

THE MINNESOTA
COURT OF APPEALS
STANDARDS OF REVIEW

REVISED AUGUST 2008

INTRODUCTION

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

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

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

August 2008

Edward Toussaint, Jr.
Chief Judge

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I. CIVIL – GENERAL

A. IN GENERAL

1. General Standards of Review

a. Questions of Law

“An appellate court is not bound by, and need not give deference to, the district court’s decision on a question of law.” *Bondy v. Allen*, 635 N.W.2d 244, 249 (Minn. App. 2001) (citing *Frost-Benco Elec. Ass’n v. Minn. Pub. Utils. Comm’n*, 358 N.W.2d 639, 642 (Minn. 1984)).

“The application of the law to the stipulated facts is a question of law, and thus is freely reviewable.” *Morton Bldgs., Inc. v. Comm’r of Revenue*, 488 N.W.2d 254, 257 (Minn. 1992).

“A reviewing court need not defer to the district court’s application of the law when the material facts are not in dispute.” *Engler v. Wehmas*, 633 N.W.2d 868, 872 (Minn. App. 2001) (citing *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 310 (Minn. 1989)), *review granted* (Minn. Dec. 19, 2001), *appeal dismissed* (Minn. Apr. 5, 2002).

“When the district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion that we review de novo.” *Weston v. McWilliams & Assocs., Inc.*, 716 N.W.2d 634, 638 (Minn. 2006) (citing *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998)).

b. Mixed Questions of Law and Fact

“When reviewing mixed questions of law and fact, ‘we will correct erroneous applications of law, but accord the trial court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard.’” *Langford Tool & Drill Co. v. Phenix Biocomposites, LLC*, 668 N.W.2d 438, 442 (Minn. App. 2003) (quoting *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997)); *see also In re Estate of Savich*, 671 N.W.2d 746, 750 (Minn. App. 2003).

“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) (quotations and citations omitted), *review denied* (Minn. June 26, 2002).

“In the review of a district court’s decision on mixed questions of law and fact, the district court’s rulings are not binding on this court and we review them independently.” *In re Estate of Whish v. Bienfang*, 622 N.W.2d 847, 849 (Minn. App. 2001) (citing *Meyering v. Wessels*, 383 N.W.2d 670, 672 (Minn. 1986)).

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 trial 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.

“It is not the province of this court to reconcile conflicting evidence. On appeal, a trial 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 trial 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).

2. Rules of Construction

a. Statutes

(1) Constitutionality of Statutes

“Evaluating a statute’s constitutionality is a question of law.” *Hamilton v. Comm’r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999). Accordingly, our review is de novo and we are “not bound by the lower court’s decision.” *Id.*

“[W]e proceed on the presumption that Minnesota statutes are constitutional and that our power to declare a statute unconstitutional should be exercised with extreme caution.” *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 299 (Minn. 2000).

“Minnesota statutes are presumed constitutional, and our power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary.” *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). “The party challenging a statute has the burden of demonstrating beyond a reasonable doubt a violation of some provision of the Minnesota Constitution.” *Id.*; see also *Miller Brewing Co. v. State*, 284 N.W.2d 353, 356 (Minn. 1979) (“A statute will not be declared unconstitutional unless the party challenging it demonstrates beyond a reasonable doubt that the statute violates some constitutional provision.”).

(2) Construction and Application of Statutes

“Statutory construction is a question of law, which this court reviews de novo.” *In re Kleven*, 736 N.W.2d 707, 709 (Minn. App. 2007) (citing *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998)).

“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 summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion, reviewed de novo by the appellate court. *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998).

“The construction and applicability of a statute of limitations is a question of law, reviewed de novo.” *Indep. Sch. Dist. No. 775 v. Holm Bros. Plumbing & Heating*, 660 N.W.2d 146, 150 (Minn. App. 2003) (citing *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998)).

(3) Interpretation of Statutes

“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. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (citation and quotations 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. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quoting *Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999)). And “[w]e 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.*

See also Minn. Stat. §§ 645.01-.51 (2006) (involving interpretation of statutes).

b. Municipal Ordinances

(1) Constitutionality/Reasonableness of an Ordinance

“Since a municipal ordinance is presumed constitutional, the burden of proving that it 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, rests on the party attacking its validity.” *City of St. Paul v. Dalsin*, 245 Minn. 325, 329, 71 N.W.2d 855, 858 (1955) (citation omitted).

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

(2) Interpretation of Municipal Ordinances

“The interpretation of an ordinance is a question of law for the court, which we review de novo.” *Eagle Lake of Becker County Lake Ass’n v. Becker County 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)).

On appeal from summary judgment, where the parties agree that there are no material issues of fact, we conduct a de novo determination of whether the district court has correctly interpreted an ordinance. *Farmington Twp. v. High Plains Coop.*, 460 N.W.2d 56, 58 (Minn. App. 1990).

c. Board of Adjustment Decisions/Municipalities

(1) Standard of Review

The standard of review to be applied to a board of adjustment’s (BOA) determination is whether, on the evidence before it, the BOA made a reasonable decision. *Town of Grant v. Washington County*, 319 N.W.2d 713, 717 (Minn. 1982); *see also Mohler v. City of St. Louis Park*, 643 N.W.2d 623, 630 (Minn. App. 2002), *review denied* (Minn. July 16, 2002). And this court is required to review the BOA’s decision independent of the findings and conclusions of the district court. *Town of Grant*, 319 N.W.2d at 717.

(2) Scope of Review

An appellate court’s “authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked.” *White Bear*

Docking & Storage, Inc. v. City of White Bear Lake, 324 N.W.2d 174, 175 (Minn. 1982).

d. Attorney General Opinions

“Opinions of the Attorney General are not binding on the courts.” *Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004). But “opinions of the attorney general are entitled to careful consideration by appellate courts,” particularly when such opinions are 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). But ““where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party,”” summary judgment is proper. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986)).

“Whether a contract is ambiguous is a question of law, on which the reviewing court owes no deference to the district court’s determination.” *Murray v. Puls*, 690 N.W.2d 337, 343 (Minn. App. 2004), *review denied* (Minn. Mar. 15, 2005). A contract is ambiguous if it is reasonably susceptible to more than one construction.” *Blackburn, Nickels & Smith, Inc. v. Erickson*, 366 N.W.2d 640, 644 (Minn. App. 1985), *review denied* (Minn. June 24, 1985).

“The interpretation of a contract is a question of law if no ambiguity exists, but if ambiguous, it is a question of fact and extrinsic evidence may be considered.” *City of Va. v. Northland Office Props. Ltd. P’ship*, 465 N.W.2d 424, 427 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991).

(a) Ambiguous Contracts

“The construction and effect of a contract are questions of law for the court, but where there is ambiguity and construction depends upon extrinsic evidence and a writing, there is a question of fact for the jury.” *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979); *see also Donnay v. Boulware*, 275 Minn. 37, 44, 144 N.W.2d 711, 716 (1966) (if writing is ambiguous, court may look to extrinsic evidence and construction of contract then becomes question of fact, “unless such evidence is conclusive”).

(b) Unambiguous Contracts

“Where the intention of the parties can be determined wholly from the writing, the construction of the instrument is a question of law for the court to resolve.” *Wolfson v. City of St. Paul*, 535 N.W.2d 384, 386 (Minn. App. 1995) (citing *Empire State Bank v. Devereaux*, 402 N.W.2d 584, 587 (Minn. App. 1987)), *review denied* (Minn. Sept. 28, 1995). “This court is not required to defer to the trial court’s findings,” and the construction and effect of an unambiguous contract are questions of law which we review de novo. *Id.*

(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). Whether alleged facts “rise to the level of promissory estoppel presents a question of law.” *Id.* at 746.

(b) Insurance Contracts

“[T]he interpretation of insurance contract language is a question of law as applied to the facts presented.” *Meister v. W. Nat’l Mut. Ins. Co.*, 479 N.W.2d 372, 376 (Minn. 1992).

“Construction of an insurance policy involves a question of law.” *General Cas. Co. of Wis. v. Outdoor Concepts*, 667 N.W.2d 441, 443 (Minn. App. 2003). “Where there is no dispute as to the material facts, this court independently reviews the district court’s interpretation of the insurance contract de novo.” *Andrew L. Youngquist, Inc. v. Cincinnati Ins. Co.*, 625 N.W.2d 178, 183 (Minn. App. 2001).

“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)).

B. PRETRIAL MATTERS

1. Service of Process

“Determination of whether service of process was proper is a question of law reviewed de novo.” *Turek v. A.S.P. of Moorhead, Inc.*, 618 N.W.2d 609, 611 (Minn. App. 2000), *review denied* (Minn. Jan. 26, 2001).

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).

