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CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 25-0686

DA 25-0686

IN THE SUPREME COURT OF THE STATE OF MONTANA

2026 MT 193

MCNAIN HOLDINGS LP, an Arizona Limited Partnership; JAY ROBERT BLAKE; and NAOMI MONICA BLAKE,

Plaintiffs and Appellees,

v.

WILDERNESS PRESERVE US LP,

Defendant and Appellant.

APPEAL FROM: District Court of the Nineteenth Judicial District,
In and For the County of Lincoln, Cause No. DV-23-158
Honorable Matthew J. Cuffe, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Brian M. Joos, Gersh, Simpson & Joos, PLLP, Whitefish, Montana

For Appellees:

Fred Simpson, Jill Gerdrum, Hall & Evans, LLC, Missoula, Montana

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Submitted on Briefs: May 13, 2026

Decided: August 18, 2026

Filed:

Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Wilderness Preserve US LP (Wilderness) appeals the September 19, 2025 Orders of the Montana Nineteenth Judicial District Court, Lincoln County, denying Wilderness's motion to alter or amend the judgment or grant a new trial in the alternative, and awarding McNain Holdings LP, Jay Robert Blake (Jay), and Naomi Monica Blake (Naomi) (collectively the Blakes) their attorney fees and costs. Tom McNain (Tom) and Corie McNain (Corie) (collectively the McNains) are the sole partners of McNain Holdings LP.[1] We restate and address the following issues:

> *Issue 1: Whether the District Court erred by concluding that sufficient evidence supported the jury's verdict.*
>
> *Issue 2: Whether the District Court erred by awarding the McNains and Blakes their attorney fees and costs.*

¶2 We affirm and remand for further proceedings concerning the attorney fees and costs incurred on appeal.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 The McNains and Blakes are acquaintances who occasionally golf together. In August 2015, the McNains and Blakes visited the Wilderness Club, a luxury resort community located near Eureka, Montana. Wilderness owns the Wilderness Club and advertised that buyers could purchase a fractional interest in residences at the Wilderness Club, including luxury villas ranging from two to four bedrooms, and luxury four-bedroom cabins. The McNains and Blakes informed Wilderness's realtors that they each desired to

[1] For the sake of clarity, we refer to the plaintiffs collectively as the "McNains and Blakes."

purchase a fractional interest in a four-bedroom villa because it would accommodate their growing families.

¶4 No four-bedroom villas had been constructed at the Wilderness Club as of August 2015, so the McNains and Blakes executed identical purchase agreements that granted each couple a fractional interest in a three-bedroom villa for $75,000. The fractional interests allowed each couple to spend up to four weeks at the Wilderness Club and use the resort's amenities. Addendums to each purchase agreement stated that each couple would be transferred to a four-bedroom villa once it was constructed, and until a four-bedroom villa was constructed, relieved them from paying their share of maintenance fees and granted them use of a four-bedroom cabin. In October 2015, the McNains and Blakes paid the purchase price at closing, and each couple received a warranty deed granting them a fractional interest in a three-bedroom villa.

¶5 The McNains and Blakes utilized their fractional interests in accordance with the purchase agreements and addendums while waiting to be transferred to a four-bedroom villa. The McNains and Blakes would schedule their stays in response to the schedule of available dates Wilderness provided to them. Throughout the years, Wilderness assured the McNains and Blakes that plans to build the four-bedroom villa were moving forward. By 2023, Wilderness had not begun to construct any four-bedroom villas.

¶6 In April 2023, Brian Ehlert, the managing partner and part owner of Wilderness, requested that the McNains and Blakes begin paying maintenance fees, informed them that Wilderness would cancel their reservations until they paid maintenance fees, and proposed that the McNains and Blakes move into a two- or three-bedroom villa or upgrade to a

four-bedroom cabin. The McNains and Blakes responded by asserting that they did not owe maintenance fees until Wilderness provided a four-bedroom villa and proposed that Wilderness reimburse their purchase money if Wilderness did not intend to honor their contracts. In May 2023, Ehlert rejected the proposal and informed the McNains and Blakes that Wilderness had canceled their reservations until the McNains and Blakes paid their maintenance fees. The McNains and Blakes received no further communication from Ehlert or Wilderness to schedule stays at the Wilderness Club. The McNains and Blakes have not stayed at the Wilderness Club since April 2023, and a four-bedroom villa was never constructed.

