THE MINNESOTA COURT OF APPEALS STANDARDS OF REVIEW

UPDATED AUGUST 2016

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.

TABLE OF CONTENTS

I. CIVIL – GENERAL

A. IN GENERAL

1. Jurisdiction and Justiciability

"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).

Subject-matter jurisdiction "is a question of law that we review de novo." *Nelson v. Schlener*, 859 N.W.2d 288, 291 (Minn. 2015).

"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).

"We review de novo whether a party has standing." *Fed. Home Loan Mort. Corp. v. Mitchell*, 862 N.W.2d 67, 70 (Minn. App. 2015), *review denied* (June 30, 2015).

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

"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." *In re Estate of Sullivan*, 868 N.W.2d 750, 754 (Minn. App. 2015) (quotation omitted).

"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 North 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. County of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979) (motion for reinstatement following grant of motion for new trial)).

BUT: "The supreme court has not deviated from a de novo standard of review of legal issues simply because the claims at issue are for equitable relief." *Drewitz v. Motorwerks, Inc.*, 867 N.W.2d 197, 204 n.2 (Minn. App. 2015) (citations and quotation omitted); *see also Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 822 (Minn. 2016) (concluding that deferential standard of review was not justified when district court "neither weighed the equities, nor made its decision based on factual findings that it was uniquely well suited to make," but rather decided that equitable relief was not available as a matter of law); *Brown v. Lee*, 859 N.W.2d 836, 839-40 (Minn. App. 2015) (explaining that de novo standard of review applies to determinations that equitable relief is not available as a matter of law), *review denied* (May 19, 2015).

***See also* Section I(E)(2).**

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." *Associated 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 (2014). "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 cannons 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 (2014 & Supp. 2015).

(3) Statutes of Limitations/Repose

"We review de novo the interpretation and application of a statute of limitations." *Ford v. Minneapolis Pub. Sch.*, 874 N.W.2d 231, 232 (Minn. 2016).

"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

"The interpretation of the rules of civil procedure ... is a question of law that [appellate courts] review de novo." "The interpretation of the rules of civil procedure ... is a question of law that [appellate courts] review de novo." *TC/Am. Monorail, Inc. v. Custom Conveyor Corp*., 840 N.W.2d 414, 417–18 (Minn. 2013).

"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 Melillo v. Heitland*, 880 N.W.2d 862, 864 (Minn. 2016); *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 All. 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 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).

"The interpretation of an ordinance is a question of law for the court, which we review de novo." *Eagle Lake of Becker Cty. Lake Ass'n v. Becker Cty. 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. 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. County of Hennepin*, 428 N.W.2d 79, 82 (Minn. 1988).

e. 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).

"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) Ambiguity Determination

"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).

"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).

(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) 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).

(c) Insurance Contracts **(See Section IV(A))**

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); *see also Melillo v. Heitland*, 880 N.W.2d 862, 864 (Minn. 2016).

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 Inv'rs*, 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." *Hauschildt 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. County 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.

11. 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).

C. PRETRIAL JUDGMENTS

1. Default Judgment and Motions to Vacate

"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 Temps., 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*, 851 N.W.2d 598, 603 (Minn. 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, 851 N.W.2d 598, 606 (Minn. 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.*, 850 N.W.2d 682, 692 (Minn. 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 Ctrs., 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 County*, 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); *see also Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 822 (Minn. 2016) (concluding that deferential standard of review was not justified when district court "neither weighed the equities, nor made its decision based on factual findings that it was uniquely well suited to make," but rather decided that equitable relief was not available as a matter of law); *Drewitz v. Motorwerks, Inc.*, 867 N.W.2d 197, 204 n.2 (Minn. App. 2015) (noting that "[t]he supreme court has not deviated from a de novo standard of review of legal issues simply because the claims at issue are for equitable relief") (citations and quotation omitted); *Brown v. Lee*, 859 N.W.2d 836, 839-40 (Minn. App. 2015) (explaining that de novo standard of review applies to determinations that equitable relief is not available as a matter of law), *review denied* (May 19, 2015).

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. County*, 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.").

"A district court's decision whether to take judicial notice of proffered facts is an evidentiary ruling that we review only for abuse of discretion." *Fed. Home Loan Mortgage Corp. v. Mitchell*, 862 N.W.2d 67, 71 (Minn. App. 2015), *review denied* (June 30, 2015).

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. Hardrives, 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. Traylor*, 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 County*, 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 Coop. 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 I(F)(2))

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. Jury Findings

(a) 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).

(b) 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).

7. Court Findings and Conclusions

"On appeal from judgment following a court trial, this court reviews whether the district court's findings were clearly erroneous and whether the district court erred as a matter of law. A finding is clearly erroneous if we are left with the definite and firm conviction that a mistake has been made. We review issues of law de novo." *In re Distrib. of Attorney's Fees between Stowman Law Firm, P.A. & Lori Peterson Law Firm*, 855 N.W.2d 760, 761 (Minn. App. 2014) (citations and quotation omitted).

"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: Avoid citing 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). *But see Swanlund v. Shimano Indus. Corp*., 459 N.W.2d 151, 155 (Minn. App. 1990) (reviewing denial of motion to amend to add punitive damages claim de novo in pretrial discretionary appeal), *review denied* (Minn. Oct. 5, 1990).

"This court may not reverse a district court's denial of a motion to add a claim for punitive damages absent an abuse of discretion." *J.W. ex rel. B.R.W. v. 287 Intermediate Dist.*, 761 N.W.2d 896, 904 (Minn. App. 2009) (quotation omitted); *see also McKenzie v. N. States Power Co.*, 440 N.W.2d 183, 184 (Minn. App. 1989).

"[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." *Stuempges 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. County 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 Cty. Bd. of Comm'rs*, 799 N.W.2d 619, 625 (Minn. App. 2011) (citations and quotation omitted).

BUT: "The supreme court has not deviated from a de novo standard of review of legal issues simply because the claims at issue are for equitable relief." *Drewitz v. Motorwerks, Inc.*, 867 N.W.2d 197, 204 n.2 (Minn. App. 2015) (citations and quotation omitted); *see also Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 822 (Minn. 2016) (concluding that deferential standard of review was not justified when district court "neither weighed the equities, nor made its decision based on factual

findings that it was uniquely well suited to make," but rather decided that equitable relief was not available as a matter of law); *Brown v. Lee*, 859 N.W.2d 836, 839-40 (Minn. App. 2015) (explaining that de novo standard of review applies to determinations that equitable relief is not available as a matter of law), *review denied* (May 19, 2015).

b. Specific Performance

"We review a district court's decision to award equitable relief, including specific performance, for abuse of discretion." *Dakota Cty. 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 Inv'rs*, 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).

g. Equitable Estoppel

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

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. County 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. Cty. 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. 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).

II. CIVIL – FAMILY

A. IN GENERAL

1. Jurisdiction, Venue, and Standing

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"), *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 appellate 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 [and Enforcement] 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 . . . requires that a party have standing before a court can court 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).

"Generally, a document is ambiguous if it is reasonably susceptible to more than one meaning. Whether a provision in a dissolution judgment and decree is clear or ambiguous is a legal question. A district court's determination of the meaning of an ambiguous judgment and decree provision is a fact question, which appellate courts review for clear error. Because the same judge who entered the judgment and decree in 2008 is the judge who determined its meaning in this proceeding, his reading of the provision is entitled to great weight." *Suleski v. Rupe*, 855 N.W.2d 330, 339 (Minn. App. 2014) (citations and quotations omitted).

"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 (2014), 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) *and 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).

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

"Whether a statute violates the Constitution is a question that we review de novo." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 131 (Minn. 2014) (footnote omitted).

"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), *review dismissed* (Minn. Apr. 20, 2010); ; *see In re Welfare of Child of A.H.*, 879 N.W.2d 1, 4 (Minn. App. 2016) (stating "[w]e review jurisdiction de novo as a question of law"); *see generally*, *Stern v. Stern*, 839 N.W.2d 96, 99-104 (Minn. App. 2013) (addressing, generally, a juvenile court's "original and exclusive jurisdiction" in juvenile protection matters).

"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

"[T]ermination of parental rights is always discretionary with the juvenile court." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014).

"[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); *see In re Welfare of Child of A.H.*, 879 N.W.2d 1, 7 (Minn. App. 2016) (stating that "[w]e review a juvenile court's assessment of best-interest factors for an abuse of discretion

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) (2014), 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

"On appeal of a juvenile-protection order, we review the juvenile court's factual findings for clear error and its findings of a statutory basis for the order for abuse of discretion." *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321 (Minn. App. 2015), *review denied* (Minn. July 20, 2015).

"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").

"[W]hether to admit or exclude evidence is discretionary with the district court. A district court abuses its discretion if it improperly applies the law." *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 320 (Minn. App. 2015) (quoting *In re Welfare of J.K.T.*, 814 N.W.2d 76, 93 (Minn. App. 2012)), *review denied* (Minn. July 20, 2015).

When reviewing a district court's decision on a motion under Minn. R. Juv. Prot. P. 15.04(c) to dismiss a permanency petition, appellate courts review for an abuse of discretion the district court's determination of whether the petitioning party made a prima facie case. *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 318 (Minn. App. 2015), *review denied* (Minn. July 20, 2015).

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 a motion 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); *see Spanier v. Spanier*, 852 N.W.2d 284, 287 (Minn. App. 2014) (same).

"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).

