

THE MINNESOTA COURT OF APPEALS STANDARDS OF REVIEW

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INTRODUCTION

When deciding a case, the first task of an appellate court is to identify the applicable standard of review. The standard of review defines the manner in which each issue is reviewed, delineates the boundaries of appellate argument, and often determines the outcome on appeal. Accordingly, the Minnesota Court of Appeals conscientiously identifies and applies a specific standard of review to each issue before the court.

The most persuasive appellate briefs explicitly state the applicable standard of review at the beginning of each issue and then apply it. This outline is intended as a tool for finding and applying various standards of review. Although this manual contains many standards of review, the cases set forth herein are not meant to provide the definitive standard of review for every appeal. Further research may be necessary, depending on the facts and issues on appeal. This manual does not address the scope of review, which concerns the extent to which specific questions or decisions may be raised on appeal.

This outline was originally proposed by Justice Peter Popovich, the first Chief Judge of the Minnesota Court of Appeals and later Chief Justice of the Minnesota Supreme Court. It has been updated periodically, under the supervision of other chief judges and with the efforts of law clerks and staff of the court. I want to thank all of the law clerks and staff attorneys of the Minnesota Court of Appeals who have researched, compiled, and edited this outline. I am confident that their efforts will assist Minnesota attorneys in locating the applicable standard of review and focusing their appellate arguments.

August 2014

Edward J. Cleary
Chief Judge

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I. CIVIL – GENERAL

A. IN GENERAL

1. Jurisdiction

“Jurisdiction is a question of law that we review de novo.” *In re Comm’r of Pub. Safety*, 735 N.W.2d 706, 710 (Minn. 2007) (quotation omitted).

“Whether subject-matter jurisdiction exists presents a question of law, which we review de novo.” *Anderson v. Cnty. of Lyon*, 784 N.W.2d 77, 80 (Minn. App. 2010) (citing *Tischer v. Hous. & Redev. Auth.*, 693 N.W.2d 426, 428 (Minn. 2005)), *review denied* (Minn. Aug. 24, 2010).

“Whether personal jurisdiction exists is a question of law which we review de novo.” *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004); *see also C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528, 533 (Minn. App. 2009).

2. General Standards of Review

a. *Questions of Law*

“No deference is given to a lower court on questions of law.” *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003).

“The application of law to stipulated facts is a question of law, which we . . . review de novo.” *In re Estate of Barg*, 752 N.W.2d 52, 63 (Minn. 2008).

“When the material facts are not in dispute, we review the lower court’s application of the law de novo.” *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007).

b. *Mixed Questions of Law and Fact*

“In an appeal from a bench trial, we do not reconcile conflicting evidence. We give the district court’s factual findings great deference and do not set them aside unless clearly erroneous. However, we are not bound by and need not give deference to the district court’s decision on a purely legal issue. When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the [district] court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard.” *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002) (alteration in original) (quotations and citations omitted), *review denied* (Minn. June 26, 2002).

c. Questions of Fact

“Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses. The findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court.” Minn. R. Civ. P. 52.01.

“[W]e review the district court’s factual findings for clear error. That is, we examine the record to see if there is reasonable evidence in the record to support the court’s findings. And when determining whether a finding of fact is clearly erroneous, we view the evidence in the light most favorable to the verdict. To conclude that findings of fact are clearly erroneous we must be left with the definite and firm conviction that a mistake has been made.” *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (quotations and citations omitted).

“It is not the province of this court to reconcile conflicting evidence. On appeal, a [district] court’s findings of fact are given great deference, and shall not be set aside unless clearly erroneous. . . . If there is reasonable evidence to support the [district] court’s findings of fact, a reviewing court should not disturb those findings.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

d. Equitable Determinations

“We have said that we review equitable determinations for an abuse of discretion.” *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 23 (Minn. 2011) (citing *Lilyerd v. Carlson*, 499 N.W.2d 803, 807, 811 (Minn. 1993) (bench trial) and *Nadeau v. Cnty. of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979) (motion for reinstatement following grant of motion for new trial)).

“[A] district court’s conclusion on equitable estoppel after a bench trial is reviewed for an abuse of discretion.” *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011).

3. Rules of Construction

a. Statutes

(1) Constitutionality of Statutes

The constitutionality of a statute is a question of law that we review de novo. *Rew v. Bergstrom*, 845 N.W.2d 764, 776 (Minn. 2014) (citing *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 653 (Minn. 2012)).

“The constitutionality of a statute is a question of law that we review de novo.” *SooHoo v. Johnson*, 731 N.W.2d 815, 821 (Minn. 2007). “Our

power to declare a law unconstitutional is to be exercised only when absolutely necessary and then with great caution.” *Id.* (quotation omitted). “Accordingly, we will uphold a statute unless the challenging party demonstrates that it is unconstitutional beyond a reasonable doubt.” *Id.*

“Minnesota statutes are presumed constitutional and, as we have said in the past, our power to declare a statute unconstitutional must be exercised with extreme caution and only when absolutely necessary.” *Hamilton v. Comm’r of Pub. Safety*, 600 N.W.2d 720,722 (Minn. 1999).

“The challenger of the constitutional validity of a statute must meet the very heavy burden of demonstrating beyond a reasonable doubt that the statute is unconstitutional.” *Assoc. Builders & Contractors v. Ventura*, 610 N.W.2d 293, 299 (Minn. 2000).

(2) Interpretation/Construction and Application of Statutes

“[S]tatutory construction is a question of law, which we review de novo.” *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). “The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2012). “We construe statutes to effect their essential purpose but will not disregard a statute’s clear language to pursue the spirit of the law.” *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 123 (Minn. 2007).

“Application of a statute to the undisputed facts of a case involves a question of law, and the district court’s decision is not binding on this court.” *Davies v. W. Publ’g Co.*, 622 N.W.2d 836, 841 (Minn. App. 2001) (citing *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998)), *review denied* (Minn. May 29, 2001).

“When the district court grants a summary judgment based on its application of statutory language to the undisputed facts of a case, . . . its conclusion is one of law and our review is de novo.” *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998).

“The application of statutes, administrative regulations, and local ordinances to undisputed facts is a legal conclusion and is reviewed de novo.” *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5 (Minn. 2008).

“Our goal when interpreting statutory provisions is to ascertain and effectuate the intention of the legislature. If the meaning of a statute is unambiguous, we interpret the statute’s text according to its plain language. If a statute is ambiguous, we apply other canons of construction to discern the legislature’s intent.” *Brua v. Minn. Joint Underwriting Ass’n*, 778 N.W.2d 294, 300 (Minn. 2010) (quotation and citations omitted).

“When interpreting a statute, we first look to see whether the statute’s language, on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation and citation omitted).

“A statute should be interpreted, whenever possible, to give effect to all of its provisions; ‘no word, phrase, or sentence should be deemed superfluous, void, or insignificant.’” *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quoting *Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999)). “We are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations.” *Id.*

“Interpretation of a statute presents a question of law, which we review de novo.” *Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011).

See also Minn. Stat. §§ 645.01-.51 (2012 & Supp. 2013) (involving interpretation of statutes).

(3) Statutes of Limitations/Repose

“We review de novo the construction and application of a statute of limitations, including the law governing the accrual of a cause of action.” *Sipe v. STS Mfg, Inc.*, 834 N.W.2d 683, 686 (Minn. 2013) (quotation omitted).

“[T]he construction and applicability of a statute of limitation or repose is a question of law subject to de novo review.” *State Farm Fire & Cas. v. Aquila Inc.*, 718 N.W.2d 879, 883 (Minn. 2006).

b. Rules of Procedure

“Construction and application of the Minnesota Rules of Civil Procedure is . . . a question of law that we review de novo.” *Eclipse Architectural Grp. v. Lam*, 814 N.W.2d 692, 696 (Minn. 2012).

“We review the interpretation of procedural rules de novo.” *State v. Martinez-Mendoza*, 804 N.W.2d 1, 6 (Minn. 2011); *see also Johnson v. State*, 801 N.W.2d 176, 176 (Minn. 2011) (citing *State v. Rourke*, 773 N.W.2d 913, 923 (Minn. 2009)).

c. Municipal Ordinances

(1) Constitutionality/Reasonableness of an Ordinance

A municipal charter or ordinance is presumed to be constitutional; the burden of proving that it is not is on the party challenging it. *Minn. Voters Alliance v. City of Minneapolis*, 766 N.W.2d 683, 688 (Minn. 2009).

“A municipal ordinance is presumed constitutional; the burden is on the party attacking the ordinance’s validity to prove an ordinance is unreasonable or that the requisite public interest is not involved, and consequently that the ordinance does not come within the police power of the city.” *N. States Power Co. v. City of Oakdale*, 588 N.W.2d 534, 541 (Minn. App. 1999) (citing *City of St. Paul v. Dalsin*, 245 Minn. 325, 329, 71 N.W.2d 855, 858 (1955)).

“To prove an ordinance is unreasonable, a complaining party must show that it has no substantial relationship to the public health, safety, morals or general welfare.” *N. States Power Co. v. City of Oakdale*, 588 N.W.2d 534, 541 (Minn. App. 1999) (quotation omitted).

“[I]f the ‘reasonableness of an ordinance is debatable, courts will not interfere with the legislative discretion.’” *State v. Hyland*, 431 N.W.2d 868, 872 (Minn. App. 1988) (quoting *State v. Modern Box Makers, Inc.*, 217 Minn. 41, 47, 13 N.W.2d 731, 734 (1944)).

(2) Interpretation of Municipal Ordinances

“The interpretation of an ordinance is a question of law for the court, which we review de novo.” *Eagle Lake of Becker Cnty. Lake Ass’n v. Becker Cnty. Bd. of Comm’rs*, 738 N.W.2d 788, 792 (Minn. App. 2007) (citing *Billy Graham Evangelistic Ass’n v. City of Minneapolis*, 667 N.W.2d 117, 122 (Minn. 2003)).

“Where . . . the parties agree that there are no material issues of fact, this court first conducts a de novo determination of whether the district court has correctly interpreted the ordinance, giving only slight consideration to the interpretation by the governmental authority.” *R.L. Hexum & Assocs., Inc. v. Rochester Twp., Bd. of Supervisors*, 609 N.W.2d 271, 274 (Minn. App. 2000) (citation omitted).

d. Board of Adjustment Decisions/Municipalities

(1) Standard of Review

“The standard of review remains whether on the evidence before it, the [Board of Adjustment] reached a reasonable decision.” *Town of Grant v.*

Washington Cnty., 319 N.W.2d 713, 717 (Minn. 1982). “We are required to make an independent review of the Board’s decision.” *Id.*

(2) Scope of Review

An appellate court’s “authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked.” *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 175 (Minn. 1982); *see Big Lake Ass’n v. St. Louis Cnty. Planning Comm’n*, 761 N.W.2d 487, 491 (Minn. 2009) (“Our limited and deferential review of a quasi-judicial decision is rooted in separation of powers principles.”).

e. Attorney General Opinions

“Opinions of the Attorney General are not binding on the courts” *Star Tribune Co. v. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004). “When appropriate, opinions of the Attorney General are entitled to careful consideration by appellate courts, particularly where they are of long standing.” *Billigmeier v. Cnty. of Hennepin*, 428 N.W.2d 79, 82 (Minn. 1988).

f. Contracts

(1) In General

“[T]he existence and terms of a contract are questions for the fact finder.” *Morrisette v. Harrison Int’l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992).

“Absent ambiguity, the interpretation of a contract is a question of law.” *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *review denied* (Minn. July 19, 2011).

“The plain and ordinary meaning of the contract language controls, unless the language is ambiguous.” *Bus. Bank v. Hanson*, 769 N.W.2d 285, 288 (Minn. 2009).

(a) Ambiguous Contracts

“Whether a contract is ambiguous is a question of law that we review de novo.” *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). “The language of a contract is ambiguous if it is susceptible to two or more reasonable interpretations.” *Id.*

“[W]here [contract] language is ambiguous, resort may be had to extrinsic evidence, and construction then becomes a question of fact for the jury, unless such evidence is conclusive.” *Bari v. Control Data Corp.*, 439 N.W.2d 44, 47 (Minn. App. 1989), *review denied* (Minn. July 12, 1989).

(b) *Unambiguous Contracts*

“The determination of whether a contract is unambiguous depends on the meaning assigned to the words and phrases in accordance with the apparent purpose of the contract as a whole.” *Halla Nursery, Inc. v. City of Chanhassen*, 781 N.W.2d 880, 884 (Minn. 2010).

“When the intent of the parties can be determined from the writing of the contract, the construction of the instrument is a question of law for the court to resolve, and this court need not defer to the district court’s findings.” *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 671 N.W.2d 213, 221 (Minn. App. 2003) (quotation omitted), *review denied* (Minn. Jan. 20, 2004).

(2) *Specific Types of Contracts*

(a) *Employment Contracts*

Whether statements made by an employer are definite enough to constitute a unilateral contract is a question of law to be resolved by the court and to be reviewed *de novo* by the appellate courts. *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 740 (Minn. 2000); *see Alexandria Hous. & Redev. Auth. v. Rost*, 756 N.W.2d 896, 904 (Minn. App. 2008). Whether alleged facts “rise to the level of promissory estoppel presents a question of law.” *Martens*, 616 N.W.2d at 746.

(b) *Insurance Contracts*

“The interpretation of an insurance policy is a question of law as applied to the facts presented.” *Star Windshield Repair, Inc. v. W. Nat’l Ins. Co.*, 768 N.W.2d 346, 348 (Minn. 2009).

“[T]he interpretation of insurance-policy language based on undisputed underlying facts, as well as statutory construction, are questions of law, which we review *de novo*.” *Mitsch v. Am. Nat’l Prop. & Cas. Co.*, 736 N.W.2d 355, 358 (Minn. App. 2007), *review denied* (Minn. Oct. 24, 2007).

“The extent of an insurer’s liability is determined by the insurance contract with its insured as long as that insurance policy does not omit coverage required by law and does not violate applicable statutes.” *Mitsch v. Am. Nat’l Prop. & Cas. Co.*, 736 N.W.2d 355, 358 (Minn. App. 2007), *review denied* (Minn. Oct. 24, 2007). “This court must construe an insurance policy as a whole and must give unambiguous language its plain and ordinary meaning. But

when language in an insurance contract is ambiguous, such that it is reasonably subject to more than one interpretation, we will construe it in favor of the insured.” *Id.* (citations omitted).

“Interpretation of insurance policy provisions required by statute involves questions of law, to be reviewed de novo.” *Britamco Underwriters, Inc. v. A & A Liquors of St. Cloud*, 649 N.W.2d 867, 871 (Minn. App. 2002) (citing *Nathe Bros., Inc. v. Am. Nat'l Fire Ins. Co.*, 615 N.W.2d 341, 344 (Minn. 2000)).

(c) Settlement Agreements

“A settlement agreement is a contract, and we review the language of the contract to determine the intent of the parties. When the language is clear and unambiguous, we enforce the agreement of the parties as expressed in the language of the contract. But if the language is ambiguous, parol evidence may be considered to determine intent. Whether a contract is ambiguous is a question of law that we review de novo. The language of a contract is ambiguous if it is susceptible to two or more reasonable interpretations.” *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 581-82 (Minn. 2010) (citations omitted).

B. PRETRIAL MATTERS

1. Service of Process

“Whether service of process was effective, and personal jurisdiction therefore exists, is a question of law that we review de novo.” *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008).

2. Amendment of Pleadings

Whether an amended pleading satisfies the requirements of Minn. R. Civ. P. 15.03 to have the amendment relate back is a question of law, subject to de novo review. *Bigay v. Garvey*, 575 N.W.2d 107, 109 (Minn. 1998); *see Metro. Bldg. Cos. v. Ram Bldgs., Inc.*, 783 N.W.2d 204, 211 (Minn. App. 2010), *review denied* (Minn. Aug. 10, 2010).

“Generally, the decision to permit or deny amendments to pleadings is within the discretion of the district court and will not be reversed absent a clear abuse of discretion.” *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003).

“Whether the district court has abused its discretion in ruling on a motion to amend may turn on whether it was correct in an underlying legal ruling.” *Doe v. F.P.*, 667 N.W.2d 493, 500-01 (Minn. App. 2003), *review denied* (Minn. Oct. 21, 2003).

3. Discovery Issues

The district court has wide discretion to issue discovery orders and, absent a clear abuse of that discretion, its discovery orders will not be disturbed. *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007). “We review a district court’s order for an abuse of discretion by determining whether the district court made findings unsupported by the evidence or by improperly applying the law.” *Id.*

“A referee has broad discretion to issue discovery orders and will be reversed on appeal only upon an abuse of such discretion.” *In re Overboe*, 745 N.W.2d 852, 861 (Minn. 2008) (quotation omitted).

4. Intervention of Parties/Interpleader

For cases concerning permissive intervention under Minn. R. Civ. P. 24.02, a “decision concerning intervention is left to the discretion of the [district] court and will be reversed only when there has been a clear abuse of its discretion.” *Norman v. Refsland*, 383 N.W.2d 673, 676 (Minn. 1986). “Orders concerning intervention as a matter of right, pursuant to Minn. R. Civ. P. 24.01, are subject to de novo review and are independently assessed on appeal.” *State Fund Mut. Ins. Co. v. Mead*, 691 N.W.2d 495, 499 (Minn. App. 2005).

“Because interpleader actions are equitable in nature, the standard of review is abuse of discretion.” *Faegre & Benson, LLP v. R & R Investors*, 772 N.W.2d 846, 852 (Minn. App. 2009), *review denied* (Minn. Dec. 23, 2009).

5. Recusal and Removal of Judges

Denial of a recusal motion is within the district court’s discretion and should not be reversed absent a clear abuse of discretion. *Carlson v. Carlson*, 390 N.W.2d 780, 785 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986).

“Whether to honor a request for removal based on allegations of actual prejudice is a matter for the [district] court’s discretion.” *Durell v. Mayo Found.*, 429 N.W.2d 704, 705 (Minn. App. 1988) (emphasis omitted), *review denied* (Minn. Nov. 16, 1988).

6. Disqualification of Counsel

We review the district court’s decision regarding disqualification of counsel for an abuse of discretion. *State ex rel. Swanson v. 3M Co.*, 845 N.W.2d 808, 816 (Minn. 2014).

7. Claim Preclusion and Issue Preclusion

“Whether collateral estoppel precludes litigation of an issue is a mixed question of law and fact that we review de novo.” *Hauschmidt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004).

“Once the reviewing court determines that collateral estoppel is available, the decision to apply collateral estoppel is left to the district court’s discretion.” *In re Estate of Perrin*, 796 N.W.2d 175, 179 (Minn. App. 2011) (quotation omitted).

“We review the application of res judicata de novo.” *Rucker v. Schmidt*, 794 N.W.2d 114, 117 (Minn. 2011).

“The determination of whether collateral estoppel is available presents a mixed question of law and fact also subject to de novo review.” *Care Inst., Inc.-Roseville v. Cnty. of Ramsey*, 612 N.W.2d 443, 446 (Minn. 2000).

8. Motion for Continuance

“The granting of a continuance is a matter within the discretion of the [district] court and its ruling will not be reversed absent a showing of clear abuse of discretion.” *Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977). “We review district court rulings on continuance and new trial motions for abuse of discretion.” *Torchwood Props, LLC v. McKinnon*, 784 N.W.2d 416, 418 (Minn. App. 2010).

9. Temporary Injunctions and Restraining Orders

“The district court has broad discretion to grant or deny a temporary injunction, and we will reverse only for abuse of that discretion.” *U.S. Bank Nat’l Ass’n v. Angeion Corp.*, 615 N.W.2d 425, 434 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000).

“A decision on whether to grant a temporary injunction is left to the discretion of the [district] court and will not be overturned on review absent a clear abuse of that discretion.” *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993).

“A district court’s findings regarding entitlement to injunctive relief will not be set aside unless clearly erroneous.” *Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003).

“In deciding whether the [temporary injunction] determination made by the district court should be sustained on appeal, we consider the likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief. We also evaluate the relationship between the parties preexisting the dispute and the relative hardships that would result if the temporary restraint were denied or issued.” *Berggren v. Town of Duluth*, 304 N.W.2d 24, 26 (Minn. 1981) (citing *Dahlberg Bros. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321 (1965)) (other citations omitted); *see also Haley v. Forcelle*, 669 N.W.2d 48, 55-56 (Minn. App. 2003) (listing the five *Dahlberg* factors to be considered on review), *review denied* (Minn. Nov. 25, 2003).

10. Class Certification

This court reviews a district court's decision granting or denying class certification for abuse of discretion. *Whitaker v. 3M Co.*, 764 N.W.2d 631, 635 (Minn. App. 2009), *review denied* (Minn. July 22, 2009). An erroneous application of Minn. R. Civ. P. 23 constitutes an abuse of discretion by the district court. *Id.* at 636.

C. PRETRIAL JUDGMENTS

1. Default Judgment

"This court will not overturn a ruling on a motion to vacate a default judgment unless the district court abused its discretion." *Roehrdanz v. Brill*, 682 N.W.2d 626, 631 (Minn. 2004).

"The discretion of the district court in opening a default judgment is particularly broad when the court's decision is based upon an evaluation of conflicting affidavits." *Roehrdanz v. Brill*, 682 N.W.2d 626, 631-32 (Minn. 2004).

"As is the case with motions to vacate district court judgments . . . the decision on a motion to vacate a conciliation court judgment is vested in the sound discretion of the district court." *Kern v. Janson*, 800 N.W.2d 126, 132 (Minn. 2011).

"The district court has broad discretion in deciding whether to grant or deny a rule 60.02 motion." *Northland Temporaries, Inc. v. Turpin*, 744 N.W.2d 398, 402 (Minn. App. 2008) (citing *Kosloski v. Jones*, 295 Minn. 177, 180, 203 N.W.2d 401, 403 (1973)), *review denied* (Minn. April 29, 2008). "But broad discretion does not mean that the discretion is unlimited." *Id.* (citing *Spicer v. Carefree Vacations, Inc.*, 370 N.W.2d 424, 426 (Minn. 1985)). "[T]he supreme court has held that, 'if the [district] court has acted under a misapprehension of the law,' the decision will be reversed on appeal even though the opening of a default judgment 'lies almost wholly within the sound discretion of the [district] court.'" *Id.* (quoting *Sommers v. Thomas*, 251 Minn. 461, 469, 88 N.W.2d 191, 196-97 (1958)). "Similarly, when the district court's reasons are based on facts not supported by the record, the determination will not be sustained." *Id.* at 402-03 (citing *Roehrdanz v. Brill*, 682 N.W.2d 626, 631-32 (Minn. 2004); *Duenow v. Lindeman*, 223 Minn. 505, 518, 27 N.W.2d 421, 429 (1947) (reversing order denying motion to vacate because "plain and decisive facts were entirely overlooked by the trial judge")).

2. Judgment on the Pleadings and Dismissal of Actions

a. Minn. R. Civ. P. 12.02(e)

"[W]e now decline to engraft the plausibility standard from *Twombly* and *Iqbal* onto our traditional interpretation of Minn. R. Civ. P. 8.01." *Walsh v. U.S. Bank, N.A.*, ___ N.W.2d ___, 2014 WL 3844201, at *4 (Minn. Aug. 6, 2014).

"We review de novo whether a complaint sets forth a legally sufficient claim for relief. We accept the facts alleged in the complaint as true and construe all

reasonable inferences in favor of the nonmoving party. *Walsh v. U.S. Bank, N.A.*, ___ N.W.2d ___, 2014 WL 3844201, at *7 (Minn. Aug. 6, 2014) (citation omitted).

“When a case is dismissed pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim for which relief can be granted, we review the legal sufficiency of the claim de novo to determine whether the complaint sets forth a legally sufficient claim for relief. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). Rule 8.01 provides that a complaint must ‘contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought.’ Minn. R. Civ. P. 8.01. We consider only those facts alleged in the complaint, accepting those facts as true and construing all reasonable inferences in favor of the nonmoving party. *In re Individual 35W Bridge Litig.*, 806 N.W.2d 811, 815 (Minn. 2011). A claim is sufficient to survive a motion to dismiss ‘if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief demanded.’ *N. States Power Co. v. Franklin*, 265 Minn. 391, 395, 122 N.W.2d 26, 29 (1963); accord *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010). But a legal conclusion in the complaint does not bind us, and a plaintiff must provide more than mere labels and conclusions. *Bahr*, 788 N.W.2d at 80. *Graphic Commc’ns Local 1B Health & Welfare Fund A v. CVS Caremark Corp.*, ___ N.W.2d ___, 2014 WL 2965400, at *7 (Minn. July 2, 2014).

“We . . . review de novo the district court’s grant of a motion to dismiss under Minn. R. Civ. P. 12.02(e). In so doing, we consider only the facts alleged in the complaint, accepting those facts as true.” *Sipe v. STS Mfg. Inc.*, 834 N.W.2d 683, 686 (Minn. 2013) (quotation and citation omitted).

“We have said that a pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief requested.” *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) (quotation omitted).

“When reviewing a case dismissed pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim on which relief can be granted, the question before this court is whether the complaint sets forth a legally sufficient claim for relief.” *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008) (citing *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997)).

When reviewing a dismissal under Minn. R. Civ. P. 12.02(e), “[t]he reviewing court must consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party.” *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003) (citing *Marquette Nat’l Bank v. Norris*, 270 N.W.2d 290, 292 (Minn. 1978)). “The standard of review is therefore de novo.” *Id.*

b. Minn. R. Civ. P. 41.01-.02

An appellate court “evaluate[s] the district court’s” dismissal under Minn. R. Civ. P. 41.02 “under an abuse of discretion standard.” *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 395 (Minn. 2003).

“A reviewing court will not reverse a district court’s decision on a [Minn. R. Civ. P. 41.01(b)] motion unless the district court abuses its discretion.” *Altimus v. Hyundai Motor Co.*, 578 N.W.2d 409, 411 (Minn. App. 1998).

c. Other Bases for Dismissal

We will reverse a district court’s dismissal of a malpractice claim for noncompliance with expert disclosure only if the district court abused its discretion. *Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 725 (Minn. 2005).

A district court’s “dismissal of an action for procedural irregularities will be reversed on appeal only if it is shown that the [district] court abused its discretion.” *Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 190 (Minn. 1990) (reviewing dismissal for failure to comply with statutory requirements); *Juetten v. LCA-Vision, Inc.*, 777 N.W.2d 772, 775 (Minn. App. 2010), review denied (Minn. Apr. 28, 2010).

A district court has “a wide discretion in determining whether dismissals shall be with or without prejudice.” *Falkenstein v. Braufman*, 251 Minn. 444, 452, 88 N.W.2d 884, 889 (1958).

3. Summary Judgment

a. Scope of Review

“The district court’s denial of a motion for summary judgment is not within the scope of review on appeal from a judgment entered after a jury verdict.” *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 912 (Minn. 2009). But the supreme court has recognized that an exception to this rule may exist if the denial of summary judgment is “based on a legal conclusion on an issue that is not presented to the jury for determination.” *Id.* at 918 n.9.

b. Review of Certification Under Minn. R. Civ. P. 54.02

“Whether an order can properly be certified under Minn. R. Civ. P. 54.02 raises a legal question that requires construction and application of a procedural rule, which we review de novo. If an order can properly be certified, we review the district court’s decision whether or not to do so for an abuse of discretion.” *T.A. Schifsky & Sons, Inc. v. Bahr Constr. LLC*, 773 N.W.2d 783, 786-87 (Minn. 2009) (citation omitted).

c. Standard of Review

“On appeal from summary judgment, we must review the record to determine whether there is any genuine issue of material fact and whether the district court erred in its application of the law.” *Dahlin v. Kroening*, 796 N.W.2d 503, 504-05 (Minn. 2011).

“We review a district court’s summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted).

“On appeal, we review a grant of summary judgment ‘to determine (1) if there are genuine issues of material fact and (2) if the district court erred in its application of the law.’” *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (quoting *K.R. v. Sanford*, 605 N.W.2d 387, 389 (Minn. 2000)).

“On appeal from summary judgment, we review whether there are any genuine issues of material fact and whether the district court erred in its application of the law. We view the evidence in the light most favorable to the party against whom summary judgment was granted. We review de novo whether a genuine issue of material fact exists. We also review de novo whether the district court erred in its application of the law.” *STAR Centers, Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002) (citations omitted).

“A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law. On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted); *see* Minn. R. Civ. P. 56.03.

“[T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). “[T]he party resisting summary judgment must do more than rest on mere averments.” *Id.*

No genuine issue for trial exists “[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (alteration in original) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986)). “[W]hen the nonmoving party bears the burden of proof on an element essential to the nonmoving party’s case, the nonmoving party must make a

showing sufficient to establish that essential element.” *Id.* at 71; *see also* *Schroeder v. St. Louis Cnty.*, 708 N.W.2d 497, 507 (Minn. 2006) (describing *substantial evidence* as “incorrect legal standard” and clarifying that “summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents *sufficient evidence* to permit reasonable persons to draw different conclusions”).

d. *Equitable Issues*

The Minnesota Supreme Court has “discussed the standard of review on appeal from a grant of summary judgment involving claims for equitable relief” and “concluded that when the relevant facts are undisputed the standard of review is *de novo*, but a more deferential abuse of discretion standard of review might be applicable where the district court, after balancing the equities, determines not to award equitable relief.” *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 837-38 (Minn. 2012) (citation omitted).

e. *Affirmance on Other Grounds*

“[W]e may affirm a grant of summary judgment if it can be sustained on any grounds.” *Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

“[W]e may affirm a summary judgment if there are no genuine issues of material fact and if the decision is correct on other grounds.” *Winkler v. Magnuson*, 539 N.W.2d 821, 827 (Minn. App. 1995) (quotation omitted).

D. TRIAL MATTERS

1. Evidentiary Issues

a. *Admission and Exclusion of Evidence*

“The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion.” *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted).

“In the absence of some indication that the [district] court exercised its discretion arbitrarily, capriciously, or contrary to legal usage, the appellate court is bound by the result.” *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997).

“Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party’s ability to demonstrate prejudicial error.” *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997) (quotation omitted).

“[T]he [district] court has the discretion to refuse to receive inadmissible evidence offered without objection.” *St. Croix Eng’g Corp. v. McLay*, 304 N.W.2d 912, 914 (Minn. 1981).

“Evidentiary rulings concerning materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence are within the [district] court’s sound discretion and will only be reversed when that discretion has been clearly abused.” *Johnson v. Wash. Cnty.*, 518 N.W.2d 594, 601 (Minn. 1994) (quotation omitted).

“The application of the parol evidence rule is a question of law subject to de novo review.” *Mollico v. Mollico*, 628 N.W.2d 637, 640 (Minn. App. 2001); *see Borgersen v. Cardiovascular Sys., Inc.*, 729 N.W.2d 619, 625 (Minn. App. 2007) (“Whether an agreement is completely integrated and therefore not subject to variance by parol evidence is an issue of law.”).

b. Foundation for Evidence

“We review a district court’s evidentiary rulings, including rulings on foundational reliability, for an abuse of discretion.” *Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164 (Minn. 2012).

“[A] decision on sufficiency of foundation is within the discretion of the [district] court.” *McKay’s Family Dodge v. Harddrives, Inc.*, 480 N.W.2d 141, 147 (Minn. App. 1992) (quotation omitted), *review denied* (Minn. Mar. 26, 1992).

c. Novel Scientific Evidence

“The standard of review of admissibility determinations under *Frye-Mack* is two-pronged. Whether a particular principle or technique satisfies the first prong, general acceptance in the relevant scientific field, is a question of law that [appellate courts] review de novo. District court determinations under the second prong, foundational reliability, are reviewed under an abuse of discretion standard, as are determinations of expert witness qualifications and helpfulness.” *Goeb v. Tharaldson*, 615 N.W.2d 800, 815 (Minn. 2000) (citation omitted).

Note: Minnesota has not adopted the *Daubert* standard, which our supreme court has characterized as “less rigorous.” *State v. Taylor*, 656 N.W.2d 885, 893 (Minn. 2003).

2. Witnesses

a. Examination of Witnesses

“The [district] court’s decisions with respect to when leading questions will be permitted will not be reversed in the absence of a clear abuse of discretion.”

Ossenfort v. Associated Milk Producers, Inc., 254 N.W.2d 672, 679 n.7 (Minn. 1977).

“[W]hat is proper rebuttal evidence rests almost wholly in the discretion of the [district] court.” *Riley Bros. Constr., Inc. v. Shuck*, 704 N.W.2d 197, 205 (Minn. App. 2005) (quotation omitted).

b. Lay Witnesses

The competence of a lay witness to give opinion evidence “is peculiarly within the province of the [district court], whose ruling will not be reversed unless it is based on an erroneous view of the law or clearly not justified by the evidence.” *Muehlhauser v. Erickson*, 621 N.W.2d 24, 29 (Minn. App. 2000) (quotation omitted).

c. Expert-Witness Testimony

Whether expert testimony is required to establish a prima facie case is a question of law. *Tousignant v. St. Louis Cnty.*, 615 N.W.2d 53, 58 (Minn. 2000).

“A district court’s evidentiary ruling on the admissibility of an expert opinion rests within the sound discretion of the [district] court and will not be reversed unless it is based on an erroneous view of the law or it is an abuse of discretion. The district court has considerable discretion in determining the sufficiency of foundation laid for expert opinion. Even if evidence has probative value, it is still within the district court’s discretion to exclude the testimony. This is a very deferential standard. In fact, we have stated that even if this court would have reached a different conclusion as to the sufficiency of the foundation, the decision of the district court judge will not be reversed absent clear abuse of discretion.” *Gross v. Victoria Station Farms, Inc.*, 578 N.W.2d 757, 760-61 (Minn. 1998) (quotations and citation omitted).

3. Presenting Questions to the Jury

a. Framing Special-Verdict Questions

“District courts have broad discretion to decide whether to use special verdicts and what form special verdicts are to take.” *Poppler v. Wright Hennepin Co-op. Elec. Ass’n*, 845 N.W.2d 168, 171 (Minn. 2014).

The district court “has broad discretion regarding the form and substance of special verdict questions.” *SCSC Corp. v. Allied Mut. Ins. Co.*, 536 N.W.2d 305, 313 (Minn. 1995).

b. Submission of Equitable Claims

“Whether an action is of an equitable nature so as to require determination by a court without a jury rests largely in the sound discretion of the [district] court.” *Johnson v. Johnson*, 272 Minn. 284, 298, 137 N.W.2d 840, 850 (1965).

When reviewing an equitable remedy, “we have not interfered unless the [district] court clearly abuses its discretion.” *Lilyerd v. Carlson*, 499 N.W.2d 803, 811 (Minn. 1993).

4. Directed Verdict, now known as Motion for Judgment as a Matter of Law (JMOL). See Section F.2, at page 25.

5. Jury Instructions

“The district court has broad discretion in determining jury instructions and we will not reverse in the absence of abuse of discretion.” *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002).

“District courts are allowed considerable latitude in selecting language used in the jury charge and determining the propriety of a specific instruction.” *Morlock v. St. Paul Guardian Ins. Co.*, 650 N.W.2d 154, 159 (Minn. 2002); *RAM Mut. Ins. Co. v. Meyer*, 768 N.W.2d 399, 406 (Minn. App. 2009) (“District courts are allowed considerable latitude in selecting language used in the jury charge and determining the propriety of a specific instruction”), *review denied* (Minn. Oct. 20, 2009).

“An instruction that is so misleading that it renders incorrect the instruction as a whole will be reversible error, but a jury instruction may not be attacked successfully by lifting a single sentence or word from its context. Where instructions overall fairly and correctly state the applicable law, appellant is not entitled to a new trial.” *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002) (citation and quotations omitted).

“Errors [in a jury instruction] are likely to be considered fundamental or controlling if they destroy the substantial correctness of the charge as a whole, cause miscarriage of justice, or result in substantial prejudice.” *Lindstrom v. Yellow Taxi Co. of Minneapolis*, 298 Minn. 224, 229, 214 N.W.2d 672, 676 (1974) (quotation and citations omitted).

6. Findings of Fact

a. Jury Findings

(1) General Verdicts

“First, the evidence must be reviewed in the light most favorable to the verdict. Second, an appellate court will overturn a jury verdict only if no reasonable mind could find as the jury did.” *Reedon of Faribault, Inc. v. Fid. & Guar. Ins. Underwriters, Inc.*, 418 N.W.2d 488, 491 (Minn. 1988) (citations omitted).

“[J]ury verdicts are to be set aside only if manifestly contrary to the evidence viewed in a light most favorable to the verdict. A verdict will not be set aside unless the evidence against it is practically conclusive.” *Ouellette by Ouellette v. Subak*, 391 N.W.2d 810, 817 (Minn. 1986) (citations omitted).

(2) Special Verdicts

“[A] special verdict form is to be liberally construed to give effect to the intention of the jury and on appellate review it is the court’s responsibility to harmonize all findings if at all possible.” *Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 618 (Minn. 2008) (alteration in original) (quotation omitted).

“An answer to a special verdict question should be set aside only if it is perverse and palpably contrary to the evidence, or where the evidence is so clear as to leave no room for differences among reasonable persons.” *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 888 (Minn. 2010) (quotation omitted).

“Review [of a special verdict] is particularly limited when the jury finding turns largely upon an assessment of the relative credibility of witnesses whose testimonial demeanor was observed only by the jury and the [district] court and the latter has approved the findings made.” *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 662-63 (Minn. 1999).

“The test is whether the special verdict answers can be reconciled in any reasonable manner consistent with the evidence and its fair inferences. If the answers to special verdict questions can be reconciled on *any* theory, the verdict will not be disturbed.” *Dunn v. Nat'l Beverage Corp.*, 745 N.W.2d 549, 555 (Minn. 2008) (quotations and citation omitted).

“[A] jury’s answer to a special verdict form can be set aside only if no reasonable mind could find as did the jury.” *Domtar, Inc. v. Niagara Fire Ins. Co.*, 563 N.W.2d 724, 734 (Minn. 1997).

b. *District Court Findings*

“Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses. The findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court.” Minn. R. Civ. P. 52.01.

In applying Minn. R. Civ. P. 52.01, “we view the record in the light most favorable to the judgment of the district court.” *Rogers v. Moore*, 603 N.W.2d

650, 656 (Minn. 1999). “The decision of a district court should not be reversed merely because the appellate court views the evidence differently.” *Id.* “Rather, the findings must be manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Id.* (quotation omitted). “Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). And “[i]f there is reasonable evidence to support the district court’s findings, we will not disturb them.” *Rogers*, 603 N.W.2d at 656.

Note: Be careful not to cite pre-1985 cases regarding rule 52.01. The 1985 amendment to rule 52.01 requires findings of fact “whether based on oral or documentary evidence” to be reviewed for clear error. *See First Trust Co. v. Union Depot Place Ltd. P’ship*, 476 N.W.2d 178, 181-82 (Minn. App. 1991) (addressing 1985 amendment), *review denied* (Minn. Dec. 13, 1991).

E. REMEDIES

1. Monetary Remedies

a. *Amount of Award in General*

“Generally, we will not disturb a damage award unless the ‘failure to do so would be shocking or would result in plain injustice.’” *Dunn v. Nat’l Beverage Corp.*, 745 N.W.2d 549, 555 (Minn. 2008) (citing *Hughes v. Sinclair Mktg., Inc.*, 389 N.W.2d 194, 199 (Minn. 1986)).

The district court’s determination on whether an award of damages is excessive “will only be disturbed for a clear abuse of discretion.” *Dallum v. Farmers Union Cent. Exch., Inc.*, 462 N.W.2d 608, 614 (Minn. App. 1990) (quoting *Nelson v. Nelson*, 283 N.W.2d 375, 379 (Minn. 1979)), *review denied* (Minn. Jan. 14, 1991); *see Myers v. Hearth Techs., Inc.*, 621 N.W.2d 787, 792 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001).

A reviewing court should not set aside a jury verdict on damages “unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict.” *Raze v. Mueller*, 587 N.W.2d 645, 648 (Minn. 1999) (internal quotation omitted).

b. *Additur and Remittitur*

The district court exercises discretion in granting or denying remittitur, and appellate courts will not reverse unless there was a clear abuse of discretion. *Myers v. Hearth Techs., Inc.*, 621 N.W.2d 787, 792 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001).

When a district court has examined the jury's verdict and outlined the reasons for its decision on a motion for remittitur, an appellate court is unlikely to tamper with that decision absent an abuse of discretion. *Sorenson v. Kruse*, 293 N.W.2d 56, 63 (Minn. 1980).

It is within the district court's discretion to determine whether damages are excessive and whether the cure therefor is remittitur or a new trial. *Ray v. Miller Meester Adver., Inc.*, 664 N.W.2d 355, 368 (Minn. App. 2003), *aff'd* 684 N.W.2d 404 (Minn. 2004).

The decision of whether to grant additur rests within the district court's discretion. *Rush v. Jostock*, 710 N.W.2d 570, 577 (Minn. App. 2006), *review denied* (Minn. May 24, 2006).

c. Special and Punitive Damages

Whether a particular type of claimed damage may be recovered as "special damages" is a question of law reviewed de novo. *Paidar v. Hughes*, 615 N.W.2d 276, 279 (Minn. 2000).

We review an order denying a motion to amend a complaint to add punitive damages for abuse of discretion. *Bjerke v. Johnson*, 727 N.W.2d 183, 196 (Minn. App. 2007), *aff'd* 742 N.W.2d 660 (Minn. 2007).

"[T]he amount of punitive damages to award is a decision that is almost exclusively within the province of the jury[:] we will not disturb the award on appeal unless it is so excessive as to be unreasonable." *Stuemperges v. Parke, Davis & Co.*, 297 N.W.2d 252, 259 (Minn. 1980); *see Ray v. Miller Meester Adver., Inc.*, 664 N.W.2d 355, 371 (Minn. App. 2003), *aff'd* 684 N.W.2d 404 (Minn. 2004).

2. Equitable Remedies

a. In General

"Granting equitable relief is within the sound discretion of the [district] court. Only a clear abuse of that discretion will result in reversal." *Nadeau v. Cnty. of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979); *see Citizens State Bank v. Raven Trading Partners, Inc.*, 786 N.W.2d 274, 277 (Minn. 2010).

"A district court has broad discretion when fashioning an equitable remedy. This court will reverse a district court's equitable remedy only if the district court abuses its discretion. A district court abuses its discretion if its decision is against the facts in the record or if its ruling is based on an erroneous view of the law." *State ex rel. Swan Lake Area Wildlife Ass'n v. Nicollet Cnty Bd. of Comm'rs*, 799 N.W.2d 619, 625 (Minn. App. 2011) (citations and quotation omitted).

b. Specific Performance

“We review a district court’s decision to award equitable relief, including specific performance, for abuse of discretion.” *Dakota Cnty. HRA v. Blackwell*, 602 N.W.2d 243, 244 (Minn. 1999).

c. Injunctions

“A decision on whether to grant a temporary injunction is left to the discretion of the [district] court and will not be overturned on review absent a clear abuse of that discretion.” *Softchoice, Inc. v. Schmidt*, 763 N.W.2d 660, 665-66 (Minn. App. 2009) (quoting *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993)).

d. Interpleader

“Because interpleader actions are equitable in nature, the standard of review is abuse of discretion.” *Faegre & Benson, LLP v. R & R Investors*, 772 N.W.2d 846, 852 (Minn. App. 2009).

e. Appointment of a Receiver

The appointment of a receiver pendente lite is an equitable remedy, and the decision to grant or deny this remedy falls within a district court’s discretion. *Mut. Benefit Life Ins. Co. v. Frantz Klodt & Son, Inc.*, 306 Minn. 244, 246, 237 N.W.2d 350, 352 (1975). “Appointment of a receiver is within the discretion of the [district] court.” *Minn. Hotel Co. v. ROSA Dev. Co.*, 495 N.W.2d 888, 891 (Minn. App. 1993).

f. Mandamus Relief

On appeal, we will reverse a district court’s order on an application for mandamus relief “only when there is no evidence reasonably tending to sustain the [district] court’s findings.” *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. App. 1995).

“When a decision on a writ of mandamus is based solely on a legal determination, we review that decision de novo.” *Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006).

3. Other Remedies

a. Contempt of Court

On appeal, we reverse the factual findings of a contempt order only if they are clearly erroneous. *In re Welfare of Children of J.B.*, 782 N.W.2d 535, 538 (Minn. 2010). We reverse a district court’s decision to invoke its contempt powers only if we find an abuse of discretion. *Id.*

b. Sanctions

“We review a district court’s decision to impose spoliation sanctions for abuse of discretion. A party challenging the district court’s choice of a sanction has the difficult burden of convincing an appellate court that the district court abused its discretion. A district court abuses its discretion when it bases its conclusions on an erroneous view of the law.” *Miller v. Lankow*, 801 N.W.2d 120, 127 (Minn. 2011) (citations omitted).

We review the district court’s order for a rule 11 sanction for an abuse of discretion. *In re Claims for No-Fault Benefits Against Progressive Ins. Co.*, 720 N.W.2d 865, 874 (Minn. App. 2006), *review denied* (Minn. Nov. 22, 2006).

Levying of civil penalties is within the district court’s discretion. *See State by Humphrey v. Alpine Air Prods., Inc.*, 490 N.W.2d 888, 897 (Minn. App. 1992), *aff’d*, 500 N.W.2d 788 (Minn. 1993).

“The district court’s discovery-related orders will not be disturbed absent an abuse of discretion.” *Frontier Ins. Co. v. Frontline Processing Corp.*, 788 N.W.2d 917, 922 (Minn. App. 2010), *review denied* (Minn. Dec. 14, 2010).

The party challenging the district court’s choice of sanctions for spoliation of evidence “has the difficult burden of convincing an appellate court that the [district] court abused its discretion—a burden which is met only when it is clear that no reasonable person would agree with the [district] court’s assessment of what sanctions are appropriate.” *Patton v. Newmar Corp.*, 538 N.W.2d 116, 119 (Minn. 1995) (quotation omitted).

“An appellate court applies an abuse-of-discretion standard when reviewing a district court’s decision to impose sanctions under Minn. R. Civ. P. 11.” *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 150 (Minn. App. 1999), *review denied* (Minn. Mar. 14, 2000).

c. Attorney Fees and Costs

“We generally review a district court’s award of costs and disbursements for an abuse of discretion. Whether the district court erred in its interpretation of the statute authorizing the award of costs and disbursements to [respondent], however, is a legal question that we review de novo.” *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 155 (Minn. 2014) (citation omitted).

“We will not reverse the district court’s decision on attorney fees absent an abuse of discretion.” *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007).

The district court shall allow reasonable costs to a prevailing party in a district court action. *Benigni v. Cnty. of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998). The

district court retains discretion to determine which party, if any, qualifies as a prevailing party when considering a request for costs incurred. *Id.* at 54-55 (citing *In re Will of Gershcow*, 261 N.W.2d 335, 340 (Minn. 1977)).

“We review the district court’s award of attorney fees or costs for abuse of discretion.” *Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 711 (Minn. App. 2007), *review denied* (Minn. Mar. 18, 2008).

Generally, an award of costs and disbursements is a matter within the district court’s sound discretion and will not be disturbed absent an abuse of that discretion. *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 482 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006).

The reasonable value of counsel’s work is a question of fact and we must uphold the district court’s findings on that issue unless they are clearly erroneous. *Amerman v. Lakeland Dev. Corp.*, 295 Minn. 536, 537, 203 N.W.2d 400, 400-01 (1973).

“Although the reasonable value of attorney fees is a question of fact, when considering whether the district court employed the proper method to calculate the amount of an attorney lien, we undertake a de novo review.” *Thomas A. Foster & Assocs. v. Paulson*, 699 N.W.2d 1, 4 (Minn. App. 2005) (citations omitted).

F. POSTTRIAL MATTERS

1. Motion for New Trial

“We review a district court’s new trial decision under an abuse of discretion standard.” *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 892 (Minn. 2010).

Because the district court has the discretion to grant a new trial, we will not disturb the decision absent a clear abuse of that discretion. Where the district court exercised no discretion and ordered a new trial because of an error of law, a de novo standard of review applies. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990).

An appellate court “will not set aside a jury verdict on an appeal from a district court’s denial of a motion for a new trial unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict.” *Navarre v. S. Wash. Cnty. Sch.*, 652 N.W.2d 9, 21 (Minn. 2002) (quotations omitted).

“The discretion to grant a new trial on the ground of excessive damages rests with the [district] court, whose determination will only be overturned for abuse of that discretion.” *Advanced Training Sys., Inc. v. Caswell Equip. Co.*, 352 N.W.2d 1, 11 (Minn. 1984).

2. Motion for Judgment as a Matter of Law (JMOL), formerly known as Motion for Judgment Notwithstanding the Verdict (JNOV)

Note: In 2006, the Minnesota Rules of Civil Procedure Advisory Committee eliminated the nominal distinction between motions for directed verdict and motions for judgment notwithstanding the verdict (JNOV), which have historically been decided under the same standard. Both are now characterized by the rule as motions for judgment as a matter of law. *See* Minn. R. Civ. P. 50.04 2006 advisory comm. cmt. Caselaw from this court acknowledges that “JMOL” should now be used instead of “JNOV.” *See, e.g., Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 n.1 (Minn. App. 2007).

“[JMOL] should be granted: ‘only in those unequivocal cases where (1) in the light of the evidence as a whole, it would clearly be the duty of the [district] court to set aside a contrary verdict as being manifestly against the entire evidence, or where (2) it would be contrary to the law applicable to the case.’” *Jerry’s Enters., Inc., v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 711 N.W.2d 811, 816 (Minn. 2006) (quoting *J.N. Sullivan & Assocs., Inc. v. F.D. Chapman Constr. Co.*, 304 Minn. 334, 336, 231 N.W.2d 87, 89 (1975)); *see also Glorvigen v. Cirrus Design Corp.*, 796 N.W.2d 541, 549 (Minn. App. 2011).

“Viewing the evidence in a light most favorable to the nonmoving party, this court makes an independent determination of whether there is sufficient evidence to present an issue of fact for the jury.” *Jerry’s Enters., Inc., v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 711 N.W.2d 811, 816 (Minn. 2006).

“We apply de novo review to the district court’s denial of a Rule 50 motion.” *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009); *Glorvigen v. Cirrus Design Corp.*, 796 N.W.2d 541, 549 (Minn. App. 2011). “[W]e view the evidence in the light most favorable to the prevailing party.” *Bahr*, 766 N.W.2d at 919.

G. PARTICULAR TYPES OF ACTIONS

1. Declaratory-Judgment Actions

“When reviewing a declaratory judgment action, we apply the clearly erroneous standard to factual findings, and review the district court’s determinations of law de novo” *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 615 (Minn. 2007) (citations omitted); *see also Skyline Village Park Ass’n v. Skyline Village L.P.*, 786 N.W.2d 304, 306 (Minn. App. 2010).

“In a declaratory judgment action tried without a jury, the court as the trier of facts must be sustained in its findings unless they are palpably and manifestly contrary to the evidence.” *Samuelson v. Farm Bureau Mut. Ins. Co.*, 446 N.W.2d 428, 430 (Minn. App. 1989), *review denied* (Minn. Nov. 22, 1989).

2. Actions Against a Governmental Body

a. Actions Against a Municipality

Although rebuttable, there is a strong presumption favoring action taken by a city. *Arcadia Dev. Corp. v. City of Bloomington*, 267 Minn. 221, 226, 125 N.W.2d 846, 850 (1964). If the reasonableness of the city's action is "doubtful[] or fairly debatable, a court will not interject its own conclusions as to more preferable actions." *Id.*

"Interpretations of state statutes and existing local zoning ordinances are questions of law that this court reviews de novo. Zoning decisions of a municipal body that require judgment and discretion are reviewed to determine whether the municipal body acted arbitrarily, capriciously, or unreasonably, and whether the evidence reasonably supports the decision made." *Clear Channel Outdoor Adver., Inc. v. City of St. Paul*, 675 N.W.2d 343, 346 (Minn. App. 2004) (quotation and citation omitted), *review denied* (Minn. May 18, 2004).

"The interpretation of statutes and municipal resolutions involves questions of law we review de novo." *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 529 (Minn. 2010).

An appellate court reviews a municipal variance decision "to determine whether the municipality was [] within its jurisdiction, was not mistaken as to the applicable law, and did not act arbitrarily, oppressively, or unreasonably, and to determine whether the evidence could reasonably support or justify the determination." *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 727 (Minn. 2010) (quoting *In re Stadsvold*, 754 N.W.2d 323, 332 (Minn. 2008) (internal quotation omitted)).

b. Governmental Immunity

"The application of immunity is a question of law that we review de novo." *J.E.B. v. Danks*, 785 N.W.2d 741, 746 (Minn. 2010).

"Whether government entities and public officials are protected by statutory immunity and official immunity is a legal question which this court reviews de novo." *Johnson v. State*, 553 N.W.2d 40, 45 (Minn. 1996).

II. CIVIL – FAMILY

A. IN GENERAL

1. Jurisdiction and Venue

a. *Jurisdiction*

Questions of subject-matter jurisdiction are reviewed de novo. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002); *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 209 (Minn. 2001); *see In re Welfare of Children of D.M.T.-R.*, 802 N.W.2d 759, 762 (Minn. App. 2011) (stating “[w]hether subject-matter jurisdiction exists presents a question of law, which we review de novo”); *Stern v. Stern*, 839 N.W.2d 96, 99 (Minn. App. 2013) (stating that “[t]he existence of subject-matter jurisdiction and a determination of the meaning of statutes addressing subject-matter jurisdiction present legal questions, which this court reviews de novo”) (quoting *Wareham v. Wareham*, 791 N.W.2d 562, 564 (Minn. App. 2010)); *In re Welfare of Children of A.I. (Deceased)*, 779 N.W.2d 886, 894 (Minn. App. 2010) (stating that “[j]urisdiction in juvenile court matters is a question of law, reviewed de novo”), *pet. for review dismissed* (Minn. Apr. 20, 2010); *In re Welfare of S.R.S.*, 756 N.W.2d 123, 126 (Minn. App. 2008) (stating that “[t]his court reviews questions of jurisdiction and interpretation of statutes de novo”), *review denied* (Minn. Dec. 16, 2008).

“Whether personal jurisdiction exists is a question of law, which we review de novo.” *Wick v. Wick*, 670 N.W.2d 599, 603 (Minn. App. 2003).

“Whether service of process was effective, and personal jurisdiction therefore exists, is a question of law that we review de novo. But in conducting this review, we must apply the facts as found by the district court unless those factual findings are clearly erroneous.” *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008); *see Rodewald v. Taylor*, 797 N.W.2d 729, 731 (Minn. App. 2011) (applying *Shamrock* in a family-law case) (citations omitted).

“The parties cannot by their actions or agreement confer jurisdiction on the court, and an appellate court will determine the jurisdictional facts on its own motion even if neither party has raised the issue.” *Davidner v. Davidner*, 304 Minn. 491, 493, 232 N.W.2d 5, 7 (1975); *see Ferraro v. Ferraro*, 364 N.W.2d 821, 822 (Minn. App. 1985) (applying *Davidner*).

This court reviews legal issues concerning jurisdiction de novo. *McLain v. McLain*, 569 N.W.2d 219, 222 (Minn. App. 1997), *review denied* (Minn. Nov. 18, 1997); *cf. In re Welfare of Children of L.L.P.*, 836 N.W.2d 563, 567 (Minn. App. 2013) (making this statement in the context of addressing whether an appeal should be dismissed for lack of jurisdiction because the ruling from which the appeal was taken was not appealable).

In the context of the Uniform Interstate Family Support Act, “we review de novo whether the Minnesota tribunal retains continuing, exclusive jurisdiction to modify its prior child-support order.” *Wareham v. Wareham*, 791 N.W.2d 562, 564 (Minn. App. 2010).

“Application of the Uniform Child Custody Jurisdiction Act (UCCJEA) involves questions of subject matter jurisdiction.” *Schroeder v. Schroeder*, 658 N.W.2d 909, 911 (Minn. App. 2003).

“[A] finding of proper domicile to confer jurisdiction for commencement of a divorce action will not be reversed unless it is palpably contrary to the evidence.” *Davidner v. Davidner*, 304 Minn. 491, 493, 232 N.W.2d 5, 7 (1975).

b. *Venue*

“We review a district court’s denial of a motion for a change of venue in a family law case under an abuse-of-discretion standard.” *Toughill v. Toughill*, 609 N.W.2d 634, 642 (Minn. App. 2000); *see Buckheim v. Buckheim*, 231 Minn. 333, 338, 43 N.W.2d 113, 116 (1950) (holding that although moving party’s affidavits were sufficient to allow change of venue, district court did not abuse its discretion in denying motion when counter affidavits supported district court’s decision to deny motion).

c. *Standing*

The existence of standing is reviewed de novo. *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011); *In re Best Interest of M.R.P.-C.*, 794 N.W.2d 373, 376 (Minn. App. 2011).

“Minnesota case law also requires that a party have standing before a court can exercise jurisdiction.” *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011).

2. Interpretation of Judgments

If a judgment is ambiguous, a district court may construe or clarify it. *Stieler v. Stieler*, 244 Minn. 312, 319, 70 N.W.2d 127, 131 (1955). Absent ambiguity, however, it is not proper for a district court to interpret a stipulated judgment. *See Starr v. Starr*, 312 Minn. 561, 562-63, 251 N.W.2d 341, 342 (1977).

“[I]f language is reasonably subject to more than one interpretation, there is ambiguity.” *Halverson v. Halverson*, 381 N.W.2d 69, 71 (Minn. App. 1986).

Stipulated dissolution judgments are treated as binding contracts. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997); *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). “The general rule for the construction of contracts . . . is that where the language employed by the parties is plain and

unambiguous there is no room for construction.” *Starr v. Starr*, 312 Minn. 561, 562-63, 251 N.W.2d 341, 342 (1977).

“Whether a dissolution judgment is ambiguous is a legal question. If a judgment is ambiguous, a district court may construe or clarify it. The meaning of an ambiguous judgment provision is a fact question, which we review for clear error. Notably, a district court’s construction of its own ruling is given great weight on appeal.” *Tarlan v. Sorensen*, 702 N.W.2d 915, 919 (Minn. App. 2005) (citations omitted).

3. Findings of Fact

a. Generally

“Appellate [courts] set aside a district court’s findings of fact only if clearly erroneous, giving deference to the district court’s opportunity to evaluate witness credibility. Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made.” *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotations and citations omitted).

“When determining whether findings are clearly erroneous, the appellate court views the record in the light most favorable to the [district] court’s findings.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

“That the record might support findings other than those made by the [district] court does not show that the court’s findings are defective.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). In order to successfully challenge a district court’s findings of fact, “the party challenging the findings must show that despite viewing that evidence in the light most favorable to the [district] court’s findings . . . , the record still requires the definite and firm conviction that a mistake was made.” *Id.*

Appellate courts “do not disturb findings of fact based on “conflicting evidence” unless the findings are “manifestly and palpably contrary to the evidence as a whole.” *In re S.G.*, 828 N.W.2d 118, 127 (Minn. 2013) (quotation omitted).

Appellate courts defer to district court credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (stating that, on appeal, appellate courts “neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder”).

“When evidence relevant to a factual issue consists of conflicting testimony, the district court’s decision is necessarily based on a determination of witness credibility, which we accord great deference on appeal.” *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009).

A district court's recitation of the parties' assertions "is not making true findings" because findings "must be affirmatively stated as findings of the [district] court." *Dean v. Pelton*, 437 N.W.2d 762, 764 (Minn. App. 1989).