¶7 In August 2023, the McNains and Blakes filed a complaint that asserted multiple causes of action against Wilderness, including breach of contract, violation of the Montana Consumer Protection Act (MCPA), and a request for attorney fees and costs pursuant to the purchase agreements. In November 2024, the McNains and Blakes and Wilderness each moved for summary judgment as to whether Wilderness breached the contracts and on the McNains and Blakes' MCPA claim. The District Court concluded that the purchase agreements and addendums constituted valid contracts. It granted summary judgment in favor of the McNains and Blakes, concluding that Wilderness breached the contracts by failing to provide a four-bedroom villa, charging the McNains and Blakes maintenance fees before it transferred them to a four-bedroom villa, and excluding them from use of their fractional interests. The District Court determined that the contracts entitled the McNains and Blakes to their reasonable attorney fees and costs as the non-defaulting party, with the amount to be determined after trial. The District Court concluded that a dispute

of material fact precluded granting summary judgment in favor of either party as to the McNains and Blakes' MCPA claim.

¶8 In December 2023, Wilderness sold the Wilderness Club to Escalante Golf (Escalante), a company that specializes in owning and operating luxury golf club resorts. As part of the purchase, Ehlert received an ownership interest in Escalante so that Escalante could utilize Ehlert's professional experience in developing golf course communities and resorts. Escalante did not change the branding of the Wilderness Club after purchasing it, retaining its name and contact information. Even after Escalante acquired the Wilderness Club, there remained no communication between the McNains and Blakes, Ehlert, Wilderness, or Escalante.

¶9 A jury trial occurred April 7, 2025 through April 9, 2025. The only issues before the jury were determining contract damages and whether Wilderness violated the MCPA. The McNains and Blakes framed the contract damages and MCPA damages as the McNains and Blakes' loss of use of their fractional interests and the difference in value between a fractional interest in a four-bedroom villa and a three-bedroom villa. Each of the McNains and Blakes testified to Wilderness's representations in negotiating the purchase agreements, Wilderness's representations regarding the status of the four-bedroom villa, and how long the McNains and Blakes intended to utilize their fractional interests. Ehlert testified to the value of each week's stay at the Wilderness Club, Escalante's purchase of the Wilderness Club, his interest in and control over Wilderness and Escalante, and his communications with the McNains and Blakes. Allyson Sabo, a realtor, testified to the value of a fractional interest in a three-bedroom villa at the

Wilderness Club. The jury awarded $250,000 in contract damages to each couple. The jury returned a verdict in favor of Wilderness on the MCPA claim.

¶10 Wilderness and the McNains and Blakes each filed post-trial motions concerning attorney fees and costs. Wilderness primarily contended that neither party should be awarded attorney fees and costs because each party succeeded on one of the McNains and Blakes' claims. The McNains and Blakes contended they constituted the prevailing parties and that they should receive the full amount of their attorney fees and costs because the time spent on the breach of contract and MCPA claims were inseparable.

¶11 In July 2025, Wilderness moved to alter or amend the judgment pursuant to M. R. Civ. P. 59(e), arguing that the District Court should reduce the jury verdict because the evidence did not support awarding the McNains and Blakes for the loss of use after Escalante purchased the Wilderness Club in December 2023. Wilderness alternatively moved for a new trial on the same grounds. The McNains and Blakes responded that substantial credible evidence supported the jury's verdict.

¶12 On September 19, 2025, the District Court issued orders addressing the award of attorney fees and costs and Wilderness's Rule 59 motion. The District Court awarded the McNains and Blakes all the attorney fees and costs they incurred, reasoning that the McNains and Blakes constituted the prevailing party and that the fees and costs associated with the breach of contract claim and MCPA claim were inextricably intertwined. The District Court denied Wilderness's Rule 59 motion, determining that substantial credible evidence supported the jury's verdict.

STANDARDS OF REVIEW

¶13 We review a district court's order granting or denying a motion for Rule 59(e) relief for abuse of discretion. *Folsom v. Mont. Pub. Emps.' Ass'n, Inc.*, 2017 MT 204, ¶ 59, 388 Mont. 307, 400 P.3d 706 (citation omitted). We review de novo a district court's order granting or denying a motion for a new trial based on the lack of sufficient evidence to determine whether substantial credible evidence in the record supports the jury's verdict. *Carestia v. Robey*, 2013 MT 335, ¶ 7, 372 Mont. 438, 313 P.3d 169 (citation omitted). Substantial credible evidence exists when a reasonable mind could accept the evidence presented as adequately supporting the verdict. *Suzor v. Int'l Paper Co.*, 2016 MT 344, ¶ 40, 386 Mont. 54, 386 P.3d 584 (citation omitted). We review the "evidence in the light most favorable to the prevailing party." *Suzor*, ¶ 40 (citation omitted).