"If modification would serve the best interests of the child, the court shall modify ... an order granting or denying parenting time, if the modification would not change the child's primary residence. Appellate courts recognize that a district court has broad discretion to decide parenting-time questions, and will not reverse a parenting-time decision unless the district court abused its discretion by misapplying the law or by relying on findings of fact that are not supported by the record. On appeal, findings of fact are accepted unless they are clearly erroneous." *Suleski v. Rupe*, 855 N.W.2d 330, 334 (Minn. App. 2014) (citations and quotations omitted).

"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. 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. *See generally*, *In re Dakota County*, 866 N.W.2d 905, 909-11 (Minn. 2015) (summarizing the calculation of child support under the new statute).

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).

"A court's determination of income must be based in fact and will stand unless clearly erroneous." *Newstrand v. Arend*, 869 N.W.2d 681, 685 (Minn. App. 2015) (quotation omitted), *review denied* (Minn. Dec. 15, 2015).

Whether a source of funds is considered to be income for child-support purposes is a legal question reviewed de novo. *Sherburne Cty. 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).

An appellate court will not reverse a district court's decision denying additional child support under Minn. Stat. § 256.87 (2014) 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); *see Newstrand v. Arend*, 869 N.W.2d 681, 685 (Minn. App. 2015) (quoting this aspect of *Welsh*), *review denied* (Minn. Dec. 15, 2015).

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. 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. *County 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, stating:

> 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 (2014) (stating that district court "shall" award need-based attorney fees if statutory requirements are met), 645.44, subd. 16 (stating that shall is mandatory); *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 (2014) (stating that conduct-based fees "may" be awarded against a party who unreasonably contributes to the length or expense of the proceeding), 645.44, subd. 15 (stating that may is permissive); *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 Cty. Human Servs. ex rel. Swancutt v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996).

"'Th[e contempt] power gives the trial court inherently broad discretion to hold an individual in contempt but only where the contemnor has acted contumaciously, in bad faith, and out of disrespect for the judicial process.' . . . 'The district court's decision to invoke its contempt powers is subject to reversal for abuse of discretion.'" *Newstrand v. Arend*, 869 N.W.2d 681, 691 (Minn. App. 2015) (quoting *Erickson v. Erickson,* 385 N.W.2d 301, 304 (Minn. 1986) (quotation omitted) and *In re Welfare of Children of J.B.,* 782 N.W.2d 535, 538 (Minn. 2010)).

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).

"Interpreting a statute is a question of law, which we review de novo. The first step in statutory interpretation is to determine whether the statute is ambiguous on its face. A statute is ambiguous when the statutory language is subject to more than one reasonable interpretation. In order to determine whether a statute is ambiguous, we interpret words and phrases according to their plain and ordinary meanings. Additionally, we interpret statutes as a whole, and the words and sentences therein are to be understood ... in the light of their context. Multiple parts of a statute may be read together so as to ascertain whether the statute is ambiguous. If a statute is unambiguous, we apply the statute's plain meaning." *In re Dakota County*, 866 N.W.2d 905, 909 (Minn. 2015) (construing child support statutes) (citations and quotations omitted).

"The interpretation of a statute is a matter we review de novo. If the plain language of a statute is clear and free from ambiguity, the court's role is to enforce the language of the statute and not explore the spirit or purpose of the law." *Nelson v. Nelson*, 866 N.W.2d 901, 903 (Minn. 2015) (addressing statute regarding the division of property) (citation quotation omitted).

"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 (2014).

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 & 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).

c. Execution

"Whether a will is executed in a manner prescribed by statute is a question of fact." *In re Estate of Sullivan*, 868 N.W.2d 750, 752 (Minn. App. 2015

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).

"The issue of which statute [addressing settlement of claims against an estate] controls is a question of law which we review de novo." *In re Estate of Johnson*, 878 N.W.2d 510, 513 (Minn. App. 2016).

"We review a district court's approval of a compromise [of a claim against an estate] effected by a personal representative for an abuse of discretion." *In re Estate of Johnson*, 878 N.W.2d 510, 514 (Minn. App. 2016).

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 & Trust of Anderson*, 654 N.W.2d 682, 688 (Minn. App. 2002), *review denied* (Minn. Feb. 26, 2003).

6. Other

"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." *In re Estate of Sullivan*, 868 N.W.2d 750, 754 (Minn. App. 2015) (quotation omitted).

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*, 834 N.W.2d 514, 520 (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 Props. 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. Generally

"Guardianship law exists as a function of the State's parens patriae power to protect infants and other persons lacking the physical and mental capacity to protect themselves. The State possesses this protective power as an attribute of sovereignty and exercises it in the manner provided by statute. Courts play a vital role in supervising guardians as they exercise the power of the State to watch over Minnesota's most vulnerable citizens." *In re Guardianship of Tschumy*, 853 N.W.2d 728, 740 (Minn. 2104) (quotation, citations, and footnote omitted).

"[T]he existence of a justiciable controversy is essential to our exercise of jurisdiction, so we can raise the issue on our own." *In re Guardianship of Tschumy*, 853 N.W.2d 728, 733-34 (Minn. 2014).

"[T]he question of our jurisdiction is a legal one that we review de novo." *In re Guardianship of Tschumy*, 853 N.W.2d 728, 734 (Minn. 2014).

Questions of statutory interpretation in the guardianship context are reviewed de novo. *In re Guardianship of Tschumy*, 853 N.W.2d 728, 742 (Minn. 2014).

"Whether a statute is unconstitutional is a question of law that we review de novo. Statutes are presumed to be constitutional and our power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary." *In re Guardianship, Conservatorship of Durand*, 859 N.W.2d 780, 784 (Minn. 2015) (citation and quotation omitted).

"We review the district court's denial of a motion for amended or additional findings [of fact] for an abuse of discretion. The district court abuses its discretion by improperly applying the law." *In re Guardianship of Guaman*, 879 N.W.2d 668, 672 (Minn. App. 2016) (citation and quotation omitted).

2. 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).

3. 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).

4. 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).

5. 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 – INSURANCE

A. POLICY INTERPRETATION

"Interpretation of an insurance policy, and whether a policy provides coverage in a particular situation, are questions of law that we review de novo." *Eng'g & Const. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 704 (Minn. 2013) (citing *Leamington Co. v. Nonprofits' Ins. Ass'n*, 615 N.W.2d 349, 353 (Minn. 2000)).

"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).

"An insurance policy is a contract to which general principles of contract law apply. This court reviews the district court's interpretation of a contract as a question of law subject to de novo review." *Terminal Transp., Inc. v. Minn. Ins. Guar. Ass'n*, 862 N.W.2d 487, 489 (Minn. App. 2015).

"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)).

"The question of whether an insurer has a duty to defend or indemnify is also a legal question subject to de novo review." *Thommes v. Milwaukee Ins. Co.*, 641 N.W.2d 877, 879 (Minn. 2002).

"An insurance policy is a contract to which general principles of contract law apply. This court reviews the district court's interpretation of a contract as a question of law subject to de novo review." *Terminal Transp., Inc. v. Minn. Ins. Guar. Ass'n*, 862 N.W.2d 487, 489 (Minn. App. 2015).

"[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).

B. STATUTORY INTERPRETATION

We "interpret statutes, such as the No–Fault Act, de novo." *Pepper v. State Farm Mut. Auto. Ins. Co.*, 813 N.W.2d 921, 925 (Minn. 2012); *see also State Farm Mut. Auto. Ins. Co. v. Lennartson*, 872 N.W.2d 524, 529 (Minn. 2015); *Hanbury v. Am. Family Mut. Ins. Co.*, 865 N.W.2d 83, 87 (Minn. App. 2015); *State Farm Mut. Auto. Ins. Co. v. Frelix*, 764 N.W.2d 581, 582 (Minn. App. 2009).

C. EQUITABLE PRINCIPLES AND SUMMARY JUDGMENT

"While subrogation is an equitable remedy, a standard of review more deferential than de novo, which may be applicable on appeal from summary judgment where, after balancing the equities, the district court determines not to award equitable relief, is not applicable here where the district court determined as a matter of law that RAM could not maintain a subrogation action. *RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1, 6 (Minn. 2012); *see also Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 822 (Minn. 2016) (applying de novo standard of review to district court's determination "as a matter of law the requirements for [subrogation] were not met.").

***See also* Section I(C)(3)(d).**

D. NO-FAULT ARBITRATION

"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).

"We have approved rules for no-fault cases involving mandatory arbitration under Minn. Stat. § 65B.525. One of the rules provides that arbitrators may grant any remedy or relief that the arbitrator deems just and equitable. Minn. R. No–Fault Arb. 32. But we have limited the role of no-fault arbitrators to deciding questions of fact, and have stated [t]he limitation on the final authority of [no-fault] arbitrators is based on the perceived need for consistency in interpretation of the No–Fault Act. 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. Ins. Co. v. Thompson*, 797 N.W.2d 201, 207 (Minn. 2011) (citation and quotations omitted).

"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)

"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).

"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.*

V. CIVIL COMMITMENT

A. REVIEW OF DISTRICT COURT'S FINDINGS OF FACT

1. Generally

"On appeal, this court applies a clear-error standard of review to the district court's findings of fact and reviews the record in the light most favorable to the findings of fact." *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 807 (Minn. App. 2014).