"[A] fact found by the court, although expressed as a conclusion of law, will be treated upon appeal as a finding of fact." *Bissell v. Bissell*, 291 Minn. 348, 351 n.1, 191 N.W.2d 425, 427 n.1 (1971) (quoting *Graphic Arts Educ. Found., Inc. v. State*, 240 Minn. 143, 145-46, 59 N.W.2d 841, 844 (1953)); *see Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App. 2006) ("There is caselaw authority that the mislabeling of a finding of fact as a conclusion of law, or vice versa, is not determinative of the true nature of the item.") (citing *Graphic Arts Educ. Found., Inc. v. State*, 240 Minn. 143, 145-46, 59 N.W.2d 841, 844 (1953)); 2 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 52.5 (2004)), review denied (Minn. May 16, 2006).

Generally, the district court's failure to make findings on relevant statutory factors requires a remand. *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (remanding maintenance question because findings were inadequate to allow review). *But see In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990) (allowing independent review of record under extraordinary circumstances); *Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (declining to remand and affirming the district court in a child custody case where the district court failed to make adequate findings of fact, but "from reading the files, the record, and the court's findings, on remand the [district] court would undoubtedly make findings that comport with the statutory language" and reach the same result)).

b. *Stipulations*

"Whether there is a substantial change in circumstances rendering an existing support obligation unreasonable and unfair generally requires comparing the parties' circumstances at the time support was last set or modified to their circumstances at the time of the motion to modify. Unless a support order provides a baseline for future modification motions by reciting the parties' then-existing circumstances, the litigation of a later motion to modify that order becomes unnecessarily complicated because it requires the parties to litigate not only their circumstances at the time of the motion, but also their circumstances at the time of the order sought to be modified." *Maschoff v. Leiding*, 696 N.W.2d 834, 840 (Minn. App. 2005) (citations omitted); *see Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997) (noting in context of motion to modify stipulated maintenance award that stipulation identifies "baseline circumstances" against which claims of changed circumstances are evaluated).

4. Reopening of Judgment

Whether to reopen a dissolution judgment under Minn. Stat. § 518.145, subd. 2 (2012), is discretionary with the district court. *See Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996) (reviewing refusal to reopen for abuse of discretion); *Clark v. Clark*, 642

N.W.2d 459, 465 (Minn. App. 2002) (reciting general rule); *Haefele v. Haefele*, 621 N.W.2d 758, 761 (Minn. App. 2001) (reviewing decision to reopen judgment for abuse of discretion), *review denied* (Minn. Feb. 21, 2001).

The district court's decision regarding whether to reopen a judgment will be upheld unless the district court abused its discretion; and the district court's findings as to whether the judgment was prompted by mistake, duress, or fraud will not be set aside unless they are clearly erroneous. *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998).

"A district court's decision to reopen the judgment and decree based on fraud on the court will be sustained absent an abuse of discretion. If there is evidence to support the district court's decision, an abuse of discretion will not be found." *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009) (citations omitted).

The standard for reviewing whether a moving party made a *prima facie* case that a dissolution judgment was based on fraud and that there should be an evidentiary hearing to address whether to reopen the judgment is analogous to the review of a grant of summary judgment. *See Doering v. Doering*, 629 N.W.2d 124, 128-32 (Minn. App. 2001), *review denied* (Minn. Sept. 11, 2001); *see Thompson v. Thompson*, 739 N.W.2d 424, 429-30 (Minn. App. 2007) (stating, in context of reviewing whether district court should have granted an evidentiary hearing on motion to reopen dissolution judgment because it was no longer equitable to enforce judgment, that "[w]hether to hold an evidentiary hearing on a motion generally is a discretionary decision of the district court, which we review for an abuse of discretion").

5. Abuse of Discretion

"Among other ways, a district court abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law." *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (internal quotation marks and citations omitted).

"A district court abuses its discretion when it makes findings unsupported by the evidence or when it improperly applies the law." *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 716 (Minn. App. 2009), *review granted* (Minn. Sept. 29, 2009), *appeal dismissed* (Minn. Feb. 1, 2010); *see Dobrin v. Dobrin*, 569 N.W.2d 199, 202 & n.3 (Minn. 1997).

"An abuse of discretion occurs when the district court resolves the matter in a manner that is 'against logic and the facts on [the] record.'" *O'Donnell v. O'Donnell*, 678 N.W.2d 471, 474 (Minn. App. 2004) (quoting *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984)).

"Misapplying the law is an abuse of discretion." *Bauerly v. Bauerly*, 765 N.W.2d 108, 110 (Minn. App. 2009); *Schisel v. Schisel*, 762 N.W.2d 265, 272 (Minn. App. 2009)

(stating, in the context of a child-support dispute, that “[t]he [district] court abuses its discretion if it erroneously applies the law to the case”).

B. PROPERTY DIVISION

1. Identifying Marital and Nonmarital Property

“Whether property is marital or nonmarital is a question of law, but a reviewing court must defer to the [district] court’s underlying findings of fact. However, if [the reviewing court is] left with the definite and firm conviction that a mistake has been made, [it] may find the [district] court’s decision to be clearly erroneous, notwithstanding the existence of evidence to support such findings.” *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997) (quotation and citation omitted); *see Baker v. Baker*, 753 N.W.2d 644, 649 (Minn. 2008) (stating that “[appellate courts] independently review the issue of whether property is marital or nonmarital, giving deference to the district court’s findings of fact”); *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 852 (Minn. 2003) (“Determining whether property is marital or nonmarital . . . is an issue over which [appellate courts] exercise independent review, though deference is given to the district court’s findings of fact.”).

“When marital and nonmarital assets have been commingled, the party asserting the nonmarital claim must adequately trace the nonmarital funds in order to establish their nonmarital character. Whether a nonmarital interest has been traced is also a question of fact.” *Kerr v. Kerr*, 770 N.W.2d 567, 571 (Minn. App. 2009) (citation omitted).

2. Marital Property

a. Valuing Property

A district court’s valuation of an item of property is a finding of fact, and it will not be set aside unless it is clearly erroneous on the record as a whole. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001); *Hertz v. Hertz*, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975).

An appellate court does not require the district court to be exact in its valuation of assets. “[I]t is only necessary that the value arrived at lies within a reasonable range of figures.” *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979) (citing *Hertz v. Hertz*, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975)).

b. Division of Marital Property

“A [district] court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion. [An appellate court] will affirm the [district] court’s division of property if it had an acceptable basis in fact and principle even though we might have taken a different approach.” *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002) (citation omitted); *see Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009) (stating that a district court has “broad discretion regarding the division of property” and that its division of property “will only be reversed on appeal if the [district] court abused

its discretion”); *Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005) (“District courts have broad discretion over the division of marital property and appellate courts will not alter a district court’s property division absent a clear abuse of discretion or an erroneous application of the law.”) (citing *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 412 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000); *Ebnet v. Ebnet*, 347 N.W.2d 840, 842 (Minn. App. 1984)).

A district court abuses its discretion in dividing property if it resolves the matter in a manner “that is against logic and the facts on record.” *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

Pension division is generally discretionary with the district court. *Faus v. Faus*, 319 N.W.2d 408, 413 (Minn. 1982); *Johnson v. Johnson*, 627 N.W.2d 359, 362 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001).

A district court has broad discretion in dividing property and setting reasonable valuation dates. *Desrosier v. Desrosier*, 551 N.W.2d 507, 510 (Minn. App. 1996).

Whether to consider the tax consequences of a property distribution lies within the district court’s discretion. *Maurer v. Maurer*, 623 N.W.2d 604, 608 (Minn. 2001); *see Miller v. Miller*, 352 N.W.2d 738, 744 (Minn. 1984); *O’Brien v. O’Brien*, 343 N.W.2d 850, 853-54 (Minn. 1984).

“[W]hether disability funds are income or marital property is a question of law, subject to de novo review.” *Walswick-Boutwell v. Boutwell*, 663 N.W.2d 20, 22 (Minn. App. 2003), *review denied* (Minn. Aug. 19, 2003).

C. SPOUSAL MAINTENANCE

An appellate court reviews a district court’s maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997); *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989); *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982).

An appellate court reviews a district court’s decision regarding whether to modify an existing maintenance award for an abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 710 (Minn. 1997); *see also Claybaugh v. Claybaugh*, 312 N.W.2d 447, 449 (Minn. 1981) (stating that “[a]lthough the [district] court is vested with broad discretion to determine the propriety of a modification, we have suggested that [district] courts exercise that discretion carefully and only reluctantly alter the terms of a stipulation governing maintenance”).

A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 & n.3 (Minn. 1997) (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)).

“Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous.” *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992); *see Minn. R. Civ. P.* 52.01 (stating that findings of fact “shall not be set aside unless clearly erroneous”).

“A district court’s determination of income for maintenance purposes is a finding of fact and is not set aside unless clearly erroneous.” *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004).

“[The appellate courts] review[] questions of law related to spousal maintenance de novo.” *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009), including questions regarding statutory interpretation and jurisdiction, *Gossmann v. Gossmann*, 847, N.W.2d 718, 721 (Minn. App. Jun. 2, 2014).

The district court’s decision regarding the effective date of the modification will be reviewed for an abuse of discretion if the statutory conditions for retroactive modification of maintenance are met. *Kemp v. Kemp*, 608 N.W.2d 916, 920 (Minn. App. 2000).

D. CHILDREN

1. Termination of Parental Rights

“Jurisdiction in juvenile court matters is a question of law, reviewed de novo.” *In re Welfare of Children of A.I. (Deceased)*, 779 N.W.2d 886, 894 (Minn. App. 2010), *pet. for review dismissed* (Minn. Apr. 20, 2010).

“Interpretation of a statute involves a question of law, which is subject to de novo review.” *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 54 (Minn. 2004); *In re Welfare of R.S.*, 805 N.W.2d 44, 48-49 (Minn. 2011) (noting that appellate courts review construction of juvenile-protection rules and statutes de novo).

“This court reviews a juvenile court’s denial of a motion to withdraw an admission under Minn. R. Juv. Prot. P. 35.03, subd. 5(a), for an abuse of discretion.” *In re Welfare of M.K.*, 805 N.W.2d 856, 862 (Minn. App. 2011) (citing *In re Welfare of Children of M.L.A.*, 730 N.W.2d 54, 60 (Minn. App. 2007)).

Because “any admission [of the statutory grounds asserted in a CHIPS petition] must be made under oath[,]” a district court “erred as a matter of law” where, despite the fact that there was “no dispute” that parents did not make their admissions under oath, the juvenile court accepted those admissions. *In re Welfare of M.K.*, 805 N.W.2d 856, 865 (Minn. App. 2011) (quoting Minn. R. Juv. Prot. P. 35.03, subd. 1).

Appellate courts review the construction of the juvenile-protection rules and statutes de novo. *In re Welfare of R.S.*, 805 N.W.2d 44, 48-49 (Minn. 2011).

a. Involuntary Termination of Parental Rights

“[O]n appeal from a district court’s decision to terminate parental rights, we will review the district court’s findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion. In doing so, we are mindful that, in termination proceedings, ‘[t]he burden of proof is upon the petitioner and is subject to the presumption that a natural parent is a fit and suitable person to be entrusted with the care of a child. We require . . . that the evidence relating to termination must address conditions that exist at the time of the hearing, . . . and that it must appear that the present conditions of neglect will continue for a prolonged, indeterminate period. Finally, this court, while giving deference to the findings of the trial court, will exercise great caution in termination proceedings.’ *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980) (citations omitted). But parental rights are not absolute, and they should not be “unduly exalted and enforced to the detriment of the child’s welfare and happiness. The right of parentage is in the nature of a trust and is subject to parents’ correlative duty to protect and care for the child.” *In re P.T.*, 657 N.W.2d 577, 583 (Minn. App. 2003) (quotation omitted), *review denied* (Minn. Apr. 15, 2003). Moreover, in terminating parental rights, the best interests of the child are the paramount consideration, and conflicts between the rights of the child and rights of the parents are resolved in favor of the child. Minn. Stat. § 260C.301, subd. 7 (2010).” *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901-02 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012); *see In re Welfare of Children of B.M.*, 845 N.W.2d 558, 562-63 (Minn. App. 2014).

“[Appellate courts] review the termination of parental rights to determine whether the district court’s findings address the statutory criteria and whether the district court’s findings are supported by substantial evidence and are not clearly erroneous. We give considerable deference to the district court’s decision to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing. We affirm the district court’s termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family.” *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citations omitted).

“We review a district court’s ultimate determination that termination is in a child’s best interest for an abuse of discretion.” *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011) (citing *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008)), *review denied* (Minn. Jan. 6, 2012).

On review, “[c]onsiderable deference is due to the district court’s decision because a district court is in a superior position to assess the credibility of witnesses.” *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). The

reviewing court closely inquires into the sufficiency of the evidence to determine whether the evidence is clear and convincing. *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998).

An appellate court “exercises great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result.” *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996).

“[O]n appeal in a termination of parental rights case, while we carefully review the record, we will not overturn the [district] court’s findings of fact unless those findings are clearly erroneous.” *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995).

The Indian Child Welfare Act requires that parental rights of Native Americans may be terminated only if supported by “evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent . . . is likely to result in serious emotional or physical damage to the child.” *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980) (citing 25 U.S.C.A. § 1912(f)).

“The question of whether appellant retained any parental rights which could be terminated through a TPR proceeding after she executed a delegation of parental authority involves the application of a statute to undisputed facts, which is a question of law we review *de novo*.” *In re Welfare of Child of T.C.M.*, 758 N.W.2d 340, 346 (Minn. App. 2008).

A district court’s determination of whether a parent has rebutted a presumption of palpable unfitness created by Minn. Stat. § 260C.301, subd. 1(b)(4) (2012), is a finding of fact that, on appeal, is reviewed for whether it is supported by substantial evidence and is not clearly erroneous. *See In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 544 (Minn. App. 2009) (stating “[y]et the district court concluded [that the parents] failed to rebut the statutory presumption of palpable unfitness. Having reviewed the record evidence, we conclude that the district court’s findings are supported by substantial evidence and are not clearly erroneous.”).

“[D]etermination of a child’s best interests ‘is generally not susceptible to an appellate court’s global review of a record,’ and . . . ‘an appellate court’s combing through the record to determine best interests is inappropriate because it involves credibility determinations.’” *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quoting *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003)).

b. Voluntary Termination of Parental Rights

“In general, a voluntary termination order may be rescinded only upon a showing of fraud, duress, or undue influence. When a [district] court’s findings in a

termination case are challenged, appellate courts are limited to determining whether the findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether they are clearly erroneous. As in all termination cases, our paramount concern is for the child's best interests.” *In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997) (citations omitted).

Whether to allow a parent to withdraw a voluntary consent to a termination of parental rights is discretionary with the district court. See *In re Welfare of the Child of J.L.L.*, 801 N.W.2d 405, 411 (Minn. App. 2011) (concluding that district court “did not abuse its discretion in allowing [the parent] to withdraw her consent to a voluntary TPR”), *review denied* (Minn. July 28, 2011).

“The [district] court’s finding of good cause [for a voluntary termination of parental rights] . . . must be upheld if supported by substantial evidence and not clearly erroneous. ‘Good cause’ under the voluntary termination statute exists under a variety of circumstances. . . . [T]he test is whether [the parent] had sound reasons for consenting at the time of termination—a determination which is not restricted by the existence of cause for *involuntary termination*.” *In re Welfare of D.D.G.*, 558 N.W.2d 481, 485-86 (Minn. 1997) (citations omitted).

2. Child in Need of Protection or Services

“We are . . . bound by a very deferential standard of review [of factual findings on appeal from a district court’s CHIPS determination].” *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 734 (Minn. App. 2009).

“Findings in a CHIPS proceeding will not be reversed unless clearly erroneous or unsupported by substantial evidence. Under the ‘clearly erroneous’ portion of this court’s review of the district court’s findings, a district court’s individual fact-findings will not be set aside unless the review of the entire record leaves the court with the definite and firm conviction that a mistake has been made.” *In re Welfare of B.A.B.*, 572 N.W.2d 776, 778 (Minn. App. 1998) (quotation and citations omitted); see *In re A.R.M.*, 611 N.W.2d 43, 50 (Minn. App. 2000) (stating “[f]indings in CHIPS proceedings are not reversed unless clearly erroneous or unsupported by substantial evidence”).

3. Custody

a. Generally

A district court has broad discretion to provide for the custody of the parties’ children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984); *In re Best Interest of M.R.P.-C.*, 794 N.W.2d 373, 378 (Minn. App. 2011).

“Appellate review of custody determinations is limited to whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law.” *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985).

A district court's findings of fact will be sustained unless they are clearly erroneous. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985); *see* Minn. R. Civ. P. 52.01 (stating that findings of fact are not set aside unless clearly erroneous).

"Even though the [district] court is given broad discretion in determining custody matters, it is important that the basis for the court's decision be set forth with a high degree of particularity." *Durkin v. Hinich*, 442 N.W.2d 148, 151 (Minn. 1989) (quotation omitted).

The law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000).

A district court's decision regarding whether to order a custody report will not be altered on appeal absent an abuse of discretion. *J.W. by D.W. v. C.M.*, 627 N.W.2d 687, 696 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001).

"The district court has broad discretion in making child custody, parenting time, and child-support determinations and in deciding whether to grant recusal motions." *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002).

"[A] district court has an affirmative obligation to inquire into whether [the Indian Child Welfare Act] applies to a custody determination when it has reason to believe that the child subject to the determination is an Indian child as defined by the act." *In re Best Interest of M.R.P.-C.*, 794 N.W.2d 373, 379 (Minn. App. 2011).

b. *Modification*

On appeal from a district court's denial, without an evidentiary hearing, of motions to modify custody and motions to restrict parenting time, this court

review[s] three discrete determinations. First, we review de novo whether the district court properly treated the allegations in the moving party's affidavits as true, disregarded the contrary allegations in the nonmoving party's affidavits, and considered only the explanatory allegations in the nonmoving party's affidavits. Second, we review for an abuse of discretion the district court's determination as to the existence of a *prima facie* case for the modification or restriction. Finally, we review de novo whether the district court properly determined the need for an evidentiary hearing.

Boland v. Murtha, 800 N.W.2d 179, 185 (Minn. App. 2011).

“A district court is required under section 518.18(d) to conduct an evidentiary hearing only if the party seeking to modify a custody order makes a prima facie case for modification.” *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008); *see Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007) (“Whether a party makes a prima facie case to modify custody is dispositive of whether an evidentiary hearing will occur on the motion. A district court, however, has discretion in deciding whether a moving party makes a prima facie case to modify custody.” (citations omitted)).

c. Joint Physical Custody

In determining the nature of a stipulated custody arrangement, the label put on the arrangement by the parties and adopted by the district court is binding. *Nolte v. Mehrens*, 648 N.W.2d 727, 730 (Minn. App. 2002). “Although it could be argued that some earlier caselaw indicates that discerning whether a physical-custody award is sole or joint requires an examination of the amount of time the parties spend with their child, [Ayers v. Ayers, 508 N.W.2d 515 (Minn. 1993)] and its progeny have superseded such cases.” *Id.* at 730 n.3.

d. Removal

“Whether to hold an evidentiary hearing on a motion generally is a discretionary decision of the district court, which we review for an abuse of discretion.” *Anh Phuong Le v. Holter*, 838 N.W.2d 797, 800 (Minn. App. 2013) (quoting *Thompson v. Thompson*, 739 N.W.2d 424, 430 (Minn. App. 2007)), *review denied* (Minn. Dec. 31, 2013).

“Appellate review of custody modification and removal cases is limited to considering whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law. Appellate courts set aside a district court’s findings of fact only if clearly erroneous, giving deference to the district court’s opportunity to evaluate witness credibility. Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made.” *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotations and citations omitted); *see Silbaugh v. Silbaugh*, 543 N.W.2d 639, 641 (Minn. 1996); *Anh Phuong Le v. Holter*, 838 N.W.2d 797, 801 (Minn. App. 2013) (citing and applying *Goldman*), *review denied* (Minn. Dec. 31, 2013) *Rutz v. Rutz*, 644 N.W.2d 489, 492-93 (Minn. App. 2002), *review denied* (Minn. July 16, 2002).

“Determination of the applicable statutory standard, and the interpretation of statutes, are questions of law that [appellate courts] review de novo.” *Anh Phuong Le v. Holter*, 838 N.W.2d 797, 801 (Minn. App. 2013) (quoting *Goldman v. Greenwood*, 748 N.W.2d 279, 282 (Minn. 2008) (citations omitted)), *review denied* (Minn. Dec. 31, 2013).

e. Locale/LaChapelle Restrictions

“As a threshold issue, we consider whether the locale restriction in the district court’s custody order is valid. Appellate review of custody determinations is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law. District courts have broad discretion in determining custody matters, and we agree with the recognition of the court of appeals in *Dailey v. Chermak* ‘that there is no absolute prohibition under Minnesota law against awarding child custody on the condition of maintaining a specific geographic residence for the child, as long as that residence is shown clearly and genuinely to serve the child’s best interests,’ 709 N.W.2d 626, 630 (Minn. App. 2006), *review denied* (Minn. May 16, 2006).” *Goldman v. Greenwood*, 748 N.W.2d 279, 281-82 (Minn. 2008) (other quotations and citations omitted).

Addressing a district court’s ability to place in-state limits on a child’s residence, this court has stated:

The bedrock principle underlying any decision affecting the custody of minor children is that their best interests must be protected and fostered. A child’s best interests are the fundamental focus of custody decisions. In determining issues of custody and residence under the authority granted in Minn. Stat. § 518.17, subd. 3(a)(2) [(2012)], the district court enjoys broad discretion. The appellate courts will not reverse the district court’s custody decision absent a showing of a clear abuse of discretion. The district court abuses its discretion if its findings are clearly erroneous. The court also abuses its discretion if its findings are insufficient to support its custody ruling.

Schisel v. Schisel, 762 N.W.2d 265, 270 (Minn. App. 2009) (citations omitted).

f. Third-Party Custody and Visitation

“Appellate review of custody determinations is generally limited to determining whether the district court has abused its discretion. However, the interpretation and construction of statutes are questions of law that [appellate courts] review de novo.” *Lewis-Miller v. Ross*, 710 N.W.2d 565, 568 (Minn. 2006) (citation omitted); see *In re Custody of N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002) (“District courts have broad discretion to determine matters of custody. Appellate review of custody determinations is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law. When determining whether findings are clearly erroneous, an appellate court views the record in the light most favorable to the [district] court’s findings. As a general matter, appellate courts review questions of law de novo.” (citations omitted)).

4. Parenting Time

“In 2000, legislation was passed replacing the term ‘visitation’ with ‘parenting time’ and allowing parties to create ‘parenting plans.’ 2000 Minn. Laws ch. 444, art. 1, §§ 1-8. Minnesota statutes now refer to parenting time, not visitation.” *In re Welfare of B.K.P.*, 662 N.W.2d 913, 914 n.1 (Minn. App. 2003); *see Hagen v. Schirmers*, 783 N.W.2d 212, 215 (Minn. App. 2010) (stating “[t]his dispute concerns allocation of parenting time, formerly known as visitation, *see* 2000 Minn. Laws ch. 444, art. 1, §§ 1-8 (changing visitation provisions to parenting-time provisions)”).

“Parenting plans must include a number of elements, one of which is a schedule of the time each parent spends with a child.” *In re Welfare of B.K.P.*, 662 N.W.2d 913, 914 n.1 (Minn. App. 2003).

The district court has broad discretion in deciding parenting-time questions based on the best interests of the child and will not be reversed absent an abuse of discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995); *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002); *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001).

“A district court abuses [its] discretion [regarding parenting time] by making findings unsupported by the evidence or improperly applying the law.” *Hagen v. Schirmers*, 783 N.W.2d 212, 215 (Minn. App. 2010) (citing *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985)).

A district court’s findings of fact, on which a parenting-time decision is based, will be upheld unless they are clearly erroneous. *Griffin v. Van Griffin*, 267 N.W.2d 733, 735 (Minn. 1978).

“Determining the legal standard applicable to a change in parenting time is a question of law and is subject to de novo review.” *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009).

“It is well established that the ultimate question in all disputes over visitation is what is in the best interest of the child.” *Clark v. Clark*, 346 N.W.2d 383, 385 (Minn. App. 1984), *review denied* (Minn. June 12, 1984).

“Substantial modifications of visitation rights require an evidentiary hearing when, by affidavit, the moving party makes a *prima facie* showing that visitation is likely to endanger the child’s physical or emotional well being. Insubstantial modifications or adjustments of visitation, on the other hand, do not require an evidentiary hearing and are appropriate if they serve the child’s best interests.” *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001) (citations omitted), *review denied* (Minn. Oct. 24, 2001).

5. Child Support

Note: Before the effective date of the 2006 amendments of the child-support statutes, child support was governed by the child-support guidelines of Minn. Stat. § 518.551 and related provisions in chapter 518. Most of the cases cited below involve review of child-support decisions made under those child-support guidelines, related statutes, and their predecessors. In 2006, the child-support guidelines were replaced by the income-shares child-support calculations, and most of the child-support-related statutes were removed from chapter 518 and codified in what is now chapter 518A (2012 & Supp. 2013). Generally, the provisions of the 2006 amendments of the child-support statutes became effective January 1, 2007, with the new provisions applying to all child-support orders in effect before January 1, 2007, except that (a) “[t]he provisions [of the new statute] used to calculate [the] parties’ [child-]support obligations apply to actions or motions filed after January 1, 2007”; and (b) the provisions of the statute “used to calculate [the] parties’ support obligations apply to actions or motions for past support or reimbursement filed after January 1, 2007.” 2006 Minn. Laws ch. 280, § 44, at 1145. As of the release of this document, there is still limited published authority addressing the new income-shares child-support statutes.

a. In General

The district court has broad discretion to provide for the support of the parties’ children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court abuses its discretion when it sets support in a manner that is against logic and the facts on record or it misapplies the law. *See id.* (addressing the setting of support in manner that is against logic and facts on record); *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998) (addressing an improper application of law).

“The district court’s determination of net income must be based in fact and it will not be overturned unless it is clearly erroneous. If the court’s determination of income is challenged on appeal, we look to both the court’s findings and the evidence of record to ascertain whether there has been clear error. We are unable to conduct a meaningful review if an essential finding has been omitted.” *Schisel v. Schisel*, 762 N.W.2d 265, 272 (Minn. App. 2009) (citations omitted).

Whether a source of funds is considered to be income for child-support purposes is a legal question reviewed de novo. *Sherburne Cnty. Soc. Servs. ex rel. Schafer v. Riedle*, 481 N.W.2d 111, 112 (Minn. App. 1992).

Whether distributions from subchapter-S corporations should be treated as income for child-support purposes is generally treated as a question of fact. *Williams v. Williams*, 635 N.W.2d 99, 103 (Minn. App. 2001).

Determinations of past child support due under Minn. Stat. § 257.66, subd. 4 (2012) are reviewed under an abuse-of-discretion standard. *LaChapelle v. Mitten*, 607 N.W.2d 151, 166 (Minn. App. 2000), *review denied* (Minn. May 16, 2000).

An appellate court will not reverse a district court's decision denying additional child support under Minn. Stat. § 256.87 (2012) absent an abuse of discretion. *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998). It is an abuse of discretion when the district court improperly applies the law to the facts. *Id.* (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)).

Whether to require a child-support obligor to provide life insurance on the obligor's life to insure his or her support obligation is discretionary with the district court. *Hunley v. Hunley*, 757 N.W.2d 898, 900-01 (Minn. App. 2008).

Allocation of federal-tax exemptions is discretionary with the district court. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 449 (Minn. App. 2002).

Interpreting the parenting-expense-adjustment statute "is a legal issue reviewed de novo." *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009).

"Whether a parent is voluntarily unemployed is a finding of fact, which we review for clear error." *Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009).

Where a child support obligee receives a lump sum of social security disability benefits on behalf of the parties' children that is based on the obligor's eligibility for those benefits, and where the amount of that lump sum exceeds the obligor's existing child support arrears, the district court must credit the excess portion of the lump sum against the obligor's prospective support obligation, but the manner in which the district court does so is discretionary with the district court. *County of Grant v. Kosar*, 809 N.W.2d 237, 244 (Minn. App. 2012).

b. Child Support Magistrates

On appeal from a child-support magistrate's order which has not been reviewed by the district court, this court uses the same standard to review issues as would be applied if the order had been issued by a district court. *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009); *Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000); see *Putz v. Putz*, 645 N.W.2d 343, 348 (Minn. 2002) (wherein supreme court, in a case where the CSM's ruling was not reviewed by the district court, stated that it had "never addressed" the question of the proper standard for reviewing a CSM's decision but nonetheless applied an abuse-of-discretion standard, noting that "the court of appeals applied the abuse of discretion standard and the parties agree that it is the appropriate standard of review").

If there is district-court review of a child-support magistrate's decision, "[t]he district court reviews the CSM's decision de novo." *Davis v. Davis*, 631 N.W.2d 822, 825 (Minn. App. 2001).

"[T]o the extent the reviewer of the CSM's original decision affirms the CSM's original decision, that original decision becomes the decision of the reviewer." *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004).

On appeal from a child support magistrate's ruling that has been affirmed by the district court, the standard of review is the same standard as would have been applied if the decision had been made by a district court in the first instance. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002).

"Failure to submit a transcript to the district court for review of the CSM's decision precludes consideration of the transcript on appeal because the transcript is not part of the record on appeal." *Davis v. Davis*, 631 N.W.2d 822, 826 (Minn. App. 2001).

c. Joint Physical Custody and Child Support

"[W]hen parents stipulate to a physical-custody arrangement and the district court adopts that arrangement, the dispositive factor in determining whether the arrangement establishes sole physical custody for one parent or joint physical custody for both parents, and therefore whether it is presumptively appropriate to apply the [Hortis/Valento] child support formula, is the district court's description of the physical-custody arrangement." *Nolte v. Mehrens*, 648 N.W.2d 727, 730 (Minn. App. 2002).

"We apply the abuse-of-discretion standard to the district court's application of [the] *Hortis/Valento* [formula]." *Schisel v. Schisel*, 762 N.W.2d 265, 273 (Minn. App. 2009).

d. Modification of Child Support

Whether to modify child support is discretionary with the district court, and its decision will be altered on appeal only if it resolved the matter in a manner that is against logic and the facts on record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002); *Moylan v. Moylan*, 384 N.W.2d 859, 864 (Minn. 1986); *see Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. May 29, 2013) (stating that "[g]enerally, [appellate courts] review orders modifying child support for abuse of discretion").