¶14 "We first review for correctness whether legal authority exists to award attorney's fees; if it does, we review a district court's order granting or denying attorney's fees for an abuse of discretion." *Hurly v. Lake Cabin Dev., LLC*, 2012 MT 77, ¶ 14, 364 Mont. 425, 276 P.3d 854 (citation omitted). A district court abuses its discretion when it acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice. *Gullet v. Van Dyke Constr. Co.*, 2005 MT 105, ¶ 23, 327 Mont. 30, 111 P.3d 220 (citation omitted).

DISCUSSION

¶15 *Issue 1: Whether the District Court erred by concluding that sufficient evidence supported the jury's verdict.*

¶16 District courts should only grant Rule 59(e) relief to alter or amend the judgment under extraordinary circumstances, including for the purposes of (1) correcting manifest errors of law or fact upon which the judgment is based; (2) addressing newly discovered or previously unavailable evidence; (3) preventing manifest injustice resulting from, among other things, serious misconduct of counsel; or (4) addressing an intervening change in controlling law brought to the court's attention. *Folsom*, ¶ 59 (citation omitted). Section 25-11-102, MCA, enumerates the grounds for vacating a judgment and granting a new trial, including when insufficient evidence justifies the verdict or when the verdict contradicts the law. Section 25-11-102(6), MCA.

¶17 Section 27-1-311, MCA, establishes the general measure for contract damages. Breach of contract damages constitute the "amount which will compensate the party aggrieved for all the detriment which was proximately caused thereby" or which "in the ordinary course of things would be likely to result therefrom." Section 27-1-311, MCA.

¶18 "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion; it may be less than a preponderance of the evidence, but must be more than a 'mere scintilla.'" *Carestia*, ¶ 7 (citation omitted). "If conflicting evidence exists, the credibility and weight given to the evidence is in the jury's province and we will not disturb the jury's findings unless they are inherently impossible to believe." *Rocky Mountain Enters., Inc. v. Pierce Flooring*, 286 Mont. 282, 295, 951 P.2d 1326, 1334 (1997) (citation omitted); *Thermal Design, Inc. v. Duffy*, 2022 MT 191, ¶ 21, 410 Mont. 211, 518 P.3d 467 (citation omitted).

¶19 The jury awarded each couple $250,000 in contract damages. Wilderness does not dispute that each purchase agreement entitled each couple to spend four weeks per year at the Wilderness Club and that Ehlert valued each week that the McNains and Blakes stayed at the Wilderness Club at $15,000 per couple, amounting to an annual value of $60,000 per couple. The jury's verdict falls within the range of compensating the McNains and Blakes for being excluded from the Wilderness Club for approximately four years (i.e., sixteen and a half weeks) based on the evidence presented at trial.

¶20 Wilderness contends the jury verdict should be reduced to only account for the three weeks in 2023 that Wilderness excluded the McNains and Blakes from the Wilderness Club while it was under Wilderness's ownership. Wilderness reasons that no evidence demonstrated that Wilderness excluded or could exclude the McNains and Blakes from the Wilderness Club after Escalante purchased the Wilderness Club in December 2023. The McNains and Blakes contend substantial credible evidence supports the jury's verdict because the McNains and Blakes' testimony established that they intended to stay at the Wilderness Club well into the future, that Ehlert remained influential as part owner of Escalante, and that Escalante and Ehlert never attempted to reschedule reservations with the McNains and Blakes.[2]

¶21 Substantial evidence supports the jury awarding damages to the McNains and Blakes for the loss of use that occurred after the change in ownership. The McNains and

[2] Wilderness and the McNains and Blakes dispute whether Wilderness or the McNains and Blakes had the burden to prove that Escalante assumed Wilderness's contractual obligations. We do not reach this issue because substantial evidence supports the jury's verdict independent of this issue.