"[T]he sheer volume of information contained in [a] district court's order is not determinative. Even a long order may be insufficient if it does not permit meaningful appellate review. An order does not permit meaningful appellate review if it does not identify the facts that the district court has determined to be true and the facts on which the district court's decision is based." *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 811 (Minn. App. 2014).[1]

2. Particular Findings

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

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[1] This court also stated:

> In our judicial experience, it has become common in sex-offender commitment cases for counsel to submit an exceedingly large volume of information and materials, which tends to add complexity to an already-complex case and to set a pattern for further proceedings in that particular case[, and that practice was followed in this case.]…
>
> In our view, the manner of practice reflected in this case is to be avoided. A preoccupation with large quantities of detailed information often tends to obscure, rather than to reveal, the essential facts of a case. The district court's fact-finding task is made more difficult, not less difficult, when counsel submit hundreds of paragraphs of proposed findings of facts. In very few cases are such a large number of facts actually pertinent to a district court's legal analysis and the ultimate decision. In most cases, including this one, the submission of a large number of proposed findings tends to frustrate any effort to make a distinction between the most-important facts, which are apt to turn the case one way or the other, and the less-important facts.

In re Civil Commitment of Spicer, 853 N.W.2d 803, 811 (Minn. App. 2014).

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).

"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 Civil 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).

"A district court cannot satisfy its obligation to find facts with particularity by simply adopting *in toto* the opinions of a particular expert." *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 810 (Minn. App. 2014) (making this statement in the context of a case involving conflicting expert opinions).

"[F]indings beginning with phrases such as 'petitioner claims,' 'according to petitioner's application,' and 'respondent asserts,' are not true findings. This is so because a district court's recitation of what others have observed is not a finding of fact that those observations are true. Accordingly, it is insufficient for a district court to merely recite or summarize excerpted portions of testimony of the witnesses without commenting independently either upon their opinions or the foundation for their opinions or the relative credibility of the various witnesses. *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 810 (Minn. App. 2014) (citations and quotations omitted).

"[A] district court may not 'simply review[] the *Linehan* factors after largely accepting [one expert's opinions] without indicating the significance of any of those factors within the context of a multi-factor analysis.'" *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 809 (Minn. App. 2014) (quoting *In re Civil Commitment of Ince*, 847 N.W.2d 13, 24 (Minn. 2014)).

Noting that certain opinions from other contexts were helpful in interpreting the requirements for findings necessary to support commitment as SDP and SPP, the court of appeals stated:

> For example, in *Rosenfeld v. Rosenfeld*, 311 Minn. 76, 249 N.W.2d 168 (1976), a case concerning child custody, the supreme court held that a district court "must make written findings which properly reflect its consideration" of the relevant statutory factors. *Id.* at 82, 249 N.W.2d at 171. The supreme court noted that custody determinations are given deferential treatment by appellate courts and that, therefore, it is "especially important that the basis for the court's decision be set forth with a high degree of particularity if appellate review is to be meaningful." *Id.* (quotation omitted). The supreme court reasoned that requiring more particular findings would "(1) assure consideration of the statutory factors by the family court; (2) facilitate appellate review of the family court's custody decision; and (3) satisfy the parties that this important decision was carefully and fairly considered by the family court." *Id*….The supreme court also has stated, in cases involving a termination of parental rights, that a district court's findings of fact must "provide insight into which facts or opinions were most persuasive of the ultimate decision." *See, e.g., In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990).

In re Civil Commitment of Spicer, 853 N.W.2d 803, 809 (Minn. App. 2014).

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).

3. 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

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).

4. 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 Civil Commitment of Nielsen*, 863 N.W.2d 399, 401 (Minn. App. 2015), *review denied* (Minn. Apr. 14, 2015).

"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).

"This court reviews issues of subject-matter and personal jurisdiction de novo as questions of law." *In re Civil Commitment of Nielsen*, 863 N.W.2d 399, 402 (Minn. App. 2015), *review denied* (Minn. Apr. 14, 2015).

"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).

"On a rule 41.02(b) motion to dismiss a discharge petition at the close of a petitioner's case-in-chief, the judicial appeal panel may not weigh the evidence or make credibility determinations regarding discharge, and instead must view the evidence ... in a light most favorable to the committed person. We therefore review the judicial appeal panel's dismissal of the petition for discharge de novo." *Foster v. Jesson*, 857 N.W.2d 545, 549 (Minn. App. 2014) (citations and quotations omitted).

"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).

C. REVIEW OF EVIDENTIARY MATTERS

"Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Unfair prejudice under rule 403 is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage. The decision of whether to admit or exclude evidence is within the district court's discretion and will be reversed only if the court has clearly abused its discretion." *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 813 (Minn. App. 2014) (quotations and citations omitted).

"The supreme court has stated that 'excluding relevant evidence at a bench trial on the grounds of unfair prejudice is in a sense ridiculous' because 'there is comparatively less risk that [a] district court judge, as compared to a jury of laypersons, would use the evidence for an improper purpose or have his sense of reason overcome by emotion.'" *In re Civil Commitment of Spicer*, 853 N.W.2d 803,

813 (Minn. App. 2014) (quoting *State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009)).

D. OTHER MATTERS

"We review a district court's application of the principle of comity for an abuse of discretion." *In re Commitment of Hand*, 878 N.W.2d 503, 506 (Minn. App. 2016), *review denied* (Minn. June 21, 2016).

> In general, when courts have concurrent jurisdiction, the first court to acquire jurisdiction has priority in considering the case. The first to file rule is not, in fact, a rule of law but a principle based on comity. Judicial comity is the respect a court of one state or jurisdiction shows to another state or jurisdiction in giving effect to the other's laws and judicial decisions. Generally[,] comity between courts will resolve instances where two actions between the same parties, on the same subject, and to test the same rights, are brought in different courts having concurrent jurisdiction. In determining whether to defer to another court or jurisdiction, a court should seek to determine which of the two actions will serve best the needs of the parties by providing a comprehensive solution of the general conflict.

In re Commitment of Hand, 878 N.W.2d 503, 506 (Minn. App. 2016) (quotations and citations omitted), *review denied* (Minn. June 21, 2016).

VI. 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 party challenging a statute must demonstrate beyond a reasonable doubt that the statute violates some provision of the [constitution]." *Id.*

"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).

"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). *See State v. Coles*, 862 N.W.2d 477, 479 (Minn. 2015) (holding same).

"We review the interpretation of criminal procedural rules de novo. *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 will not be disturbed unless they are clearly erroneous." *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015).

"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).

Postconviction 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)).

"The wholesale adoption of one party's findings of fact and conclusions [of law] raises the question of whether the trial court independently evaluated each party's testimony and evidence." *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992).

3. Mixed Questions of Fact and Law

"A district court's application of statutory criteria to the facts found is a question of law that we review de novo." *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 Forfeiture/Failure to Raise Claim

"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).

Although cases use the term "waiver," the supreme court "has recently emphasized the distinction between waiver, which refers to the intentional relinquishment of a known right, and forfeiture, which refers to the failure to make a timely assertion of a right." *Troxel v. State*, 875 N.W.2d 302, 313 n.3 (Minn. 2016) (citing *State v. Beaulieu*, 859 N.W.2d 275, 278 n.3 (Minn. 2015)).

B. PRETRIAL MATTERS

1. Suppressing Evidence

a. In General

"When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) (citing *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992)). *See State v. Onyelobi*, 879 N.W.2d 334, 342-43 n.4 (Minn. 2016) (clarifying standard for reviewing district court's factual findings on pretrial suppression order is the clearly erroneous standard, but "the legal determinations, including a determination of probable cause," is reviewed de novo).

"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)).

The standard of review of pretrial suppression ruling is de novo on the legal issue of whether a search was justified by reasonable suspicion or probable cause and clearly erroneous on the district court's findings of fact. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005). Where the facts are undisputed, "our review is entirely de novo." *Id*. *But see State v. Lemert*, 843 N.W.2d 227, 231 (Minn. 2014) ("This case was submitted to the district court on stipulated facts, and 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 Lemert.").

b. Critical Impact

In a pretrial appeal by the state, the appellate court will only reverse if the state demonstrates clearly and unequivocally that the district court erred in its judgment and that unless reversed, the error will have a critical impact on the outcome of the trial. *State v. Webber*, 262 N.W.2d 157, 159 (Minn. 1977). The supreme court is currently considering whether this creates a deferential standard of review unique to pretrial appeals by the state, consistent with the general rule that such appeals are disfavored, or if this articulates the state's burden of proof necessary to obtain relief from a pretrial suppression ruling and the general standard of review applied to such rulings, as stated above, applies. *State v. Lugo*, No. A15-1432, 2016 WL 764514, at *2-3 (Minn. App. Feb. 29, 2016), *review granted* (Minn. Apr. 27, 2016).

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) (clarifying critical impact standard).

"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). Suppression of a child's statements describing alleged sexual abuse meets the critical impact test when the child is found incompetent to testify. *Id*.

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 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. An 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 regarding 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). *See also State v. Horst*, 880 N.W.2d 24, 31 (Minn. 2016) (holding same).

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) (clarifying standard of review for "fact-intensive, mixed questions of constitutional law"). 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).

The circumstances a court looks at to determine whether a *Miranda* waiver has occurred are the same as the circumstances the court considers to determine whether a confession is involuntary. *See State v. Camacho*, 561 N.W.2d 160, 170 (Minn. 1997).

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, lack of or adequacy of warnings, length and legality of detention, nature of interrogation, physical deprivations, and limits on access to 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); *State v. Clark*, 738 N.W.2d 316, 332 (Minn. 2007) (holding same).

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).