A district court has discretion to set the effective date of a child-support modification. *Finch v. Marusich*, 457 N.W.2d 767, 770 (Minn. App. 1990); *see Bauerly v. Bauerly*, 765 N.W.2d 108, 111 (Minn. App. 2009) (same).

"[M]odification of support is generally retroactive to the date the moving party served notice of the motion on the responding party[.]" and when no statutory exception to the general rule applied and there was no indication that the district court had exercised its discretion to make a child-support modification effective as of some other date, modification would be effective as of the date the motion was served. *Bormann v. Bormann*, 644 N.W.2d 478, 482-83 (Minn. App. 2002).

6. Parentage/Adoption/Name Change

a. Parentage

Interpretation of the Minnesota Parentage Act is a question of law that appellate courts review de novo. *Cnty. of Dakota v. Blackwell*, 809 N.W.2d 226, 228 (Minn. App. 2011); *Dorman v. Steffen*, 666 N.W.2d 409, 411 (Minn. App. 2003).

Standing to bring a paternity action is “an issue of statutory interpretation reviewed de novo.” *Zentz v. Graber*, 760 N.W.2d 1, 4 (Minn. App. 2009), *review denied* (Minn. Mar. 31, 2009); *see also In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011); *Witso v. Overby*, 627 N.W.2d 63, 65-66 (Minn. 2001).

b. Adoption

On appeal from a district court’s dismissal, without an evidentiary hearing, of a motion for adoptive placement, the court of appeals adopted the standard of review applicable to the denial, without an evidentiary hearing, of a motion to modify custody, and stated:

Applying the custody-modification standard, we first review de novo whether the district court properly treated the parties’ supporting documents. The district court must accept facts in appellants’ supporting documents as true, disregard contrary allegations, and consider the non-moving party’s supporting documents only to the extent that they explain or provide context. Second, we review the district court’s determination of whether appellants established a *prima facie* case for abuse of discretion. Third, we review de novo whether the district court properly determined the need for an evidentiary hearing. Whether a party makes a *prima facie* case ... is dispositive of whether an evidentiary hearing will occur....

In re Welfare of Children of L.L.P., 836 N.W.2d 563, 570 (Minn. App. 2013) (citations and quotation marks omitted).

Appellate courts review a district court’s decision of whether to grant an adoption petition for an abuse of discretion. *In re S.G.*, 828 N.W.2d 118, 125-26 (Minn. 2013). When doing so, the appellate court recognizes both the substantial latitude conferred on the district court by the statutory and best-interests factors involved in addressing whether a particular adoption should be by a relative or nonrelative, and that a district court’s exercise of its discretion must be supported by findings showing that the child’s best interests are being served. *Id.*

An appellant’s “fail[ure] to challenge” the district court’s “independent, procedural basis” for its ruling granting an adoption was “fatal to her appeal.” *In re Adoption of T.A.M.*, 791 N.W.2d 573, 577 (Minn. App. 2010).

c. Name Change

“We review a district court’s grant of a request to change a child’s name for abuse of discretion. A district court abuses its discretion when evidence in the record does not support the factual findings, the court misapplied the law, or the court settles a dispute in a way that is against logic and the facts on record.” *Foster v. Foster*, 802 N.W.2d 755, 756 (Minn. App. 2011) (citation and quotation omitted).

E. ATTORNEY FEES

1. Need-Based Attorney Fees

In the context of reviewing a need-based award of attorney fees, the Minnesota Supreme Court has stated: “The standard of review for an appellate court examining an award of attorney fees is whether the district court abused its discretion.” *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). *But cf.* Minn. Stat. § 518.14, subd. 1 (2012) (stating that district court “shall” award need-based attorney fees if statutory requirements are met); *Holmberg v. Holmberg*, 588 N.W.2d 720, 727 (Minn. 1999) (stating that Minn. Stat. § 518.14, subd. 1, “requires the court to award attorney fees if the fees are necessary to allow a party to continue an action brought in good faith, the party from whom fees are requested has the means to pay the fees, and the party seeking fees cannot pay the fees”). *See generally Geske v. Marcolina*, 624 N.W.2d 813, 816-19 (Minn. App. 2001) (addressing 1990 amendments to Minn. Stat. § 518.14, as well as recovery of attorney fees under Minn. Stat. § 518.14, subd. 1, in both district court and appellate court).

2. Conduct-Based Attorney Fees

Conduct-based fee awards “are discretionary with the district court.” *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007); *see also* Minn. Stat. § 518.14, subd. 1 (2012) (stating that conduct-based fees “may” be awarded against a party who unreasonably contributes to the length or expense of the proceeding); *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (stating, in context of reviewing conduct-based award of attorney fees, that “[a]mong other ways, a district court abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law”) (quotations and citations omitted)).

F. CONTEMPT

In reviewing a district court’s decision whether to hold a party in contempt, the factual findings are subject to reversal only if they are clearly erroneous, while the district court’s decision to invoke its contempt powers is subject to reversal only for an abuse of discretion. *Mower Cnty. Human Servs. ex rel. Swancutt v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996).

In reviewing a contempt order, appellate courts consider whether the order “was arbitrary and unreasonable or whether it finds support in the record.” *Gustafson v. Gustafson*, 414 N.W.2d 235, 237 (Minn. App. 1987) (quotation omitted).

“The district court has broad discretion to hold an individual in contempt. This court reviews a district court’s decision to invoke its contempt power under an abuse-of-discretion standard.” *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001) (citation omitted), *review denied* (Minn. Oct. 16, 2001).

G. PROTECTIVE ORDERS

1. Harassment Restraining Orders

“Ultimately, the issuance of an HRO is reviewed for abuse of discretion.” *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008).

The district court exercises its discretion in issuing a harassment restraining order. *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004).

2. Domestic Abuse Orders for Protection

“The decision to grant an OFP under the Minnesota Domestic Abuse Act, Minn. Stat. § 518B.01 . . . is within the district court’s discretion. A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009) (quoting *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 926-27 (Minn. App. 2006)); *see Sperle v. Orth*, 763 N.W.2d 670, 672-73 (Minn. App. 2009).

“Whether to grant relief under the Domestic Abuse Act (Minn. Stat. ch. 518B) is discretionary with the district court.” *McIntosh v. McIntosh*, 740 N.W.2d 1, 9 (Minn. App. 2007); *see Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 926-27 (Minn. App. 2006).

“[I]n our review of an OFP, we review the record in the light most favorable to the district court’s findings, and we will reverse those findings only if we are left with the definite and firm conviction that a mistake has been made. We will not reverse merely because we view the evidence differently. And we neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotations and citations omitted).

Absent sufficient evidence, we will reverse an order for protection issued under Minn. Stat. § 518B.01. *Bjergum v. Bjergum*, 392 N.W.2d 604, 606-07 (Minn. App. 1986).

“The Domestic Abuse Act, as a remedial statute, receives liberal construction but it ‘may not be expanded in a way that does not advance its remedial purpose.’” *Sperle v. Orth*,

763 N.W.2d 670, 673 (Minn. App. 2009) (quoting *Swenson v. Swenson*, 490 N.W.2d 668, 670 (Minn. App. 1992)).

Whether to grant an injunction is discretionary with the district court and its decision will not be altered on appeal unless the record shows that the district court abused its discretion. *Geske v. Marcolina*, 642 N.W.2d 62, 67 (Minn. App. 2002).

H. OTHER

An appellant’s “fail[ure] to challenge” the district court’s “independent, procedural basis” for its ruling granting an adoption was “fatal to her appeal.” *In re Adoption of T.A.M.*, 791 N.W.2d 573, 577 (Minn. App. 2010).

“Whether a person is a putative spouse is a question of fact[,]” the district court’s resolution of which will not be set aside unless, upon review of the record, the appellate court is left with a definite and firm conviction that a mistake has been made. *Xiong v. Xiong*, 800 N.W.2d 187, 191 (Minn. App. 2011), *review denied* (Minn. Aug. 16, 2011).

To be a putative spouse under Minn. Stat. § 518.055, a person must have a good faith but incorrect belief that he or she is a spouse. In Minnesota, the existence of a “good faith” belief is judged subjectively while the existence of a “reasonable belief” is measured objectively. Thus, whether a person is a putative spouse under Minn. Stat. § 518.055 is measured subjectively. *Xiong v. Xiong*, 800 N.W.2d 187, 191 (Minn. App. 2011), *review denied* (Minn. Aug. 16, 2011).

“The interpretation of a statute or case law is . . . reviewed de novo.” *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011).

Questions of statutory interpretation are reviewed de novo. *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 209 (Minn. 2001); *see Dahlin v. Kroening*, 796 N.W.2d 503, 508 (Minn. 2011) (stating that “[w]hen interpreting the statutes, it is our role to rely on what the Legislature intended over what may appear to be supported by public policy”).

“The applicability of a statute is an issue of statutory interpretation, which appellate courts review de novo.” *Ramirez v. Ramirez*, 630 N.W.2d 463, 465 (Minn. App. 2001).

“Application of a statute to the undisputed facts of a case involves a question of law, and the district court’s decision is not binding on this court.” *Branch v. Branch*, 632 N.W.2d 261, 263 (Minn. App. 2001).

“This court reviews purely legal issues, such as case law relied upon by the district court, de novo.” *Haefele v. Haefele*, 621 N.W.2d 758, 761 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).

“Interpretation and application of procedural rules are legal issues that are reviewed de novo.” *Clark v. Clark*, 642 N.W.2d 459, 464 (Minn. App. 2002).

Appellate courts defer to district court credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (stating that, on appeal, appellate courts “neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder”).

Procedural and evidentiary rulings are within the district court’s discretion and are reviewed for an abuse of that discretion. *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001).

“Among other ways, a district court abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law.” *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (quotations and citations omitted).

“Whether to receive evidence is discretionary with the district court.” *J.W. by D.W. v. C.M.*, 627 N.W.2d 687, 697 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001).

“A petition for a writ of prohibition is the proper means of challenging a district court judge’s denial of a notice of removal.” *Ihde v. Ihde*, 800 N.W.2d 808, 809-10 (Minn. App. 2011) (citing *McClelland v. Pierce*, 376 N.W.2d 217, 219 (Minn. 1985)).

Whether a district court should recuse from a case is discretionary with the district court. *Carlson v. Carlson*, 390 N.W.2d 780, 785 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986).

“[W]e review de novo the question of whether federal law preempts state law.” *Angell v. Angell*, 791 N.W.2d 530, 534 (Minn. 2010).

“Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules.” *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001).

“Permissive intervention rulings are reviewed under an abuse-of-discretion standard.” *J.W. by D.W. v. C.M.*, 627 N.W.2d 687, 691 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001).

If a district court has authority to vacate an order allowing transfer of a juvenile-protection case to tribal court, whether to do so is discretionary with the district court. *See In re Welfare of Children of R.A.J.*, 769 N.W.2d 297, 304 (Minn. App. 2009) (concluding, on appeal from an order vacating a transfer of a juvenile-protection case to tribal court, “that the district court did not abuse its discretion by vacating the transfer order”).

“Uniform laws are interpreted to effect their general purpose to make uniform the laws of those states that enact them. Accordingly, we give great weight to other states’ interpretations of a uniform law.” *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002) (citation omitted); *see* Minn. Stat. § 645.22 (2012).

III. CIVIL – PROBATE

A. WILLS

1. Interpretation/Construction

“We review a district court’s construction of an unambiguous instrument de novo. But where critical evidence in the case turns on extrinsic language about the testator’s intent and disputed expert opinions about the language of the instrument, a ‘clearly erroneous’ standard of review applies.” *In re Estate and Trust of Anderson*, 654 N.W.2d 682, 687 (Minn. App. 2002) (citation omitted), *review denied* (Minn. Feb. 26, 2003).

“Whether a will is ambiguous is a question of law that this court reviews de novo.” *In re Trust of Shields*, 552 N.W.2d 581, 582 (Minn. App. 1996), *review denied* (Minn. Oct. 29, 1996).

2. Findings of Fact

“On appeal from a probate court’s decision after a trial without a jury, findings of fact will be disturbed only if clearly erroneous.” *In re Estate of Torgersen*, 711 N.W.2d 545, 550 (Minn. App. 2006), *review denied* (Minn. June 20, 2006).

a. Undue influence

“The trial court’s findings on undue influence are not to be set aside unless clearly erroneous.” *In re Estate of Larson*, 394 N.W.2d 617, 620 (Minn. App. 1986), *review denied* (Minn. Dec. 12, 1986).

“Like the question of mental capacity, the question of undue influence is usually one of fact, of which the Supreme Court has only the limited review of inquiring as to the sufficiency of the evidence to sustain the conclusion reached.” *Borstad v. Ulstad*, 232 Minn. 365, 371, 45 N.W.2d 828, 832 (1951).

b. Lack of testamentary capacity

“The fact-finding function in cases of testamentary capacity is in the trial court. In a case such as this, where the weight of the evidence depends in a large measure upon the appearance and interest of the witnesses, the trial court is peculiarly qualified to discharge the factfinding function. Under well-settled rules, the trial court’s finding upon this fact issue is binding upon us if such finding is not clearly and manifestly against the evidence.” *In re Estate of Rasmussen*, 244 Minn. 215, 220, 69 N.W.2d 630, 634 (1955) (citation omitted).

“[W]here the evidence as to testamentary capacity is conflicting the findings of the trial court with respect to that question are final on appeal.” *Borstad v. Ulstad*, 232 Minn. 365, 371, 45 N.W.2d 828, 832 (1951).

3. Appointment/Removal of Personal Representative

“The district court has discretion to determine suitability of a personal representative, and that determination will not be reversed absent an abuse of discretion. This court will not reverse the district court’s determination regarding removal of a personal representative unless the district court clearly abused its discretion by disregarding the facts.” *In re Estate of Martignacco*, 689 N.W.2d 262, 269 (Minn. App. 2004) (citation omitted), *review denied* (Minn. Jan. 26, 2005).

4. Claims Against Estate

“A court may allow a claim to be filed against an estate after the expiration of the statutory filing time if the creditor can show good cause. The trial court has broad discretion to determine whether good cause exists, and its finding will not be disturbed unless clearly erroneous.” *In re Estate of Thompson*, 484 N.W.2d 258, 261 (Minn. App. 1992) (citation omitted).

5. Expenses/Attorney Fees

“The standard of review for an appellate court examining an award of attorney fees and costs is whether the district court abused its discretion.” *In re Estate of Martignacco*, 689 N.W.2d 262, 271 (Minn. App. 2004) (quotation omitted), *review denied* (Minn. Jan. 26, 2005).

“This court reviews a district court’s award or denial of attorney fees on an abuse-of-discretion standard.” *In re Estate and Trust of Anderson*, 654 N.W.2d 682, 688 (Minn. App. 2002), *review denied* (Minn. Feb. 26, 2003).

B. TRUSTS

1. Interpretation/Construction

Appellate courts “review de novo a district court’s interpretation of a written document, which in this case is the Trust Agreement.” *In re Pamela Andreas Stisser Grantor Trust*, 818 N.W.2d 495, 502 (Minn. 2012).

“This court applies a *de novo* standard of review to a district court’s interpretation of a trust agreement.” *In re G.B. Van Dusen Marital Trust*, ___ N.W.2d ___ (Minn. App. Apr. 8, 2013) (citing *In re Pamela Andreas Stisser Grantor Trust*, 818 N.W.2d 495, 502 (Minn. 2012)), *review denied* (Minn. June 26, 2013).

2. Expenses/Attorney Fees

“An award of fiduciary compensation or attorney fees rests largely within the district court’s discretion. The reasonable value of compensation or reimbursement is a question of fact. We review a district court’s findings of fact under the clearly erroneous standard.” *In re Pamela Andreas Stisser Grantor Trust*, 818 N.W.2d 495, 507 (Minn. 2012) (citations omitted).

“We will not reverse a district court’s denial of attorney fees absent an abuse of discretion.” *In re Margolis Revocable Trust*, 765 N.W.2d 919, 928 (Minn. App. 2009).

“Determination of whether attorney fees will be chargeable to a trust is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion.”

In re Trust Created by Hill, 499 N.W.2d 475, 493-94 (Minn. App. 1993) (citing *In re Great N. Iron Ore Properties Trust*, 311 N.W.2d 488, 492 (Minn. 1981)), *review denied* (Minn. July 15, 1993).

“The allowance of reasonable compensation to a trustee for his services lies within the discretion of the trial court.” *In re Trust Created by Voss*, 474 N.W.2d 199, 201 (Minn. App. 1991) (quotation omitted).

C. GUARDIANSHIPS AND CONSERVATORSHIPS

1. Appointment of Guardian/Conservator

“The appointment of a conservator is a matter within the district court’s discretion and will not be disturbed absent a clear abuse of that discretion.” *In re Guardianship of Pates*, 823 N.W.2d 881, 885 (Minn. App. 2012) (quotation omitted).

“The appointment of a guardian is a matter within the discretion of the district court and will not be disturbed absent a clear abuse of that discretion.” *In re Guardianship of Autio*, 747 N.W.2d 600, 603 (Minn. App. 2008).

“The appointment of a guardian is uniquely within the discretion of the appointing court, and we will not interfere with the exercise of that discretion except in the case of a clear abuse of discretion. A reviewing court is limited to determining whether the district court’s findings are clearly erroneous, giving due regard to the district court’s determinations regarding witness credibility.” *In re Guardianship of Wells*, 733 N.W.2d 506, 510 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Sept. 18, 2007).

“The appointment of a conservator is a matter within the district court’s discretion and will not be disturbed absent a clear abuse of that discretion.” *In re Conservatorship of Geldert*, 621 N.W.2d 285, 287 (Minn. App. 2001), *review denied* (Minn. Mar. 27, 2001).

2. Removal of Guardian/Conservator

“We review the decision to remove a guardian for an abuse of discretion and will not set aside the decision absent a clear abuse of that discretion. The district court abuses its discretion by improperly applying the law.” *In re Guardianship of DeYoung*, 801 N.W.2d 211, 216 (Minn. App. 2011) (citation omitted).

“The removal of a guardian or conservator is also a matter within the district court’s discretion.” *In re Conservatorship of Geldert*, 621 N.W.2d 285, 287 (Minn. App. 2001), *review denied* (Minn. Mar. 27, 2001).

3. Terms of Guardianship

“We review a district court's determination of the terms of a guardianship for an abuse of discretion.” *In re Guardianship of O'Brien*, 847 N.W.2d 710, 714 (Minn. App. 2014).

4. Attorney Fees

“The question of whether the attorney's fees were for necessary services is a fact question. A probate court's determination of factual questions will not be set aside unless clearly erroneous.” *In re Conservatorship of W.R.L.*, 396 N.W.2d 705, 707 (Minn. App. 1986).

IV. CIVIL COMMITMENT

A. REVIEW OF DISTRICT COURT'S FINDINGS OF FACT

1. Commitments

Note: The standard of review is the same for all types of civil commitment.

a. *Mentally ill person*

An appellate court will not reverse a district court's "findings unless they are clearly erroneous." *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995).

"An appellate court will not reverse a district court's findings of fact unless they are clearly erroneous." *In re Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003).

b. *Person who is mentally ill and dangerous to the public*

"Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witness." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995).

In upholding a district court decision that a person committed as mentally ill was no longer dangerous, the supreme court stated: "We believe that the evidence was such that, although the [district] court arguably was free to continue the commitment, the [district] court was not compelled to do so." *In re Colbert*, 454 N.W.2d 614, 615 (Minn. 1990) (reversing decision by court of appeals that held that the district court was clearly erroneous).

c. *Developmentally disabled person (previously referred to as mentally retarded person)*

"The [district] court's findings in support of its order for commitment will not be disturbed unless clearly erroneous." *In re Chey*, 374 N.W.2d 778, 780 (Minn. App. 1985).

d. *Chemically dependent person*

"The [district] court's findings as to this determination will not be set aside unless clearly erroneous." *In re May*, 477 N.W.2d 913, 915 (Minn. App. 1991).

"The [district] court's findings as to this determination will not be set aside unless clearly erroneous." *In re Heurung*, 446 N.W.2d 694, 696 (Minn. App. 1989).

e. Sexually dangerous person

“We review the district court’s decision that [a person committed as an SDP] waived his rights for clear error.” *In re Civil Commitment of Giem*, 742 N.W.2d 422, 432 (Minn. 2007) (vacating order for commitment because Giem did not waive right to demand immediate hearing without prejudice, and allowing county to renew petition for commitment).

“Reviewing for clear error, we find sufficient evidence in the record to uphold the court’s findings.” *In re Linehan*, 557 N.W.2d 171, 190 (Minn. 1996), *vacated on other grounds and remanded*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff’d on remand*, 594 N.W.2d 867 (Minn. 1999) (affirming commitment as an SPD).

“We review the district court’s factual findings under a clear-error standard.” *In re Civil Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006) (reversing denial of commitment as an SDP), *review denied* (Minn. June 20, 2006).

“We review the district court’s factual findings under a clear error standard to determine whether they are supported by the record as a whole.” *In re Commitment of Ince*, 847 N.W.2d 13, 22 (Minn. 2014) (reaffirming the “highly likely” standard enunciated in *Linehan III*, but rejecting a numeric value for determining “highly likely”).

“Regarding the factual issues, we review the district court’s findings of fact for clear error. We give due deference to the district court as the best judge of the credibility of witnesses. And where, as here, the findings of fact rest almost entirely on expert testimony, the district court’s evaluation of credibility is particularly significant. But we review legal issues *de novo*, including whether the record contains clear and convincing evidence to support the district court’s conclusion that Crosby meets the standard for civil commitment.” *In re Civil Commitment of Crosby*, 824 N.W.2d 351, 356 (Minn. App. 2013) (quotation and citations omitted) (affirming commitment as SPP and SDP), *review denied* (Minn. Mar. 27, 2013).

“As the trier of fact, the district court will be in the best position to determine the weight to be attributed to each factor, as well as to evaluate the credibility of witnesses--a critical function in these cases that rely so heavily on the opinions of experts.” *In re Commitment of Ince*, 847 N.W.2d 13, 23-24 (Minn. 2014) (noting agreement that actuarial assessment evidence is relevant to likelihood of future harmful sexual conduct, but cautioning district courts to be wary of factor repetition where *Linehan* factors and actuarial assessments may consider same or similar factors).

f. Appeal from judicial appeal panel

“Generally, this court reviews decisions by a judicial appeal panel for clear error, “examin[ing] the record to determine whether the evidence as a whole sustains the appeal panels’ findings” and not “weigh[ing] the evidence as if trying the matter *de novo.*” *Jarvis v. Levine*, 364 N.W.2d 473, 474 (Minn. App. 1985) (quotation omitted); *see also Piotter v. Steffen*, 490 N.W.2d 915, 919 (Minn. App. 1992), *review denied* (Minn. Nov. 17, 1992).” *Larson v. Jesson*, 847 N.W.2d 531 (Minn. App. 2014).

“It is well established, however, that a trier of fact is free to accept part and reject part of a witness’s testimony.” *Coker v. Jesson*, 831 N.W.2d 483, 492 (Minn. 2013).

“Findings of fact will not be reversed if the record as a whole sustains those findings.” *Rydberg v. Goodno*, 689 N.W.2d 310, 313 (Minn. App. 2004) (addressing issue of pass-eligible status in psychopathic-personality commitment).

“The appeal panel’s reliance upon the testimony of [certain witnesses] was clearly erroneous. The vast weight of the evidence, which was provided by personnel at the security hospital who interacted with and treated respondent, was apparently ignored by the appeal panel, and requires denial of the transfer” of respondent, who was committed as mentally ill and dangerous, from the security hospital to an open hospital. *Piotter v. Steffen*, 490 N.W.2d 915, 920 (Minn. App. 1992), *review denied* (Minn. Nov. 17, 1992).

2. Findings on Less Restrictive Alternatives

a. For a mentally ill, developmentally disabled, or chemically dependent person

“In reviewing whether the least restrictive treatment program that can meet the patient’s needs has been chosen, an appellate court will not reverse a district court’s finding unless clearly erroneous.” *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003) (addressing continued commitment as mentally ill).

“A district court’s decision as to placement will not be reversed unless clearly erroneous.” *In re Kellor*, 520 N.W.2d 9, 12 (Minn. App. 1994) (addressing commitment as mentally ill), *review denied* (Minn. Sept. 28, 1994).

“Unless it is clearly erroneous, we must affirm the [district] court’s finding that there was no suitable less restrictive treatment alternative.” *In re King*, 476 N.W.2d 190, 193 (Minn. App. 1991) (addressing commitment of mentally ill person to the state security hospital).

“We will not reverse [a finding that a particular facility was the least restrictive alternative] unless it is clearly erroneous.” *In re Cieminski*, 374 N.W.2d 289, 292

(Minn. App. 1985) (addressing commitment as mentally retarded, now referred to as developmentally disabled), *review denied* (Minn. Nov. 18, 1985).

b. For a mentally ill and dangerous person

Previously, the petitions for commitment as an SPP or SDP were generally governed by the procedures for commitment as an MI&D person and even after section 253B.185 was amended to include separate provisions for commitment to less restrictive alternatives, the standards for commitment to less-restrictive treatment programs were the same. *See Minn. Stat. §§ 253B.18, .185* (2012). Under the current codification, the same standards apply as well, except that the district court may commit a mentally ill and dangerous person to “a treatment facility willing to accept the patient under commitment,” while this option is not available to one committed as an SPP or SDP. *Minn. Stat. §§ 253B.185, subd. 1(a)* (2012), *.253D.07, subd. 3* (Supp. 2013).

In ruling on a less restrictive alternative, the district court must make findings of fact to support its conclusion that no less restrictive treatment program existed that could meet the needs of the committed person. *In re Civil Commitment of Ince*, 847 N.W.2d 13, 26 (Minn. 2014) (reversing and remanding for findings in an appeal from commitment as an SDP under earlier version of statute, *Minn. Stat. § 253B.185, subd. 1(d)* (2012)). *Ince* addresses for the first time factors for the district court to consider in reaching its decision on less restrictive alternatives. *Id.* at 25-26.

Where the district court has not made findings of fact to support a conclusion that “no less restrictive treatment program” existed, the reviewing court will remand for reconsideration. *In re Commitment of Ince*, 847 N.W.2d 13, 27 (Minn. 2014).

The district court’s decision as to the least restrictive alternative will not be reversed unless clearly erroneous. *In re Dirks*, 530 N.W.2d 207, 211-12 (Minn. App. 1995).

“[P]atients have the *opportunity* to prove that a less-restrictive treatment program is available, but they do not have the *right* to be assigned to it.” *In re Kindschy*, 634 N.W.2d 723, 731 (Minn. App. 2001) (discussing less restrictive option in SPP/SDP commitment), *review denied* (Minn. Dec. 19, 2001); *see In re Robb*, 622 N.W.2d 564, 574 (Minn. App. 2001) (comparing previous version of statute with current version of statute as to least restrictive alternative option for indeterminate commitment), *review denied* (Minn. Apr. 17, 2001); *cf. In re Senty-Haugen*, 583 N.W.2d 266, 269 (Minn. 1998) (holding, under previous version of statute, there was no requirement that those committed as SPP/SDP be committed to the least restrictive alternative).

3. Findings Based on Expert Testimony

“As the trier of fact, the district court will be in the best position to determine the weight to be attributed to each factor, as well as to evaluate the credibility of witnesses-a critical function in these cases that rely so heavily on the opinions of experts.” *In re Civil Commitment of Ince*, 847 N.W.2d 13, 23-24 (Minn. 2014) (addressing commitment of person as an SDP).

“We give due deference to the district court as the best judge of the credibility of witnesses. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). And where, as here, the findings of fact ‘rest almost entirely on expert testimony, the district court’s evaluation of credibility is particularly significant.’ *Id.*” *In re Civil Commitment of Crosby*, 824 N.W.2d 351, 356 (Minn. App. 2013) (reviewing commitment as SPP and SDP).

“Where the findings of fact rest almost entirely on expert testimony, the [district] court’s evaluation of credibility is of particular significance.” *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995).

“Where the findings of fact rest almost entirely on expert opinion testimony, the probate judge’s evaluation of credibility is of particular significance. Here the probate court’s findings with respect to the pertinent facts—that Joelson’s treatment program is adequate—are supported by the record as a whole and are not clearly erroneous.” *In re Joelson*, 385 N.W.2d 810, 811 (Minn. 1986).

“The testimony in this case by the treating professionals, who were very familiar with respondent’s condition, should have been given greater weight” than the testimony by the psychologist, “who had an inadequate amount of time to make an adequate evaluation of respondent.” *Piotter v. Steffen*, 490 N.W.2d 915, 920 (Minn. App. 1992), *review denied* (Minn. Nov. 17, 1992).

B. REVIEW OF CONCLUSIONS OF LAW

1. District Court

Statutory interpretation is a legal question, which is subject to de novo review. *In re Civil Commitment of Ince*, 847 N.W.2d 13, 20 (Minn. 2014) (reviewing commitment as an SDP).

“Interpretation of a statute is a legal question that we review de novo.” *In re Civil Commitment of Lonergan*, 811 N.W.2d 635, 639 (Minn. 2012) (addressing when indeterminately committed person as an SDP or SPP may bring motion under Minn. R. Civ. P. 60.02).

“Justiciability issues receive de novo review.” *In re Commitment of Travis*, 767 N.W.2d 52, 58 (Minn. App. 2009).

“Subject matter jurisdiction is a question of law that we review de novo.” *In re Civil Commitment of Giem*, 742 N.W.2d 422, 425-26 (Minn. 2007).

“We review de novo whether there is clear and convincing evidence in the record to support the district court’s conclusion that appellant meets the standards for commitment.” *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003) (addressing continued commitment as mentally ill). This case is often cited in SPP/SDP decisions.