“The district court has broad discretion to grant or deny leave to amend a complaint, and its ruling will not be reversed absent a clear abuse of that discretion.” *State v. Baxter*, 686 N.W.2d 846, 850 (Minn. App. 2004) (citing *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993)). “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

“[T]he 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.” *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990); *see also Minn. Twins P’ship v. State by Hatch*, 592 N.W.2d 847, 850 (Minn. 1999) (citing *Shetka*).

4. Intervention of Parties

For cases concerning permissive intervention under Minn. R. Civ. P. 24.02, a “decision concerning intervention is left to the discretion of the trial 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).

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); *cf. State v. Pero*, 590 N.W.2d 319, 326 (Minn. 1999) (stating, in criminal case, that because there was no

claim that recusal was absolutely required by applicable rule, “we must only determine if the trial court abused its discretion in not granting the motion for recusal”).

“Whether to honor a request for removal based on allegations of actual prejudice is a matter for the trial 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. Claim Preclusion and Issue Preclusion

“Whether collateral estoppel is available is a mixed question of law and fact subject to de novo review.” *In Re Trusts Created by Hormel*, 504 N.W.2d 505, 509 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993). “Once it is determined that collateral estoppel is available, the decision to apply the doctrine is left to the trial court’s discretion.” *Id.* “The district court’s decision to apply collateral estoppel will be reversed only upon a demonstrated abuse of discretion.” *Pope County Bd. of Comm’rs v. Pryzmus*, 682 N.W.2d 666, 669 (Minn. App. 2004) (citing *Saudi Am. Bank v. Azhari*, 460 N.W.2d 90, 92 (Minn. App. 1990)), *review denied* (Minn. Sept. 29, 2004).

“We review de novo whether the doctrine of res judicata can apply to a given set of facts.” *Erickson v. Comm’r of Dep’t of Human Servs.*, 494 N.W.2d 58, 61 (Minn. App. 1992). “If the doctrine applies, the decision whether to actually apply it is left to the discretion of the trial court.” *Id.*

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

7. Motion for Continuance

“The granting of a continuance is a matter within the discretion of the trial court and its ruling will not be reversed absent a showing of clear abuse of discretion.” *Dunshie v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977).

8. Temporary Injunctions and Restraining Orders

The sole issue on appeal from an order denying a motion for a temporary restraining order is whether there was a clear abuse of the district court’s discretion. *Earth Protector, Inc. v. City of Hopkins*, 474 N.W.2d 454, 455 (Minn. App. 1991).

“A decision on whether to grant a temporary injunction is left to the discretion of the trial 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) (citations omitted); *see also Bell v. Olson*, 424 N.W.2d 829, 832 (Minn. App. 1988) (listing factors to be considered on review).

C. PRETRIAL JUDGMENTS

1. Default Judgment

In reviewing the denial of a motion to vacate a default judgment, we determine whether the district court abused its discretion. *Foerster v. Folland*, 498 N.W.2d 459, 460 (Minn. 1993).

“Absent an abuse of discretion, a reviewing court will uphold a district court’s decision to vacate a judgment under Minn. R. Civ. P. 60.02.” *Galbreath v. Coleman*, 596 N.W.2d 689, 691 (Minn. App. 1999).

2. Judgment on the Pleadings and Dismissal of Actions

In reviewing cases dismissed for failure to state a claim on which relief can be granted, the only question before the reviewing court is “whether the complaint sets forth a legally sufficient claim for relief.” *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997).

“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)).

A district court’s dismissal of an action for “procedural irregularities,” such as failure to comply with statutory requirements, will be reversed on appeal 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).

Appellate courts will reverse an involuntary dismissal under Minn. R. Civ. P. 41.02(a) when the district court abused its discretion. *Bonhiver v. Fugelso, Porter, Simich & Whiteman, Inc.*, 355 N.W.2d 138, 144 (Minn. 1984).

3. Summary Judgment

“On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law.” *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

“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).

“[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).

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 *significant evidence* to permit reasonable persons to draw different conclusions”).

Although proximate cause generally is a question of fact for the jury, “where reasonable minds can arrive at only one conclusion,” proximate cause becomes a question of law and may be disposed of by summary judgment. *Lubbers v. Anderson*, 539 N.W.2d 398, 402 (Minn. 1995).

Causation is generally a question of fact for the jury, and it “becomes a question of law where different minds can reasonably arrive at only one result.” *Paidar v. Hughes*, 615 N.W.2d 276, 281 (Minn. 2000) (quotation omitted).

D. TRIAL MATTERS

1. Evidentiary Issues

a. Admission and Exclusion of Evidence

“Evidentiary rulings . . . are committed to the sound discretion of the trial court and those rulings will only be reversed when that discretion has been clearly abused.” *Pedersen v. United Servs. Auto. Ass’n*, 383 N.W.2d 427, 430 (Minn. App. 1986).

“The admission of evidence rests within the broad discretion of the trial 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. . . . In the absence of some indication that the trial 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, 45-46 (Minn. 1997) (citations and quotations omitted).

Absent an erroneous interpretation of the law or an abuse of discretion, the district court’s ruling on whether to admit evidence will not be disturbed. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (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.” *Id.* at 46 (quotation omitted).

“[T]he trial 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 trial 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).

b. Foundation for Evidence

A decision on the sufficiency of the foundation for evidence is within the discretion of the district court. *McKay’s Family Dodge v. Hardrives, Inc.*, 480 N.W.2d 141, 147 (Minn. App. 1992), *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. Competency

The competence of a lay witness to give opinion evidence on a particular matter is an issue “peculiarly within the province of the trial judge, 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).

When reviewing a district court ruling on the competence of an expert witness, the appellate court must apply a deferential standard, reversing only if there is an abuse of discretion. *Gross v. Victoria Station Farms, Inc.*, 578 N.W.2d 757, 760-61 (Minn. 1998).

b. Examination of Witnesses

“The trial 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).

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] decision to exclude expert testimony, lie[s] within the sound discretion of the trial court. . . . A trial judge is given wide latitude in determining whether there is sufficient foundation upon which an expert may state an opinion. Even if this court would have reached a different conclusion as to the sufficiency of the foundation, the decision of the trial judge will not be reversed absent clear abuse

of discretion.” *Benson v. N. Gopher Enters., Inc.*, 455 N.W.2d 444, 445-46 (Minn. 1990) (citations omitted).

3. Presenting Questions to the Jury

a. Framing Special-Verdict Questions

District courts have broad discretion in framing special-verdict questions to the jury. *Dang v. St. Paul Ramsey Med. Ctr., Inc.*, 490 N.W.2d 653, 658 (Minn. App. 1992), *review denied* (Minn. Dec. 15, 1992).

“District courts also have broad discretion in drafting special-verdict questions.” *Russell v. Johnson*, 608 N.W.2d 895, 898 (Minn. App. 2000), *review denied* (Minn. June 27, 2000) (citing *Dang v. St. Paul Ramsey Med. Ctr., Inc.*, 490 N.W.2d 653, 658 (Minn. App. 1992), *review denied* (Minn. Dec. 15, 1992)).

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 trial court.” *Johnson v. Johnson*, 272 Minn. 284, 298, 137 N.W.2d 840, 850 (1965).

4. Directed Verdict, now known as Motion for Judgment as a Matter of Law (JMOL)

“A directed verdict 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 trial 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)).

“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) (citing *Wall v. Fairview Hosp. & Healthcare Servs.*, 584 N.W.2d 395, 406 (Minn. 1998)).

Note: In 2006, the Minnesota Supreme Court amended the Minnesota Rules of Civil Procedure to eliminate 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. (stating that amendments were intended to remove “archaic language and procedures of directing verdicts and granting j.n.o.v.”). This change

has not completely permeated the caselaw; some litigants and courts, including the Minnesota Supreme Court in *Jerry's Enters.*, continue to use the term "directed verdict." But neither the standard of law nor the standard of review has changed. In cases where either the litigants or the court refer to "directed verdict," however, a clarification to acknowledge this rule change may be warranted.

5. Jury Instructions

Appellate courts will not reverse a district court's decision unless the instructions constituted an abuse of discretion. *Alholm v. Wilt*, 394 N.W.2d 488, 490 (Minn. 1986). District courts are allowed considerable latitude in selecting the language in jury instructions. *Id.*

"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) (citing *Alholm v. Wilt*, 394 N.W.2d 488, 490 (Minn. 1986)).

Where instructions fairly and correctly state the applicable law, an appellate court will not grant a new trial. *Alevizos v. Metro. Airports Comm'n*, 452 N.W.2d 492, 501 (Minn. App. 1990), *review denied* (Minn. May 11, 1990).

Error in a jury instruction is likely to be considered fundamental if the error destroys the substantial correctness of the entire jury charge, results in a miscarriage of justice, or causes substantial prejudice to a party. *Lindstrom v. Yellow Taxi Co. of Minneapolis*, 298 Minn. 224, 229, 214 N.W.2d 672, 676 (1974).