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).

e. Video or Audio Evidence

When a district court's factual findings in a ruling on a pretrial suppression issue involve a dispute between officer testimony and video or audio evidence, we accept the district court's factual findings unless the findings are clearly erroneous. *See State v. Chavaria-Cruz*, 784 N.W.2d 355, 363 (Minn. 2010); *see also State v. Shellito*, 594 N.W.2d 182, 185-86 (Minn. App. 1999).

f. Voluntariness of Consent

The question of whether a consent search was voluntary and not the product of duress or coercion is a question of fact, which we review under the clearly erroneous standard. *State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011). "Findings of fact are clearly erroneous if, on the entire evidence, we are left with the definite and firm conviction that a mistake occurred." *Id*. "'Voluntariness' is a question of fact that depends on the totality of the circumstances," including the nature of the encounter, the kind of person the defendant is, and what was said and how it was said." *State v. Dezso*, 512 N.W.2d 877, 880 (Minn. 1994).

2. Probable Cause—General

Dismissal of a complaint for lack of probable cause is only 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).

"When reviewing the legality of a seizure or search, an appellate court will not reverse the [district] court's findings unless clearly erroneous or contrary to law. This court will review de novo a [district] court's determination of reasonable suspicion as it relates to Terry stops and probable cause as it relates to warrantless searches." *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997) (citation omitted). "We undertake a de novo review to determine whether a search or seizure is justified by reasonable suspicion or by probable cause." *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

"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)).

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 n.1 (Minn. 2001) (clarifying the standard of review and noting we do not review probable cause for a search warrant novo, as stated in *State v. Bradford*, 618 N.W.2d 782, 794 (Minn. 2000); *but see State v. Holland*, 865 N.W.2d 666, 673 (Minn. 2015) (citing *Bradford* for the standard of review).

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).

The reviewing court gives great deference to the issuing judge's determination of whether a nighttime search warrant should be authorized under Minn. Stat. § 626.14. *State v. Bourke*, 718 N.W.2d 922, 928 (Minn. 2006).

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); Minn. R. Crim. P. 15.05, subd. 1. 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)); Minn. R. Crim. P. 15.05, subd. 2. *But see Campos v. State*, 816 N.W.2d 480, 485 (Minn. 2012) (stating abuse of discretion standard applies to district court's decision to deny a motion to withdraw a guilty plea under Minn. R. Crim. P. 15.05, subd. 1).

"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*, 849 N.W.2d 94, 96 (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)).

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

Determining what the parties agreed to in a plea bargain is a factual inquiry, but 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.*

Because of concern about harassing the victim, the decision to order an adverse examination is within the district court's discretion. *State v. Moore*, 433 N.W.2d 895, 899-900 (Minn. App. 1988).

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.

The mental-illness defense is a question of fact to be resolved by the factfinder, and "a finding that a defendant failed to meet his or her burden to prove a mental-illness defense should not be disturbed unless it is clearly erroneous." *State v. Roberts*, 876 N.W.2d 863, 868 (Minn. 2016).

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). And a district court will grant an indigent defendant's request for different counsel only if exceptional circumstances exist and the demand is timely and reasonable. *Id.* But a request to have advisory counsel take over representation under Minn. R. Crim. P. 5.04, subd. 2(2), is not discretionary. *State v. Chavez-Nelson*, No. A15-0251, __ N.W.2d__, 2016 WL 3615614, at *5-6 (Minn. July 6, 2016) (concluding Chavez-Nelson had a rule-based right to request that advisory counsel take over representation, and district court's denial of that request was error subject to harmless-error review).

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 admission of evidence of improperly joined offenses would have been admissible as *Spreigl* evidence had the offenses had been properly severed for trial, the improper joinder of the offenses is not prejudicial. *State v. Ross*, 732 N.W.2d 274, 283 (Minn. 2007). *See State v. Ross*, 732 N.W.2d 274, 280 (Minn. 2007) (rejecting less restrictive joinder standards and adhering to traditional joinder analysis in caselaw).

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).

"Trial court decisions relating to the conduct of voir dire will not be overturned absent an abuse of discretion." *State v. Greer*, 635 N.W.2d 82, 87 (Minn. 2001). "[I]t is an abuse of discretion for the trial court to frustrate the purposes of voir dire by preventing discovery of bases for challenge or inhibiting a defendant's ability to make an informed exercise of peremptory challenges." *Id.*

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.*

> Harmless error analysis does not apply when a peremptory challenge is based on a discriminatory intent or motive. *State v. Greenleaf*, 591 N.W.2d 488, 500-01 (Minn. 1999) ("If a prosecutor had a prohibited discriminatory intent or motive for striking a juror, a defendant is automatically entitled to a new trial because harmless error impact analysis is inappropriate in the case of a defendant convicted by a petit jury if there was racial discrimination in the selection of the jury.").

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).

"A motion to remove for cause is committed to the discretion of the [district] court and this court will reverse only for an abuse of that discretion." *Hooper v. State*, 838 N.W.2d 775, 790 (Minn. 2013) (quotation omitted).

Harmless-error does not apply to a district court's erroneous decision to deny a challenge for cause where the defendant has used all of his or her peremptory challenges and the biased juror served on the jury. *State v. Logan*, 535 N.W.2d 320, 324 (Minn. 1995).

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, 517-18 (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").

A motion to remove a judge for cause is within the district court's discretion and will only be reversed on appeal if the district court abused its discretion. *Hooper v. State*, 838 N.W.2d 775, 790 (Minn. 2013).

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," which includes the power to sequester witnesses, the question of whether the court's conduct during voir dire 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; *see also State v. Gillam*, 629 N.W.2d 440, 451 (Minn. 2001).

"[T]he question of whether a defendant is voluntarily absent from trial . . . is a factual determination." *State v. Finnegan*, 784 N.W.2d 243, 249 (Minn. 2010) (adhering to "fact-driven approach" and declining to adopt rule that a defendant who attempts suicide during criminal trial is "involuntarily and justifiably absent").

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).

"A mistrial should not be granted unless there is a reasonable probability that the outcome of the trial would be different if the event that prompted the motion had not occurred." *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006) (quotation omitted).

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).

When the district court's evidentiary ruling results in the erroneous exclusion of defense evidence in violation of the defendant's constitutional rights, the verdict must be reversed if "there is a reasonable possibility that the verdict might have been different if the evidence had been admitted." *State v. Graham*, 764 N.W.2d 340, 351 (Minn. 2009) (quoting *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994)).

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.*

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 deciding what effect the erroneously admitted evidence had on the verdict, 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).

Some errors are not subject to harmless error review. Here are some examples: *State v. Dorsey*, 701 N.W.2d 238, 253 (Minn. 20015) (biased judge or jury and denial of counsel); *Brown v. State*, 682 N.W.2d 162, 166-68 (Minn. 2004) (judge communicating with jury outside without defendant present); *State v. Richards*, 456 N.W.2d 260, 263 (Minn. 1990) (denial of right to self-representation); *State v. McRae*, 494 N.W.2d 252, 260 (Minn. 1992) (improper closure of the courtroom violating right to public trial); *State v. Rosillo*, 281 N.W.2d 877, 879 (Minn. 1979) (denial of right to testify).

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). *See State v. Little*, 851 N.W.2d 878, 886 (Minn. 2014) (granting a new trial where allowing Little to be convicted of more serious offense would affect confidence in fairness and integrity of proceedings "where there is a reasonable likelihood that but for the district court's error he would not have waived his constitutional right to a jury trial on the newly added charge").

"[F]or purposes of applying the plain-error doctrine the court examines the law in existence at the time of appellate review." *State v. Kelley*, 855 N.W.2d 269, 277 (Minn. 2014).

Under the invited error doctrine, a party cannot assert on appeal an error that he invited or that could have been prevented at the district court. The invited error doctrine does not apply, however, if an error meets the plain error test." *State v. Carridine*, 812 N.W.2d 130, 142 (Minn. 2012).

The invited error doctrine "does not require us to turn a blind eye to errors that seriously affect the fairness, integrity or public reputation of judicial proceedings." State v. Benton, 858 N.W.2d 535, 540 (Minn. 2015). Despite the general rule that appellate courts "do not typically review errors that were invited by the defendant or that the defendant could have prevented in the district court," the appellate courts will review an unobjected-to error, even if invited by the defendant, under the plain-error test. *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016).

An evidentiary objection made at trial must state the specific ground of objection. *State v. Mosley*, 853 N.W.2d 789, 797 n. 2 (Minn. 2014) (citing Minn. R. Evid. 103(a)(1)). When the ground for the objection at trial is not the same as that raised on appeal, we review the claim for plain error. *Id. See also State v. Peltier*, 874 N.W.2d 792, 799-800 (Minn. 2016) (noting that objection to proposed jury instructions at trial was unrelated to ground raised on appeal so review of appellate claim is subject to plain-error analysis).

d. Privilege

"The applicability of an evidentiary privilege is a question of law that we review de novo." *State v. Expose*, 872 N.W.2d 252, 257 (Minn. 2015).

"The availability of a privilege established under statutory or common law is an evidentiary ruling to be determined by the [district] court and reviewed based on an abuse of discretion standard." *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"). Similarly, the appellate courts also review a district court's exclusion of expert testimony for abuse of discretion. *State v. Bird*, 734 N.W.2d 664, 672 (Minn. 2007).