“In reviewing a commitment, we are limited to an examination of whether the district court complied with the requirements of the commitment act.” See *In re Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003) (reviewing district court’s mentally ill determination under Minn. Stat. § 253B.02, subd. 13(a)). “We review de novo the question of whether the evidence is sufficient to meet the standard of commitment.” *Id.*

“We conclude that the [district] court’s findings are insufficient to support the conclusion that [the proposed patient] is a mentally ill person, as defined by the Commitment Act.” *In re McGaughey*, 536 N.W.2d 621, 624 (Minn. 1995) (review of mentally ill determination under Minn. Stat. § 253B.02, subd. 13).

“The question before us is whether the record supports, by clear and convincing evidence, the [district] court’s conclusion that appellant meets the second and third elements [for commitment as a psychopathic personality.] This is a question of law which we review de novo.” *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994).

2. Judicial Appeal Panel

“Generally, this court reviews decisions by a judicial appeal panel for clear error, ‘examin[ing] the record to determine whether the evidence as a whole sustains the appeal panels’ findings’ and not ‘weigh[ing] the evidence as if trying the matter de novo.’” *Larson v. Jesson*, 847 N.W.2d 531, 534 (Minn. App. 2014) (quoting *Jarvis v. Levine*, 364 N.W.2d 473, 474 (Minn. App. 1985)). But we hold that when a judicial appeal panel dismisses a petition under Minn. R. Civ. P. 41.02(b), the appropriate standard of appellate review is de novo. See *Coker v. Jesson*, 831 N.W.2d 483, 489 (Minn. 2013) (noting that “the standards for directing a verdict [under Minn. R. Civ. P. 50.01] apply to motions to dismiss under [Minn. R. Civ. P.] 41.02(b),” and these standards “require the determination of whether, as a matter of law, the evidence is sufficient to present a fact question for the jury’s consideration” (quotation omitted)); see also *Coker v. Ludeman*, 775 N.W.2d 660, 663 (Minn. App. 2009) (noting that determining whether judicial appeal panel applied the proper evidentiary burden was a legal issue that this court reviews de novo), *review dismissed* (Minn. Feb. 24, 2010).” *Larson v. Jesson*, 847 N.W.2d 531, 534 (Minn. App. 2014).

“Determining whether an amendment is a clarification or a modification of preexisting law is a question of statutory interpretation, that we review de novo.” *Braylock v. Jesson*, 819 N.W.2d 585, 588 (Minn. 2012) (citations omitted).

“Issues of statutory interpretation are reviewed de novo.” *Rydberg v. Goodno*, 689 N.W.2d 310, 313 (Minn. App. 2004) (addressing issue of pass-eligible status in psychopathic-personality commitment).

V. CRIMINAL – GENERAL

A. GENERAL STANDARDS OF REVIEW

1. Questions of Law

The constitutionality of a statute presents a question of law that this court reviews de novo. *State v. Wolf*, 605 N.W.2d 381, 386 (Minn. 2000) (Minnesota constitutional challenge).

“The constitutionality of a statute is a question of law that [appellate courts] review de novo.” *State v. Ness*, 834 N.W.2d 177, 181-82 (Minn. 2013) (quotation omitted).

“The constitutionality of an ordinance is a question of law, which this court reviews de novo.” *State v. Botsford*, 630 N.W.2d 11, 15 (Minn. App. 2001), *review denied* (Minn. Sept. 11, 2001).

Whether a statute has been properly construed is a question of law subject to de novo review. *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996).

“The interpretation of the rules of criminal procedure is a question of law subject to de novo review.” *Ford v. State*, 690 N.W.2d 706, 712 (Minn. 2005).

“We review the interpretation of criminal procedural rules de novo. Except where otherwise provided, the procedure in petty misdemeanor cases must be the same as for misdemeanors punishable by incarceration.” *State v. Wood*, 845 N.W.2d 239, 242 (Minn. App. 2014) (citation and quotation omitted), *review denied* (Minn. June 17, 2014).

2. Questions of Fact

“The [district] court’s factual findings are subject to a clearly erroneous standard of review[.]” *State v. Critt*, 554 N.W.2d 93, 95 (Minn. App. 1996) (reviewing the substantiality of violation of *Scales* recording requirement), *review denied* (Minn. Nov. 20, 1996).

District court factual findings adopted verbatim from one of the parties’ proposed findings are reviewed under the clearly erroneous standard. *Dukes v. State*, 621 N.W.2d 246, 258-59 (Minn. 2001) (“We will devote special care not in the test that we apply to a particular finding of fact—individual findings will only be reversed if clearly erroneous—but in the volume of evidence we sift in judging the correctness of such findings.” (quotation omitted)).

3. Mixed Questions of Fact and Law

The district court's application of statutory criteria to the facts is a question of law subject to de novo review. *State v. Bunde*, 556 N.W.2d 917, 918 (Minn. App. 1996) (reviewing legality of arrest outside officer's jurisdiction).

A mixed question of law and fact requires the appellate court "to apply the controlling legal standard to historical facts" as determined by the district court. *State v. Wiernasz*, 584 N.W.2d 1, 3 (Minn. 1998) (footnote omitted). An appellate court reviews the district court's factual findings under the clearly erroneous standard, but independently reviews the district court's legal determinations. *Id.*

A reviewing court accepts the district court's factual findings concerning the circumstances under which a statement was given to the police unless the findings are clearly erroneous. *State v. Williams*, 535 N.W.2d 277, 286 (Minn. 1995). But the reviewing court makes an independent determination of whether a confession was voluntary, applying constitutional principles to the facts as found by the district court. *Id.*

4. Exception to Waiver

"A respondent can raise alternative arguments on appeal in defense of the underlying decision when there are sufficient facts in the record for the appellate court to consider the alternative theories, there is legal support for the arguments, and the alternative grounds would not expand the relief previously granted." *State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003).

B. PRETRIAL MATTERS

1. Suppressing Evidence

a. In General

"[W]hen reviewing a pre-trial order suppressing evidence where the facts are not in dispute and the [district] court's decision is a question of law, the reviewing court may independently review the facts and determine, as a matter of law, whether the evidence need be suppressed." *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

"When reviewing a district court's pretrial order on a motion to suppress evidence, 'we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo.'" *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quoting *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007)).

b. Critical Impact

If the state appeals pretrial suppression orders, it "must 'clearly and unequivocally' show both that the [district] court's order will have a 'critical

impact' on the state's ability to prosecute the defendant successfully and that the order constituted error." *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (quoting *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995)). "[T]he critical impact of the suppression must be first determined before deciding whether the suppression order was made in error." *Id.*

The standard for critical impact is that "the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution." *State v. Kim*, 398 N.W.2d 544, 551 (Minn. 1987).

Dismissal of a complaint satisfies the critical-impact requirement. *State v. Trei*, 624 N.W.2d 595, 597 (Minn. App. 2001).

"When analyzing critical impact, an appellate court should first examine all the admissible evidence available to the state in order to determine what impact the absence of the suppressed evidence will have. The analysis should not stop there however. The court should go on to examine the inherent qualities of the suppressed evidence itself, its relevance and probative force, its chronological proximity to the alleged crime, its effect in filling gaps in the evidence viewed as a whole, its quality as a perspective of events different than those otherwise available, its clarity and amount of detail and its origin. Suppressed evidence particularly unique in nature and quality is more likely to meet the critical impact test." *In re Welfare of L.E.P.*, 594 N.W.2d 163, 168 (Minn. 1999) (citations omitted).

The critical impact test applies to pretrial appeals from discovery orders. *State v. Underdahl*, 767 N.W.2d 677, 682-83 (Minn. 2009).

c. *Suppression of Confessions and Admissions*

The district court's factual determination of whether a defendant has invoked the right to counsel is accepted unless it is clearly erroneous. *State v. Miller*, 573 N.W.2d 661, 671 (Minn. 1998).

Underlying factual determinations regarding a suspect's invocation of his right to counsel or his right to silence are reviewed for clear error. *State v. Chavarria-Cruz*, 784 N.W.2d 355, 363 (Minn. 2010). The application of the reasonable-officer standard to those facts is reviewed de novo. *Id.*

Application of the rule that police must "stop and clarify" an equivocal request for silence is reviewed de novo, but the clearly erroneous standard applies to the factual findings involved. *State v. Ortega*, 798 N.W.2d 59, 70 (Minn. 2011).

"In cases in which the claim is made that a confession was involuntary or that the waiver of the *Miranda* rights was involuntary, the [district] court must make a subjective factual inquiry into all the circumstances surrounding the giving of the statement. On appeal this court will not reverse any findings of fact unless they

are clearly in error, but this court will make an independent determination of voluntariness on the facts as found.” *State v. Hardimon*, 310 N.W.2d 564, 567 (Minn. 1981).

In independently determining whether a confession or statement was involuntary or coerced, a reviewing court considers all relevant factors including age, maturity, intelligence, education, experience, ability to comprehend, length and legality of detention, nature of interrogation, physical deprivations, and limits on access to counsel, family and friends. *State v. Blom*, 682 N.W.2d 578, 614 (Minn. 2004); *State v. Camacho*, 561 N.W.2d 160, 168, 169-70 (Minn. 1997).

Where evidence suggests a defendant’s custodial statement may be involuntary and should be suppressed, a district court should make specific factual findings at the omnibus hearing. *State v. Buchanan*, 431 N.W.2d 542, 551 (Minn. 1988). A reviewing court will not reverse those factual findings unless they are clearly erroneous, but will “make its own independent evaluation of whether the waiver was knowing, intelligent and voluntary, based on the facts as found.” *Id.* at 552.

“In a pre-trial suppression hearing at which the defendant seeks suppression of a confession on the ground that the confession was involuntary, the state has the burden of proving voluntariness by a fair preponderance of the evidence. It is the [district] court’s role, in such a case, to resolve any evidentiary disputes as to the historical facts. The appellate court is not bound by the [district] court’s determination of whether or not the confession was voluntary. Rather, its duty is to independently determine, on the basis of all factual findings that are not clearly erroneous, whether or not the confession was voluntary.” *State v. Thaggard*, 527 N.W.2d 804, 807 (Minn. 1995) (quotation and citations omitted).

“The issue of whether a suspect is in custody and therefore entitled to a *Miranda* warning presents a mixed question of law and fact qualifying for independent review. [A]n appellate court reviews a [district] court’s findings of historical fact relating to the circumstances of the interrogation pursuant to the clearly erroneous test but an independent review of the [district] court’s determination regard custody and the need for a *Miranda* warning. We grant considerable, but not unlimited, deference to a [district] court’s fact-specific resolution of such an issue when the proper legal standard is applied.” *State v. Sterling*, 834 N.W.2d 162, 167-68 (Minn. 2013) (quotations and citations omitted).

d. Suppression of Physical Evidence

“When reviewing a pretrial order on a motion to suppress evidence, we review the district court’s factual findings under our clearly erroneous standard. We review the district court’s legal determinations, including a determination of probable cause, *de novo*.” *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012) (citation omitted).

2. Probable Cause—General

Dismissal of a complaint for lack of probable cause is appealable if it is based on a legal determination. *State v. Ciurleo*, 471 N.W.2d 119, 121 (Minn. App. 1991). As with other legal determinations, it is reviewed de novo. *State v. Linville*, 598 N.W.2d 1, 2 (Minn. App. 1999).

3. Warrantless Searches and Seizures

Whether there is probable cause for a citizen's arrest depends on findings of fact that are reviewed for clear error under the clearly erroneous standard, but it is ultimately a question of law to be reviewed de novo. *State v. Horner*, 617 N.W.2d 789, 795 (Minn. 2000).

The standard for reviewing reasonable suspicion for a *Terry* stop and probable cause determinations made by police in a warrantless search is de novo. *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997).

"We evaluate whether a reasonable, articulable suspicion exists [to conduct a pat search] from the perspective of a trained police officer, who may make 'inferences and deductions that might well elude an untrained person.'" *State v. Lemert*, 843 N.W.2d 227, 230 (Minn. 2014) (quoting *United States v. Cortez*, 449 U.S. 411, 418, 101 S. Ct. 690, 695 (1981)).

When a case is submitted to the district court on stipulated facts, "we review de novo whether the stipulated facts were sufficient to provide the officer with a reasonable articulable suspicion to conduct a pat search of [the defendant]." *State v. Lemert*, 843 N.W.2d 227, 231 (Minn. 2014).

4. Probable Cause—Search Warrants

We review the district court's determination of probable cause to issue a search warrant to ensure that there was a substantial basis to conclude that probable cause existed. *State v. Harris*, 589 N.W.2d 782, 787-88 (Minn. 1999). A substantial basis in this context means a "fair probability," given the totality of the circumstances, "that contraband or evidence of a crime will be found in a particular place." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted).

The standard of review appropriate for an appellate court reviewing a district court's probable cause determination made upon issuing a search warrant is the deferential, substantial-basis standard. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001).

The standard for determining that an unannounced entry is necessary is reasonable suspicion, and where the material facts are not in dispute, the reviewing court independently determines whether evidence obtained during execution of a no-knock warrant should be suppressed. *State v. Goodwin*, 686 N.W.2d 40, 43 (Minn. App. 2004), *review denied* (Minn. Dec. 14, 2004).

In reviewing an alleged *Franks* search-warrant-application deficiency, the court reviews for clear error the district court's findings on whether there was a statement or omission that was false or in reckless disregard of the truth. *State v. Andersen*, 784 N.W.2d 320, 327 (Minn. 2010). The court reviews de novo whether the alleged misrepresentation or omission was material to the probable cause determination. *Id.*

5. Grand Jury Proceedings

"[T]he standard of review of the dismissal of an indictment is not clear and unequivocal error on the part of the [district] court. The proper focus of inquiry is the grand jury's determination of probable cause to believe the alleged offenses occurred, with deference to the grand jury's factfinding role. A presumption of regularity attaches to a grand jury indictment and only in a rare case will an indictment be invalidated." *State v. Plummer*, 511 N.W.2d 36, 38 (Minn. App. 1994) (quotation omitted).

"A prosecutor's failure to disclose exculpatory evidence to the grand jury will require dismissal of the indictment if the evidence would have materially affected the grand jury proceeding. The effect on the grand jury proceeding must be judged after looking at all of the evidence that the grand jury received." *State v. Lynch*, 590 N.W.2d 75, 79 (Minn. 1999) (citation omitted).

"An indictment will be dismissed if 'it is clear that the prosecutor knowingly committed misconduct in the presentation of evidence to the Grand Jury' and that such misconduct 'substantially influenced the Grand Jury's decision to indict' " *State v. Martin*, 823 N.W.2d 913, 919 (Minn. App. 2012) (quoting *State v. Montanaro*, 463 N.W.2d 281, 281 (Minn. 1990)).

"A criminal defendant bears a heavy burden when seeking to overturn a grand jury indictment, especially when the challenge is brought after the defendant has been found guilty beyond a reasonable doubt following a fair trial." *State v. Johnson*, 463 N.W.2d 527, 531 (Minn. 1990); *see also State v. Lynch*, 590 N.W.2d 75, 79 (Minn. 1999) (stating that a defendant convicted after a fair trial bears a heightened burden).

6. Guilty Plea Withdrawal

There are two standards for guilty-plea withdrawal. The standard for reviewing denial of a guilty-plea withdrawal motion under the manifest-injustice standard, which is applied to post-sentencing motions and requires withdrawal when the defendant shows that the guilty-plea was invalid, i.e., not accurate, voluntary, and intelligent, is "a question of law that we review de novo." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). But the district court's decision to permit withdrawal under the fair-and-just standard, which is applied when the motion is made prior to sentencing, is discretionary. The district court must consider the reasons for withdrawal and any prejudice withdrawal would cause the state, and "[w]e review a district court's decision to deny a withdrawal motion for abuse of discretion, reversing only in the 'rare case.'" *Id.* at 97 (quoting *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989)).

“The authority of a court to *sua sponte* vacate a guilty plea and conviction is a question of law, which is reviewed de novo.” *State v. Miller*, ___ N.W.2d ___, ___ (Minn. App. 2014) (quoting *State v. Spraggins*, 742 N.W.2d 1, 3 (Minn. App. 2007)).

“[T]he ‘ultimate decision’ of whether to allow withdrawal under the ‘fair and just’ standard is ‘left to the sound discretion of the [district] court, and it will be reversed only in the rare case in which the appellate court can fairly conclude that the [district] court abused its discretion.’” *State v. Kaiser*, 469 N.W.2d 316, 320 (Minn. 1991) (quoting *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989)).

A reviewing court will reverse the district court’s determination of whether to permit withdrawal of a guilty plea only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).

When credibility determinations are crucial in determining whether a guilty plea was accurate, voluntary, and intelligent, “a reviewing court will give deference to the primary observations and trustworthiness assessments made by the district court.” *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *review denied* (Minn. June 11, 1997).

7. Plea Agreements

The interpretation and enforcement of plea agreements present issues of law subject to de novo review. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004); *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000).

“Assessing the validity of a plea presents a question of law that we review de novo.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

8. Adverse Psychological Examinations

“There is [district] court discretion to order adverse psychological examinations in criminal cases, but the discretion should be used judiciously and in a balanced way.” *State v. Elvin*, 481 N.W.2d 571, 574 (Minn. App. 1992) (affirming district court decision to deny defense request for adverse psychological examination of a victim), *review denied* (Minn. Apr. 29, 1992). A reviewing court will not reverse the district court absent an abuse of that discretion. *See id.*

9. Change of Venue

“The standard of review on a venue transfer challenge is whether the district court abused its discretion.” *State v. Fairbanks*, 842 N.W.2d 297, 302 (Minn. 2014).

District courts have wide discretion in deciding motions for change of venue and we will sustain such decisions absent a clear abuse of discretion. *State v. Warren*, 592 N.W.2d 440, 447 n.6 (Minn. 1999).

“Before [a reviewing] court will reverse a conviction based on a denial of a change of venue motion, we must find not only that the [district] court abused [its] wide discretion, but also that the denial resulted in prejudice to the defendant.” *State v. Chambers*, 589 N.W.2d 466, 473 (Minn. 1999); *see State v. Everett*, 472 N.W.2d 864, 866 (Minn. 1991) (affirming district court’s denial of defendant’s motion for a change of venue when defendant made no showing of actual prejudice).

10. Double Jeopardy

An appellate court reviews double-jeopardy issues de novo. *State v. Leroy*, 604 N.W.2d 75, 77 (Minn. 1999). But decisions to declare a mistrial sua sponte without the defendant’s consent are reviewed for an abuse of discretion. *State v. Gouleed*, 720 N.W.2d 794, 800 (Minn. 2006).

11. Continuances

A ruling on a request for a continuance is within the district court’s discretion and a conviction will not be reversed for denial of a motion for a continuance unless the denial is a clear abuse of discretion. *State v. Rainer*, 411 N.W.2d 490, 495 (Minn. 1987).

“The reviewing court must examine the circumstances before the [district] court at the time the motion [for a continuance] was made to determine whether the [district] court’s decision prejudiced [the] defendant by materially affecting the outcome of the trial.” *State v. Turnipseed*, 297 N.W.2d 308, 311 (Minn. 1980).

“In evaluating a request for a continuance, the test is whether the denial of a continuance prejudices the outcome of the trial.” *State v. Stroud*, 459 N.W.2d 332, 335 (Minn. App. 1990).

12. Competency of Defendant

The standards for competency to stand trial and for competency to waive counsel are the same. *State v. Comacho*, 561 N.W.2d 160, 172 (Minn. 1997). The appellate courts have reviewed competency determinations on undisputed facts “to determine whether the district court gave proper weight” to the evidence in the record. *Id.* at 174.

13. Waiver of Counsel

“We will only overturn a ‘finding of a valid waiver of a defendant’s right to counsel if that finding is clearly erroneous.’” *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009) (quoting *State v. Worthy*, 583 N.W.2d 270, 276 (Minn. 1998)).

14. Substitution of Counsel

The decision whether to grant a request for substitute counsel is within the district court’s discretion. *State v. Clark*, 722 N.W.2d 460, 464 (Minn. 2006).

15. Speedy Trial

“A speedy-trial challenge presents a constitutional question subject to de novo review.” *State v. Griffin*, 760 N.W.2d 336, 339 (Minn. App. 2009).

16. Joinder and Severance of Defendants

In reviewing the district court’s decision regarding the joinder of defendants, the appellate court makes “an independent inquiry into any substantial prejudice to defendants that may have resulted from their being joined for trial.” *State v. Powers*, 654 N.W.2d 667, 674 (Minn. 2003) (quotation omitted); *see Minn. R. Crim. P. 17.03, subd. 2* (giving district courts discretion regarding joinder of defendants, and providing factors that the court must consider when determining whether to join defendants). Severance claims are evaluated under the standard provided in Minn. R. Crim. P. 17.03, subd. 2(1). *Santiago v. State*, 644 N.W.2d 425, 444 (Minn. 2002).

17. Joinder of Offenses

The determination of whether offenses arose from a single behavioral incident so as to permit joinder depends on the facts and circumstances of the case. *State v. Jackson*, 615 N.W.2d 391, 394 (Minn. App. 2000), *review denied* (Minn. Oct. 17, 2000). The ultimate question when offenses are improperly joined is one of prejudice. *State v. Profit*, 591 N.W.2d 451, 460 (Minn. 1999). If the evidence of each offense would have been admissible as *Spreigl* evidence in the trial of the others, there is no prejudice. *State v. Conaway*, 319 N.W.2d 35, 42 (Minn. 1982).

18. Jurisdiction

“The question of whether subject matter jurisdiction exists is a question of law that we review de novo.” *State v. Vang*, 847 N.W.2d 248, 257-58 (Minn. 2014) (considering question of whether district court had subject matter jurisdiction to consider indictment filed against 23-year-old appellant who committed crime at 14 years of age).

C. TRIAL MATTERS

1. Jury Selection

a. Peremptory Challenges

The district court has discretion to allow or deny the use of a peremptory challenge after the right to make the challenge has expired and before the entire jury has been impaneled. *State v. Kitto*, 373 N.W.2d 307, 310-11 (Minn. 1985).

The district court’s erroneous denial of a peremptory challenge automatically entitles a defendant to a new trial without a showing of prejudice. *State v. Reiners*, 664 N.W.2d 826, 835 (Minn. 2003).

b. ***Batson Challenges***

(1) General

The district court's determination on a *Batson* challenge will not be reversed unless clearly erroneous. *State v. McDonough*, 631 N.W.2d 373, 385 (Minn. 2001).

"We are mindful of the unique position of a district court to determine, based on all relevant factors, whether the circumstances of the case raise an inference that the challenge was based upon race. We have consistently given deference to the district court's rulings on *Batson* issues, realizing that the record may not accurately reflect all relevant circumstances that may properly be considered." *State v. White*, 684 N.W.2d 500, 506 (Minn. 2004) (citations omitted).

The supreme court has emphasized "[t]he importance of clarity at each step of the analysis," but when the district court fails to follow this "prescribed procedure" the appellate courts will "examine the record without deferring to the district court's analysis." *State v. Seaver*, 820 N.W.2d 627, 633 (Minn. App. 2012) (quotations omitted).

(2) Prong one—prima facie case of discrimination

"[U]pon review of a district court's determination under step one of the *Batson* process that a prima facie showing of discrimination has not been established, we will reverse only in the face of clear error." *State v. White*, 684 N.W.2d 500, 507 (Minn. 2004).

(3) Prong three—purposeful discrimination

Whether racial discrimination in the exercise of a peremptory challenge has been shown "is an essentially factual determination, which typically will turn largely on an evaluation by the [district] court of credibility." *State v. James*, 520 N.W.2d 399, 403-04 (Minn. 1994) (quotation omitted). "A [district] court's determination of the genuineness of the prosecutor's response is entitled to great deference on review." *Id.* at 404 (quotations omitted). The clearly erroneous standard of review applies to this factual determination. *Id.*

Appellate courts give "considerable deference" to district court findings on whether a peremptory challenge was motivated by prohibited discriminatory intent because the issue typically requires an evaluation of the prosecutor's credibility. *State v. Johnson*, 616 N.W.2d 720, 725 (Minn. 2000). Appellate courts must determine whether the district court "abused its considerable discretion" in determining that a "prosecutor did not engage in purposeful discrimination." *Id.*

c. Challenges for Cause

The district court is in the best position to determine whether prospective jurors can be impartial because it hears their testimony and observes their demeanor. *State v. Drieman*, 457 N.W.2d 703, 708-09 (Minn. 1990). The district court's resolution of whether a prospective juror's protestation of impartiality is credible is a determination of credibility and demeanor and, therefore, is entitled to "special deference." *State v. Logan*, 535 N.W.2d 320, 323 (Minn. 1995).

Removals for cause are reviewed under an abuse-of-discretion standard. *State v. Spangler*, 816 N.W.2d 651, 653 (Minn. App. 2012), *review denied* (Minn. Aug. 21, 2012).

2. Trial Management

a. Removal of Judge

"A judicial officer's authority to conduct a trial is a legal question that we review de novo." *State v. Irby*, 848 N.W.2d 515, ___ (Minn. 2014) (applying de novo review on appeal despite failure to object to judge presiding at trial because the issue involves a "fundamental question of judicial authority").

b. Sanctions for Discovery Violations

"[District] courts have broad discretion in imposing sanctions for violations of the discovery rules." *State v. Patterson*, 587 N.W.2d 45, 50 (Minn. 1998). The appellate court will not overturn the district court's ruling absent a clear abuse of discretion. *Id.* "Despite the [district] court's broad discretion, '[p]reclusion of evidence is a severe sanction which should not be lightly invoked.'" *Id.* (quoting *State v. Lindsey*, 284 N.W.2d 368, 374 (Minn. 1979)).

The reviewing court should not order a new trial to remedy a discovery violation unless the evidence would have affected the outcome of the trial. *State v. Clobes*, 422 N.W.2d 252, 255 (Minn. 1988).

c. Sequestration/Courtroom Closure

Sequestration of defendant's family and friends during voir dire is a question of constitutional law because it involves the right to a public trial, which is reviewed de novo. *State v. Zornes*, 831 N.W.2d 609, 618 (Minn. 2013). But because the district court has "substantial discretion in conducting voir dire," the question of whether the court's conduct during voir fell within the contours of that right is reviewed for an abuse of discretion. *Id.* (quotation omitted).

The question of whether the closing of the courtroom violated the right to a public trial is a constitutional issue the appellate courts review de novo. *State v. Brown*, 815 N.W.2d 609, 616 (Minn. 2012).

d. Trial in Absentia

The decision to proceed with trial in absentia is reviewed under an abuse-of-discretion standard. *State v. Cassidy*, 567 N.W.2d 707, 709 (Minn. 1997). The district court's factual findings will not be disturbed unless clearly erroneous. *Id.* at 709-10. The district court, however, has "only a narrow discretion" in deciding whether to proceed with trial in the defendant's absence because the right to be present at trial must be safeguarded. *Id.* at 710.

e. Restraints on Defendant

The decision to require a criminal defendant to wear restraints during trial is within the discretion of the district court and will not be overturned absent an abuse of discretion. *State v. Chambers*, 589 N.W.2d 466, 475 (Minn. 1999).

f. Unruly Defendant

The district court has broad discretion in dealing with "disruptive, contumacious, stubbornly defiant defendants." *State v. Richards*, 495 N.W.2d 187, 197 (Minn. 1992).

g. Mistrial

The denial of a motion for a mistrial is reviewed for abuse of discretion. *State v. Jorgensen*, 660 N.W.2d 127, 133 (Minn. 2003) (mistrial motion based on prosecutorial misconduct); *State v. Spann*, 574 N.W.2d 47, 52 (Minn. 1998) (mistrial based on prosecutorial misconduct in failing to provide discovery).

3. Evidentiary Rulings

a. In General

"Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted).

b. Harmless Error

"When an error implicates a constitutional right, we will award a new trial unless the error is harmless beyond a reasonable doubt. An error is harmless beyond a reasonable doubt if the jury's verdict was surely unattributable to the error." *State v. Davis*, 820 N.W.2d 525, 533 (Minn. 2012) (citation and quotation omitted).

Harmless beyond a reasonable doubt means that "the reviewing court must be satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, a [reasonable] jury . . . would

have reached the same verdict.” *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994) (analyzing the impact of district court’s erroneous exclusion of defense evidence). But if there is a reasonable possibility that the verdict might have been different if the evidence had been admitted, then the error is prejudicial. *Id.*

If the district court has erred in admitting evidence, the reviewing court determines whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994). If there is a reasonable possibility that the verdict might have been more favorable to the defendant without the evidence, then the error is prejudicial. *Id.*

In completing a “harmless error impact” analysis, the inquiry is not whether the jury could have convicted the defendant without the error; rather, we must determine what effect the error had on the jury’s verdict, “and more specifically, whether the jury’s verdict is ‘surely unattributable’ to [the error].” *State v. King*, 622 N.W.2d 800, 811 (Minn. 2001) (quoting *State v. Juarez*, 572 N.W.2d 286, 292 (Minn. 1997)).

In conducting this analysis, the reviewing court considers “the manner in which the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether the defense effectively countered it.” *Townsend v. State*, 646 N.W.2d 218, 223 (Minn. 2002).