6. Findings of Fact

a. Jury Findings

(1) General Verdicts

"First, the evidence must be reviewed in the light most favorable to the verdict. Second, an appellate court will overturn a jury verdict only if no reasonable mind could find as the jury did. However, implicit in those rules is the premise that there must exist some evidence to support the verdict, and if there exists no supportive evidence or if the jury's verdict is perverse and palpably contrary to the evidence, an appellate court will, and should, reverse." *Reedon of Faribault, Inc. v. Fid. & Guar. Ins. Underwriters, Inc.*, 418 N.W.2d 488, 491 (Minn. 1988) (citations omitted).

"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).

(2) Special Verdicts

“[A] special verdict form is to be liberally construed to give effect to the intention of the jury and on appellate review it is the court’s responsibility to harmonize all findings if at all possible.” *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 662 (Minn. 1999). If the jury’s answer to the special verdict question “can be reconciled in any reasonable manner consistent with the evidence and its fair inferences, the jury verdict must be sustained.” *Id.* (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.” *Id.* (quotation omitted).

On review, we will not set aside answers to special-verdict questions “unless they are perverse and palpably contrary to the evidence or where the evidence is so clear” that there is “no room for differences among reasonable people.” *Hanks v. Hubbard Broad., Inc.*, 493 N.W.2d 302, 309 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993). “The evidence must be viewed in a light most favorable to the jury verdict. If the jury’s special verdict finding can be reconciled on any theory, the verdict will not be disturbed.” *Id.* (citation omitted).

A jury’s answer to a special-verdict question “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); *see also Hughes v. Sinclair Mktg., Inc.*, 389 N.W.2d 194, 198 (Minn. 1986) (jury verdict will be sustained on any reasonable theory based on the evidence).

b. District Court Findings

“Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial 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). This court will not reverse the district court’s judgment merely because we view the evidence differently. *Id.*; *see Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000) (“That the record might support findings other than those made by the trial court does not show that the court’s findings are defective.”). Rather, the court’s factual findings must be clearly erroneous or “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole” to warrant reversal. *Rogers*, 603 N.W.2d at 656 (quotation omitted). “Findings of fact are clearly erroneous

only if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). And “[i]f there is reasonable evidence to support the district court’s findings, we will not disturb them.” *Rogers*, 603 N.W.2d at 656.

Note: Be careful not to cite pre-1985 cases regarding rule 52.01. The 1985 amendment of 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).

“The standard for review of a bench trial is broader than the standard for jury verdicts” *Runia v. Marguth Agency, Inc.*, 437 N.W.2d 45, 48 (Minn. 1989).

E. REMEDIES

1. Monetary Remedies

a. Amount of Award in General

A reviewing court will not disturb a damage award “unless its failure to do so would be shocking or would result in plain injustice.” *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 be disturbed only for a clear abuse of discretion. *Dallum v. Farmers Union Cent. Exch., Inc.*, 462 N.W.2d 608, 614 (Minn. App. 1990), *review denied* (Minn. Jan. 14, 1991).

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) (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, 62-63 (Minn. 1980).

We review the district court's decision to remit a verdict and to grant a new trial due to excessive damages under an abuse of discretion standard. *Carlson v. Mut. Serv. Cas. Ins. Co.*, 527 N.W.2d 580, 584 (Minn. App. 1995) (citing *Advanced Training Sys., Inc. v. Caswell Equip. Co.*, 352 N.W.2d 1, 11 (Minn. 1984) (conditional new trial); *Hanson v. Chicago, Rock Island & Pac. R.R.*, 345 N.W.2d 736, 739 (Minn. 1984) (remitter); *Kinikin v. Heupel*, 305 N.W.2d 589, 596 (Minn. 1981) (same)), *review denied* (Minn. Apr. 27, 1995).

The decision "whether to grant additur rests almost wholly within the trial court's discretion." *Pulkrabek v. Johnson*, 418 N.W.2d 514, 516 (Minn. App. 1988), *review denied* (Minn. May 4, 1988).

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).

Whether punitive damages are available in an action for intentional damage to property, where the only damage is to property, presents a question of law reviewed de novo. *Jensen v. Walsh*, 623 N.W.2d 247, 249 (Minn. 2001).

2. Equitable Remedies

a. In General

"Granting equitable relief is within the sound discretion of the trial 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).

b. Specific Performance

Specific performance is an equitable remedy within the sound discretion of the district court. *Lilyerd v. Carlson*, 499 N.W.2d 803, 811 (Minn. 1993).

c. Injunctions

"A decision on whether to grant a temporary injunction is left to the discretion of the trial 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) (citation omitted).

d. Interpleader

An interpleader action to determine rights in insurance proceeds is an action in equity reviewed for an abuse of discretion. *Metro. Life Ins. Co. v. Belland*, 583 N.W.2d 592, 593 (Minn. App. 1998).

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).

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 trial court's findings." *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. App. 1995).

"When the district court's decision on a petition for a writ of mandamus is based solely on a legal determination, this court reviews that decision de novo." *Nolan & Nolan v. City of Eagan*, 673 N.W.2d 487, 493 (Minn. App. 2003), *review denied* (Minn. Mar. 16, 2004).

3. Other Remedies

a. Contempt of Court

On appeal, we reverse the factual findings of a contempt order only if they are clearly erroneous. *Mower County Human Servs. v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996). 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 rule 11 sanction under an abuse-of-discretion standard. *Leonard v. Nw. Airlines, Inc.*, 605 N.W.2d 425, 432 (Minn. App. 2000).

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 choice of sanctions under Minn. R. Civ. P. 37.02(b) for failure to comply with discovery is within the trial court's discretion." *Przymus v. Comm'r of Pub.*

Safety, 488 N.W.2d 829, 832 (Minn. App. 1992), *review denied* (Minn. Sept. 15, 1992).

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 trial court abused its discretion--a burden which is met only when it is clear that no reasonable person would agree with the trial court's assessment of what sanctions are appropriate." *Patton v. Newmar Corp.*, 538 N.W.2d 116, 119 (Minn. 1995) (quotation omitted).

Because "courts should construe rule 11 somewhat narrowly to avoid deterring legitimate or arguably legitimate claims," we will reverse a district court's award of sanctions "if the party's assertion is not an objectively unreasonable one." *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 150 (Minn. App. 1999) (quotation omitted), *review denied* (Minn. Mar. 14, 2000).

c. Attorney Fees and Costs

"On review, this court will not reverse a trial court's award or denial of attorney fees absent an abuse of discretion." *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987).

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 Gershcov's Will*, 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).

We will reverse an award of expert witness fees only where abuse of discretion is apparent. *Carpenter v. Mattison*, 300 Minn. 273, 280, 219 N.W.2d 625, 631 (1974).

“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

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. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990). Where the trial court exercised no discretion and ordered a new trial because of an error of law, a de novo standard of review applies. *Id.*

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. County Schs.*, 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 trial 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)

This court reviews de novo the district court’s grant of judgment as a matter of law (JMOL). *Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. App. 2007). “JMOL is appropriate when a jury verdict has no reasonable support in fact or is contrary to law.” *Id.* (citing *Diesen v. Hessburg*, 455 N.W.2d 446, 452 (Minn.1990)); see also Minn. R. Civ. P. 50.01(a).

Note: In 2006, the Minnesota Supreme Court amended the Minnesota Rules of Civil Procedure to eliminate 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.” *Longbehn*, 727 N.W.2d at 159 n.1.

G. PARTICULAR TYPES OF ACTIONS

1. Declaratory Judgment Actions

An appellate court will reverse a district court's factual findings if clearly erroneous. The district court's determination of questions of law is subject to de novo review. *Rice Lake Contracting Corp. v. Rust Env't & Infrastructure, Inc.*, 549 N.W.2d 96, 98-99 (Minn. App. 1996), *review denied* (Minn. Aug. 20, 1996).

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

2. Actions Against a Governmental Body

a. Actions Against a Municipality

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

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

"[W]hen examining quasi-judicial municipal proceedings, we review the evidence only to determine whether it supports the findings of fact or the conclusions of law, and whether the municipality's decision was arbitrary or capricious." *In re Dakota Telecomm. Group*, 590 N.W.2d 644, 646 (Minn. App. 1999).

b. Governmental Immunity

The applicability of a governmental immunity is a question of law subject to de novo review. *Sletten v. Ramsey County*, 675 N.W.2d 291, 299 (Minn. 2004) (official immunity); *Johnson v. State*, 553 N.W.2d 40, 44 n.1, 45 (Minn. 1996) (official and statutory immunity; also referred to as "discretionary immunity").

II. CIVIL – FAMILY

A. IN GENERAL

1. Jurisdiction and Venue

a. Jurisdiction

Questions of subject matter jurisdiction are reviewed de novo. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002); *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 209 (Minn. 2001).

“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).

“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).

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

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

b. Venue

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

2. Interpretation of Judgments

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

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

Stipulated dissolution judgments are treated as binding contracts. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997); *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). “The general rule for the construction of contracts . . . is that where the language employed by the parties is plain and unambiguous there is no room for construction.” *Starr v. Starr*, 312 Minn. 561, 562-63, 251 N.W.2d 341, 342 (1977).

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

3. Findings of Fact

a. Generally

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); *see also Moylan v. Moylan*, 384 N.W.2d 859, 865 (Minn. 1986) (stating that independent review of record by appellate court is improper where it is unclear whether district court considered statutory factors); *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).

“That the record might support findings other than those made by the trial 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 trial court’s

findings . . . the record still requires the definite and firm conviction that a mistake was made.” *Id.*

An appellate court defers to a district court’s credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

A district court’s recitation of the parties’ assertions “is not making true findings” because findings “must be affirmatively stated as findings of the trial 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).

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 (2006), 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 or fraud will not be set aside unless they are clearly erroneous. *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998).

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. *Doering v. Doering*, 629 N.W.2d 124, 128 (Minn. App. 2001), review denied (Minn. Sept. 11, 2001); see *Thompson v. Thompson*, 739 N.W.2d 424, 430 (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”).

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 trial 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 trial 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*, ___ N.W.2d ___, ___ (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.”).

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; “it 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 trial 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 trial 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 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 regarding a property division if its findings of fact are “against logic and the facts on [the] 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, 854 (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, (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).

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”).

Whether to address spousal maintenance lies within the district court’s discretion. *Walker v. Walker*, 553 N.W.2d 90, 93 (Minn. App. 1996); see *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984) (discussing abuse-of-discretion standard of review).

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

a. Involuntary Termination of Parental Rights

“[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); see also *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004) (same).

“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).

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); *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996).

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 trial 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)); *see also In re Welfare of R.M.M.*, 316 N.W.2d 538, 541 (Minn. 1982).

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 trial 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) (citation omitted).

“The trial 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) (citation omitted).

2. 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).

Appellate review of custody determinations is limited to determining 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).

"Even though the trial 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 trial court's balancing of best-interests considerations." *Vangness v. Vangness*, 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).

b. Modification

"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) (citations omitted); *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 and quotations 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 was sole or joint requires an examination of the amount of time the parties spend with their child, [*Ayers v. Ayers*, 508 N.W.2d 516 (Minn. 1993)] and its progeny have superseded such cases." *Id.* at 730 n.3.

d. Removal

“Appellate review of custody modification and removal cases is limited to considering whether the trial 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) (citations and quotations omitted); see *Silbaugh v. Silbaugh*, 543 N.W.2d 639, 641 (Minn. 1996); *Rutz v. Rutz*, 644 N.W.2d 489, 492-93 (Minn. App. 2002).

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 citations and quotations omitted).

f. Third-Party Custody

“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 this court reviews *de novo*.” *Lewis-Miller v. Ross*, 710 N.W.2d 565, 568 (Minn. 2006) (citations 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 trial court’s findings. As a general matter, appellate courts review questions of law *de novo*.” (citations omitted)).

3. Parenting Time

Note: “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. 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’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).

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

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

4. Child Support

Note: The cases cited below address review of child-support decisions made under the child-support guidelines of Minn. Stat. § 518.551 (2004 & Supp. 2005), 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 are now in chapter 518A (2006 & Supp. 2007). Generally, the provisions of the 2006 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) “the provisions [of the new statute] used to calculate [the] parties’ [child-]support obligations apply to actions or motions filed after January 1, 2007”; and (b) the provisions of the statute “used to calculate [the] parties’ support obligations apply to actions or motions for past support or reimbursement filed after January 1, 2007.” 2006 Minn. Laws ch. 280, § 44, at 1145.

As of the release of this document, there is limited published authority addressing the new income-shares child-support statutes.

a. In General

The district court has broad discretion to provide for the support of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court abuses its discretion when it sets support in a manner that is against logic and the facts on record or it misapplies the law. *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 determination of the amount of an obligor's income for the purpose of child support is a finding of fact and will not be altered on appeal unless it is clearly erroneous. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002).

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

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

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

An appellate court will not reverse a district court's decision denying additional child support under Minn. Stat. § 256.87 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)).

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

b. Child Support Magistrates

(1) Standard of Review

On appeal from a child support magistrate's ruling, the standard of review is the same as it would be if the decision had been made by a district court. *Perry v. Perry*, 749 N.W.2d 399, 402 (Minn. App. 2008); *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002).

(2) Review of a CSM Decision

“The district court reviews the CSM’s decision de novo.” *Davis v. Davis*, 631 N.W.2d 822, 825 (Minn. App. 2001). “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.” *Id.* “We review the district court’s decision confirming the CSM’s order under an abuse-of-discretion standard.” *Id.*; see *Putz v. Putz*, 645 N.W.2d 343, 348 (Minn. 2002) (supreme court states that it has “never addressed” the question of the proper standard for reviewing a CSM’s decision, but applies an abuse-of-discretion standard, noting “the court of appeals applied the abuse of discretion standard and the parties agree that it is the appropriate standard of review”).

c. Joint Physical Custody and Child Support

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

d. Modification of Child Support

Whether to modify child support is discretionary with the district court, and its decision will be altered on appeal if it resolved the matter only 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).

Under Minn. Stat. § 518.64, subd. 2(d) (2004), 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). “[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 existed 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).

E. ATTORNEY FEES (Minn. Stat. § 518.14, subd. 1 (2006))

1. Need-Based Attorney Fees

In the context of reviewing an award of need-based 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. 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, 817-18 (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 Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007) (same); *see* Minn. Stat. § 518.14, subd. 1 (2006).

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 County Human Servs. ex. rel. Swancutt v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996).

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

“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.” *In re Marriage of Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001) (citation omitted), *review denied* (Minn. Oct. 16, 2001).

G. PROTECTIVE ORDERS

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).

“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 (Minn. App. 2006).

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).

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

Questions of statutory interpretation are reviewed de novo. *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 209 (Minn. 2001).

“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).

Procedural and evidentiary rulings are within the district court’s discretion and 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).

“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).

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).

“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).

“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 (2006).

III. CIVIL – COMMITMENT

A. REVIEW OF DISTRICT COURT’S FINDINGS OF FACT

1. Findings on Elements of Commitment

Note: Standard of review is the same for all types of civil commitment

a. Mentally Ill – Minn. Stat. § 253B.02, subd. 13 (2006)

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 Civil Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003).

b. Mentally Ill and Dangerous – Minn. Stat. § 253B.02, subd. 17 (2006)

“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 trial 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 trial court arguably was free to continue the commitment, the trial 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 – Minn. Stat. § 253B.02, subd. 14 (2006)
(previously Mentally Retarded)**

“The trial 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 – Minn. Stat. § 253B.02, subd. 2 (Supp. 2007)

“The trial 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. Sexual Psychopathic Personality and Sexually Dangerous Person – Minn. Stat. § 253B.02, subds. 18b, 18c (2006)

“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).

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

“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), *review denied* (Minn. June 20, 2006).

2. Findings on Least Restrictive Alternative

a. Commitment as mentally ill, chemically dependent, or developmentally disabled - Minn. Stat. § 253B.09 (2006)

“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 findings 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 trial 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 person who is mentally ill 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. Least restrictive alternative option for commitment as mentally ill and dangerous, SPP or SDP - Minn. Stat. §§ 253B.18, subd. 1(a) (mentally ill and dangerous), .185, subd. 1 (SPP and SDP) (2006)

“[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 to SPP/SDP commitment under Minn. Stat. § 253B.185, subd. 1 (2000), which has not been substantively amended), *review denied* (Minn. Dec. 19, 2001); *see In re Robb*, 622 N.W.2d 564, 574 (Minn. App. 2001) (comparing previous version of statute with current version of statute as to least restrictive alternative option for indeterminate commitment), *review denied* (Minn. Apr. 17, 2001); *cf. In re Senty-Haugen*, 583 N.W.2d 266, 269 (Minn. 1998) (holding, under previous version of statute, there was no requirement that those committed as SPP/SDP be committed to the least restrictive alternative).

3. Findings Based on Expert Testimony

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

“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 DISTRICT COURT’S CONCLUSIONS OF LAW

“We conclude that the trial 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 trial 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).

“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).

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

C. REVIEW OF JUDICIAL APPEAL PANEL DECISION

“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).

“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 person committed to security hospital as mentally ill and dangerous to open hospital]. *Piotter v. Steffen*, 490 N.W.2d 915, 920 (Minn. App. 1992), *review denied* (Minn. Nov. 17, 1992).

IV. 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).

“The constitutionality of an ordinance is a question of law which this court reviews de novo.” *Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 171 (Minn. App. 2001) (quotation omitted).

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

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

2. Questions of Fact

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).

"The trial 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 substantiality of violation of *Scales* recording requirement), *review denied* (Minn. Nov. 20, 1996).