Blakes testified that they generally have spent four weeks at the Wilderness Club every year since August 2015 and that they intended to schedule reservations at the Wilderness Club well into the future. Tom testified that he intended to use the McNains's fractional interest for five to ten more years while Corie's testimony indicated that she intended to use it for generations. Jay testified that he intended to use the Blakes's fractional interest for at least twenty more years.

¶22 Wilderness's argument that no evidence supported awarding damages to the McNains and Blakes for the loss of use because Wilderness sold the Wilderness Club is misplaced. Ehlert, the managing partner and part owner of Wilderness who indefinitely canceled the McNains and Blakes' reservations, testified that he acquired an ownership interest in Escalante when Escalante purchased the Wilderness Club. Ehlert described his ownership role in Escalante as minimal despite also testifying that he was Escalante's registered agent and that Escalante required him to assume an ownership interest in Escalante so it could utilize his professional experience. Ehlert's testimony indicated that certain aspects of the Wilderness Club's operations, including its branding and contact information, did not change under Escalante's ownership. The McNains and Blakes testified that neither the Wilderness Club, Escalante, nor Ehlert contacted them to reschedule reservations after Escalante acquired the Wilderness Club in December 2023.

¶23 There was substantial evidence introduced at trial that Wilderness indefinitely canceled the McNains and Blakes' reservations and no one later withdrew that cancellation, restored the contractual arrangement, or resumed contacting the McNains and Blakes about scheduling reservations as had occurred for the prior years. Although the sale ended

Wilderness's operational control of the Wilderness Club, the sale itself did not establish that all the damage resulting from Wilderness's breach immediately ended. Viewing the evidence in the McNains and Blakes' favor, the jury could find a continuing loss attributable to Wilderness's breach. The District Court did not err by determining that substantial evidence supported the jury awarding contract damages in the amount of $250,000 per couple.

¶24 A jury's failure to render a verdict comporting with the given jury instructions constitutes an error of law that warrants granting Rule 59(e) relief or granting a new trial. *See Ingman v. Hewitt*, 107 Mont. 267, 86 P.2d 653, 655 (1938) (citations omitted) ("a verdict contrary to the instructions is against law, necessitating a new trial"); *Folsom*, ¶ 59 (correcting an error of law warrants granting Rule 59(e) relief). A jury's disregard for a jury instruction may manifest when the jury's findings under a given instruction would not justify its verdict. *See Thorton v. Wallace*, 85 Mont. 27, 277 P. 417, 418 (1929) (concluding the jury clearly disregarded the jury instruction because substantial evidence did not support the verdict).

¶25 The District Court provided the jury with multiple instructions concerning contract damages. Instruction No. 16 instructed the jury that "the nonbreaching party should receive a sum that will put it in as good a position as if the contract had been performed." Instruction No. 17 instructed the jury that "damages must be the proximate result of the wrong" complained of. Instruction No. 18 instructed the jury that the McNains and Blakes had a duty to minimize their damages. Wilderness argues the jury failed to adhere to these instructions.

¶26 Wilderness argues that the jury verdict places the McNains and Blakes in a better position than they would have been if they performed their respective contracts because the McNains and Blakes each received $250,000 in contract damages despite retaining fractional interests in a three-bedroom villa which Sabo valued at $38,976. But the fact that the McNains and Blakes retain fractional interests in a three-bedroom villa does not mean they received a windfall, as Wilderness contends. The warranty deeds granted to each couple a fractional interest entitling them to four weeks per year in a three-bedroom villa. The corresponding contracts entitled each couple to enjoy their fractional interests—with each week's stay valued at $15,000 per couple—without paying maintenance fees until a four-bedroom villa was constructed. Wilderness breached the contracts by excluding the McNains and Blakes from the Wilderness Club until the McNains and Blakes paid maintenance fees even though the condition that contractually would have triggered that obligation had never occurred because the Wilderness Club never constructed a four-bedroom villa. The jury's verdict compensated the McNains and Blakes for the lost value of being prevented from using their fractional interests.

¶27 Wilderness argues the jury ignored Instruction No. 17 that prohibited the jury from awarding speculative damages because the verdict compensated the McNains and Blakes for the loss of use that occurred after Wilderness sold the Wilderness Club to Escalante. This argument rehashes Wilderness's argument that the jury's verdict was unsupported by substantial credible evidence. The jury complied with Instruction No. 17 because substantial credible evidence supported the jury's verdict.