“If no constitutional right was implicated, we will reverse only if the district court’s error ‘substantially influenced[d] the jury’s decision.’” *State v. Vang*, 774 N.W.2d 566, 576 (Minn. 2009).

c. Plain Error

Where a defendant fails to object to the admission of evidence, our review is under the plain error standard. *See Minn. R. Crim. P. 31.02*; *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). “The plain error standard requires that the defendant show: (1) error; (2) that was plain; and (3) that affected substantial rights.” *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002) (citing *Griller*, 583 N.W.2d at 740 (citing *Johnson v. United States*, 520 U.S. 461, 466-67, 117 S. Ct. 1544, 1548-49 (1997))). The third prong is satisfied if there is a “reasonable likelihood that the error had a significant effect on the verdict.” *See State v. Vance*, 734 N.W.2d 650, 660 n.8 (Minn. 2007), *overruled on other grounds by State v. Fleck*, 810 N.W.2d 303 (Minn. 2012). “If those three prongs are met, we may correct the error only if it ‘seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.’” *Strommen*, 648 N.W.2d at 686 (quoting *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001)). (In general, the term “forfeiture” applies to the failure to object, which permits only review for plain error. *Vance*, 734 N.W.2d at 654-55. The term “waiver” refers to “affirmative waiver,” which requires more than mere silence. *See id.* at 655).

d. *Privilege*

“The availability of a privilege established by statute ‘is an evidentiary ruling to be determined by the [district] court and reviewed based on an abuse of discretion standard.’” *State v. Expose*, ___ N.W.2d ___, ___ (Minn. App. 2014) (quoting *State v. Gianakos*, 644 N.W.2d 409, 415 (Minn. 2002)). But the “determination of ‘whether a particular testimonial privilege or exception exists . . . is a question of law’ that we review de novo.” *Id.*

e. *Expert-Witness Testimony*

“The admission of expert testimony is within the broad discretion accorded [to] a [district] court, and rulings regarding materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence may be reversed only if the [district] court clearly abused its discretion.” *State v. Ritt*, 599 N.W.2d 802, 810 (Minn. 1999) (quotation and citations omitted); *see also State v. Grecinger*, 569 N.W.2d 189, 194 (Minn. 1997) (stating that reversal requires “apparent error”).

Appellate courts defer to the fact-finder’s determination of weight and credibility of expert witnesses. *State v. Triplett*, 435 N.W.2d 38, 44 (Minn. 1989).

When reviewing the admission of expert testimony, appellate courts review de novo “whether a particular technique is generally accepted in the relevant scientific field, and review under an abuse-of-discretion standard whether an expert witness is qualified and the testimony [is] helpful to the jury.” *State v. Pirsig*, 670 N.W.2d 610, 616 (Minn. App. 2003), *review denied* (Minn. Jan. 20, 2004).

f. *Identification Evidence*

If an identification procedure is found to be unnecessarily suggestive, the court must determine under the “totality of the circumstances” whether the identification created “a very substantial likelihood of irreparable misidentification.” *State v. Taylor*, 594 N.W.2d 158, 161 (Minn. 1999) (quoting *Simmons v. United States*, 390 U.S. 377, 384, 88 S. Ct. 967, 971 (1968)); *see also State v. Ostrem*, 535 N.W.2d 916, 921 (Minn. 1995).

Error in admission of tainted pretrial identification does not require a new trial if the state can show beyond a reasonable doubt that the error was harmless. *State v. Jones*, 556 N.W.2d 903, 913 (Minn. 1996).

g. *Prior Bad Acts Evidence*

“A defendant who claims the district court erred in admitting evidence bears the burden of showing the error and any resulting prejudice.” *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998).

A reviewing court will not reverse the district court's admission of evidence of other crimes or bad acts unless an abuse of discretion is clearly shown. *State v. Scruggs*, 421 N.W.2d 707, 715 (Minn. 1988). To prevail, an appellant must show error and the prejudice resulting from the error. *State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981).

Evidence of other crimes or bad acts is characterized as “*Spreigl* evidence” after the supreme court’s decision in *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965). *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998). The admission of *Spreigl* evidence lies within the sound discretion of the district court and will not be reversed absent a clear abuse of discretion. *State v. Spaeth*, 552 N.W.2d 187, 193 (Minn. 1996).

The district court’s decision to admit similar-conduct or relationship evidence under Minn. Stat. § 634.20 in a domestic-abuse prosecution is reviewed for an abuse of discretion. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004).

The admission of *Spreigl* evidence is less prejudicial if the trial is to the court rather than a jury. *Irwin v. State*, 400 N.W.2d 783, 786 (Minn. App. 1987), *review denied* (Minn. Mar. 25, 1987).

If the district court erred in admitting evidence, the reviewing court determines whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994). If there is a reasonable possibility that the verdict might have been more favorable to the defendant without the evidence, then the error is prejudicial. *Id.*

h. Impeachment by Prior Conviction

A district court’s ruling on the impeachment of a witness by prior conviction is reviewed, as are other evidentiary rulings, under a clear abuse of discretion standard. *State v. Ihnot*, 575 N.W.2d 581, 584 (Minn. 1998). Whether the probative value of the prior convictions outweighs their prejudicial effect is a matter within the discretion of the district court. *State v. Graham*, 371 N.W.2d 204, 208 (Minn. 1985). The district court’s decision will not be reversed absent a clear abuse of discretion. *Id.* at 209.

i. Hearsay Evidence and Confrontation

The district court’s evidentiary rulings will generally not be reversed absent a clear abuse of discretion. *State v. Flores*, 595 N.W.2d 860, 865 (Minn. 1999) (reviewing hearsay ruling).

Whether the admission of evidence violates a defendant’s rights under the Confrontation Clause is a question of law that is reviewed de novo. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006). *But see State v. Hull*, 788 N.W.2d 91, 100 (Minn. 2010) (noting but not deciding that a hearsay objection at trial may

not be sufficient to preserve a Confrontation Clause violation on appeal and analyzing that issue under plain-error standard).

j. Physical Evidence

A district court's admission of physical evidence will be affirmed unless it constitutes an abuse of discretion. *State v. Daniels*, 361 N.W.2d 819, 827 (Minn. 1985) (admissibility of weapon).

k. Photographs

The admission of photographs is in the discretion of the district court and will not be reversed absent a showing of an abuse of discretion. *State v. Stewart*, 514 N.W.2d 559, 564 (Minn. 1994) (admissibility of autopsy photos).

“Rulings on the admissibility of photographs as evidence are in the broad discretion of the district court and will not be reversed on appeal absent a showing of a clear abuse of discretion.” *State v. Dame*, 670 N.W.2d 261, 264 (Minn. 2003) (admissibility of autopsy photos).

“We review a district court's decision to admit photographic evidence for an abuse of discretion.” *State v. Morrow*, 834 N.W.2d 715, 726 (Minn. 2013) (discussing admissibility of spark of life evidence).

l. Scope of Cross-Examination

The scope of cross-examination is left largely to the district court's discretion and will not be reversed absent a clear abuse of discretion. *State v. Parker*, 585 N.W.2d 398, 406 (Minn. 1998).

m. Scope of Closing Arguments

“We review a district court's restricting the scope of a closing argument for an abuse of discretion.” *State v. Caldwell*, 815 N.W.2d 512, 516 (Minn. App. 2012), *review denied* (Minn. June 27, 2012).

4. Jury Instructions

District courts are allowed “considerable latitude” in the selection of language for the jury instructions. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). “[J]ury instructions must be viewed in their entirety to determine whether they fairly and adequately explained the law of the case.” *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). “An instruction is in error if it materially misstates the law. Furthermore, it is well settled that the court's instructions must define the crime charged. In accordance with this, it is desirable for the court to explain the elements of the offense rather than simply to read statutes.” *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001) (citations omitted).

The refusal to give a requested jury instruction lies within the discretion of the district court and will not be reversed absent an abuse of discretion. *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996). The focus of the analysis is on whether the refusal resulted in error. *State v. Kuhnau*, 622 N.W.2d 552, 555 (Minn. 2001).

“We review a district court’s refusal to give a requested jury instruction for an abuse of discretion. The interpretation of a statute is a legal question we review *de novo*.” *State v. Ndikum*, 815 N.W.2d 816, 818 (Minn. 2012) (citation omitted).

Generally, when there is no argument that an unobjected-to instruction violated the defendant’s right to a jury trial, the instruction is reviewed under the plain-error standard. *State v. Vance*, 734 N.W.2d 650, 655 (Minn. 2007), *overruled on other grounds by State v. Fleck*, 810 N.W.2d 303 (Minn. 2012). Even when there is no objection to jury instructions at trial, the appellate court has discretion to consider a claim of error on appeal if there was “plain error affecting substantial rights,” or an error of fundamental law in the jury instructions. *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001) (quotation omitted). See *State v. Milton*, 821 N.W.2d 789, 807-08 (Minn. 2012) (holding erroneous jury instruction was not “clear” or “obvious” error when supreme court had not clearly held what accomplice-liability jury instruction requires).

“We evaluate the erroneous omission of a jury instruction under a harmless error analysis.” *State v. Lee*, 683 N.W.2d 309, 316 (Minn. 2004). When faced with an erroneous refusal to give jury instructions, the reviewing court must “examine all relevant factors to determine whether, beyond a reasonable doubt, the error did not have a significant impact on the verdict.” *State v. Shoop*, 441 N.W.2d 475, 481 (Minn. 1989). If the error might have prompted the jury to reach a harsher verdict than it might otherwise have reached, the defendant is entitled to a new trial. *Id.*

a. Lesser-Included Offenses

“It is well established in our jurisprudence that we review the denial of a requested lesser-included offense instruction under an abuse of discretion standard.” *State v. Dahlin*, 695 N.W.2d 588, 597 (Minn. 2005). But “the failure to submit lesser-included offenses to the jury is grounds for reversal only if the defendant is prejudiced thereby.” *Id.* “As a preliminary matter, we emphasize that when a defendant fails to request a lesser-included offense instruction warranted by the evidence, the defendant impliedly waives his or her right to receive the instruction.” *Id.* at 597-98.

“The determination of what, if any, lesser offense to submit to the jury lies within the sound discretion of the [district] court, but where the evidence warrants an instruction, the [district] court must give it.” *Bellcourt v. State*, 390 N.W.2d 269, 273 (Minn. 1986) (citations omitted).

b. Accomplice Instruction

“An accomplice instruction ‘must be given in any criminal case in which any witness against the defendant might reasonably be considered an accomplice to the crime.’” *State v. Lee*, 683 N.W.2d 309, 316 (Minn. 2004) (quoting *State v. Shoop*, 441 N.W.2d 475, 479 (Minn. 1989)). “The duty to instruct on accomplice testimony remains regardless of whether counsel for the defendant requests the instruction” and omission of the jury instruction is error. *Id.* (citing *State v. Strommen*, 648 N.W.2d 681, 689 (Minn. 2002)). “[W]here a district court fails to give a required accomplice corroboration instruction and the defendant does not object, an appellate court must apply the plain error analysis.” *State v. Reed*, 737 N.W.2d 572, 584 n.4 (Minn. 2007).

5. Prosecutorial Misconduct

A district court’s denial of a new-trial motion based on alleged prosecutorial misconduct will be reversed only “when the misconduct, considered in the context of the trial as a whole, was so serious and prejudicial that the defendant’s constitutional right to a fair trial was impaired.” *State v. Johnson*, 616 N.W.2d 720, 727-28 (Minn. 2000).

There are two distinct standards for determining whether prosecutorial misconduct is harmless error; serious misconduct will be found “harmless beyond a reasonable doubt if the verdict rendered was surely unattributable to the error,” while for less serious misconduct, the standard is “whether the misconduct likely played a substantial part in influencing the jury to convict.” *State v. Powers*, 654 N.W.2d 667, 678 (Minn. 2003) (quoting *State v. Hunt*, 615 N.W.2d 294, 302 (Minn. 2000)); *but see State v. Mayhorn*, 720 N.W.2d 776, 785 (Minn. 2006) (applying a streamlined approach to review of prosecutorial misconduct). The supreme court recently has questioned whether this two-tier approach is still good law, while declining to decide the question. *See State v. McDaniel*, 777 N.W.2d 739, 749 (Minn. 2010).

“If the defendant failed to object to the misconduct at trial, he forfeits the right to have the issue considered on appeal, but if the error is sufficient, this court may review.” *State v. Powers*, 654 N.W.2d 667, 678 (Minn. 2003) (citing *State v. Sanders*, 598 N.W.2d 650, 656 (Minn. 1999)). Only when the misconduct is unduly prejudicial will relief be granted absent a trial objection or request for instruction. *State v. Whittaker*, 568 N.W.2d 440, 450 (Minn. 1997). When the defendant fails to object, prosecutorial misconduct is reviewed under the plain-error standard announced in *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). But under this modified plain-error standard, on the third or “prejudice” prong, the state now bears the burden of proving that there is no reasonable likelihood that the absence of the misconduct would have a significant effect on the jury’s verdict. *Id.* at 302.

The general rule that a party must object to alleged prosecutorial misconduct or waive the issue does not apply to a criminal defendant appearing pro se. *State v. Stufflebean*, 329 N.W.2d 314, 318 (Minn. 1983) (holding appellate court must evaluate the misconduct to determine whether it was so serious the district court should have intervened sua sponte).

6. Juror Misconduct

“The standard of review for denial of a *Schwartz* hearing is abuse of discretion.” *State v. Church*, 577 N.W.2d 715, 721 (Minn. 1998). “The granting of a *Schwartz* hearing is generally a matter of discretion for the [district] court.” *State v. Rainer*, 411 N.W.2d 490, 498 (Minn. 1987).

A district court’s findings as to the presence or absence of juror bias is “based upon determinations of demeanor and credibility” and therefore is entitled to deference. Actual bias is a question of fact that the district court is in the best position to evaluate. *State v. Evans*, 756 N.W.2d 854, 870 (Minn. 2008) (quotation omitted).

7. Sufficiency of the Evidence

a. In General

When a sufficiency-of-the-evidence claim involves the question of whether the defendant’s conduct meets the statutory definition of an offense, an appellate court is presented with a question of statutory interpretation that is reviewed de novo. *See State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013).

In considering a claim of insufficient evidence, this court’s review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

b. Direct and Circumstantial Evidence

Direct evidence is the testimony of a person who perceived the fact through his senses or physical evidence of the fact itself. *State v. Williams*, 337 N.W.2d 387, 389 (Minn. 1983). For example, a victim’s identification of her assailant’s voice is direct evidence, *see State v. Otten*, 292 Minn. 493, 494, 195 N.W.2d 590, 591 (1972), and a defendant’s confession is also direct evidence of guilt, *see State v. McClain*, 208 Minn. 91, 95-96, 292 N.W. 753, 755 (1940).

“[A] conviction based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct evidence.” *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). “While it warrants stricter scrutiny, circumstantial

evidence is entitled to the same weight as direct evidence.” *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). The circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt. *Jones*, 516 N.W.2d at 549. A jury, however, is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

In applying the circumstantial evidence standard, the reviewing court uses a two-step analysis. *State v. Silvermail*, 831 N.W.2d 594, 598 (Minn. 2013). “The first step is to identify the circumstances proved. In identifying the circumstances proved, we defer ‘to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.’” *Id.* at 599 (citing *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010)). The reviewing court “construe[s] conflicting evidence in the light most favorable to the verdict and assume[s] that the jury believed the State’s witnesses and disbelieved the defense witnesses.” *Id.* (quotation omitted). “The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotation omitted).

c. Evidence Corroborating an Accomplice’s Testimony

The sufficiency of the circumstantial evidence to corroborate an accomplice’s testimony that the defendant participated in the crime charged is reviewed in the light most favorable to the verdict. *State v. Bowles*, 530 N.W.2d 521, 532 (Minn. 1995).

“Corroborating evidence is sufficient if it ‘restores confidence in the accomplice’s testimony, confirming its truth and pointing to the defendant’s guilt in some substantial degree.’” *State v. Ford*, 539 N.W.2d 214, 225 (Minn. 1995) (quoting *State v. Scruggs*, 421 N.W.2d 707, 713 (Minn. 1988)).

“Evidence that merely shows the commission of the crime or the circumstances thereof is not sufficient to corroborate accomplice testimony.” *State v. Johnson*, 616 N.W.2d 720, 727 (Minn. 2000). Corroborating evidence may be direct or circumstantial; it is viewed in a light most favorable to the verdict and, “while it need not establish a *prima facie* case of the defendant’s guilt, it must point to [the] defendant’s guilt in some substantial way.” *Id.*; see Minn. Stat. § 634.04 (Supp. 2013) (providing that accomplice testimony must be corroborated).

D. SENTENCING

1. In General

“[F]or purposes of appellate review, a continuance for dismissal is functionally equivalent to a stay of adjudication. Consequently, we review a continuance for dismissal

by applying the caselaw that applies to a stay of adjudication. Accordingly, a district court may order a continuance for dismissal only for the purpose of avoiding an injustice resulting from the prosecutor's *clear abuse of discretion* in the exercise of the charging function." *State v. Martin*, ___ N.W.2d ___, ___ (Minn. App. 2014) (quotation and citations omitted). "This court applies a *de novo* standard of review to a district court order that precludes adjudication of a defendant's guilt." *Id.* at ___.

"We review a district court's denial of a motion to correct a sentence [under Minn. R. Crim. P. 27.03, subd. 9] for an abuse of discretion. Specifically, we review the district court's legal conclusions *de novo* and its factual findings under the clearly erroneous standard." *Townsend v. State*, 834 N.W.2d 736, 738 (Minn. 2013) (citation omitted).

2. Interpretation of Guidelines

"[I]nterpretation of the sentencing guidelines [is] subject to *de novo* review . . . We apply the rules of statutory construction to our interpretation of the sentencing guidelines." *State v. Campbell*, 814 N.W.2d 1, 3 (Minn. 2012) (citation omitted).

3. Calculation of Sentence

a. Criminal History Score

The district court's determination of a defendant's criminal history score will not be reversed absent an abuse of discretion. *State v. Stillday*, 646 N.W.2d 557, 561 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

b. Jail Credit

"The granting of jail credit is not discretionary with the [district] court." *State v. Parr*, 414 N.W.2d 776, 778 (Minn. App. 1987), *review denied* (Minn. Jan. 15, 1988).

"Awards of jail credit are governed by principles of fairness and equity and must be determined on a case-by-case basis.' A defendant has the burden of establishing that he is entitled to jail credit for a specific period of time." *State v. Arend*, 648 N.W.2d 746, 748 (Minn. App. 2002) (quoting *State v. Bradley*, 629 N.W.2d 462, 464 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001)). We review the district court's factual findings concerning the credit the defendant seeks custody for under the clearly erroneous standard and then apply the rules of law to those circumstances under the *de novo* standard. *State v. Clarkin*, 817 N.W.2d 678, 687 (Minn. 2012).

c. Multiple Sentences

The district court's decision whether multiple offenses were committed as part of a single behavioral incident so as to preclude multiple sentencing entails factual determinations that will not be reversed unless clearly erroneous. *State v. O'Meara*, 755 N.W.2d 29, 37 (Minn. App. 2008). When the facts are not in

dispute, the decision whether multiple offenses are part of a single behavioral incident presents a question of law that is reviewed de novo. *State v. Ferguson*, 808 N.W.2d 586, 590 (Minn. 2012); *State v. Marchbanks*, 632 N.W.2d 725, 731 (Minn. App. 2001).

4. Imposition of Presumptive Sentence

“This court will not generally review a district court’s exercise of its discretion to sentence a defendant when the sentence imposed is within the presumptive guidelines range.” *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010).

5. Departures from Guidelines

a. In General

“[A] sentencing court has no discretion to depart from the sentencing guidelines unless aggravating or mitigating factors are present.” *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999).

“We review a sentencing court’s departure from the sentencing guidelines for abuse of discretion.” *State v. Geller*, 665 N.W.2d 514, 516 (Minn. 2003).

The question of whether a stated reason for departure is “proper” is a legal one. *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). The review of the district court’s decision *whether* to depart, based on identified and proper grounds for departure, is “extremely deferential.” *Id.* at 595-96. Less discretion is given to the length of departure, although a less-than-double departure is given more deference than a greater-than-double departure. *Id.* at 596.

b. Mitigating Factors

The district court must order the presumptive sentence provided in the sentencing guidelines unless the case involves “substantial and compelling circumstances” to warrant a downward departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). If the case involves substantial and compelling circumstances, it is within the district court’s discretion whether to depart. *State v. Best*, 449 N.W.2d 426, 427 (Minn. 1989). Only in a “rare” case will an appellate court reverse a sentencing court’s refusal to depart. *Kindem*, 313 N.W.2d at 7.

c. Aggravating Factors

Departures from presumptive sentences are reviewed under an abuse of discretion standard, but there must be “substantial and compelling circumstances” in the record to justify a departure. *Rairdon v. State*, 557 N.W.2d 318, 326 (Minn. 1996).

“If the record supports findings that substantial and compelling circumstances exist, this court will not modify the departure unless it has a ‘strong feeling’ that the sentence is disproportional to the offense.” *State v. Anderson*, 356 N.W.2d 453, 454 (Minn. App. 1984); *see also State v. Woelfel*, 621 N.W.2d 767, 774 (Minn. App. 2001), *review denied* (Minn. Mar. 27, 2001).

Imposing a more onerous sentence on retrial may give rise to a presumption of vindictiveness, and a violation of due process, if under the circumstances there is a reasonable likelihood of vindictive sentencing. *Alabama v. Smith*, 490 U.S. 794, 798-99, 109 S. Ct. 2201, 2205 (1989); *State v. Pflepsen*, 590 N.W.2d 759, 768 (Minn. 1999) (noting upon reconviction or resentencing after appeal, district court may not impose harsher sentence than was imposed in original trial).

The presumption of vindictiveness may be rebutted if the district court makes explicit findings on why new evidence justifies the imposition of a more onerous sentence. *Texas v. McCullough*, 475 U.S. 134, 137-38, 106 S. Ct. 976, 978 (1986) (quotations omitted); *State v. Carver*, 390 N.W.2d 431, 434 (Minn. App. 1986) (reversing and remanding for resentencing where the district court imposed consecutive sentences at resentencing).

6. Restitution

“[District] courts are given broad discretion in awarding restitution.” *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999).

“But determining whether an item meets the statutory requirements for restitution is a question of law that is fully reviewable by the appellate court.” *State v. Nelson*, 796 N.W.2d 343, 346-47 (Minn. App. 2011) (quoting *State v. Ramsey*, 789 N.W.2d 513, 517 (Minn. App. 2010)).

7. Probation Revocation

“The [district] court has broad discretion in determining if there is sufficient evidence to revoke probation and should be reversed only if there is a clear abuse of that discretion.” *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980).

Whether the district court made the findings required for revocation of probation is a question of law, which this court reviews de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

E. POSTCONVICTION RELIEF

1. In General

“When a defendant initially files a direct appeal and then moves for a stay to pursue postconviction relief, we review the postconviction court’s decisions using the same standard that we apply on direct appeal.” *State v. Beecroft*, 813 N.W.2d 814, 836 (Minn.

2012); *State v. Petersen*, 799 N.W.2d 653, 657 (Minn. App. 2011), review denied (Minn. Sept. 28, 2011) (same).

“When reviewing a postconviction court’s decision, we examine only whether the postconviction court’s findings are supported by sufficient evidence. We will reverse a decision of the postconviction court only if that court abused its discretion.” *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012) (quotation omitted).

In reviewing a postconviction court’s decision to grant or deny relief, issues of law are reviewed de novo and issues of fact are reviewed for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007); *Butala v. State*, 664 N.W.2d 333, 338 (Minn. 2003) (noting also that appellate courts “extend a broad review of both questions of law and fact” when reviewing postconviction proceedings).

“We review a denial of a petition for postconviction relief, as well as a request for an evidentiary hearing, for an abuse of discretion. A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (citations and quotations omitted).

Review of a denial of postconviction relief based on the *Knaffla* procedural bar is for an abuse of discretion. *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005).

The two-year statutory time bar for postconviction claims is not jurisdictional and may be waived by the state’s failure to assert it. *Carlton v. State*, 816 N.W.2d 590, 601 (Minn. 2012).

A summary denial of a postconviction petition is reviewed for an abuse of discretion. *Nicks v. State*, 831 N.W.2d 493, 503 (Minn. 2013). The threshold showing for a postconviction evidentiary hearing is lower than that required for a new trial. *Id.* at 504. And any doubts about whether to conduct an evidentiary hearing should be resolved in favor of the petitioner. *Id.*

A district court will not reverse the district court’s denial of a motion brought under Minn. R. Crim. P. 27.03, subd. 9, to correct a sentence, unless the district court abused its discretion or the original sentence was unauthorized by law. *Anderson v. State*, 794 N.W.2d 137, 139 (Minn. App. 2011), review denied (Minn. Apr. 27, 2011).

2. New Trial

a. In General

“The denial of a new trial by a postconviction court will not be disturbed absent an abuse of discretion and review is limited to whether there is sufficient evidence to sustain the postconviction court’s findings.” *State v. Hooper*, 620 N.W.2d 31, 40 (Minn. 2000).

b. Newly Discovered Evidence

A new trial based upon newly discovered evidence may be granted when a defendant proves: “(1) that the evidence was not known to the defendant or his/her counsel at the time of the trial; (2) that the evidence could not have been discovered through due diligence before trial; (3) that the evidence is not cumulative, impeaching, or doubtful; and (4) that the evidence would probably produce an acquittal or a more favorable result.” *Rainer v. State*, 566 N.W.2d 692, 695 (Minn. 1997). *But see Dukes v. State*, 621 N.W.2d 246, 257 (Minn. 2001) (“Although the four-prong *Rainer* test is the correct test for newly-discovered evidence, it is not the correct test when a court reviews an allegation that false testimony was given at trial.”).

c. Juror Misconduct

“The decision to grant a new trial based upon juror misconduct rests within the discretion of the [district] court and will not be reversed unless there is an abuse of discretion.” *State v. Landro*, 504 N.W.2d 741, 745 (Minn. 1993).

d. Witness Recantations/False Testimony

“Courts have traditionally looked with disfavor on motions for a new trial based on recantations unless extraordinary or unusual circumstances exist.” *Daniels v. State*, 447 N.W.2d 187, 188 (Minn. 1989).

When assessing the merits of a claim based on false or recanted testimony, the reviewing court applies the test set forth in *Larrison v. United States*, 24 F.2d 82, 87-88 (7th Cir. 1928), *overruled by United States v. Mihione*, 357 F.3d 712, 718 (7th Cir. 2004). *Roby v. State*, 808 N.W.2d 20, 27 n.6 (Minn. 2011). A new trial based on false testimony may be granted where (1) the court is reasonably well satisfied the testimony was false; (2) the jury might have reached a different conclusion without the testimony; and (3) the petitioner was surprised by the testimony and was unable to counteract it or did not know it was false until after the trial. *State v. Nicks*, 831 N.W.2d 493, 511 (Minn. 2013); *Dobbins v. State*, 788 N.W.2d 719, 733 (Minn. 2010).

3. Ineffective Assistance of Counsel

“The defendant must affirmatively prove that his counsel’s representation ‘fell below an objective standard of reasonableness’ and ‘that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.’” *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)).

“Recognizing that it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable, *Strickland* admonishes reviewing courts to judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” *State v. Rhodes*, 657 N.W.2d 823, 844 (Minn. 2003) (quotations and citations omitted).

“We review the denial of postconviction relief based on a claim of ineffective assistance of counsel de novo because such a claim involves a mixed question of law and fact.” *Hawes v. State*, 826 N.W.2d 775, 782 (Minn. 2013).

4. Motion for Release Pending Appeal

“[A]ppellate review under Rule 28.02, subd. 7(3) [involving motion for release pending appeal], unlike that provided in petitions for extraordinary writs, is de novo.” *State v. Johnson*, 447 N.W.2d 605, 607 (Minn. App. 1989).

The district court is in a “far better position” than an appellate court to determine whether the appellant has made the showing required for release pending appeal. *State v. McKinley*, 424 N.W.2d 586, 586-87 (Minn. App. 1988).

F. FUNDING UNDER MINN. STAT. § 611.21

In reviewing a district court order under Minn. Stat. § 611.21(a) (2012) for payment of expert-witness fees on behalf of a defendant, “the district court’s determination of reasonable compensation should be reviewed under an abuse of discretion standard.” *In re Jobe*, 477 N.W.2d 723, 725 (Minn. App. 1991).

VI. QUASI-CRIMINAL

A. JUVENILE

1. Delinquency Adjudications

“On appeal from a determination that each of the elements of a delinquency petition have been proved beyond a reasonable doubt, an appellate court is limited to ascertaining whether, given the facts and legitimate inferences, a fact-finder could reasonably make that determination. This court must assume that the fact-finder believed the state’s witnesses and disbelieved any contrary evidence.” *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 768 (Minn. App. 2001) (quotation and citations omitted).

“In reviewing the sufficiency of the evidence the court applies the same standard to bench and jury trials. The sufficiency standard is that the reviewing court views the evidence in the light most favorable to the state and decides whether the fact-finder could have reasonably found the defendant guilty. When the evidence is circumstantial, it must form a complete chain that, viewed as whole, leads so directly to the guilt of the defendant as to exclude any reasonable inference of doubt of guilt. The factual findings of the district court are upheld unless clearly erroneous.” *In re Welfare of M.E.M.*, 674 N.W.2d 208, 215 (Minn. App. 2004) (citations omitted).

In juvenile delinquency matters, “[w]e review questions of law de novo.” *In re Welfare of R.J.E.*, 642 N.W.2d 708, 710-11 (Minn. 2002).

2. Stops

When reviewing the legality of a stop and subsequent seizure and search, an appellate court will not reverse the district court’s findings unless clearly erroneous, but the appellate court reviews the district court’s determination of reasonable suspicion as it relates to *Terry* stops and probable cause as it relates to warrantless searches de novo. *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997).

3. Miranda

“We review findings of fact surrounding a purported *Miranda* waiver for clear error, and we review legal conclusions based on those facts de novo to determine whether the state has shown by a fair preponderance of the evidence that the suspect’s waiver was knowing, intelligent, and voluntary.” *State v. Burrell*, 697 N.W.2d 579, 591 (Minn. 2005) (addressing inadequate *Miranda* waiver of juvenile later tried as an adult).

“[W]hether a defendant was in custody at the time of an interrogation is a mixed question of law and fact, requiring the appellate court to apply the controlling legal standard to historical facts as determined by the [district] court. The appellate court reviews the district court’s findings of fact under the clearly erroneous standard of review but reviews de novo the district court’s custody determination and the need for a *Miranda* warning.”

In re Welfare of D.S.M., 710 N.W.2d 795, 797 (Minn. App. 2006) (quotations and citation omitted).