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

3. Mixed Questions of Fact and Law

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

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

4. Other

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

B. PRETRIAL MATTERS

1. Suppressing Evidence

a. In General

"[W]hen reviewing a pre-trial order suppressing evidence where the facts are not in dispute and the trial court's decision is a question of law, the reviewing court

may independently review the facts and determine, as a matter of law, whether the evidence need be suppressed.” *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

“When reviewing 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).

b. Critical Impact

If the state appeals pretrial suppression orders, it “must clearly and unequivocally show both that the trial 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) (citing *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. Joon Kyu Kim*, 398 N.W.2d 544, 551 (Minn. 1987).

“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).

c. Suppression of Confessions and Admissions

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

“In cases in which the claim is made that a confession was involuntary or that the waiver of the *Miranda* rights was involuntary, the trial court must make a subjective factual inquiry into all the circumstances surrounding the giving of the statement. On appeal this court will not reverse any findings of fact unless they are clearly in error, but this court will make an independent determination of

voluntariness on the facts as found.” *State v. Hardimon*, 310 N.W.2d 564, 567 (Minn. 1981).

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

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

“In a pre-trial suppression hearing at which the defendant seeks suppression of a confession on the ground that the confession was involuntary, the state has the burden of proving voluntariness by a fair preponderance of the evidence. It is the trial 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 trial 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) (citations and quotations omitted).

2. Probable Cause

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

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).

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

The standard of review appropriate for an appellate court reviewing a district court's probable cause determination made upon issuing a warrant is the deferential, substantial-basis standard. *State v. Rochefort*, 631 N.W.2d 802, 805 (Minn. 2001).

3. 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 trial 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).

“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) (explaining the burden).

4. Guilty Plea

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

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

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

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).

5. Adverse Psychological Examinations

“There is trial 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 report for adverse psychological examination of a victim), *review denied* (Minn. Apr. 29, 1992). A reviewing court will not reverse the trial court absent an abuse of that discretion. *See id.*

6. Change of Venue

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 this court will reverse a conviction based on a denial of a change of venue motion, we must find not only that the trial 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).

7. 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 trial court at the time the motion [for continuance] was made to determine whether the trial court’s decision prejudiced 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).

8. 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. In reviewing a severance decision, the court applies the same standard. *Santiago v. State*, 644 N.W.2d 425, 444 (Minn. 2002).

9. Joinder of Offenses

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

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 defendant's right to make the challenge has expired and before the entire jury has been impaneled. *State v. Kitto*, 373 N.W.2d 307, 310-11 (Minn. 1985).

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

b. Batson Challenges

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).

"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 trial court of credibility." *State v. James*, 520 N.W.2d 399, 403-04 (Minn. 1994) (quoting *State v. McRae*, 494 N.W.2d 252, 254 (Minn. 1992)). "The district court's determination of the genuineness of the prosecutor's response is entitled to great deference." *Id.* at 404 (quotation omitted). The clearly erroneous standard of review applies to this factual determination. *Id.*

"[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).

“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) (citation omitted).

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

c. Challenges for Cause

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

2. Trial Management

a. Sanctions for Discovery Violations

“Trial 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 trial 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)).

b. 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. *Id.* at 710.

c. 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).

d. 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) (quotation omitted).

3. Evidentiary Rulings

a. In General

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

b. Harmless Error

If the district court has erred in excluding defense evidence, the error is harmless only if this court is “satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, an average jury (*i.e.*, a reasonable jury) would have reached the same verdict.” *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994) (footnote omitted). But if there is a reasonable possibility that the verdict might have been different if the evidence had been admitted, the error is prejudicial. *Id.*

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

In completing a “harmless error impact” analysis, the inquiry is not whether the jury could have convicted the defendant without the error, but rather, 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)).

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))). “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.’” *Id.* (quoting *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001)).

d. Expert Witness Testimony

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

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

e. Identification Evidence

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

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

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

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

g. 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.

h. 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).

i. 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).

j. 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).

k. Accomplice Testimony

“[A]ppellate courts must review de novo the issue of whether admitted testimony [of an accomplice who is not available for trial] violates a defendant’s Confrontation Clause rights.” *State v. King*, 622 N.W.2d 800, 806 (Minn. 2001).

4. Jury Instructions

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

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

Generally, when it is not argued 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).

“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). “[W]e 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 trial court, but where the evidence warrants an instruction, the trial court must give it.” *Bellcourt v. State*, 390 N.W.2d 269, 273 (Minn. 1986) (citations omitted).

b. Accomplice Instruction

The proper standard of review for the omission of an accomplice-corroboration instruction has not been settled. *State v. Jackson*, 726 N.W.2d 454, 461 (Minn. 2007). “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)). “We evaluate the erroneous omission of a jury instruction under a harmless error analysis.” *Id.*

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) (citing *State v. Hunt*, 615 N.W.2d 294, 302 (Minn. 2000)). *But see State v. Mayhorn*, 720 N.W.2d 776, 785 (Minn. 2006) (stating that supreme court has more recently applied “streamlined approach,” applying only the harmless-beyond-a-reasonable-doubt standard).

“If the defendant failed to object to the misconduct at trial, he forfeits the right to have the issue considered on appeal, but if the error is sufficient, this court may review.” *State v. Powers*, 654 N.W.2d 667, 678 (Minn. 2003) (citing *State v. Sanders*, 598 N.W.2d 650, 656 (Minn. 1999)). Only when the misconduct is unduly prejudicial will relief be granted absent a trial objection or request for instruction. *State v. Whittaker*, 568 N.W.2d 440, 450 (Minn. 1997). When the defendant fails to object, prosecutorial misconduct is reviewed under the plain-error standard announced in *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). 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. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006).

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. Reed*, 398 N.W.2d 614, 617 (Minn. App. 1986) (citing *State v. Stufflebean*, 329 N.W.2d 314, 318 (Minn. 1983)), *review denied* (Minn. Feb. 13, 1987).

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 trial court.” *State v. Rainer*, 411 N.W.2d 490, 498 (Minn. 1987).

7. Sufficiency of the Evidence

a. In General

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

b. Circumstantial Evidence

“[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).

c. Evidence Corroborating an Accomplice's Testimony

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

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

“Evidence that merely shows the commission of the crime or the circumstances thereof is not sufficient to corroborate accomplice testimony.” *State v. Johnson*, 616 N.W.2d 720, 727 (Minn. 2000). Corroborating evidence may be direct or circumstantial; it is viewed in a light most favorable to the verdict and, “while it need not establish a prima facie case of the defendant’s guilt, it must point to [the] defendant’s guilt in some substantial way.” *Id.*; see Minn. Stat. § 634.04 (2006) (providing that accomplice testimony must be corroborated).

D. SENTENCING

1. Calculation of Sentence

a. In General

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).

b. Jail Credit

“The granting of jail credit is not discretionary with the trial 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.” *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)).

2. Imposition of Presumptive Sentence

Only in a “rare” case will a reviewing court reverse a district court’s imposition of the presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

3. Departures from Guidelines

a. In General

“[A] sentencing court has no discretion to depart from the sentencing guidelines unless aggravating or mitigating factors are present.” *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999); *cf. State v. Bendzula*, 675 N.W.2d 920, 923 n.4 (Minn. App. 2004) (noting, in the context of a challenged downward departure, that similar statements limiting sentencing discretion were made in cases correcting excessive upward departures).

A district court has broad discretion to depart from the presumptive sentence under the sentencing guidelines. *State v. Gassler*, 505 N.W.2d 62, 69 (Minn. 1993).

“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); *see also State v. Jones*, 745 N.W.2d 845, 851 (Minn. 2008) (stating that, unless waived by the accused, a resentencing jury must determine the facts to justify an enhanced sentence).

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); *State v. Anderson*, 463 N.W.2d 551, 555 (Minn. App. 1990) (applying abuse-of-discretion standard in evaluating downward departure), *review denied* (Minn. Jan. 14, 1991).

c. Aggravating Factors

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

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

Imposing a more onerous sentence on retrial may give rise to a presumption of vindictiveness, and a violation of due process, if under the circumstances there is a reasonable likelihood of vindictive sentencing. *Alabama v. Smith*, 490 U.S. 794, 798-99, 109 S. Ct. 2201, 2204-05 (1989); *State v. Pflapsen*, 590 N.W.2d 759, 768-69 (Minn. 1999).

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

4. Restitution

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

5. Probation Revocation

“The trial 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).

E. POSTCONVICTION RELIEF

1. In General

Appellate courts “review a postconviction court’s findings to determine whether there is sufficient evidentiary support in the record.” *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). Appellate courts “afford great deference to a district court’s findings of fact and will not reverse the findings unless they are clearly erroneous. The decisions of a postconviction court will not be disturbed unless the court abused its discretion.” *Id.*

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

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).

A summary denial of a postconviction petition is reviewed for an abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005).

2. New Trial

a. In General

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

b. Newly Discovered Evidence

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

c. Juror Misconduct

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

d. Witness Recantations

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

“To receive a new trial based on recantation of testimony, [the defendant] must show that 1) the testimony was false; 2) he was surprised by the testimony and was unable to counteract it or did not know it was false until after the trial; and 3) the jury might have reached a different conclusion if it had not considered the false testimony.” *Flournoy v. State*, 583 N.W.2d 564, 569 (Minn. 1998).

e. False Testimony and Incorrect Evidence

“A new trial may be granted for false testimony where: (a) the court is reasonably well satisfied that the testimony given by a material witness is false[;] (b) without it the jury *might* have reached a different conclusion[; and] (c) the party seeking the new trial was taken by surprise when the false testimony was given and was

unable to meet it or did not know of its falsity until after the trial.” *State v. Smith*, 541 N.W.2d 584, 588 (Minn. 1996).

3. Ineffective Assistance of Counsel

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

A postconviction decision regarding a claim of ineffective assistance of counsel involves mixed questions of fact and law and is reviewed de novo. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004).

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) (emphasis omitted).

F. COSTS

In reviewing a court order under Minn. Stat. § 611.21(a) 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 Application of Jobe*, 477 N.W.2d 723, 725 (Minn. App. 1991).

V. QUASI-CRIMINAL

A. JUVENILE

1. Delinquency Adjudications

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

“In reviewing a claim of insufficient evidence, this court must ascertain whether given the facts in the record and the legitimate inferences that can be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the

offense charged. The reviewing court cannot retry the facts, but must view the evidence in a light most favorable to the state and must assume that the jury believed the state's witnesses and disbelieved any contradictory evidence. These standards apply to the review of a jury trial as well as a court trial." *In re Welfare of J.G.B.*, 473 N.W.2d 342, 344-45 (Minn. App. 1991) (citations and quotations omitted).

2. Stops

When an appellate court reviews a stop based on given facts, the test is not whether the district court decision is clearly erroneous, but whether, as a matter of law, the basis for the stop was adequate. *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997).

3. *Miranda*

"Whether 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 trial 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) (citation and quotation marks 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. Stipulated Facts and "Clearly Erroneous" Review

When this court determines that the district court erred, "harmless error review should not be applied to trials on stipulated facts" and the matter will be remanded for a new hearing. *In re Welfare of R.J.E.*, 642 N.W.2d 708, 713 (Minn. 2002).

5. Certification and 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 a case for adult prosecution. Its decision will not be reversed unless [the court's] findings are clearly erroneous so as to constitute an abuse of discretion." *In re Welfare of D.T.H.*,

572 N.W.2d 742, 744 (Minn. App. 1997) (quotations and citations omitted), *review denied* (Minn. Feb. 19, 1998).

6. Dispositions and Requirement of Findings

“The trial 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 trial 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 (2006); 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 *Austin*, but must make sufficient written findings in support of its disposition order. *Id.* at 302, 304.

B. IMPLIED CONSENT

1. Findings of Fact

“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) (citations omitted).

“Due regard is given to the district court's opportunity to judge the credibility of the 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 trial court fails to make adequate findings.” *Welch v. Comm'r of Pub. Safety*, 545 N.W.2d 692, 694 (Minn. App. 1996). “A remand is unnecessary, however, when we are able to infer the findings from the trial court's conclusions.” *Id.*

The district court's verbatim adoption of the commissioner's "proposed findings did not constitute reversible error per se" and "the clearly erroneous standard remains the proper standard of review." *Przymus v. Comm'r of Pub. Safety*, 488 N.W.2d 829, 832 (Minn. App. 1992), *review denied* (Minn. Sept. 15, 1992).

2. Conclusions of Law

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

"Whether the stop in this case was valid is, for the appellate court, purely a legal determination on given facts." *Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985).

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

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

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

3. Abuse of Discretion

"[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." *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007) (alteration in original) (quoting *Shetka v. Kueppers*, 454 N.W.2d 916, 921 (Minn. 1990)).

"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." *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007).

4. Statutory Interpretation

"Statutory interpretation is a question of law, which we review *de novo*." *Sands v. Comm'r of Pub. Safety*, 744 N.W.2d 24, 26 (Minn. App. 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 (Minn. App. 2008) (quotation omitted).

C. HABEAS CORPUS

1. Review of District Court’s Decision

“We are to give great weight to the trial court’s findings in considering a petition for a writ of habeas corpus and will uphold the findings if they are reasonably supported by the evidence.” *Northwest v. LaFleur*, 583 N.W.2d 589, 591 (Minn. App. 1998), *review denied* (Minn. Nov. 17, 1998).

“An appellate court will review a habeas corpus decision de novo where, as here, the facts are undisputed.” *Joelson v. O’Keefe*, 594 N.W.2d 905, 908 (Minn. App. 1999), *review denied* (Minn. July 28, 1999).

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

2. Extradition

“In an extradition case, a finding by the trial 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 County*, 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 date of supervised release for that rule violation. *Carrillo v. Fabian*, 701 N.W.2d 763, 776-77 (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 the 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).

VI. ADMINISTRATIVE

A. IN GENERAL

1. Reviewability

“There is a presumption in favor of judicial review of agency decisions in the absence of statutory language to the contrary.” *Minn. Pub. Interest Research Group v. Minn. Env'tl. Quality Council*, 306 Minn. 370, 376, 237 N.W.2d 375, 379 (1975).

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. *Frost-Benco Elec. Ass’n v. Minn. Pub. Utils. Comm’n*, 358 N.W.2d 639, 642 (Minn. 1984) (quoting *No Power Line, Inc. v. Minn. Env'tl. Quality Council*, 262 N.W.2d 312, 320 (Minn. 1977)).

3. Burden of Proof on Appeal

Upon judicial review of an action taken by an administrative agency, the party seeking review has the burden of proof. *Markwardt v. State, Water Res. Bd.*, 254 N.W.2d 371, 374 (Minn. 1977).

B. GENERAL STANDARDS OF REVIEW

1. Questions of Law

“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).

“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).

“[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).

2. 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.” *City of Moorhead v. Minn. Pub. Utils. Comm’n*, 343 N.W.2d 843, 846 (Minn. 1984)

“Although a reviewing court might reach a contrary conclusion to that arrived at by an administrative body, the court cannot substitute its judgment for that of the administrative body when the finding is properly supported by the evidence.” *Vicker v. Starkey*, 265 Minn. 464, 470, 122 N.W.2d 169, 173 (1963).

3. Deference to the Agency

“When reviewing agency decisions we adhere to the fundamental concept that decisions 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. 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) (quotations and 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 Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).

“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. It must be guided in its review by the principle that the agency’s conclusions are not arbitrary and capricious so long as a rational connection between the facts found and the choice made has been articulated.” *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001) (footnote omitted) (quotations and citations omitted).

“Upon review, our court must exercise judicial restraint, lest we substitute our judgment for that of the agency.” *In re Denial of Eller Media Co.’s Applications for Outdoor Adver. Device Permits*, 664 N.W.2d 1, 7 (Minn. 2003).

“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).

4. Arbitrary and Capricious

“An 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.” *White v. Minn. Dep’t of Natural Res.*, 567 N.W.2d 724, 730 (Minn. App. 1997) (quotation omitted), *review denied* (Minn. Oct. 31, 1997).

“[T]he agency’s conclusions are not arbitrary and capricious so long as a rational connection between the facts found and the choice made has been articulated.” *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001) (quotation omitted).

“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).

Where an administrative agency does “not consistently apply the principles that it articulated and applied in [previous adjudicative cases],” or does not “modify those principles,” the agency’s decision is arbitrary and capricious. *In re Review of 2005 Annual Automatic Adjustment*, 748 N.W.2d 322, 332 (Minn. App. 2008).

C. RULES OF CONSTRUCTION

1. Interpretation of Statutes

“The construction of a statute or a regulation is a question of law to be determined by the court.” *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003).

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

“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 Indep. Sch. Dist. No. 192 v. Minn. Dep’t of Educ.*, 742 N.W.2d 713, 720 (Minn. App. 2007) (same), *review denied* (Minn. Mar. 18, 2008).

2. Interpretation of Agency Rules and Regulations

“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).

“As a general rule, this court defers to an agency’s interpretation [of its own rule] when the language subject to construction is so technical in nature that only a specialized agency has the experience and expertise needed to understand it, when the language is ambiguous or when the agency interpretation is one of long standing. We do not defer when the language employed or the standards delineated are clear and capable of understanding.” *Resident v. Noot*, 305 N.W.2d 311, 312 (Minn. 1981) (citations omitted).

“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 understanding; 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).

“We defer to an agency’s interpretation of its own regulations.” *Minn. Ctr. for Env’tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 465 (Minn. 2002).

“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).

“[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).