Weighing credibility of witnesses, including expert witnesses, is the exclusive function of the jury. *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). *See also Goeb v. Tharaldson*, 615 N.W.2d 800, 815 (Minn. 2000) (stating standard of review of expert testimony under *Frye-Mack* is two-pronged: de novo review on general acceptance and foundational reliability, abuse of discretion on witness qualifications and helpfulness).

f. Identification Evidence

"A district court's ruling on the admissibility of identification evidence is subject to an abuse-of-discretion standard of review." *State v. Booker*, 770 N.W.2d 161, 168 (Minn. App. 2009) (citing *State v. Goar*, 295 N.W.2d 633, 634 (Minn. 1980)).

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) ("Looking to the whole of the evidence on which the jury based its verdict, we [conclude] that the verdict was surely unattributable to [the witness's] pre-trial identification.").

g. Prior Bad Acts Evidence

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 reviewing court applies an abuse of discretion standard of review to a district court's admission of *Spreigl* evidence. *State v. Clark*, 738 N.W.2d 316, 345 (Minn. 2007).

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); *State v. Lindsey*, 755 N.W.2d 752, 755 (Minn. App. 2008) (holding same), *review denied* (Minn. Oct. 29, 2008).

This court reviews the district court's decision to admit immediate-episode evidence under the abuse-of-discretion standard. *State v. Riddley*, 776 N.W.2d 419, 424-26 (Minn. 2009) (clarifying that immediate-episode evidence, a narrow exception to *Spreigl*, requires a close causal and temporal connection between the prior bad act and the charged crime).

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).

"When the district court has erroneously admitted other-acts evidence, this court must determine whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Ness*, 707 N.W.2d 676, 691 (Minn. 2006) (clarifying *Spreigl* standard of review).

Note that the supreme court omitted the "reasonable possibility" language from the *Spreigl* standard of review in *State v. Campbell*, 861 N.W.2d 95, 102 (Minn. 2015) (citing *State v. Rossberg*, 851 N.W.2d 609, 615 (Minn. 2014)). But the supreme court restored the "reasonable possibility" language in *State v. Welle*, 870 N.W.2d 360, 366-67 (Minn. 2015). The omission appears inadvertent.

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.

The district court errs by failing to place its analysis of the *Jones* factors on the record. *State v. Vanhouse*, 634 N.W.2d 715, 719 (Minn. App. 2001). "But when we have applied the harmless-error analysis to cases in which the district court failed to enter the *Jones*-factor analysis on the record, we have held that the error is

harmless if the conviction could have been admitted after a proper application of the *Jones*-factor analysis." *Id.*

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).

While evidentiary rulings are within the district court's discretion, 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).

When the defendant does not specifically object under the Confrontation Clause at trial but only argues that testimony is inadmissible under the rules of evidence, the reviewing court will review for plain error. *State v. Rossberg*, 851 N.W.2d 609, 618 (Minn. 2014); *see also 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).

The supreme court has noted that it is "particularly important" for counsel to object to potential hearsay evidence because of the "complexity and subtlety of the operation of the hearsay rule and its exceptions" so "that a full discussion of admissibility can be conducted at trial." *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006).

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 photos as 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).

n. Alternative Perpetrator

"A district court's denial of a motion to introduce alternative-perpetrator evidence is reviewed for an abuse of discretion." *Troxel v. State*, 875 N.W.2d 302, 307 (Minn. 2016).

4. Jury Instructions

A district court has "considerable latitude" in the selection of language for the jury instructions. *State v. Gatson*, 801 N.W.2d 134, 147 (Minn. 2011). We apply an abuse of discretion standard to a district court's jury instructions. *State v. Koppi*, 798 N.W.2d 358, 361 (Minn. 2011). "[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. *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001) (citations omitted).

"While district courts have broad discretion to formulate appropriate jury instructions, a district court abuses its discretion if the jury instructions 'confuse, mislead, or materially misstate the law.'" *State v. Taylor*, 869 N.W.2d 1, 14-15 (Minn. 2015) (quoting *State .v Kelley*, 855 N.W.2d 269, 274 (Minn. 2014)). "Where there is a conflict between the Minnesota Jury Instructions Guide, Criminal (CRIMJIG) and the statute or our case law, the latter two control." *Id.* at 15.

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); *see also State v. Malaski*, 330 N.W.2d 447, 453 (Minn. 1983) (reversing and remanding for new trial where it was plain error for district court to give self-defense instruction that was consistent with defense theory that defendant did not intend to kill the victim, and the error significantly affected the verdict under the circumstances because, based on juror's requests for clarification, "[w]e have no way of knowing what the jury's understanding of the law was").

In evaluating whether a plainly-erroneous jury instruction affected substantial rights, the reviewing court "look[s] to all relevant factors including, but not limited to: (1) whether [the defendant] contested the omitted elements at trial and submitted evidence to support a contrary finding; (2) whether the State presented overwhelming evidence to prove those elements; and (3) whether the jury's verdict nonetheless encompassed a finding on those elements notwithstanding their omission from the jury instructions." *State v. Peltier*, 874 N.W.2d 792, 800 (Minn. 2016); *see also State v. Huber*, 527 N.W.2d 519, 525 n.5, 526 (Minn. 2016) (noting court of appeals erred in analyzing third prong of plain-error test when it concluded erroneous accomplice-liability instruction did not affect substantial rights because "Huber directly and vigorously contested the aiding-and-abetting element and offered evidence to the contrary").

"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). "[I]t is plainly erroneous for a district court to fail to give an accomplice-corroboration instruction when the facts warrant it." *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016). In evaluating whether the failure to give an accomplice-corroboration instruction affected the defendant's substantial rights, the appellate courts examine "'whether the testimony of the accomplice was corroborated by significant evidence, whether the accomplice testified in exchange for leniency, whether the prosecution emphasized the accomplice's testimony in closing argument, and whether the court gave the jury general witness credibility instructions.'" *Id.* (quoting *State v. Jackson*, 746 N.W.2d 894, 899 (Minn. 2008) (declining to decide whether witness was accomplice because the failure give an accomplice-corroboration instruction was harmless).

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); *see also State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012) (applying standard for serious misconduct without deciding the continued application of the *Caron* test).

"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)). When the defendant fails to object, prosecutorial misconduct is reviewed under a modified plain-error standard. *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).

"[Appellate courts] use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence." *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

b. Direct and Circumstantial Evidence

"Direct evidence is [e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Bernhardt v. State*, 684 N.W.2d 465, 477 n.11 (Minn. 2004) (quotation omitted).

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. Silvernail*, 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).

"[W]hen a disputed element is sufficiently proven by direct evidence alone . . ., it is the traditional standard, rather than the circumstantial-evidence standard, that governs." *State v. Horst*, 880 N.W.2d 24, 39-40 (Minn. 2016) (concluding defendant's statement, "I want him dead," was direct evidence of her mens rea, and defendant's offer of life-insurance proceeds and instructions about number of times to shoot was direct evidence that defendant hired or procured third party to commit murder).

Where the state presents direct evidence of a defendant's exclusive control over the place where contraband is located, the state has established constructive possession by direct evidence, and the circumstantial evidence standard does not apply. *State v. Salyers*, 858 N.W.2d 156, 160-61 (Minn. 2015).

c. Evidence Corroborating an Accomplice's Testimony

"This court reviews the sufficiency of evidence corroborating accomplice testimony in the light most favorable to the state, and all conflicts presented by the evidence are resolved in favor of the verdict." *State v. Her*, 668 N.W.2d 924, 927 (Minn. App. 2003), *review denied* (Minn. Dec. 16, 2003).

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)).

"The quantum of corroborative evidence needed necessarily depends on the circumstances of each case." *State v. Her*, 668 N.W.2d 924, 927 (Minn. App. 2003) (quotation omitted), *review denied* (Minn. Dec. 16, 2003). "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 (2014) (providing that accomplice testimony must be corroborated).

D. SENTENCING

1. Stay of Adjudication/Continuance for Dismissal

"Whether a district court's continuance for dismissal violates the constitutional principle of separation of powers is a question of law, to which we apply a *de novo* standard of review." *State v. Strok*, 786 N.W.2d 297, 303 (Minn. App. 2010).

"[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*, 849 N.W.2d 99, 103 (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 105.

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).

The state has the burden to prove "the facts necessary to justify consideration of an out-of-state conviction in determining a defendant's criminal history score." *State v. Outlaw*, 748 N.W.2d 349, 355 (Minn. App. 2008) (quotation omitted), *review denied* (Minn. July 15, 2008).

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)). "The decision whether to award credit is a mixed question of fact and law." *State v. Clarkin*, 817

N.W.2d 678, 687 (Minn. 2012) (quotation omitted). 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. *Id.*

c. Multiple Sentences

The district court's decision whether multiple offenses were committed as part of a single behavioral incident under Minn. Stat. § 609.035 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

"All three numbers in any given cell [on the sentencing guidelines grid] constitute an acceptable sentence based solely on the offense at issue and the offender's criminal history score—the lowest is not a downward departure, nor is the highest an upward departure." *State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008). "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

"We 'afford the trial court great discretion in the imposition of sentences' and reverse sentencing decisions only for an abuse of that discretion." *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quoting *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 issue. *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). Once we determine, as a matter of law, whether the district court has identified proper grounds for departure, we review the decision whether to depart for an abuse of discretion. *Id.* 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. *See also State v. Soto*, 855 N.W.2d 303, 309 (Minn. 2014) (requiring a defendant to be particularly amenable to probation, which means the amenability to probation distinguishes the defendant from others and truly presents "substantial[] and compelling circumstances").