Determining when a juvenile suspect would believe that he or she was in custody the circumstances are viewed from the perspective of the juvenile. “[T]his court must ask whether a reasonable person in [the juvenile’s] situation would have believed that he was in custody. Proper constitutional analysis of custodial interrogation should focus primarily on the perspective of the suspect, rather than the subjective intent of the police.” *In re Welfare of G.S.P.*, 610 N.W.2d 651, 657 (Minn. App. 2000) (holding 12-year-old’s statements to uniformed police officer in principal’s office were inadmissible because taken in violation of *Miranda*) (citation omitted).

The harmless error analysis directs an appellate court to consider the impact of an error at trial, and a determination that a district court erred in admitting a juvenile’s statement does not automatically result in a reversal and the granting of a new trial. *In re Welfare of T.J.C.*, 670 N.W.2d 629, 631 (Minn. App. 2003), *review denied* (Minn. Jan. 20, 2004).

4. Review of Pretrial Ruling

A juvenile may seek review of a pretrial issue involving the suppression of evidence by stipulating to the state’s case, as approved in *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980), and harmless error review does not apply. *In re Welfare of R.J.E.*, 642 N.W.2d 708, 713 (Minn. 2002).

5. Certification and Extended Jurisdiction Juvenile (EJJ) Designation

“We review under a clearly erroneous standard the juvenile court’s finding that the prosecutor proved by clear and convincing evidence that public safety would be served by designating respondent’s prosecution EJJ.” *In re Welfare of D.M.D.*, 607 N.W.2d 432, 437 (Minn. 2000).

“A district court has considerable latitude in deciding whether to certify, and this court will not upset its decision unless its findings are clearly erroneous so as to constitute an abuse of discretion.” *In re Welfare of S.J.T.*, 736 N.W.2d 341, 346 (Minn. App. 2007) (citation omitted), *review denied* (Minn. Oct. 24, 2007).

“We review the juvenile court’s decision to certify a child to adult court for an abuse of discretion. Specifically, we review questions of law de novo, and we review findings of fact under the clearly erroneous standard. We will not disturb a finding about whether public safety would be served by retaining the proceeding in juvenile court unless it is clearly erroneous. In determining whether the juvenile court’s findings are clearly erroneous, we view the record in the light most favorable to the juvenile court’s findings.” *In re Welfare of J.H.*, 844 N.W.2d 28. 34-35 (Minn. 2014) (citations omitted).

6. Dispositions and Requirement of Findings

“The district court has broad discretion to order dispositions authorized by statute [in juvenile proceedings], and the disposition will not be disturbed absent an abuse of discretion.” *In re Welfare of J.S.H.-G.*, 645 N.W.2d 500, 504 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

“The [district] court has broad discretion in choosing the appropriate juvenile delinquency disposition. This court will affirm the disposition as long as it is not arbitrary. Findings of fact in the dispositional order will be accepted unless clearly erroneous. Absent a clear abuse of discretion, a [district] court’s disposition will not be disturbed.” *In re Welfare of J.A.J.*, 545 N.W.2d 412, 414 (Minn. App. 1996) (citations omitted).

Written dispositional findings “are essential to meaningful appellate review,” and failure to make sufficient written findings constitutes reversible error. *In re Welfare of N.T.K.*, 619 N.W.2d 209, 211-12 (Minn. App. 2000); *see also* Minn. Stat. § 260B.198, subd. 1 (2012) (requiring order with findings as to the necessary disposition for rehabilitation of a delinquent child); Minn. R. Juv. Delinq. P. 15.05, subd. 2 (setting out requirement of findings).

Absent a clear abuse of discretion, a reviewing court will affirm a probation revocation order and a disposition in a juvenile delinquency case. *In re Welfare of R.V.*, 702 N.W.2d 294, 298 (Minn. App. 2005). And when revoking the juvenile’s probation, the district court need not follow the three-step probation revocation analysis set forth in *State v. Austin*, 295 N.W.2d 246 (Minn. 1980), but must make sufficient written findings in support of its disposition order. *Id.* at 302-04 (noting that the juvenile rules afford probationers better protection than *Austin* would afford). But note that the *Austin* factors do apply to EJJ revocations when the district court revokes probation and executes a previously stayed adult sentence. *State v. B.Y.*, 659 N.W.2d 763, 772 (Minn. 2003).

B. IMPLIED CONSENT LAW

1. Findings of Fact

“The clearly erroneous standard controls our review of a district court’s factual findings.” *In re Source Code Evidentiary Hearings*, 816 N.W.2d 525, 537 (Minn. 2012).

“As for the district court’s findings of fact, they will not be set aside unless clearly erroneous. We hold findings of fact as clearly erroneous only when we are left with a definite and firm conviction that a mistake has been committed. When findings of fact rest almost entirely on expert testimony, the district court’s evaluation of credibility is of particular significance.” *Jasper v. Comm’r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002) (quotations and citations omitted); *see Ellingson v. Comm’r of Pub. Safety*, 800 N.W.2d 805, 806 (Minn. App. 2011) (same), *review denied* (Minn. Aug. 24, 2011).

“This issue [of whether the arresting officer unlawfully prevented or denied the driver’s right to obtain an additional chemical test] includes both questions of law and of fact. The district court’s findings of fact must be sustained unless clearly erroneous, but this court reviews *de novo* whether, as a matter of law, the driver’s right to an independent test was prevented or denied. Findings of fact are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Schulz v. Comm’r of Pub. Safety*, 760 N.W.2d 331, 333 (Minn. App. 2009) (citation and quotations omitted), *review denied* (Minn. Apr. 21, 2009).

“Due regard is given the district court’s opportunity to judge the credibility of witnesses, and findings of fact will not be set aside unless clearly erroneous.” *Snyder v. Comm’r of Pub. Safety*, 744 N.W.2d 19, 22 (Minn. App. 2008).

“A remand may be required if the district court fails to make adequate findings. A remand is unnecessary, however, when we are able to infer the findings from the district court’s conclusions.” *Welch v. Comm’r of Pub. Safety*, 545 N.W.2d 692, 694 (Minn. App. 1996) (citation omitted).

“In *Sigurdson*, this court held that adopting proposed findings did not constitute reversible error *per se*, and that the clearly erroneous standard remains the proper standard of review. *Id.* Because there was no basis in the record for the Commissioner’s proposed findings of fact regarding details related to the stop, probable cause, and the arrest, the trial court’s adoption of the findings was clearly erroneous. However, because there are no challenges on appeal as to the merits of the stipulated issues, the error is harmless.” *Przymus v. Comm’r of Pub. Safety*, 488 N.W.2d 829, 832 (Minn. App. 1992) (citing *Sigurdson v. Isanti Cnty.*, 408 N.W.2d 654, 657 (Minn. App. 1987), *review denied* (Minn. Aug. 19, 1987)), *review denied* (Minn. Sept. 15, 1992).

2. Conclusions of Law

“When the facts of a case are undisputed, probable cause is a question of law to be reviewed *de novo*.” *Shane v. Comm’r of Pub. Safety*, 587 N.W.2d 639, 641 (Minn. 1998).

“Whether the stop in this case was valid is, for the appellate court, purely a legal determination on given facts. This is because the [district] court expressly credited the testimony of [the deputy], stating that he was ‘very honest.’ Therefore, the appropriate approach to reviewing this case is not to use the ‘clearly erroneous’ test – which is the test which would be used in the first instance if the [district] court had rejected some of the deputy’s testimony, *State v. Kvam*, 336 N.W.2d 525, 528-29 (Minn. 1983) – but to simply analyze the testimony of the officer and determine whether, as a matter of law, his observations provided an adequate basis for the stop.” *Berge v. Comm’r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985).

Where the appellant “raises only a question of law, our review is *de novo*.” *Harrison v. Comm’r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010) (addressing constitutional challenges).

“We review a district court’s determination regarding the legality of an investigatory traffic stop and questions of reasonable suspicion de novo.” *Wilkes v. Comm’r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2010).

“After the facts are determined, this court must apply the law to determine if probable cause existed.” *Groe v. Comm’r of Pub. Safety*, 615 N.W.2d 837, 840 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000).

When the facts are undisputed, “it is a legal determination whether [the driver] was accorded a reasonable opportunity to consult with counsel based on the given facts.” *Kuhn v. Comm’r of Pub. Safety*, 488 N.W.2d 838, 840 (Minn. App. 1992), *review denied* (Minn. Oct. 20, 1992).

“Conclusions of law will be overturned only upon a determination that the district court has erroneously construed and applied the law to the facts of the case.” *Dehn v. Comm’r of Pub. Safety*, 394 N.W.2d 272, 273 (Minn. App. 1986).

3. Abuse of Discretion

“Rulings on evidentiary matters rest within the sound discretion of the district court and will not be reversed on appeal absent a clear abuse of discretion.” *In re Source Code Evidentiary Hearings*, 816 N.W.2d 525, 537 (Minn. 2012).

“[A] trial judge has wide discretion to issue discovery orders and, absent clear abuse of that discretion, normally its order with respect thereto will not be disturbed. We review a district court’s order for an abuse of discretion by determining whether the district court made findings unsupported by the evidence or by improperly applying the law.” *Underdahl v. Comm’r of Pub. Safety (In re Comm’r of Pub. Safety)*, 735 N.W.2d 706, 711 (Minn. 2007) (alteration in original) (quotation omitted).

In implied-consent proceedings, “[w]e apply an abuse-of-discretion standard of review to a district court’s ruling on the admissibility of expert testimony.” *Hayes v. Comm’r of Pub. Safety*, 773 N.W.2d 134, 136-37 (Minn. App. 2009), *review denied* (Minn. Dec. 23, 2009).

4. Statutory Interpretation

“The parties’ arguments present an issue of statutory interpretation, which we review de novo. When a statute is ‘clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.’ Minn. Stat. § 645.16 (2012).” *Axelberg v. Comm’r of Pub. Safety*, 848 N.W.2d 206, 208 (Minn. 2014) (citation omitted).

“Statutory interpretation presents a question of law, which we review de novo.” *Johnson v. Comm’r of Pub. Safety*, 756 N.W.2d 140, 143 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008).

“The Minnesota Supreme Court has repeatedly recognized that laws prohibiting a person from driving a motor vehicle while intoxicated are remedial statutes. Consequently, such laws are liberally interpreted in favor of the public interest and against the private interest of the drivers involved.” *Sands v. Comm’r of Pub. Safety*, 744 N.W.2d 24, 26-27 (Minn. App. 2008) (quotation omitted).

C. HABEAS CORPUS

1. Review of District Court’s Decision

“The district court’s findings in support of a denial of a petition for a writ of habeas corpus are entitled to great weight and will be upheld if reasonably supported by the evidence.” *Aziz v. Fabian*, 791 N.W.2d 567, 569 (Minn. App. 2010).

Questions of law pertaining to a habeas petition are subject to de novo review. *Aziz v. Fabian*, 791 N.W.2d 567, 569 (Minn. App. 2010).

“An appellate court will review a habeas corpus decision de novo where, as here, the facts are undisputed.” *State ex rel Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006); *Joelson v. O’Keefe*, 594 N.W.2d 905, 908 (Minn. App. 1999), *review denied* (Minn. July 28, 1999).

Where the issue raised in a petition involves the interpretation of statutes, it is subject to de novo review on appeal. *State ex. rel. McMaster v. Benson*, 495 N.W.2d 613, 614 (Minn. App. 1993), *review denied* (Minn. Mar. 11, 1993).

2. Extradition

“In an extradition case, a finding by the [district] court that the habeas corpus petitioner has failed to meet his burden of proof should be affirmed unless clearly erroneous.” *Perez v. Sheriff of Watonwan Cnty.*, 529 N.W.2d 346, 349 (Minn. App. 1995).

3. Review of Revocation of Supervised Release or Prison Disciplinary Proceedings

The Department of Corrections fact-finder must find by a preponderance of the evidence that an inmate has violated a disciplinary rule before it can extend an inmate’s supervised release date for that rule violation. *Carrillo v. Fabian*, 701 N.W.2d 763, 777 (Minn. 2005) (holding that petitioner has protected liberty interest in supervised release date, which triggers right to procedural due process, and rejecting department’s use of “some evidence” standard of proof at fact-finding level as violating due process).

“This court reviews a decision to revoke an offender’s release for a clear abuse of discretion” and “defers to a fact-finder’s credibility determinations.” *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 27 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

D. EXPUNGEMENT

“A district court’s exercise of its inherent authority to expunge records that are located within the judicial branch is a matter of equity, which this court reviews under an abuse-of-discretion standard of review, although findings of fact underlying a district court’s decision will be set aside if they are clearly erroneous.” *State v. N.G.K.*, 770 N.W.2d 177, 180 (Minn. App. 2009) (citations omitted).

“Whether a court has inherent authority to issue an expungement order affecting the executive branch is a question of law, which is subject to a *de novo* standard of review.” *State v. N.G.K.*, 770 N.W.2d 177, 181 (Minn. App. 2009).

“The exercise of a court’s inherent power to expunge is a matter of equity, and we therefore review the district court’s conclusion under an abuse-of-discretion standard.” *State v. Ambaye*, 616 N.W.2d 256, 261 (Minn. 2000).

The proper construction of the statutory expungement statute, Minn. Stat. § 609A.02, is a question of law that is reviewed *de novo*. *State v. Ambaye*, 616 N.W.2d 256, 258 (Minn. 2000).

“A district court’s findings of fact will not be set aside unless clearly erroneous. Clearly erroneous means manifestly contrary to the weight of the evidence or not supported by the evidence as a whole.” *State v. H.A.*, 716 N.W.2d 360, 363 (Minn. App. 2006) (quotation and citation omitted).

The question whether the district court exceeded the scope of its inherent authority to expunge criminal records is a question of law, which is reviewed *de novo*. *State v. M.D.T.*, 831 N.W.2d 276, 279 (Minn. 2013) (holding that the district court did not have inherent authority to expunge executive branch records).

VII. ADMINISTRATIVE – GENERAL

A. GENERAL PRINCIPLES

1. Reviewability

“There is a presumption in favor of judicial review of agency decisions in the absence of statutory language to the contrary.” *In re North Metro Harness Inc.*, 711 N.W.2d 129, 133-34 (Minn. App. 2006) (quotation omitted), *review denied* (Minn. June 20, 2006).

2. Agency Jurisdiction

Whether an agency has jurisdiction over a matter is a legal question and thus a reviewing court need not defer to “agency expertise” or the district court’s decision on the issue. *In re N. States Power Co.*, 775 N.W.2d 652, 656 (Minn. App. 2009).

“Whether an administrative agency has acted within its statutory authority is a question of law that we review *de novo*.” *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010) (footnote omitted).

a. Constitutional Issues

“[A]n administrative agency lacks subject matter jurisdiction to decide constitutional issues because those questions are within the exclusive province of the judicial branch.” *Holmberg v. Holmberg*, 578 N.W.2d 817, 820 (Minn. App. 1998) (citing *Neeland v. Clearwater Mem’l Hosp.*, 257 N.W.2d 366, 368 (Minn. 1977)), *aff’d* 588 N.W.2d 720 (Minn. 1999); *see also In re PERA Salary Determinations Affecting Retired and Active Emps. of City of Duluth*, 820 N.W.2d 563, 575 (Minn. App. 2012).

3. Burden of Proof on Appeal

The party challenging an agency decision bears the burden of proving that the decision violated provisions of the Minnesota Administrative Procedures Act. *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 118 (Minn. 2009).

4. Presumption of Correctness/Deference

An administrative agency’s decision enjoys a presumption of correctness; the appellate court defers to the agency’s expertise and special knowledge in its field. *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 514 (Minn. 2007).

“We consider an agency’s expertise or special knowledge when: (a) the agency is interpreting a regulation that is unclear or susceptible to more than one reasonable interpretation or the agency’s interpretation is reasonable, or (b) when the application of the regulation is primarily factual and necessarily requires application of the agency’s technical knowledge and expertise to the facts presented.” *In re Review of 2005 Annual*

Automatic Adjustment of Charges, 768 N.W.2d 112, 119 (Minn. 2009) (quotation and citations omitted).

“The agency decision-maker is presumed to have the expertise necessary to decide technical matters within the scope of the agency’s authority, and judicial deference, rooted in the separation of powers doctrine, is extended to an agency decision-maker in the interpretation of statutes that the agency is charged with administering and enforcing. We defer to an agency’s conclusions regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony.” *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001) (footnote omitted) (citations omitted).

“The standard of review is not heightened where the final decision of the agency decision-maker differs from the recommendation of the ALJ.” *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 289 (Minn. App. 2010).

“An appellate court may reverse or modify an administrative decision if substantial rights of the petitioners have been prejudiced by administrative findings, inferences, conclusions or decisions that are unsupported by substantial evidence in view of the entire record, or arbitrary and capricious, but the court must also recognize the need for exercising judicial restraint and for restricting judicial functions to a narrow area of responsibility lest [the court] substitute its judgment for that of the agency.” *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001) (quotation and citations omitted).

“We presume the agency’s decision . . . is correct, but the court may reverse an agency decision if the decision was affected by an error of law.” *N. States Power Co. v. Minn. Pub. Utils. Comm’n*, 344 N.W.2d 374, 377 (Minn. 1984).

“Even if a constitutional issue is involved, the challenged determination of a legislative or administrative body may be due judicial deference if the underlying decision-making process is designed to effectively produce a correct or just result or if the decision is informed by considerable expertise.” *Buettner v. City of St. Cloud*, 277 N.W.2d 199, 204 (Minn. 1979).

“[W]e have deferred to an agency’s expertise and special knowledge when (1) the agency is interpreting a regulation that is unclear and susceptible to more than one interpretation; and (2) the agency’s interpretation is reasonable.” *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 515 (Minn. 2007).

“If an administrative agency engages in reasoned decisionmaking, the court will affirm, even though it may have reached a different conclusion had it been the factfinder. The court will intervene, however, where there is a “combination of danger signals which suggest the agency has not taken a ‘hard look’ at the salient problems” and the decision lacks “articulated standards and reflective findings.” *Cable Commc’ns Bd. v. Nor-West*

Cable Commc'n's P'ship, 356 N.W.2d 658, 669 (Minn. 1984) (quoting *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977)) (citations omitted).

5. Agency Interpretations of Statutes and Rules

a. In General

“When a decision turns on the meaning of words in a statute or regulation, a legal question is presented. In considering such questions of law, reviewing courts are not bound by the decision of the agency and need not defer to agency expertise.” *St. Otto’s Home v. Minn. Dep’t of Human Servs.*, 437 N.W.2d 35, 39-40 (Minn. 1989) (citations omitted).

“When . . . the language of an administrative rule is clear and capable of understanding, interpretation of the rule presents a question of law reviewed de novo.” *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002); *see also In re Rate Appeal of Benedictine Health Ctr.*, 728 N.W.2d 497, 503 (Minn. 2007).

“[W]hen a decision turns on the meaning of words in an agency’s own regulation, it is a question of law that we review de novo.” *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 515 (Minn. 2007).

The appellate court reviews questions of statutory construction de novo. *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 122 (Minn. 2007).

“We retain the authority to review de novo errors of law which arise when an agency decision is based upon the meaning of words in a statute.” *In re Denial of Eller Media Co.’s Applications for Outdoor Adver. Device Permits*, 664 N.W.2d 1, 7 (Minn. 2003).

“We note that on matters of statutory interpretation, this court is not bound by the determination of an administrative agency. The manner in which the agency has construed a statute may be entitled to some weight, however, where (1) the statutory language is technical in nature, and (2) the agency’s interpretation is one of long-standing application.” *Arvig Tel. Co. v. Nw. Bell Tel. Co.*, 270 N.W.2d 111, 114 (Minn. 1978); *see also In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 289 (Minn. App. 2010).

b. Deference/Ambiguity

The appellate court reviews de novo the meaning of the words in a regulation as a question of law. If the meaning of the regulation is clear and unambiguous, the reviewing court gives no deference to the agency's interpretation. *In re Rate Appeal of Benedictine Health Ctr.*, 728 N.W.2d 497, 503 (Minn. 2007).

"When the agency's construction of its own regulation is at issue, however, considerable deference is given to the agency interpretation, especially when the relevant language is unclear or susceptible to different interpretations. If a regulation is ambiguous, agency interpretation will generally be upheld if it is reasonable. No deference is given to the agency interpretation if the language of the regulation is clear and capable of [being understood]; therefore, the court may substitute its own judgment." *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 40 (Minn. 1989) (footnote omitted) (citations omitted).

"When an agency's regulation is ambiguous, we will give deference to the agency's interpretation and will generally uphold that interpretation if it is reasonable." *Risdall v. Brown-Wilbert, Inc.*, 753 N.W.2d 723, 733 (Minn. 2008) (quotation omitted).

The appellate court will defer to the agency's expertise and special knowledge "when (1) the agency is interpreting a regulation that is unclear and susceptible to more than one interpretation; and (2) the agency's interpretation is reasonable." *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 515 (Minn. 2007). The appellate court will also "consider the agency's expertise and special knowledge when reviewing an agency's application of a regulation when application of the regulation is primarily factual and necessarily requires application of the agency's technical knowledge and expertise to the facts presented." *Id.* n.9 (quotation omitted).

"[T]here are several factors courts need to consider when determining whether to give deference to an agency's interpretation [of its own regulation]. These factors include whether the agency is legally required to enforce and administer the regulation under review and whether the meaning of the words in the regulation is clear and unambiguous or is unclear and susceptible to different reasonable interpretations—ambiguous." *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 516 (Minn. 2007).

"When the language of a regulation is unclear or susceptible to different interpretations, we consider several factors to determine the level of judicial deference afforded to the agency's interpretation. First, we consider the nature of the regulation at issue. . . . Second, we consider the agency's expertise and judgment; specifically, we examine whether the subject matter of the regulation is within the agency's technical training, education, and experience. . . . Third, we will defer to the agency's expertise and special knowledge when the agency's interpretation of an unclear regulation is reasonable." *In re Alexandria Lake Area*

Sanitary Dist. NPDES/SDS Permit, 763 N.W.2d 303, 312-13 (Minn. 2009) (quotation and citations omitted).

6. Findings of Fact

“With respect to factual findings made by the agency in its judicial capacity, if the record contains substantial evidence supporting a factual finding, the agency’s decision must be affirmed.” *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 290 (Minn. App. 2010) (quotation omitted).

The reviewing court must not substitute its judgment for that of the administrative body when its findings are properly supported by evidence. *In re Denial of Eller Media Co.’s Applications for Outdoor Device Advert. Permits*, 664 N.W.2d 1, 7 (Minn. 2003).

“We defer to an agency’s conclusion regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony.” *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).

“[A] substantial judicial deference is to be accorded to the fact-finding processes of the administrative agency.” *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 279 (Minn. 2001) (quotation omitted).

“We defer to an agency’s conclusions regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony.” *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).

Absent manifest injustice, inferences drawn from the evidence by an agency must be accepted by a reviewing court “even though it may appear that contrary inferences would be better supported or that the reviewing court would be inclined to reach a different result were it the trier of fact.” *Ellis v. Minneapolis Comm’n on Civil Rights*, 295 N.W.2d 523, 525 (Minn. 1980).

B. QUASI-JUDICIAL DECISION-MAKING

1. Defined

“An agency acts in a quasi-judicial manner when the commission hears the view of opposing sides presented in the form of written and oral testimony, examines the record and makes findings of fact.” *In re North Metro Harness, Inc.*, 711 N.W.2d 129, 137 (Minn. App. 2006) (quotation omitted), *review denied* (Minn. June 20, 2006).

2. Review When Minnesota Administrative Procedures Act (MAPA) Applies

a. Contested Case Defined

A “contested case” is “a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing.” Minn. Stat. § 14.02, subd. 3 (2012).

b. Standard of Review

“In a judicial review [of a contested-case hearing] the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.”

Minn. Stat. § 14.69 (2012).

3. Review Under Common-Law Standard

“On certiorari appeal from a quasi-judicial agency decision not subject to the [Minnesota] Administrative Procedure Act, we examine the record to review questions affecting the jurisdiction of the [agency], the regularity of its proceedings, and, as to the merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.” *Anderson v. Comm'r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012), *review denied* (Minn. Apr. 17, 2012).

“An agency’s quasi-judicial determinations will be upheld unless they are unconstitutional, outside the agency’s jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious.” *Cole v. Metro. Council HRA*, 686 N.W.2d 334, 336 (Minn. App. 2004) (quotation omitted).

“A quasi-judicial decision of an agency that does not have statewide jurisdiction will be reversed if the decision is fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on an error of law.” *Axelson v. Minneapolis Teacher’s Retirement Fund Ass’n*, 544 N.W.2d 297, 299 (Minn. 1996) (citing *Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 675 (Minn. 1990)).

The MAPA “scope of review is similar to the common law scope of review on certiorari. Thus, the same standard applies regardless of the applicability of [MAPA].” *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 304 n.1 (Minn. App. 2007) (acknowledging that MAPA has sometimes been cited in cases to which it does not apply).

4. Review of District Court Decision

“Where the [district] court reviewing an agency decision makes independent factual determinations and otherwise acts as a court of first impression, this court applies the clearly erroneous standard of review. Where, on the other hand, the [district] court is itself acting as an appellate tribunal with respect to the agency decision, this court will independently review the agency’s record.” *In re Hutchinson*, 440 N.W.2d 171, 175 (Minn. App. 1989) (citations and quotation marks omitted), *review denied* (Minn. Aug. 9, 1989); *see also In re Expulsion of N.Y.B.*, 750 N.W.2d 318, 323-24 (Minn. App. 2008).

“[I]f the [district] court conducts a de novo hearing, then appellate inquiry is limited to whether the district court’s findings are clearly erroneous.” *Fisher Nut Co. v. Lewis ex rel. Garcia*, 320 N.W.2d 731, 734 (Minn. 1982).

“In reviewing decisions of administrative agencies, [an appellate court] is not bound by the district court’s decision. [The appellate court] may conduct an independent examination of the administrative agency’s record and decision and arrive at its own conclusions as to the propriety of that determination.” *Signal Delivery Serv., Inc. v. Brynwood Transfer Co.*, 288 N.W.2d 707, 710 (Minn. 1980); *see also In re Fin. Responsibility for Mental Health Servs. Provided to D.F.*, 656 N.W.2d 576, 578 (Minn. App. 2003).

5. Arbitrary and Capricious

“[A]n agency ruling is arbitrary and capricious if the agency (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency’s expertise.” *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm’rs*, 713 N.W.2d 817, 832 (Minn. 2006).

An agency’s conclusions are not arbitrary and capricious so long as there is a rational connection between the facts found and the choice made. *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 120 (Minn. 2009) (quotation and citations omitted).

“If there is room for two opinions on a matter, the [c]ommission’s decision is not arbitrary and capricious, even though the court may believe that an erroneous decision was reached.” *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 120 (Minn. 2009).

“Rejection of the ALJ’s recommendations without explanation[,] however, may suggest that the agency exercised its will rather than its judgment and was therefore arbitrary and capricious.” *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).

6. Substantial Evidence

“Substantial evidence is defined as: (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Cannon v. Minneapolis Police Dep’t*, 783 N.W.2d 182, 189 (Minn. App. 2010) (quotation omitted).

“The substantial evidence test requires a reviewing court to evaluate the evidence relied upon by the agency in view of the entire record as submitted. If an administrative agency engages in reasoned decisionmaking, the court will affirm, even though it may have reached a different conclusion had it been the factfinder. The court will intervene, however, where there is a combination of danger signals which suggest the agency has not taken a hard look at the salient problems and the decision lacks articulated standards and reflective findings.” *Cable Commc’ns Bd. v. Nor-west Cable Commc’ns P’ship*, 356 N.W.2d 658, 668-69 (Minn. 1984) (quotations and citations omitted).

C. QUASI-LEGISLATIVE DECISION-MAKING

1. Defined

“An agency exercises a legislative as opposed to a quasi-judicial function when it balances cost and noncost factors and makes choices among public policy alternatives. The agency acts in its legislative capacity in determining the extent to which competition should be permitted or limited.” *In re Qwest’s Wholesale Serv. Quality Standards*, 678 N.W.2d 58, 62 (Minn. App. 2004) (citation omitted).

2. Standard of Review

“When an agency exercises a legislative function, its decision is affirmed unless it is shown, by clear and convincing evidence, to be in excess of statutory authority or to have unjust, unreasonable, or discriminatory results.” *In re Qwest’s Wholesale Serv. Quality Standards*, 678 N.W.2d 58, 62 (Minn. App. 2004).

D. RULEMAKING

1. Defined

A “rule” is defined as “every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure.” Minn. Stat. § 14.02, subd. 4 (2012).

2. Standard of Review

“The validity of any rule may be determined upon the petition for a declaratory judgment thereon, addressed to the Court of Appeals, when it appears that the rule, or its threatened

application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner.” Minn. Stat. § 14.44 (2012).

“In proceedings under section 14.44, the court shall declare the rule invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rulemaking procedures.” Minn. Stat. § 14.45 (2012); *see also Minn.-Dakotas Retail Hardware Ass’n v. State*, 279 N.W.2d 360, 363 (Minn. 1979) (clarifying “the scope and nature of judicial review of prospective administrative regulations” as provided by statute).

A rule “is unreasonable (and therefore invalid) when it fails to comport with substantive due process because it is not rationally related to the objective sought to be achieved.” *Mammenga v. State Dep’t of Human Servs.*, 442 N.W.2d 786, 789 (Minn. 1989).

“The standard of review in a pre-enforcement action [questioning the validity of the process by which the rule was made and its general validity] is more limited than it would be in a challenge to enforcement of a rule in a contested-case appeal.” *Peterson v. Dep’t of Labor & Indus.*, 591 N.W.2d 76, 78-79 (Minn. App. 1999), *review denied* (Minn. May 18, 1999). The appellate court reviews an agency’s rulemaking proceedings using an arbitrary and capricious standard. The agency must provide the evidence on which it relied and show how that evidence rationally supports the agency’s action. *Id.*

E. REVIEW OF SPECIFIC AGENCIES

1. Bureau of Mediation Services (BMS)

“This court will affirm the BMS Commissioner’s decision unless, upon independent evaluation, the decision is shown to be unsupported by the substantial evidence, based upon errors of law, or arbitrary and capricious.” *Minn. Teamsters Pub. & Law Enforcement Emps. Union, Local No. 320 v. County of McLeod*, 509 N.W.2d 554, 556 (Minn. App. 1993).