3. Constitutionality of Standard of Review Statutes

“The legislature surely has the power to insist that certain types of cases receive a more stringent review by the courts than others. The procedure that it imposes in order to achieve this result is, nevertheless, subject to constitutional limits. No legislative act can order the courts to conduct their unique judicial functions in a particular way or dictate their rules of procedure. Similarly, this court cannot dictate how legislation must be worded. This court must give great deference to an act of the legislature and interpret a statute, if possible, in such a way as to uphold its constitutionality.” *St. Paul Cos. v. Hatch*, 449 N.W.2d 130, 137 (Minn. 1989).

D. REVIEW OF AGENCY ACTS

1. Agency Rules

a. Definition

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 (2006); *see also St. Otto’s Home v. Minn. Dep’t of Human Servs.*, 437 N.W.2d 35, 42 (Minn. 1989) (quoting section 14.02, subdivision 4) (1988)).

b. 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 (2006).

“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 (2006); *see also Minn.-Dakotas Retail Hardware Ass’n v. State*, 279 N.W.2d 360, 363 (Minn. 1979) (clarifying “the scope and nature of judicial review of prospective administrative regulations” as provided by statute).

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

2. Agency Rulemaking - Minn. Stat. §§ 14.05-.47 (2006)

Standard of Review

The “‘arbitrary and capricious’ test, rather than the more rigorous ‘substantial evidence’ test,” applies in rulemaking proceedings. *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 244 (Minn. 1984) (footnote omitted). “[I]n determining if the agency acted arbitrarily and capriciously the court must make a searching and careful inquiry of the record to ensure that the agency action has a rational basis.” *Id.* (quotation omitted).

“[W]hen [an agency] acts in a legislative capacity, the standard of review is whether [the agency] exceeded its statutory authority; in contrast, when [the agency] acts in a quasi-judicial capacity, the standard of review is the substantial evidence test.” *In re Request of Interstate Power Co. v. Minn. Pub. Util. Comm’n*, 574 N.W.2d 408, 412-13 (Minn. 1998).

3. Agency Quasi-Legislative Action

a. Definition

An agency acts in a legislative capacity when it balances both cost and noncost factors and makes choices among public policy alternatives. *Arvig Tel. Co. v. Nw. Bell Tel. Co.*, 270 N.W.2d 111, 116 (Minn. 1978).

b. Standard of Review

“[W]hen an agency acts in its legislative capacity, its decision will not be set aside unless it can be shown to be illegal by clear and convincing evidence . . . [its decision] will be upheld unless shown to be in excess of statutory authority or resulting in unjust, unreasonable or discriminatory rates by clear and convincing evidence.” *City of Moorhead v. Minn. Pub. Utils. Comm’n*, 343 N.W.2d 843, 846 (Minn. 1984).

4. Agency Decisions in Contested Case/Quasi-Judicial Actions

a. Definition

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 (2006).

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 Signal Delivery Serv., Inc.*, 288 N.W.2d 707, 710 (Minn. 1980).

b. Standard of Review

“[T]he legislature has codified the standard of review for agency’s decisions in contested case proceedings in the Minnesota Administrative Procedures Act (MAPA) at Minn. Stat. § 14.69 (2000).” *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 463 (Minn. 2002).

“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 (2006).

“When [an agency] engages in a quasi-judicial function, a reviewing court applies the substantial evidence test.” *In re N. States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987) (quotation omitted).

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.” *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

“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).

The substantial evidence test “is met when we find such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *In re Request of Interstate Power Co.*, 574 N.W.2d 408, 415 (Minn. 1998) (quotation omitted).

Substantial judicial deference is given to administrative fact-finding. *Info Tel Commc’ns, LLC v. Minn. Pub. Utils. Comm’n*, 592 N.W.2d 880, 884 (Minn. App. 1999), *review denied* (Minn. July 28, 1999).

“The functions of factfinding, resolving conflicts in the testimony, and determining the weight to be given it and the inferences to be drawn therefrom rest with the administrative board.” *Quinn Distrib. Co. v. Quast Transfer, Inc.*, 288 Minn. 442, 448, 181 N.W.2d 696, 700 (1970) (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).

5. Review When District Court Considered Issue

“[I]f the trial 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.” *In re Signal Delivery Serv., Inc.*, 288 N.W.2d 707, 710 (Minn. 1980).

“Where the trial 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 trial 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 omitted), *review denied* (Minn. Aug. 9, 1989).

When reviewing a district court’s summary judgment affirming an agency’s negative declaration regarding the need for an environmental impact statement, the court focuses “on the proceedings before the decision-making body . . . , not the findings of

the trial court. . . . We review the governmental body’s determination on the basis of whether it was unreasonable, arbitrary, or capricious.” *Iron Rangers for Responsible Ridge Action v. Iron Range Res.*, 531 N.W.2d 874, 879 (Minn. App. 1995) (alterations in original) (quoting *Carl Bolander & Sons v. City of Minneapolis*, 502 N.W.2d 203, 207 (Minn. 1993)), *review denied* (Minn. July 28, 1995).

E. REVIEW OF SPECIFIC AGENCIES

1. Department of Employment and Economic Development (Formerly Department of Economic Security)

a. Generally

In 2005, the legislature adopted the following 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) (2006); *see Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007) (citing this standard of review).

b. Prior Law: Review of Decision by Senior Unemployment Review Judge (SURJ) or Commissioner’s Representative

Before the 2005 amendments, the referee (now unemployment-law judge (ULJ)) held a hearing and then issued a decision that was subject to de novo review by the SURJ or the commissioner’s representative. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 530-31 (Minn. App. 2007) (describing change in law); *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 593-94 (Minn. App. 2006) (same).

Under the previous statutory scheme, appellate courts reviewed and deferred to the decision of the SURJ or the commissioner’s representative rather than the referee/unemployment-law judge. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 531 (Minn. App. 2007); *see, e.g., Tuff v. Knitcraft Corp.*, 526 N.W.2d 50, 51 (Minn. 1995) (reviewing decision of commissioner’s

representative); *Nelson v. Comm’r of Employment & Econ. Dev.*, 698 N.W.2d 443, 446 (Minn. App. 2005) (reviewing decision of SURJ).

c. Current Law: Review of Decision by Unemployment-Law Judge

Under current law, the ULJ holds the hearing and issues the initial decision, rather than the initial decision being subject to de novo review by a higher-level decisionmaker. The initial decision is now reviewable by the same ULJ, after a request for reconsideration by the applicant. Minn. Stat. § 268.105, subd. 2(a), (e) (2006); see *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 531 (Minn. App. 2007) (describing procedure). Appellate courts now review the decision of the ULJ directly. Minn. Stat. § 268.105, subd. 7(a) (2006); see *Ywswf*, 726 N.W.2d at 531.

d. Factual Findings

Under Minn. Stat. § 268.105, subd. 7(d)(5) (2006), the court of appeals may reverse or modify the ULJ’s findings or inferences if they are “unsupported by *substantial* evidence in view of the entire record as submitted.” (Emphasis added.) “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.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted). Note that this case cites the *current* statutory standard of whether the findings are substantially supported by the record, rather than the *previous* standard of whether findings are reasonably supported by the record, which is no longer good law. Cf. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002) (stating under prior law that SURJ’s factual findings will not be disturbed “as long as there is evidence that reasonably tends to sustain those findings”).

An appellate court will review “factual findings in the light most favorable to the decision” *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006); see *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002) (same). While these supreme court cases are still good law for the cited proposition, they should no longer be cited for the now incorrect statement that findings will not be disturbed as long as there is evidence that *reasonably* tends to sustain them, because the standard in Minn. Stat. § 268.105, subd. 7(d)(5) (2006), provides that findings may be reversed if “unsupported by *substantial* evidence.” (Emphasis added.)

e. Credibility Determinations

“When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony.”

Minn. Stat. § 268.105, subd. 1(c) (2006). 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). If the ULJ does not make the credibility determinations required by Minn. Stat. § 268.105, subd. 1(c), this court will “remand for additional findings that satisfy the statute.” *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007).

“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 that under the prior statutory scheme, the appellate court reviewed the decision of the SURJ or the commissioner’s representative rather than the referee (ULJ). *Tuff v. Knitcraft Corp.*, 526 N.W.2d 50, 51 (Minn. 1995). Under current law, the positions of SURJ or commissioner’s representative no longer exist, and this court reviews the decision of the ULJ. *See* Minn. Stat. § 268.105, subd. 7(a), (d) (2006).

f. Questions of Law

The court of appeals may reverse or modify the ULJ’s decision if it is affected by error of law. Minn. Stat. § 268.105, subd. 7(d)(4) (2006). When addressing a question of law, the appellate court is “free to exercise [] independent judgment.” *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006); *see also* *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989) (similar language).

