236 Mont. 1, 4, 768 P.2d 334, 336 (1989).

e. Undue Influence.

“[T]he proper standard of review in estate cases at equity (cases of undue influence) is whether the findings of the district court are clearly erroneous. Absent a determination that the findings are clearly erroneous, they will not be set aside.” *In re Estate of Tipp*, 281 Mont. 120, 123, 933 P.2d 182, 184 (1997).

87. **Workers’ Compensation Court.**

a. Generally.

“We review the WCC's factual findings to determine whether they are supported by substantial credible evidence and its conclusions of law for correctness. ‘Substantial credible evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.’ Additionally, this Court accords a high level of deference to the WCC’s factual findings, and we will consider evidence substantial even if it is contradicted by other evidence, even if it is somewhat less than a preponderance, and even if it is inherently weak.’ *Stewart v. Liberty Northwest Ins. Corp.*, 2013 MT 107, ¶¶ 16 and 31, 370 Mont. 19, 299 P.3d 820 (internal citations omitted).” *Malcomson v. Liberty Northwest*, 2014 MT 242, ¶ 11, 376 Mont. 306, 339 P.3d 1235.

“Since we are in the same position as the WCC to assess deposition testimony, we review deposition testimony *de novo*.” *Banco v. Liberty Nw. Ins. Corp.*, 2012 MT 3, ¶ 8, 363 Mont. 290, 268 P.3d 13.

88. Youth Court.

a. Generally.

“[T]he standard of review in a youth court case depends on the issue presented.” *In re K.D.K.*, 2006 MT 187, ¶ 14, 333 Mont. 100, 141 P.3d 1212.

b. Jurisdiction.

“Determination of subject matter jurisdiction is a question of law that this Court reviews to determine whether the district court had authority to act.” *In re E.G.*, 2014 MT 148, ¶ 8, 375 Mont. 252, 326 P.3d 1092.

“A district court’s authority, including authority to modify a Mont. Code Ann. § 41-5-208 order, is dictated by the state and federal constitutions and by statute and is reviewed *de novo*.” *In re A.S.M.*, 2014 MT 133, ¶ 12, 375 Mont. 147, 325 P.3d 1251.

c. Prosecution as Youth or as Adult.

“This Court reviews a district court’s decision for an abuse of discretion regarding whether a juvenile should be prosecuted in youth court or district court. *State v. Spina*, 1999 MT 113, ¶ 12, 294 Mont. 367, ¶ 12, 982 P.2d 421, ¶ 12 (citing *Matter of J.K.C.* (1995), 270 Mont. 342, 344, 891 P.2d 1169, 1171). ‘With regard to specific findings of fact relied on by the [district] court in transferring the case, the standard of review is whether such findings are clearly erroneous.’” *State v. Whiteman*, 2005 MT 15, ¶ 10, 325 Mont. 358, 106 P.3d 543.

1. This is not really a standard of “review.”

2. *N.B. In re D.K.D.*, 2011 MT 74, ¶ 11, 360 Mont. 76, 250 P.3d 856, overruled *In re L.S.*, 2009 MT 83, ¶ 18, 349 Mont. 518, 204 P.3d 707, which had articulated a *de novo* standard.

3. It is not clear what the Court meant here. Mixed issues of law and fact are routinely reviewed *de novo*. That is because the district court has applied the law to the facts. In *Tefft* there may have been findings of fact about the defendant's actions, which findings would be reviewable for clear error. The conclusion that those actions constituted bad faith or unreasonable grounds is a mixed question, reviewable *de novo*.

4. This is likely a poor statement of the rule. The district court exercises discretion in determining if declaratory judgment is the proper remedy but it's conclusion that the petition does not state a claim is reviewed *de novo*.

5. *Essex* sets forth a rule of decision to be applied by the district courts. This is not a standard of review. It appears, from the Court's approach in *Essex* and *Engelsberger*, that the Court engaged in *de novo* review.

6. *Byrum* was a Rule 11 case. There the Court said "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. The cases cited above in ¶ 17 and in supra note 1 are likewise clarified to the extent they cite a different standard of review." *Byrum*, ¶ 19. *Estate of Miles* was cited in note 1. It is not clear that the *Byrum* standard has been imported into a review of Rule 26(g) sanctions. See *Hilten v. Bragg*, 2010 MT 273, ¶¶ 16, 17, 27, 358 Mont. 407, 248 P.3d 282 (affirming Rule 11 and Rule 26(g) sanctions); *Park County Concerned Citizens v. DePuy*, 2008 MT 246, ¶¶ 16, 31, 344 Mont. 504, 190 P.3d 293 (discussing *Byrum* but reviewing Rule 26(g) sanction for abuse of discretion).

7. This statement is, obviously, internally contradictory.

8. This appears to be an erroneous statement in light of the broader definition of abuse of discretion. That is, the error of fact must affect the district court's exercise of discretion. In *Weibert*, however, the only issue was substantial evidence and there were no formal findings of fact.

9. It is not clear if clear abuse of discretion is the same as manifest abuse of discretion. The two seem synonymous. In *A.M.M.*, it is not clear because

the Supreme Court considered the standard in the context of a motion for new trial, which employs a manifest abuse of discretion standard of review.

10. *Abbey* was a Rule 24(a) case, which is intervention of right. Because intervention as a matter of right calls for application of Rule 24(a), the proper standard of review is *de novo*. Compare, *Prete v. Bradbury*, 438 F.3d 949, 953 (9th Cir. 2006) (holding that intervention as a matter of right under Rule 24(a), Fed. R. Civ. P., is reviewed *de novo*). The abuse of discretion standard applies to permissive intervention.

11. Compare the Federal Circuits: “We review the district court’s determination as to whether a particular statement constitutes a judicial admission that excludes certain evidence under the abuse of discretion standard.” *Meyer v. Berkshire Life Ins. Co.*, 372 F.3d 261, 264 (4th Cir. 2004); *United States v. Cohen*, 946 F.2d 430, 435 (6th Cir.1991); *MacDonald v. Gen. Motors Corp.*, 110 F.3d 337, 340 (6th Cir. 1997); *contra Estate of Korby v. C.I.R.*, 471 F.3d 848, 852 (8th Cir. 2006) (holding determining whether a particular statement constitutes a judicial admission is a question of law we review *de novo*) (citing *Rowe Int’l, Inc. v. J–B Enters., Inc.*, 647 F.2d 830, 836 (8th Cir.1981) (analyzing a statement to determine “whether it had sufficient formality or conclusiveness to be considered a judicial admission.”)).

12. *Ramsey*, however, speaks only to statutory construction and interpretation, not to the application of a statute to a set of facts.

13. The *de novo* standard is proper when applied to evidentiary rulings in the summary judgment context. If the district court engages in findings of credibility, those will preclude summary judgment, since credibility determinations are left for trial. If the district court makes findings that evidence offered in the motion is credible or not credible, that finding may be reviewed on the record and the Supreme Court is in as good a position at the district court to make the finding. Finally, if the district court finds that evidence is or is not material, that finding may be reviewed on the same record presented to the district court.

14. This conflicts with the standard in mental health cases.

15. This is an interesting standard. The two cited decisions are based on *In re A.S.*, 2004 MT 62, ¶ 9, 320 Mont. 268, 87 P.3d 408. *A.S.* raised the issue of whether there was a right to appointed counsel. *A.S.*, however, did not subject the district court's decision to appoint or not appoint counsel to plenary review. If the district court properly applies the criteria set out in *A.S.*, then it would seem that the district court's decision on effective assistance is subject to abuse of discretion review.

16. If this seems confusing, that is because it is. This is a poorly crafted statement. Under the facts of *S.C.B.*, it is apparent that the correct statement of the standard should be "Our review of a district court's interpretation of the law governing a motion to change venue is plenary. . . ." See *In re Custody & Parenting Plan of B.C.B.W.*, 2008 MT 147, ¶ 6, 343 Mont. 215, 185 P.3d 327. Most, but not all, questions of venue are fixed by statute. See *e.g.*, Mont. Code Ann. § 25-2-118. Some, such as change of venue for the convenience of the witnesses or parties, are within the district court's discretion. Where the statute leaves the district court no discretion, the district court's decision is reviewed *de novo*. The second are reviewed for an abuse of discretion.

17. Note that the standards of review applicable to water court decisions give no deference to the water court's particular expertise.