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).

"We review a district court's decision to depart from the presumptive guidelines sentence for an abuse of discretion. If the reasons given for an upward departure are legally permissible and factually supported in the record, the departure will be affirmed. But if the district court's reasons for departure are improper or inadequate, the departure will be reversed." *State v. Hicks*, 864 N.W.2d 153, 156 (Minn. 2015) (quotations and citations omitted).

6. Restitution

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

"A district court has broad discretion to award restitution. But whether a statute authorizes restitution is a matter of statutory construction, which we review de novo." *State v. Moua*, 874 N.W.2d 812, 816 (Minn. App. 2016) (citation omitted).

"Whether a particular claim for restitution fits within the statutory definition is a question of law, which this court reviews de novo." *In re Welfare of M.R.H.*, 716 N.W.2d 349, 351 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

"A district court has broad discretion to award restitution, and the district court's order will not be reversed absent an abuse of that discretion. The district court's factual findings will

not be disturbed unless they are clearly erroneous. But questions concerning the authority of the district court to order restitution are questions of law subject to de novo review." *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015) (citations omitted).

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). *But see State v. Whitson*, 876 N.W.2d 297, 303 (Minn. 2016) (noting in a direct appeal with stay and remand, that all issues Whitson raises on direct appeal were raised in his postconviction petition and are subject to standard of review applicable to an appeal from denial of a petition for postconviction relief).

"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).

"We review the denial of a petition for postconviction relief for an abuse of discretion. We review legal issues de novo, but on factual issues our review is limited to whether there is sufficient evidence in the record to sustain the postconviction court's findings. We will not reverse an order unless the postconviction court exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015) (citations and quotations omitted).

"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); *see also Colbert v. State*, 870 N.W2d 616, 621 (Minn. 2015) (holding same).

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 forfeited by the state's failure to assert it. *Carlton v. State*, 816 N.W.2d 590, 601 (Minn. 2012). But where there is no indication that the state has intentionally, knowingly, and expressly waived the defense of untimeliness, a postconviction court may consider, sua sponte, the untimeliness of a postconviction petition, provided it first gives notice to the parties. *See Weitzel v. State*, 868 N.W.2d 268, 280 (Minn. App. 2015) (relying on *Day v. McDonough*, 547 U.S. 198, 126 S. Ct. 1675 (2006), and *Wood v. Milyard*, 132 S. Ct. 1826 (2012) for the analysis of waiver and forfeiture of statute-of-limitations defense), *review granted* (Minn. Oct. 20, 2015).

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.*

2. Minn. R. Crim. P. 27.03, subd. 9

A motion to correct a sentence not authorized by law under Minn. R. Crim. P. 27.03, subd. 9, may be treated as a postconviction petition. *See Bonga v. State*, 765 N.W.2d 639, 642-43 (Minn. 2009); *see also Johnson v. State*, 877 N.W.2d 776, 779 n.3 (Minn. 2016) (concluding postconviction court did not err when construing Johnson's rule 27.03 motion as postconviction petition). The "remedy in rule 27.03, subdivision 9, . . . coexist[s] with the postconviction remedy." *Vazquez v. State*, 822 N.W.2d 313, 317 (Minn. App. 2012). An offender may challenge a sentence by filing a petition for postconviction relief under chapter 590 or by filing a motion to correct a sentence under rule 27.03, subdivision 9. *Washington v. State*, 845 N.W.2d 205, 210 (Minn. App. 2014).

A defendant's failure to raise an issue involving the legality of the sentence is not forfeited by the defendant's failure to assert the issue in district court. *See State v. Maurstad*, 733 N.W.2d 141, 146 (Minn. 2007) (permitting offender to challenge his sentence on the ground the district court erred in assigning a custody status point, even though that argument was not presented to the district court at sentencing).

"[T]he two-year time limit [in section 590.01, subdivision 4(a)] does not apply to motions properly filed under" rule 27.03, subd. 9. *Vazquez v. State*, 822 N.W.2d 313, 318 (Minn. App. 2012). But "rule 27.03, subdivision 9, authorizes relief only if a party challenges a sentence, as opposed to a conviction, and only if a party does so by asserting that a sentence is unauthorized by law in the sense that the sentence is contrary to an applicable statute or other applicable law." *Washington v. State*, 845 N.W.2d 205, 213 (Minn. App. 2014).

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).

"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).

3. 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."). A defendant is entitled to an evidentiary hearing on a newly-discovered evidence claim if he alleges facts, that if proven by a preponderance of the evidence, would satisfy the four-prong *Rainer* test. *Nissalke v. State*, 861 N.W.2d 88, 91 (Minn. 2015).

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).

"Actual bias [of a juror] is a question of fact which the district court is in the best [position] to evaluate." *State v. Fraga*, 864 N.W.2d 615, 623 (Minn. 2015) (quotation omitted). "We give great deference to a district court's findings of fact regarding juror bias, and review a district court's decision to seat a juror of abuse

of discretion." *Id.* (quotation omitted). "Permitting a biased juror to serve is structural error requiring automatic reversal." *Id.*

d. Witness Recantations/False Testimony

"We review the ultimate decision by the postconviction court to grant or deny an evidentiary hearing for an abuse of discretion," but "we review the postconviction court's underlying factual findings for clear error and its legal conclusions de novo." *Caldwell v. State*, 853 N.W.2d 766, 770 (Minn. 2014). In order to justify an evidentiary hearing on a claim of recanted testimony, the allegations in the postconviction petition must have factual support that carries "sufficient indicia of trustworthiness" and "recite facts that would, if proven by a preponderance of the evidence, entitle the petitioner to a new trial." *Id.* (noting an affidavit from the recanting witness, or an affidavit from the investigator who interviewed each witness, can provide sufficient indicia of trustworthiness justifying an evidentiary hearing). "[A] petitioner is entitled to an evidentiary hearing if, assuming that the trustworthy allegations contained in the petition, files, and records are true, a court would conclude that a material witness's trial testimony was false and that the false testimony might have affected the verdict." *Id.* at 772.

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).

"The decision whether to grant a new trial based upon newly discovered evidence rests with the court and will not be disturbed unless there is an abuse of discretion." *Pederson v. State*, 649 N.W.2d 161, 163 (Minn. 2002).

3. Ineffective Assistance of Counsel

"When a claim of ineffective assistance of trial counsel can be determined on the basis of the trial record, the claim must be brought on direct appeal or it is *Knaffla*-barred." *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). But when the claim requires examination of evidence outside of the record or additional fact-finding, the claim is better brought in a postconviction proceeding. *Id.* "[A]n ineffective-assistance-of-trial-counsel claim brought in a postconviction proceeding following direct appeal is not *Knaffla*-barred if review of the claim requires consideration of facts outside those in the trial court record." *Zornes v. State*, 880 N.W.2d 363, 369 (Minn. 2016).

"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).

"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 will generally not review an ineffective-assistance-of-counsel claim that is based on trial strategy." *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013).

A claim of ineffective assistance of appellate counsel is not barred by *Knaffla* in a first postconviction appeal because the claim could not have been brought at any earlier time. *Arredondo v. State*, 754 N.W.2d 566, 571 (Minn. 2008). To succeed on an ineffective assistance of appellate counsel claim, the offender must show that his or her appellate counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable possibility that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id*. (quotation omitted). "When an ineffective assistance of appellate counsel claim is based on appellate counsel's failure to raise an ineffective assistance of trial counsel claim, the petitioner must first show that trial counsel was ineffective to prevail on the appellate counsel claim." *Zornes v. State*, 880 N.W.2d 363, 371 (Minn. 2016) (quotation omitted).

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) (2014) 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).

VII. QUASI-CRIMINAL

A. JUVENILE

1. Delinquency Adjudications

An adjudication of delinquency means that the court has found the charge proved and has adjudicated the juvenile delinquent in a final appealable order. *In re Welfare of J.J.P.*, 831 N.W.2d 260, 266 (Minn. 2013) (construing Minn. R. Juv. Delinq. P. 6.03, subd. 1, 15.05, subd. 1; Minn. Stat. § 260B.198, subd. 1 (2014)).

"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. *In re Welfare of M.E.M.*, 674 N.W.2d 208, 215 (Minn. App. 2004) (citations omitted). "The factual findings of the district court are upheld unless clearly erroneous." *Id.*

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).

When a juvenile waives the right to a contested delinquency hearing and submits the case to the district court for a trial on stipulated facts, "according to the procedures approved by this court in *Lothenbach*," "[w]e review questions of law de novo." *In re Welfare of R.J.E.*, 642 N.W.2d 708, 710-11 (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 (2014) (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. Distinguishing Implied Consent from Criminal DWI Proceedings

"We have used the 'quasi-criminal' label to describe the consequences of license revocation. At the same time, however, we have also recognized that once a driver has made a decision regarding testing, the proceeding divides clearly into its civil and criminal aspects. The criminal proceedings serve to punish the driver. The civil proceedings, however, protect public safety on the highway. A driver's decision to challenge the Commissioner's administrative license revocation falls squarely on the civil side of the division." *Axelberg v. Comm'r of Pub. Safety*, 848 N.W.2d 206, 211-12 (Minn. 2014) (quotations and citations omitted), *superseded by statute*, Minn. Stat. § 169A.53, subd. 3 (Supp. 2015) (adding defense of necessity to list of issues within scope of implied-consent hearing)).