¶28 Wilderness contends the jury ignored Instruction No. 18 because the evidence demonstrated that the McNains and Blakes failed to mitigate their damage given that they did not contact Escalante to schedule reservations once it purchased the Wilderness Club and the McNains and Blakes failed to attempt to sell their fractional interests.

¶29 Instruction No. 18 informed the jury that the McNains and Blakes had a duty to mitigate their damages, but that the "duty does not require them to do what is unreasonable or impracticable."

¶30 Tom testified that Ehlert rejected his request that Wilderness refund the McNains and Blakes' purchase price in response to Ehlert canceling their reservations in May 2023. The McNains and Blakes testified they could not accept Ehlert's offer to downgrade to a two- or three-bedroom villa or upgrade to a four-bedroom cabin because a smaller villa would not accommodate their growing families and the four-bedroom cabin was beyond their budget. Tom and Jay testified they did not attempt to sell their respective interests because they did not believe they could. Tom explained he did not believe he could sell the McNains's fractional interest because Wilderness's realtor informed the McNains and Blakes during their initial negotiations that Wilderness would have to sell their fractional interests for them, a representation that Wilderness's realtor reiterated to Tom on a separate occasion. At the point when the McNains and Blakes had a reason to sell their fractional interests due to Wilderness's failure to construct a four-bedroom villa and its misrepresentations concerning the status of construction, Tom testified that he did not trust Wilderness to sell the fractional interests with the McNains and Blakes' best interest in mind.

¶31 Tom and Jay also testified that they did not know whether Wilderness, the very entity that excluded the McNains and Blakes from the Wilderness Club, retained an interest in the Wilderness Club after Escalante became involved. Ehlert, the managing partner who informed the McNains and Blakes that Wilderness canceled their reservations, also remained involved with the Wilderness Club as part owner of Escalante. The McNains and Blakes did not receive any communication from the Wilderness Club on behalf of Ehlert or Escalante to reschedule their reservations at the Wilderness Club despite the change in ownership.

¶32 Whether the McNains and Blakes might have more aggressively pursued options to sell their interests or re-engaged the Wilderness Club after Escalante's acquisition is a question for the jury; the record contains substantial credible evidence to support the jury's general verdict indicating that it determined that the McNains and Blakes acted reasonably under the circumstances. Viewing the record in the light most favorable to the McNains and Blakes, the jury's implicit finding that the McNains and Blakes acted reasonably to mitigate their damages is "not inherently impossible to believe." *Thermal Design*, ¶ 36 (citation and internal quotations omitted).

¶33 The District Court did not err by denying Wilderness's Rule 59 motion and request for a new trial because substantial credible evidence supported the jury's verdict and the jury's verdict adhered to the given jury instructions.

¶34 *Issue 2: Whether the District Court erred by awarding the McNains and Blakes their attorney fees and costs.*

¶35 A court generally may "award attorney fees only where a statute or contract provides for their recovery." *Mandell v. Ward*, 2016 MT 205, ¶ 27, 384 Mont. 377, 377 P.3d 1228 (citation and internal quotations omitted). "[W]here a lawsuit involves multiple claims or theories, an award of attorney fees must be based on the time spent by the prevailing party's attorney on the claim or theory under which attorney fees are allowable." *Mandell*, ¶ 27 (citation and internal quotations omitted). A district court may award an entire fee for a lawsuit involving multiple claims only if the court cannot segregate the time spent on the claims that entitle the litigant to attorney fees from the claims that do not. *Kenyon-Noble Lumber Co. v. Dependant Founds., Inc.*, 2018 MT 308, ¶ 26, 393 Mont. 518, 432 P.3d 133 (citation omitted).

¶36 The District Court concluded that the attorney fee provision of each contract entitled the McNains and Blakes to the reasonable attorney fees and costs incurred because of Wilderness's breach. The MCPA permits the district court to "award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action." Section 30-14-133(3), MCA.[3]

¶37 The District Court awarded the McNains and Blakes their entire fees despite Wilderness successfully defending the McNains and Blakes' MCPA claim because it concluded the McNains and Blakes constituted the prevailing parties and determined that it could not separate the time spent on the breach of contract claim from the MCPA claim. The District Court reasoned the time spent at trial litigating contract damages and the

[3] The District Court concluded that Wilderness was not entitled to the attorney fees it incurred in defending the McNains and Blakes' MCPA claim, which Wilderness does not appeal.

MCPA claim was inseparable because the facts and witnesses utilized to prove contract damages were identical to those used to prove the MCPA claim.

¶38 Wilderness argues that the District Court erred by failing to reduce the attorney fees award in a manner that accounted for the jury finding in its favor on the McNains and Blakes' MCPA claim. It argues the time spent at trial litigating contract damages and the MCPA claim is separable because the causes of action have no elements in common, required different factual showings, and required calling different witnesses. The McNains and Blakes contend they constitute the prevailing parties despite the jury rendering a verdict in Wilderness's favor on its MCPA claim because the McNains and Blakes obtained the principal relief they requested—damage for the loss of use of their fractional interests and the difference in value between a three-bedroom villa and four-bedroom villa. The McNains and Blakes assert that the time spent on each cause of action is inextricably intertwined because the breach of contract and MCPA claims arose from the same facts and each cause of action sought to recover the same damages for the same wrong.

¶39 "No one factor is conclusive in determining the prevailing party for the purpose of awarding attorney fees." *Little Big Warm Ranch, LLC v. Doll*, 2024 MT 3, ¶ 35, 415 Mont. 8, 541 P.3d 104 (citing *Kenyon-Noble*, ¶ 24). Generally, the prevailing party constitutes the party who gains "a net benefit from the judgment." *Kenyon-Noble*, ¶ 24 (citation omitted).

¶40 Wilderness solely focuses on its success in defending the MCPA claim without addressing whether it constitutes the prevailing party. The McNains and Blakes asserted two causes of action based on a singular factual theory that they alleged entitled them to

recover damages for a singular harm. The McNains and Blakes constitute the prevailing parties because they received the net benefit of the judgment by receiving contract damages that compensated them for the loss of use and receiving deeds to less valuable fractional interests despite the jury's verdict in favor of Wilderness on the MCPA claim.

¶41 Wilderness outlines the different elements of each cause of action to demonstrate the claims are separable but makes no effort to address how the time spent on each cause of action can be differentiated based on the theory of the case that the McNains and Blakes presented in the District Court. Wilderness summarily asserts that "nearly the entire trial" entailed litigating the MCPA claim rather than contract damages, emphasizing that the evidence concerning Wilderness's conduct was exclusive to the MCPA claim.

¶42 The McNains and Blakes based their breach of contract claim and MCPA claim on a singular factual theory: that Wilderness promised to construct a four-bedroom villa, Wilderness promised to refrain from charging maintenance fees until it transferred them to a four-bedroom villa, that Wilderness failed to uphold its end of the bargain, and the McNains and Blakes suffered financial damages from the loss of use and receiving deeds to less valuable fractional interests. The McNains and Blakes relied on the same witnesses, facts, and exhibits to establish this narrative from the briefing on summary judgment through trial. The evidence presented at trial demonstrating how Wilderness induced the McNains and Blakes to enter into the contracts was relevant to prove that Wilderness employed unlawful business practices for the purpose of the McNains and Blakes' MCPA claim while also contextualizing Wilderness's breach for determining contract damages.

¶43 The District Court did not abuse its discretion by awarding the McNains and Blakes their entire fee because the McNains and Blakes constituted the prevailing party and the time dedicated to the breach of contract claim was inextricably intertwined with the MCPA claim based on the McNains and Blakes' theory of the case.

¶44 The McNains and Blakes request us to award their attorney fees and costs incurred on appeal pursuant to the contracts as the non-defaulting party. Wilderness only contends that the McNains and Blakes are not entitled to their attorney fees and costs on appeal because they will not prevail on appeal.

¶45 "When an entitlement to costs and attorney fees arises from contract, that entitlement includes costs and attorney fees on appeal." *Kenyon-Noble*, ¶ 28 (citation omitted); *Boyne USA, Inc. v. Lone Moose Meadows, LLC*, 2010 MT 133, ¶ 26, 356 Mont. 408, 235 P.3d 1269 (clarifying that attorney fees provision includes fees incurred on appeal).

¶46 The McNains and Blakes are entitled to the reasonable attorney fees and costs they incurred on appeal as the non-defaulting party because the contracts provide that "the non-defaulting party shall be entitled to reasonable costs and attorney fees incurred because [of the other party's] default," which includes the attorney fees and costs incurred on appeal. *Kenyon-Noble*, ