

Outline – Standards of Review

I. There are four standards of review:

- A. Clearly Erroneous,
- B. Abuse of Discretion,
- C. *De Novo*, and
- D. Plain Error.

II. Clearly Erroneous:

- A. The burden is very heavy and rarely successful in turning over the decision of the trial court based upon this standard of review.
- B. C.R.C.P. 52 (2017) states in part:

Findings of fact 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.

- C. Basically, if there is **any support** in the record for the trial judge’s factual findings, they will not be overturned.

In weighing sufficiency of the evidence, we review the record in the light most favorable to the prevailing party and draw every inference fairly deducible from the evidence in favor of the court's decision. Further, we will not disturb the trial court's findings and conclusions if the record supports them, even though reasonable people might arrive at different conclusions based on the same facts. *People ex rel. L.B.*, 254 P.3d 1203, 1208 (Colo. App. 2011).

Factual findings are binding on appeal unless they are so clearly erroneous as to find no support in the record. *Town of Minturn v. Tucker*, 293 P.3d 581, 590 (Colo. 2014).

III. Abuse of Discretion:

- A. Like clearly erroneous, so much deference is given to the trial judge that it is difficult under this standard to have a ruling overturned on appeal.
- B. In essence, where the standard of review is abuse of discretion, even if the trial judge is wrong, the ruling will not be overturned unless it “affects a substantial right of the parties.” C.R.C.P. 61 (2017).

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

- C. Additionally, the trial judge's ruling must be "manifestly arbitrary, unreasonable, or unfair." *Churchill v. Univ. of Colo. at Boulder*, 285 P.3d 986, 1008 (Colo. 2012).
- D. Two examples of where a trial judge may abuse their discretion are in the admission or exclusion of evidence, *Horton v. Bischof & Coffman Constr.*, 217 P.3d 1262, 1267 (Colo. App. 2009), or in denying a motion for continuance, *In re C.A.O.*, 192 P.3d 508, 512 (Colo. App. 2008).

IV. *De Novo*:

- A. Of the four standards, this is perhaps your best chance at getting a reversal.
- B. Essentially, you would be arguing the trial judge made a mistake in the interpretation of the law, applied the wrong law, applied the wrong burden of proof, erred in granting summary judgment, etc.
- C. These rulings of the trial judge are reviewed "anew."

V. Plain Error:

- A. Normally, you must make an objection or otherwise give the trial judge a chance to rule on a matter before you can appeal it, or the issue is waived for the purposes of appeal. (There will be a section in this seminar on preserving issues for appeal.) Under this standard, if the error is so serious that it affects the validity of the ruling, the appellate court will consider it.
- B. C.A.R. 1(d) states in part:

. . . The party will be limited to the grounds so stated although the court may in its discretion notice any error appearing of record. . .
- C. *Roberts v. Am. Family Mut. Ins. Co.*, 144 P.3d 546, 550 (Colo. 2006):

. . . with regard to matters having broad impact or directly affecting the validity of judgments, such as the constitutionality of statutes and related issues, we have at times found it appropriate to address even claims that were never presented to the trial courts.