"Criminal DWI proceedings and civil implied-consent proceedings are separate proceedings in separate cases. In an implied-consent proceeding, the parties before the district court are the defendant and the Commissioner of Public Safety, the scope of the hearing is limited to ten issues, and the Minnesota Rules of Procedure govern. In a criminal DWI proceeding, the parties are the defendant and the state, the Minnesota Rules of Criminal Procedure apply, and the state is held to a higher burden of proof. In addition, Minnesota law expressly recognizes that determinations in civil implied-consent hearings 'shall not give rise to an estoppel on any issues arising from the same set of circumstances in any criminal prosecution.' Minn. Stat. § 169A.53, subd. 3(g) (2012)." *State v. Miller*, 849 N.W.2d 94, 98 (Minn. App. 2014) (citations omitted) (holding that district court erred by applying law-of-the-case doctrine in criminal action based on district court's decision in implied-consent proceeding that stop was unconstitutional).

The court of appeals "applies de novo review to questions of collateral estoppel." *State v. Wagner*, 637 N.W.2d 330, 336 (Minn. App. 2001) (quotation omitted) (holding that driver was not collaterally estopped from challenging validity of stop of his vehicle in criminal proceeding, even though he unsuccessfully litigated that issue in earlier implied-consent civil proceeding).

2. Questions of Law

"We review de novo the district court's application of the law in proceedings held pursuant to section 171.19. And, like the district court, we may reverse the commissioner's licensure determination if it was fraudulent, arbitrary, unreasonable, or not within its jurisdiction and powers. We presume regularity and correctness when we review license matters." *Pallas v. Comm'r of Pub. Safety*, 781 N.W.2d 163, 167 (Minn. App. 2010) (citations omitted).

"Jurisdiction is a question of law that we review de novo. We review the district court's conclusions of law de novo. We review due-process challenges de novo. Interpretation of a statute presents a question of law, which we review de novo." *Thole v. Comm'r of Pub. Safety*, 831 N.W.2d 17, 19 (Minn. App. 2013) (quotations omitted), *review denied* (Minn. July 16, 2013).

"Certified questions are questions of law that we review de novo." *Fedziuk v. Comm'r of Pub. Safety*, 696 N.W.2d 340, 344 (Minn. 2005).

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) (applying Fourth Amendment and exclusionary rule to implied-consent proceeding).

"We apply a *de novo* standard of review to the district court's conclusions of law" on the issue of whether the officer violated the driver's limited right to counsel. *Nelson v. Comm'r of Pub. Safety*, 779 N.W.2d 571, 573 (Minn. App. 2010).

"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).

"A district court's conclusion of law will be overturned only if it erroneously applied the law to the facts." *Brooks v. Comm'r of Pub. Safety*, 584 N.W.2d 15, 17 (Minn. App. 1998) (holding that because implied-consent hearing is not a criminal proceeding, *Brady* and other due-process rights associated with criminal trials do not apply), *review denied* (Minn. Nov. 24, 1998).

"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. 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).

"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); *see also Trombley v. Comm'r of Pub. Safety*, 375 N.W.2d 97, 98-99 (Minn. App. 1985) (remanding for findings of fact when reviewing court was unable to conduct meaningful review or discern basis for district court's order).

"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 County*, 408 N.W.2d 654, 657 (Minn. App. 1987), *review denied* (Minn. Aug. 19, 1987)), *review denied* (Minn. Sept. 15, 1992).

"The question whether a driver has refused to submit to chemical testing is a question of fact, to which this court applies a clear-error standard of review." *Stevens v. Comm'r of Pub. Safety*, 850 N.W.2d 717, 722 (Minn. App. 2014) (citing *Lynch v. State, Comm'r of Pub. Safety*, 498 N.W.2d 37, 38-39 (Minn. App. 1993)).

"Since an implied consent hearing is a civil matter, the clearly erroneous standard of review applies. The implied consent statute is remedial and should be liberally interpreted in favor of the public interest against the private interests of the drivers involved." *Kozak v. Comm'r of Pub. Safety*, 359 N.W.2d 625, 627 (Minn. App. 1984) (holding that district court properly ruled that driver had physical control of vehicle when he was found asleep in vehicle with keys in his possession).

4. Mixed Questions of Law and Fact

"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).

"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).

"We are to apply the clearly erroneous standard of review to the trial court's findings. Minn. R. Civ. P. 52.01. But the facts in this case are largely undisputed, and we must independently determine if the trial court erroneously applied the law to the facts." *Cole v. Comm'r of Pub. Safety*, 535 N.W.2d 816, 817-18 (Minn. App. 1995) (citing *Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985)).

"In a license-reinstatement hearing, the district court conducts a de novo review of the department's decision to cancel and must weigh witness credibility and all of the evidence, and independently determine whether the cancellation is justified. We review de novo the district court's application of the law, and defer to the district court's credibility determinations and ability to weigh the evidence. The district court's fact findings will not be reversed on appeal unless clearly erroneous. *Constans v. Comm'r of Pub. Safety*, 835 N.W.2d 518, 523 (Minn. App. 2013) (quotations and citations omitted) (holding that commissioner has discretion to determine that motorist's driving conduct, which included repeatedly driving at rate of speed under the posted limit, is inimical to public safety, so as to support cancellation of driver's license, even when such conduct does not involve impaired driving).

"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).

5. 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) (holding that preponderance-of-the-evidence standard of proof applies to preliminary questions regarding admissibility of evidence).

"Evidentiary rulings on materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence are committed to the sound discretion of the [district] court and will be the basis for reversal only where that discretion has been clearly abused." *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 245 (Minn. App. 2010) (quotations omitted) (holding that district court did not abuse its discretion in declining to view the scene of the traffic stop).

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).

"[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).

The imposition of sanctions for failure to produce requested documents and violation of the rules of discovery remains within the discretion of the district court. *Przymus v. Comm'r of Pub. Safety*, 488 N.W.2d 829, 832 (Minn. App. 1992), *review denied* (Minn. Sept. 15, 1992).

The district court's decision to deny the commissioner's request to reopen the case to allow the officer to testify to resolve a date discrepancy will not be disturbed absent a clear abuse of the district court's discretion. *Montpetit v. Comm'r of Pub. Safety*, 392 N.W.2d 663, 665 (Minn. App. 1986).

6. Statutory Interpretation

To raise any issue in an implied-consent hearing, the petitioner must specifically state the issue in his petition for review, and the jurisdiction of an appellate court is limited to questions actually decided by the district court. *Schafer v. Comm'r of Pub. Safety*, 348 N.W.2d 365, 368 (Minn. App. 1984).

"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 (2014)." *Axelberg v. Comm'r of Pub. Safety*, 848 N.W.2d 206, 208 (Minn. 2014) (citation omitted) (prohibiting driver from raising necessity defense in implied-consent proceeding because it was not among statutory list of issues that can be raised), *superseded by statute*, Minn. Stat. § 169A.53, subd. 3 (Supp. 2015) (adding necessity defense to list of issues within scope of implied-consent hearing)).

"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).

"The constitutionality of a statute is a question of law, to which this court applies a *de novo* standard of review. We presume that Minnesota statutes are constitutional and will declare a statute unconstitutional with extreme caution and only when absolutely necessary. The party challenging a statute on constitutional grounds must meet the very heavy burden of demonstrating beyond a reasonable doubt that the statute is unconstitutional." *Stevens v. Comm'r of Pub. Safety*, 850 N.W.2d 717, 722 (Minn. App. 2014) (quotations and citations omitted) (holding that Minnesota's implied-consent statute does not violate unconstitutional-conditions doctrine by authorizing commissioner to revoke driver's license of person who has been arrested for DWI and has refused to submit to chemical testing).

"The question we must answer—whether the defense could also apply in a driving-while-impaired *administrative* proceeding—is a matter of statutory interpretation, which we review de novo. *Dornbusch v. Comm'r of Pub. Safety*, 860 N.W.2d 381, 383 (Minn. App. 2015) (affirming district court's rejection of driver's argument that revocation of his driving privileges cannot stand when the positive test resulted from his lawful use of a prescription drug, because that criminal defense does not apply in administrative license-revocation proceedings under the implied-consent law), *review denied* (Minn. May 27, 2015).

"This constitutional question [of whether procedural due process rights are violated when drivers received only six days' notice before their revocations became effective] involves the application of law to undisputed facts. Accordingly, our review is de novo. Statutory interpretation is a question of law, which this court also reviews de novo." *Williams v. Comm'r of Pub. Safety*, 830 N.W.2d 442, 444 (Minn. App. 2013) (quotations and citation omitted), *review denied* (Minn. July 16, 2013).

C. HABEAS CORPUS

1. Review of District Court's Decision

An appellate court reviews the district court's decision on whether to expunge criminal records under an abuse of discretion standard. But the question of "whether the district court exceeded the scope of its inherent authority to expunge criminal records—is a question of law." *State v. M.D.T.*, 831 N.W.2d 276, 279 (Minn. 2013).

"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); *see also Bedell v. Roy*, 853 N.W.2d 827, 829 (Minn. App. 2014).

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).

An offender seeking to obtain judicial review of the commissioner of correction's administrative decision implementing a sentence imposed by a district court must obtain review by petition for a writ of habeas corpus with the commissioner named as a party. *State v. Schnagl*, 859 N.W.2d 297, 303 (Minn. 2015).

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 Cty.*, 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).