2. Department of Employment and Economic Development (See Section VIII)

3. Department of Health/Department of Human Services – Disqualification from employment with licensed facilities

“The commissioner’s decision whether to grant a request for reconsideration is a quasi-judicial agency decision not subject to the [Minnesota] Administrative Procedure Act, Minnesota Statutes sections 14.63-.69 (2010). On certiorari appeal from a quasi-judicial agency decision not subject to the [Minnesota] Administrative Procedure Act, we examine the record to review questions affecting the jurisdiction of the [agency], the regularity of its proceedings, and, as to the merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.” *Anderson v. Comm’r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012) (citations and quotations omitted).

“On a certiorari appeal from an agency’s quasi-judicial action, we review the record to determine whether (1) the agency had jurisdiction over the matter; (2) the agency followed the correct procedure; and (3) the agency’s determination of the merits of the controversy was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it. This court reviews questions of law, including interpretation of a statute, *de novo*.¹ *Smith v. Minn. Dep’t of Human Servs.*, 764 N.W.2d 388, 391 (Minn. App. 2009) (citations and quotations omitted).

“Unless the Commissioner’s decision is arbitrary and capricious and without substantial support in the record, we shall affirm. When reviewing questions of law, however, we are not bound by the agency’s decision, and we need not defer to the agency’s expertise.” *Dozier v. Comm’r of Human Servs.*, 547 N.W.2d 393, 395 (Minn. App. 1996) (citation omitted), *review denied* (Minn. July 10, 1996).

4. Retirement Boards

“We have analogized a public retirement fund board to an administrative agency.” *Axelson v. Minneapolis Teachers’ Retirement Fund Ass’n*, 544 N.W.2d 297, 299 (Minn. 1996).

“For the purposes of appellate review, a public-retirement-fund board, like the PERA board of trustees, is analogous to an administrative agency.”² *In re PERA Salary Determinations Affecting Retired and Active Emps. of City of Duluth*, 820 N.W.2d 563, 569 (Minn. App. 2012) (quoting *In re Disability Earnings Offset of Masson*, 753 N.W.2d 755, 757 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008)).

5. Environmental-Review Decisions (Various Responsible Governmental Units (RGUs))

“In 2011, the legislature amended the Minnesota Statutes to allow persons aggrieved by environmental-review decisions to appeal directly to this court, rather than first appealing to the district court. This court has historically reviewed challenges to environmental-review decisions ‘without according deference to the district court’s review.’ Accordingly, the legislative amendment allowing for direct appeal does not affect this court’s standard of review.” *In re Envtl. Assessment Worksheet for 33rd Sale of State Metallic Leases in Aitkin, Lake, Saint Louis Counties*, 838 N.W.2d 212, 216 (Minn. App. 2013) (citation and quotation omitted), *review denied* (Nov. 26, 2013).

“Final decisions on whether to complete EAWs are appealable to the Minnesota Court of Appeals by petition for writ of certiorari. Minn.Stat. § 116D.04, subd. 10 (2012). We review such decisions to determine whether they are unreasonable, arbitrary, or capricious. *Watab Twp. Citizen Alliance v. Benton Cnty. Bd. of Comm’rs*, 728 N.W.2d 82, 89 (Minn. App. 2007), *review denied* (Minn. May 15, 2007).” *In re Envtl. Assessment Worksheet for 33rd Sale of State Metallic Leases in Aitkin, Lake, Saint Louis Counties*, 838 N.W.2d 212, 216 (Minn. App. 2013), *review denied* (Nov. 26, 2013).

“The party challenging an RGU’s decision . . . has the burden of proving that its findings are unsupported by the evidence as a whole.” *Friends of Twin Lakes v. City of Roseville*, 764 N.W.2d 378, 381 (Minn. App. 2009) (citing *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm’rs*, 713 N.W.2d 817, 833 (Minn. 2006)).

“[W]e evaluate whether the RGU took a ‘hard look’ at the salient issues, but defer to the RGU’s decision unless the decision reflects an error of law, is arbitrary and capricious, or is unsupported by substantial evidence.” *Friends of Twin Lakes v. City of Roseville*, 764 N.W.2d 378, 381 (Minn. App. 2009) (citing *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm’rs*, 713 N.W.2d 817, 832 (Minn. 2006)).

“When reviewing a district court’s summary judgment order affirming an agency’s negative declaration regarding the need for an EIS, the court reviews the agency decision to determine if it is unreasonable, arbitrary, or capricious, with review focused on the legal sufficiency of and factual basis for the reasons given. We will affirm the agency’s decision if it was not arbitrary or capricious even though the court may have reached a different conclusion had it been the fact-finder. We review the administrative record and determine whether there is substantial evidence supporting the agency finding.” *In re Am. Iron & Supply Co.’s Proposed Metal Shredding Facility*, 604 N.W.2d 140, 144 (Minn. App. 2000) (quotations omitted).

“A determination whether significant environmental effects result from this project is primarily factual and necessarily requires application of the agency’s technical knowledge and expertise to the facts presented. Accordingly, it is appropriate to defer to the agency’s interpretation of whether the statutory standard is met . . . [W]e review the decision not to prepare an EIS for whether it was unsupported by substantial evidence in view of the entire record as submitted or was arbitrary or capricious.” *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002) (citing Minn. Stat. § 14.69 (2000)).

When reviewing a summary judgment affirming a negative declaration regarding the need for an EIS, we focus “on the proceedings before the decision-making body . . . , not the findings of the [district] court.” *Iron Rangers for Responsible Ridge Action v. Iron Range Res.*, 531 N.W.2d 874, 879 (Minn. App. 1995), *review denied* (Minn. July 28, 1995).

“[D]ecisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies’ expertise and their special knowledge in the field of their technical training, education, and experience.” *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 463 (Minn. 2002) (quotation omitted).

“[I]n an area such as environmental review, uniquely involving application of an agency’s expertise, technical training, and experience, the standard of review set forth in

[the Minnesota Administrative Procedures Act (MAPA)] is appropriate. Therefore, despite the fact that a contested case proceeding was not held in this case, we believe application of the MAPA standards is appropriate.” *Minn. Ctr. for Envlt. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002).

6. Municipalities

“We review a quasi-judicial decision rendered by a city under a limited and nonintrusive standard of review. Under that standard, we may not substitute our own findings of fact for those of a city, or engage in a de novo review of conflicting evidence. Instead, we must uphold a city’s decision if the city has explained how it derived its conclusion and [the city’s] conclusion is reasonable on the basis of the record.” *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 635 (Minn. 2012) (citations and quotations omitted).

“City council action is quasi-judicial and subject to certiorari review if it is the product or result of discretionary investigation, consideration, and evaluation of evidentiary facts.” *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007) (quotation omitted).

“Certiorari review is limited to ‘questions affecting the jurisdiction of the board, the regularity of its proceedings, and, as to the merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.’” *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007) (quoting *Dietz v. Dodge Cnty.*, 487 N.W.2d 237, 239 (Minn. 1992)).

“As a reviewing court, we will not retry facts or make credibility determinations, and we will uphold the decision if the lower tribunal furnished any legal and substantial basis for the action taken.” *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007) (quotation omitted).

7. School Boards

A reviewing court will reverse a school board’s determination “when it is fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on an error of law.” *Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 675 (Minn. 1990).

“The school board must make specific findings supporting its decision. If the findings are insufficient, the case can be either remanded for additional findings or reversed for lacking substantial evidence supporting the decision.” *Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 675 (Minn. 1990).

“This court reviews a school board’s decision to terminate a teacher by looking at the entire record. The matter is, however, not heard *de novo* and this court may not substitute its judgment for that of the school board.” *Atwood v. Indep. Sch. Dist. No. 51*, 354 N.W.2d 9, 11 (Minn. 1984).

VIII. ADMINISTRATIVE – DEED

A. GENERALLY

“The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.”

Minn. Stat. § 268.105, subd. 7(d) (2012); *see Vasseei v. Schmitty & Sons Sch. Buses, Inc.*, 793 N.W.2d 747, 749-50 (Minn. App. 2010) (citing this standard of review); *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007) (same).

This standard of review was enacted in 2005, and it mirrors the standard of review for administrative agencies generally. *See* Minn. Stat. § 14.69 (2012) (standard of review under the Minnesota Administrative Procedures Act); *see* 2005 Minn. Laws ch. 112, art. 2, § 34, at 709-10 (enacting Minn. Stat. § 268.105, subd. 7(d)).

B. NO BURDEN OF PROOF

“An applicant’s entitlement to unemployment benefits must be determined based upon that information available without regard to a burden of proof.” Minn. Stat. § 268.069, subd. 2 (2012).

Caution: Previously, case law referred to a common-law burden of proof. *McGowan v. Exec. Express Transp. Enter., Inc.*, 420 N.W.2d 592, 595 (Minn. 1988); *Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn. 1978). These cases are no longer good law for the proposition that there is a burden of proof in unemployment-benefit cases.

C. FINDINGS OF FACT

Under Minn. Stat. § 268.105, subd. 7(d)(5) (2012), the court of appeals may reverse or modify the ULJ’s findings or inferences if they are “unsupported by *substantial* evidence in view of the entire record as submitted.” (Emphasis added.)

“This court views the ULJ’s factual findings in the light most favorable to the decision. This court also gives deference to the credibility determinations made by the ULJ. As a result, this court will not disturb the ULJ’s factual findings when the evidence substantially sustains them.”

Peterson v. Nw. Airlines, Inc., 753 N.W.2d 771, 774 (Minn. App. 2008) (citations omitted), review denied (Minn. Oct. 1, 2008).

“Whether an employee committed employment misconduct is a mixed question of fact and law. Whether the employee committed a particular act is a question of fact. We view the ULJ’s factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ’s factual findings when the evidence substantially sustains them. Minn. Stat. § 268.105, subd. 7(d). But whether the act committed by the employee constitutes employment misconduct is a question of law, which we review *de novo*.¹ *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (other citations omitted).

Caution: Before the enactment of Minn. Stat. § 268.105, subd. 7(d), findings were reviewed to determine whether they were *reasonably* supported by the record. See *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002) (stating that commissioner’s factual findings will not be disturbed “as long as there is evidence that reasonably tends to sustain those findings”). In addition, the supreme court recently applied this same standard, holding that the appellate court “should not disturb [the ULJ’s] findings as long as there is evidence in the record that *reasonably* tends to sustain them.” *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (emphasis added). *Stagg* did not cite Minn. Stat. § 268.105, subd. 7(d)(5), but note that subdivision 7(d) specifically refers to the standard of review for the court of appeals, not the supreme court.

D. CREDIBILITY DETERMINATIONS

“When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (2012).

“Appellate courts “review the ULJ’s factual findings in the light most favorable to the decision,” *Stagg*, 796 N.W.2d at 315 (quotation omitted), and we “give deference to the ULJ’s credibility determinations,” *Van de Werken v. Bell & Howell, LLC*, 834 N.W.2d 220, 221 (Minn. App. 2013).” *Icenhower v. Total Automotive, Inc.*, 845 N.W.2d 849, 855 (Minn. App. 2014), review denied (Minn. July 15, 2014).

“This court . . . gives deference to the credibility determinations made by the ULJ.” *McNeilly v. Dept. of Emp’t & Econ. Dev.*, 778 N.W.2d 707, 710 (Minn. App. 2010).

If the ULJ does not make the credibility determinations required by Minn. Stat. § 268.105, subd. 1(c), this court will “remand for additional findings that satisfy the statute.” *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007).

This court will affirm if “[t]he ULJ’s findings are supported by substantial evidence and provide the statutorily required reason for her credibility determination.” *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (setting out factors to consider in making credibility determinations).

“Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

Note: While it may appear that *Skarhus* and *Ywswf* are contradictory, *Skarhus* addressed the 2004 version of the statute, and *Ywswf* cited the Supp. 2005 version of the statute, which had been amended to require, as it does today, that the ULJ must make credibility findings when the testimony of a witness is significant. See *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 531-32 (Minn. App. 2007). There, the relator argued that the ULJ failed to make these “statutorily required credibility findings in a case that hinged on the credibility of the parties.” *Id.* at 532. Under Minn. Stat. 268.105, subd. 7(d), findings by the ULJ may be reversed if “unsupported by substantial evidence in view of the entire record as submitted.” This court held that the ULJ’s findings were supported by substantial evidence and provided the statutorily required reasons for the credibility determinations. *Id.* at 533.

E. QUESTIONS OF LAW

The court of appeals may reverse or modify the ULJ’s decision if it is affected by an error of law. Minn. Stat. § 268.105, subd. 7(d)(4) (2012).

An appellate court will “review de novo” a question of law. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011).

When addressing a question of law, the appellate court is “free to exercise [] independent judgment.” *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006); see also *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989) (similar language).

“Whether a statute precludes an applicant from receiving benefits is a question of law, which we review de novo.” *Van de Werken v. Bell & Howell, LLC*, 834 N.W.2d 220, 221-22 (Minn. App. 2013)

“But a ULJ’s decision to dismiss an appeal as untimely is a question of law, subject to de novo review.” *Godbout v. Dep’t of Emp’t & Econ. Dev.*, 827 N.W.2d 799, 802 (Minn. App. 2013).

“Questions of law are reviewed de novo.” *Builders Commonwealth, Inc. v. Dep’t of Emp’t & Econ. Dev.*, 814 N.W.2d 49, 56 (Minn. App. 2012).

“We review de novo a ULJ’s determination that an applicant is ineligible for unemployment benefits.” *Stassen v. Lone Mountain Truck Leasing LLC*, 814 N.W.2d 25, 30 (Minn. App. 2012).

“An appellate court will exercise its own independent judgment in analyzing whether an applicant is entitled to unemployment benefits as a matter of law.” *Irvine v. St. John’s Lutheran Church of Mound*, 779 N.W.2d 101, 103 (Minn. App. 2010).

F. STATUTORY CONSTRUCTION

1. Purpose of Statute

“The public purpose of this chapter is: Economic insecurity because of involuntary unemployment of workers in Minnesota is a subject of general concern that requires appropriate action by the legislature. The public good is promoted by providing workers who are unemployed through no fault of their own a temporary partial wage replacement to assist the unemployed worker to become reemployed. This program is the ‘Minnesota unemployment insurance program.’” Minn. Stat. § 268.03, subd. 1 (2012).

“There is no presumption of entitlement or nonentitlement to unemployment benefits.” Minn. Stat. § 268.069, subd. 2 (2012).

“There is no equitable or common law denial or allowance of unemployment benefits.” Minn. Stat. § 268.069, subd. 3 (2012).

“This chapter is remedial in nature and must be applied in favor of awarding unemployment benefits. Any legal conclusion that results in an applicant being ineligible for unemployment benefits must be fully supported by the facts. In determining eligibility or ineligibility for benefits, any statutory provision that would preclude an applicant from receiving benefits must be narrowly construed.” Minn. Stat. § 268.031, subd. 2 (2012); *see Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (citing policy that unemployment compensation is paid only to those who are unemployed through no fault of their own as well as remedial nature of statute); *Irvine v. St. John’s Lutheran Church of Mound*, 779 N.W.2d 101, 103 (Minn. App. 2010) (same).

2. Question of Law Reviewed De Novo; Statutory Construction

“We review questions of statutory construction de novo.” *Houston v. Int’l Data Transfer Corp.*, 645 N.W.2d 144, 149 (Minn. 2002).

“As a threshold matter, we clarify the standard of review that must be applied here. DEED frames the issue as one of fact and argues that substantial evidence supports the ULJ’s determination that Rubin occupied the dean position after May 28, 2012. *See Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (stating that we “will not disturb the ULJ’s factual findings when the evidence substantially sustains them.”), *review denied* (Minn. Oct. 1, 2008). . . . But we are not persuaded that Reed’s testimony alone is dispositive of the issue because our focus is also on the meaning of the phrase “major policy-making or advisory position” in Minn. Stat. § 268.035, subd. 20(15). So the issue is also one of law, and we review the interpretation and application of statutory language de novo. *See St. Otto’s Home v. Minn. Dep’t of Human Servs.*, 437 N.W.2d 35, 39 (Minn. 1989) (stating that “[w]hen a decision turns on the meaning of words in a statute or regulation, a legal question is presented” and “reviewing courts are not bound by the decision of the agency”).” *Rubin v. Winona State Univ.*, 842 N.W.2d 469, 472 (Minn. App. 2014).

“When interpreting a statute, our object is to “ascertain and effectuate the intention of the legislature.” Minn.Stat. § 645.16 (2012). “[An appellate court] first look[s] to see whether the statute’s language, on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation and citation omitted). If the legislature’s intent is clearly discernible from a statute’s unambiguous language, appellate courts interpret the language according to its plain meaning, without resorting to other principles of statutory construction. *State v. Anderson*, 683 N.W.2d 818, 821 (Minn. 2004).” *Van de Werken v. Bell & Howell, LLC*, 834 N.W.2d 220, 222 (Minn. App. 2013).

“This court reviews matters of statutory construction de novo. ‘The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.’ Minn. Stat. § 645.16 (2010). If the meaning of a statute is unambiguous, we interpret the statutory text according to its plain language. When a statute is ambiguous, we apply other canons of construction to discern the legislature’s intent. A statute is ambiguous when the language therein is subject to more than one reasonable interpretation. Legislative intent may be ascertained by considering, among other matters, the necessity and purpose of the law and the consequences of a particular interpretation. Minn. Stat. § 645.16(1), (4), (6) (2012). This court is further required to construe and apply the unemployment-benefit statutes ‘in favor of awarding unemployment benefits.’ Minn. Stat. § 268.031, subd. 2 (2012). And ‘any statutory provision that would preclude an applicant from receiving benefits must be narrowly construed.’ *Id.*” *Wiley v. Dolphin Staffing – Dolphin Clerical Group*, 825 N.W.2d 121, 124-25 (Minn. App. 2012) (other citations omitted), review denied (Minn. Jan. 29, 2013).

“Statutory construction is . . . a legal issue reviewed de novo.” *Vasseei v. Schmittry & Sons Sch. Buses, Inc.*, 793 N.W.2d 747, 750 (Minn. App. 2010).

“The critical issue is the interpretation of the Act and the federal regulations Statutory interpretation is a question of law, which we review de novo. DEED argues that it is entitled to deference in its interpretation of these federal statutes and regulations. But when ‘the meaning of the words in [a] regulation is clear and unambiguous, [the court] need not defer to the agency’s interpretation and may substitute its own judgment for that of the agency.’ *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 516 (Minn. 2007); *see also St. Otto’s Home v. Minn. Dep’t of Human Servs.*, 437 N.W.2d 35, 39–40 (Minn. 1989) (“When a decision turns on the meaning of words in a statute or regulation, a legal question is presented,” and therefore “reviewing courts are not bound by the decision of the agency and need not defer to agency expertise”). Thus, if we conclude that the Act and regulations are clear and unambiguous with respect to the issue before us, DEED’s interpretation is entitled to no deference.” *Abdi v. Dep’t of Emp’t & Econ. Dev.*, 749 N.W.2d 812, 815 (Minn. App. 2008) (other citations omitted).

3. Deferring to Agency’s Own Interpretation of Its Statute

While the appellate courts are “not bound by an agency’s conclusions of law, the manner in which an agency has construed a statute may be entitled to some weight when the

statutory language is technical in nature and the agency's interpretation is one of longstanding application." *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 375 (Minn. 1996).

This court will defer to an agency's interpretation of its own statutes unless such interpretation is in conflict with the express purpose of the statute and the legislature's intent." *Carlson v. Augsburg College*, 604 N.W.2d 392, 394 (Minn. App. 2000).

4. Mixed Questions of Fact and Law

"Whether an employee committed employment misconduct is a mixed question of fact and law. Whether the employee committed a particular act is a question of fact." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citation omitted), *review denied* (Minn. Oct. 1, 2008). "But whether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo." *Id.*

5. Question of Law Reviewed De Novo; Eligibility Determinations

"Determining whether a particular act constitutes disqualifying misconduct is a question of law that we review de novo." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011).

"Specifically, the determination of whether an employee was properly disqualified from receipt of unemployment compensation benefits is a question of law on which we are free to exercise our independent judgment." *Jenkins v. Am. Express Fin.*, 721 N.W.2d 286, 289 (Minn. 2006).

"Whether the act committed by the employee constitutes employment misconduct presents a question of law, which we review de novo." *Santillana v. Cent. Minn. Council on Aging*, 791 N.W.2d 303, 307 (Minn. App. 2010).

"An appellate court will exercise its own independent judgment in analyzing whether an applicant is entitled to unemployment benefits as a matter of law." *Irvine v. St. John's Lutheran Church of Mound*, 779 N.W.2d 101, 103 (Minn. App. 2010).

6. Questions of Law Reviewed De Novo; Quit Determination

"Whether an employee had good cause to quit is a question of law, which we review de novo." *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012) (quotation omitted).

"The determination that an employee quit without good reason attributable to the employer is a legal conclusion, but the conclusion must be based on findings that have the requisite evidentiary support." *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

G. ADDITIONAL EVIDENTIARY HEARINGS

The ULJ did not abuse his discretion when, upon a timely request for reconsideration, he set aside his decision and ordered an additional evidentiary hearing under Minn. Stat. § 268.105, subd. 2(a)(2), after determining that the unrepresented party's failure to present evidence at the hearing was the result of the ULJ's failure to assist the party as required by Minn. R. 3310.2921." *Vasseei v. Schmitty & Sons Sch. Buses, Inc.*, 793 N.W.2d 747, 751 (Minn. App. 2010).

"The court will not reverse a ULJ's decision to deny an additional evidentiary hearing unless the decision constitutes an abuse of discretion." *Kelly v. Ambassador Press, Inc.*, 792 N.W.2d 103, 104 (Minn. App. 2010). "An error of law can constitute an abuse of discretion." *Id.*

"This court will defer to the ULJ's decision not to hold an additional hearing." *Ywswf v. Teleplan Wireless Servs.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (referring to request for additional evidentiary hearing based on claims of new evidence).

"A reviewing court accords deference to a ULJ's decision not to hold an additional hearing and will reverse that decision only for an abuse of discretion." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006) (referring to request for an additional evidentiary hearing when relator shows good cause for failing to participate in initial hearing).

IX. ARBITRATION

A. DETERMINATION OF ARBITRABILITY

“This court has de novo review when reviewing arbitration clauses.” *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 349 (Minn. 2003).

“A reviewing court is not bound by the trial court’s interpretation of the arbitration agreement and independently determines whether the trial court correctly interpreted the clause.” *Elsenpeter v. St. Michael Mall, Inc.*, 794 N.W.2d 667, 672 (Minn. App. 2011) (quotation omitted).

“In reviewing an arbitrator’s decision, the arbitrator is the final judge of both law and fact, but this court’s review of the determination of arbitrability is de novo.” *Phillips v. Dolphin*, 776 N.W.2d 755, 758 (Minn. App. 2009), *review denied* (Minn. Mar. 16, 2010).

“This court reviews de novo the district court’s denial of a motion to compel arbitration.” *Cargill Inc. v. Jorgenson Farms*, 719 N.W.2d 226, 234 (Minn. App. 2006).

“[W]e review *de novo* the district court’s determination that the parties did not agree to submit the present dispute to arbitration.” *Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790, 795 (Minn. 1995).

B. SCOPE OF ARBITRATION

“[W]e should resolve any doubts concerning the scope of arbitrable issues in favor of arbitration” *Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790, 795 (Minn. 1995).

C. GENERAL STANDARDS OF REVIEW

“[A]rbitrators are the final judges of both law and fact; every reasonable presumption is to be exercised in favor of the finality and validity of the arbitration award, thus the scope of judicial review of an arbitration award is extremely narrow.” *Peggy Rose Revocable Trust v. Eppich*, 640 N.W.2d 606 (Minn. 2002).

“A judicial appeal from an arbitration decision is subject to an extremely narrow standard of review.” *Hunter, Keith Indus., Inc. v. Piper Capital Mgmt., Inc.*, 575 N.W.2d 850, 854 (Minn. App. 1998).

“It is well settled that ‘an arbitrator, in the absence of an agreement limiting his authority, is the final judge of both law and fact, including the interpretation of the terms of any contract, and his award will not be reviewed or set aside for mistake of either law or fact in the absence of fraud, mistake in applying his own theory, misconduct, or other disregard of duty.’” *State v. Minn. Ass’n of Prof’l Emps.*, 504 N.W.2d 751, 754 (Minn. 1993) (citing *Cournoyer v. Am. Television & Radio Co.*, 249 Minn. 577, 580, 83 N.W.2d 409, 411 (1957)).

D. STANDARDS FOR PARTICULAR ISSUES

1. Evident Partiality or Misconduct Prejudicing the Rights of a Party

“Whether challenged conduct constitutes evident partiality or prejudicial misconduct is a legal question reviewed de novo.” *Aaron v. Ill. Farmers Ins. Grp.*, 590 N.W.2d 667, 669 (Minn. App. 1999) (quotation omitted).

2. Exceeding Powers

“We exercise de novo review to determine whether an arbitrator exceeded her powers.” *Fernow v. Gould*, 816 N.W.2d 647, 649 (Minn. App. 2012) (citing *Klinefelter v. Crum & Forster Ins. Co.*, 675 N.W.2d 330, 333 (Minn. App. 2004)).

“The district court shall vacate the award, among other grounds, if the arbitrators exceeded their powers. Absent a clear showing that the arbitrators were unfaithful to their obligations, the courts assume that the arbitrators did not exceed their authority.” *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass’n*, 778 N.W.2d 393, 398 (Minn. App. 2010) (quotation and citations omitted).

“[I]n the public sector an arbitrator has no authority to make constitutional determinations, irrespective of the language of the arbitration agreement.” *Cnty. of Hennepin v. Law Enforcement Labor Servs., Inc., Local No. 19*, 527 N.W.2d 821, 825 (Minn. 1995).

“[I]n deciding issues of law, the appellate courts are not bound by the [district] court’s conclusions, and may independently determine the issues pursuant to applicable statutory and case law. . . . The [district] court is not bound by the arbitrator’s decision that its actions were within its authority.” *MedCenters Health Care, Inc. v. Park Nicollet Med. Ctr.*, 430 N.W.2d 668, 672 (Minn. App. 1988), *review denied* (Minn. Apr. 26, 1989).

E. COLLECTIVE BARGAINING AGREEMENTS

“Where the decision is being challenged on the merits, an award cannot be vacated if it draws its ‘essence’ from the contract and can ‘in some rational manner be derived from the agreement.’” *Metro. Airports Comm’n v. Metro. Airports Police Fed’n*, 443 N.W.2d 519, 524 (Minn. 1989) (quoting *Ramsey Cnty. v. AFSCME, Council 91, Local 8*, 309 N.W.2d 785, 792 (Minn. 1981)).

F. NO-FAULT AUTOMOBILE INSURANCE ARBITRATION

“We recognized, however, that in order to award benefits, arbitrators must apply the law to the facts, and therefore we review de novo the arbitrators’ legal determinations that are necessary to award, suspend, or deny benefits.” *W. Nat'l Ins. Co. v. Thompson*, 797 N.W.2d 201, 207 (Minn. 2011).

“[W]e conclude that whether a request for an examination under oath and the refusal of such a request are reasonable are questions of fact for the arbitrator. The court, however, reviews de novo any legal conclusions made by the arbitrators based on these factual determinations. . . .

[T]he arbitrators made an implicit factual determination that the refusal was reasonable, and that determination is final.” *W. Nat'l Ins. Co. v. Thompson*, 797 N.W.2d 201, 208 (Minn. 2011) (footnote omitted).

“The threshold issue is whether the arbitrators exceeded the scope of their authority by deciding an issue of law not properly subject to arbitration. To answer this question we must examine the relevant provisions of the No-Fault Act and applicable case law, and then apply the law to the case before us.” *W. Nat'l Ins. Co. v. Thompson*, 797 N.W.2d 201, 205 (Minn. 2011)

“Arbitrators are not required to give reasons for their decisions. To facilitate judicial review, we urge arbitrators to state whether their decisions in no-fault arbitrations are based on factual determinations or legal conclusions. When arbitrators fail to give reasons for their decisions, they run the risk that they will be compelled to clarify their awards. See Minn. Stat. § 572.16 (2010).” *W. Nat'l Ins. Co. v. Thompson*, 797 N.W.2d 201, 208 n.3 (Minn. 2011) (other citation omitted).

“The issues raised in these cases require that we interpret language from automobile insurance policies. The interpretation of an insurance policy is a question of law as applied to the facts presented. When there are no disputed material facts, we independently review a lower court's interpretation of the insurance policy.” *Star Windshield Repair, Inc. v. W. Nat'l Ins. Co.*, 768 N.W.2d 346, 348 (Minn. 2009) (citation omitted).

“We interpret an arbitration agreement ‘to give effect to the intention of the parties as expressed in the language they used in drafting the whole [agreement].’” *George v. Evenson*, 754 N.W.2d 335, 341 (Minn. 2008).

“[N]o-fault arbitrators are limited to deciding questions of fact, leaving the interpretation of law to the courts.” *Weaver v. State Farm Ins. Cos.*, 609 N.W.2d 878, 882 (Minn. 2000). “Arbitration regarding automobile reparations therefore departs from the generally accepted principle that arbitrators are the final judges of both law and fact.” *Id.* (quotation omitted).

“Appellate courts will review questions of statutory interpretation of the no-fault act de novo.” *State Farm Mut. Auto. Ins. Co. v. Frelix*, 764 N.W.2d 581, 582 (Minn. App. 2009).

“An arbitrator's findings of fact are final.” *State Farm v. Liberty Mut. Ins. Co.*, 678 N.W.2d 719, 721 (Minn. App. 2004), *review denied* (Minn. June 29, 2004). “When reviewing a no-fault arbitration award, questions of law are reviewed de novo.” *Id.*