“Whether a particular act constitutes disqualifying misconduct is a question of law, which this court reviews de novo.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

“Questions of law are reviewed de novo. . . .” *Carlson v. Dep’t of Employment & Econ. Dev.*, 747 N.W.2d 367, 371 (Minn. App. 2008).

g. Statutory Construction

“We review questions of statutory construction de novo.” *Houston v. Int’l Data Transfer Corp.*, 645 N.W.2d 144, 149 (Minn. 2002). “Thus, this case presents an issue of statutory interpretation, which we review de novo.” *Bukkuri v. Dep’t of Employment & Econ. Dev.*, 729 N.W.2d 20, 21 (Minn. App. 2007).

The unemployment benefits statute is deemed remedial and is construed liberally in favor of awarding benefits to “persons unemployed through no fault of their own”; disqualification provisions are to be narrowly interpreted. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006).

“Statutory provisions governing unemployment benefits are to be liberally construed in favor of those unemployed through no fault of their own, and disqualification provisions are to be narrowly construed.” *Carlson v. Dep’t of Employment & Econ. Dev.*, 747 N.W.2d 367, 372 (Minn. App. 2008).

While the appellate courts are “not bound by an agency’s conclusions of law, the manner in which an agency has construed a statute may be entitled to some weight when the statutory language is technical in nature and the agency’s interpretation is one of longstanding application.” *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 375 (Minn. 1996). “This court will defer to an agency’s interpretation of its own statutes unless such interpretation is in conflict with the express purpose of the statute and the legislature’s intent.” *Carlson v. Augsburg College*, 604 N.W.2d 392, 394 (Minn. App. 2000).

h. No Presumption of Eligibility

Under prior law, “the employee [was] presumed to be eligible to receive unemployment benefits after discharge.” *McGowan v. Executive Express Transp. Enters., Inc.*, 420 N.W.2d 592, 595 (Minn. 1988). Currently, however, the statute provides: “There is no presumption of entitlement or nonentitlement to unemployment benefits.” Minn. Stat. § 268.069, subd. 2 (Supp. 2007).

i. No Burden of Proof

Under prior law, the employer was “given the burden of proving an employee guilty of misconduct and thus disqualified from receiving benefits.” *McGowan v. Executive Express Transp. Enters., Inc.*, 420 N.W.2d 592, 595 (Minn. 1988).

Under current law, there is no burden of proof: “An applicant’s entitlement to unemployment benefits must be determined based upon that information available without regard to any burden of proof” Minn. Stat. § 268.069, subd. 2 (Supp. 2007). “An issue of ineligibility is determined . . . without regard to any burden of proof.” Minn. Stat. § 268.101, subd. 2(c) (Supp. 2007). “The evidentiary hearing is conducted by an unemployment law judge without regard to any burden of proof as an evidence gathering inquiry and not an adversarial proceeding.” Minn. Stat. § 268.105, subd. 1(b) (Supp. 2007).

j. Disqualification/Ineligibility Provisions

Before September 30, 2007, the unemployment benefits statute used the terms “disqualify” and “ineligible.” 2007 Minn. Laws ch. 128, art. 5, § 1, at 974. For all department determinations, appeal decisions, and other actions taking place on or after September 30, 2007, the term “ineligible” will be substituted for the term “disqualify” in Minn. Stat. § 268; “[t]his substitution is not intended as a substantive change.” 2007 Minn. Laws ch. 128, art. 5, §§ 1, 10, at 974, 981.

(1) Misconduct

“Whether an employee has engaged in conduct that disqualifies him from unemployment benefits is a mixed question of fact and law.” *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006); *see also Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

“Whether a particular act constitutes disqualifying misconduct is a question of law, which this court reviews de novo.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

Whether an employee’s acts constitute misconduct “is a question of law upon which this court remains free to exercise its independent judgment.” *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989)

“Whether the employee committed an act alleged to be employment misconduct is a fact question, but the interpretation of whether that act is employment misconduct is an issue of law.” *Risk v. Eastside Beverage*, 664 N.W.2d 16, 19-20 (Minn. App. 2003).

(2) Quit

“Whether an employee voluntarily quit is a question of fact for the [decisionmaker].” *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). “Whether a claimant is properly disqualified from the receipt of unemployment benefits is a question of law, which this court reviews de novo.” *Id.*

(3) Good Reason Attributable to Employer

“Whether an employee had good cause to quit is a question of law, which we review de novo.” *Munro Holding, LLC v. Cook*, 695 N.W.2d 379, 384 (Minn. App. 2005).

“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).

2. School Boards

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

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

“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).

3. Minnesota Pollution Control Agency

“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. See Minn. Stat. § 14.69.” *Minn. Ctr. for Env’tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002).

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) (alteration in original), *review denied* (Minn. July 28, 1995).

“Based on [] case law, we 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) (footnote omitted).

“[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 Env’tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 463 (Minn. 2002) (quotation omitted).

When “there is a combination of danger signals which suggest the agency has not taken a hard look at the salient problems and has not genuinely engaged in reasoned decision making it is the duty of the court to intervene.” *In re Owatonna NPDES/SDS Permit Reissuance*, 672 N.W.2d 921, 926 (Minn. App. 2004) (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)] 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 Env’tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002).

VII. 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).

“[T]his court’s review of the determination of arbitrability is *de novo*.” *Indep. Sch. Dist. No. 88 v. Sch. Serv. Employees Union Local 284*, 503 N.W.2d 104, 106 (Minn. 1993).

“[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. BURDEN OF PROOF

The party seeking to vacate the arbitration award “has the burden of proving [its] invalidity.” *Nat’l Indem. Co. v. Farm Bureau Mut. Ins. Co.*, 348 N.W.2d 748, 750 (Minn. 1984).

D. GENERAL STANDARDS OF REVIEW

Arbitrators are the final judges of both law and fact and their “award will not be reviewed or set aside for mistake of either law or fact in the absence of fraud, mistake in applying [their] own theor[ies], misconduct, or other disregard of duty.” *Cournoyer v. Am. Television & Radio Co.*, 249 Minn. 577, 580, 83 N.W.2d 409, 411 (1957) (footnote omitted).

“Every reasonable presumption must be exercised in favor of the finality and validity of the arbitration award, . . . and courts will not overturn an award merely because they disagree with the arbitrator’s decision on the merits[.] . . . Thus, the scope of review of an arbitration award is extremely narrow.” *State, Office of State Auditor v. Minn. Ass’n of*

Prof'l Employees, 504 N.W.2d 751, 754-55 (Minn. 1993) (citations omitted). “[W]e are bound to accept” the arbitrator’s findings. *Id.* at 758.

E. GROUNDS FOR VACATING AN ARBITRATION AWARD

1. General Statutory Grounds for Vacating Award

An arbitration award “will be vacated only upon proof of one or more of the grounds stated in Minn. Stat. § 572.19 . . . and not because the court disagrees with the decision on the merits.” *AFSCME Council 96 v. Arrowhead Regional Corrections Bd.*, 356 N.W.2d 295, 299-300 (Minn. 1984); *see Hunter, Keith Indus., Inc. v. Piper Capital Mgmt. Inc.*, 575 N.W.2d 850, 854 (Minn. App. 1998) (same).

“[T]he court shall vacate an [arbitration] award where:

- (1) The award was procured by corruption, fraud or other undue means;
- (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
- (3) The arbitrators exceeded their powers;
- (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 572.12, as to prejudice substantially the rights of a party; or
- (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 572.09 and the party did not participate in the arbitration hearing without raising the objection;

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

Minn. Stat. § 572.19, subd. 1 (2006).

2. Examples of Grounds for Vacating

a. 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. Group*, 590 N.W.2d 667, 669 (Minn. App. 1999) (quotation omitted).

b. Exceeding Powers

“Only where the arbitrators have clearly exceeded their powers must a court vacate an award.” *Nat’l Indem. Co. v. Farm Bureau Mut. Ins. Co.*, 348 N.W.2d 748, 750 (Minn. 1984); *see also* *Wolfer v. Microboards Mfg., LLC*, 654 N.W.2d 360, 365 (Minn. App. 2002), *review denied* (Minn. Feb. 26, 2003).

“Unless there is a clear showing that arbitrators were unfaithful to their obligations, courts assume they did not exceed their powers.” *EEC Prop. Co. v. Kaplan*, 578 N.W.2d 381, 383 (Minn. App. 1998), *review denied* (Minn. Aug. 31, 1998).

“[I]n the public sector an arbitrator has no authority to make constitutional determinations, irrespective of the language of the arbitration agreement.” *County of Hennepin v. Law Enforcement Labor Servs., Inc., Local No. 19*, 527 N.W.2d 821, 825 (Minn. 1995).

“[I]n deciding issues of law, the appellate courts are not bound by the trial court’s conclusions, and may independently determine the issues pursuant to applicable statutory and case law. . . . The trial 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).

c. 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

“[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).

The reasonableness of a refusal to submit to an independent medical examination (IME) “is a fact issue to be determined by the arbitrator.” *Weaver v. State Farm Ins. Cos.*, 609 N.W.2d 878, 882 (Minn. 2000).

“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.*