When the district court fails to make findings or determinations on the record, the reviewing court is unable to determine whether the district court abused its discretion, and reversal and remand is necessary. *State v. A.S.E.*, 835 N.W.2d 513, 517 (Minn. App. 2013) (citing *State v. K.M.M.*, 721 N.W.2d 330, 335 (Minn. App. 2006)).

VIII. 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 N. 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'ns 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

"Statutory interpretation is a question of law that we review de novo." *J.D. Donovan, Inc. v. Minn. Dep't of Transp.*, 878 N.W.2d 1, 4 (Minn. 2016)

"The interpretation of an administrative regulation presents a question of law that we review de novo." *J.D. Donovan, Inc. v. Minn. Dep't of Transp.*, 878 N.W.2d 1, 5 (Minn. 2016).

"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. Fresenurs 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 N. 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 Procedure 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 (2014).

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 (2014).

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 Cty. 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 (2014).

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 (2014).

"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 (2014).

"A pre-enforcement challenge questions the process by which the rule was made and the rule's general validity before it is enforced against any particular party." *Save Mille Lacs Sportsfishing, Inc. v. Minn. Dep't of Nat. Res.*, 859 N.W.2d 845, 849 (Minn. App. 2015) (quotations omitted). "Our authority to review the validity of a rule at the pre-enforcement stage is limited to three distinct inquiries: (1) whether the rule violates a constitutional provision; (2) whether the rule exceeds the statutory authority of the agency; and (3) whether the rule was adopted without compliance with statutory rulemaking proceedings." *Id.* at 850.

"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 IX)

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." *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.'" *In re PERA Salary Determinations Affecting Retired & 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 Ctys.*, 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. We review such decisions to determine whether they are unreasonable, arbitrary, or capricious. *In re Envtl. Assessment Worksheet for 33rd Sale of State Metallic Leases in Aitkin, Lake, Saint Louis Ctys.*, 838 N.W.2d 212, 216 (Minn. App. 2013) (quotation and citations omitted), *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 Cty. 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 Cty. 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 Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002).

IX. ADMINISTRATIVE – DEED

A. GENERAL STANDARDS

1. Statutory Standard of Review

"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) (Supp. 2015); *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).

"We review de novo a ULJ's determination that an applicant is ineligible for unemployment benefits. And we review findings of fact in the light most favorable to the ULJ's decision and will rely on findings that are substantially supported by the record." *Fay v. Dep't of Emp't & Econ. Dev.*, 860 N.W.2d 385, 387 (Minn. App. 2015).

2. Interpretation of the Minnesota Unemployment Insurance Law

"Statutory interpretation of the Minnesota Unemployment Insurance Law is a question of law that appellate courts review de novo." *Yusuf v. Masterson Pers., Inc.*, 880 N.W.2d 600, 603 (Minn. App. 2016) (citing *Engfer v. Gen. Dynamics Advanced Info. Sys., Inc.*, 869 N.W.2d 295, 300 (Minn. 2015)).

"If the relevant facts are not in dispute, we apply a *de novo* standard of review to the ULJ's interpretation of the unemployment statutes and to the ultimate question of whether an applicant is eligible to receive unemployment benefits." *Menyweather v. Fedtech, Inc.*, 872 N.W.2d 543, 545 (Minn. App. 2015).

"The Minnesota Unemployment Insurance Law is 'remedial in nature and must be applied in favor of awarding unemployment benefits.'" *White v. Univ. of Minn. Physicians Corp.*, 875 N.W.2d 351, 354 (Minn. App. 2016) (quoting Minn. Stat. § 268.031, subd. 2 (2014)).

"'[A]ny statutory provision that would preclude an application from receiving benefits must be narrowly construed.'" *White v. Univ. of Minn. Physicians Corp.*, 875 N.W.2d 351, 354 (Minn. App. 2016) (quoting Minn. Stat. § 268.031 (2014)).

3. Findings of Fact and Credibility Determinations

"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).

"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 Auto. 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. 1a(a), 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) (addressing requirement of findings on credibility previously codified at Minn. Stat. § 268.105, subd. 1(c) (Supp. 2005)).

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: Older cases addressing previous statutory language reviewed findings 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).

4. Eligibility Generally

"If the relevant facts are not in dispute, we apply a *de novo* standard of review to the ULJ's interpretation of the unemployment statutes and to the ultimate question of whether an applicant is eligible to receive unemployment benefits." *Menyweather v. Fedtech, Inc.*, 872 N.W.2d 543, 545 (Minn. App. 2015).

"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).

"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).

"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).

a. 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 (2014).

"No burden of proof is allocated in unemployment-benefits proceedings." *White v. Univ. of Minn. Physicians Corp.*, 875 N.W.2d 351, 354 (Minn. App. 2016) (citing Minn. Stat. 268.069, subd. 2 (2014)).

Caution: Previously, case law referred to a common-law burden of proof. *McGowan v. Exec. Express Transp. Enters., 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.

b. No Equitable Grant or Denial of Benefits

"There is no equitable or common law denial or allowance of unemployment benefits." Minn. Stat. § 268.069 (2014).

B. PARTICULAR ISSUES

1. Dismissal of Untimely Appeal

"[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).

2. Discharge or Quit

"Whether an employee has been discharged or voluntarily quit is a question of fact subject to our deference." *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 31 (Minn. App. 2012).

"Whether an employee quit or was discharged is a question of fact." *Goodwin v. BPS Guard Servs., Inc.*, 524 N.W.2d 28, 29 (Minn. App. 1994) (citing *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985)).

3. Misconduct

"Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law." *White v. Univ. of Minn. Physicians Corp.*, 875 N.W.2d 351, 354 (Minn. App. 2016).

"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." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (other citations omitted).

"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.*

"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).

4. Good Reason for Quit

"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).

5. Denial of Additional Evidentiary Hearing

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).

X. ADMINISTRATIVE – LOCAL GOVERNMENT DECISIONS

A. MUNICIPAL DECISIONS – GENERALLY

"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 County*, 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).

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*.

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 Cty. 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.").

B. LAND-USE DECISIONS

1. Zoning

"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).

"[I]t should be remembered that the standard of review for legislative zoning decisions is narrow. As a legislative act, a zoning or rezoning classification must be upheld unless opponents prove that the classification is unsupported by any rational basis related to promoting the public health, safety, morals, or general welfare." *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 414–15 (Minn. 1981).

"Although caselaw distinguishes between zoning matters that are legislative in nature, such as rezoning, and those that are quasi-judicial, such as variances and special-use permits, the standard of review is the same for all zoning matters, namely, whether the zoning authority's action was reasonable. This standard has been expressed in various ways: Is there a 'reasonable basis' for the decision? Or is the decision 'unreasonable, arbitrary or capricious'? Or is the decision 'reasonably debatable'? [T]he nature of the matter under review has a bearing on what is reasonable. In granting or denying a permit, the inquiry is more judicial because the decision involves applying specific standards to a particular individual use." *Goerke Family P'ship v. Lac qui Parle-Yellow Bank Watershed Dist.*, 857 N.W.2d 50, 55 (Minn. App. 2014) (quotations omitted).

"When the municipal proceedings were fair and the record clear and complete, review is on the record." *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 180 (Minn. 2006).

"We do not give any special deference to the conclusions of the lower courts, but rather engage in an independent examination of the record and arrive at our own conclusions as to the propriety of the city's decision." *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 180 (Minn. 2006).

2. Variances

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)).

"The standard of review remains whether on the evidence before it, the [Board of Adjustment] reached a reasonable decision." *Town of Grant v. Washington County*, 319 N.W.2d 713, 717 (Minn. 1982). "We are required to make an independent review of the Board's decision." *Id.*

3. Conditional Use Permits

"We will reverse a governing body's decision regarding a conditional use permit application if the governing body acted unreasonably, arbitrarily, or capriciously. There are two steps in determining whether a city's denial was unreasonable, arbitrary, or capricious. First, we must determine if the reasons given by the city were legally sufficient. Second, if the reasons given are legally sufficient, we must determine if the reasons had a

factual basis in the record." *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75-76 (Minn. 2015) (citations omitted).

"Our standard of review is a deferential one, as counties have wide latitude in making decisions about special use permits." *Schwardt v. County of Watonwan*, 656 N.W.2d 383, 386 (Minn. 2003).

C. ENVIRONMENTAL-REVIEW DECISIONS (SEE SECTION VII(E)(5))

D. SCHOOL BOARD DECISIONS

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).

XI. 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 judicial appeal from an arbitration decision is subject to an extremely narrow standard of review. The courts must "exercise every reasonable presumption in favor of the award's finality and validity. 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." *Davies v. Waterstone Capital Mgmt., L.P.*, 856 N.W.2d 711, 716 (Minn. App. 2014), *review denied* (Feb. 25, 2015).

"[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 determine the scope of an arbitrator's authority de novo. An arbitration award will be set aside by the courts only when the objecting party meets its burden of proof that the arbitrators have *clearly* exceeded the powers granted to them in the arbitration agreement; courts will not overturn an award merely because they may disagree with the arbitrators' decision on the merits. In our review of an arbitrator's authority, [e]very reasonable presumption is exercised in favor of the finality and validity of the award." *Seagate Tech., LLC v. W. Digital Corp.*, 854 N.W.2d 750, 760–61 (Minn. 2014) (quotations and citations omitted).

"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 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 County v. AFSCME, Council 91, Local 8*, 309 N.W.2d 785, 792 (Minn. 1981)).

F. NO-FAULT AUTOMOBILE INSURANCE ARBITRATION (SEE SECTION IV(D))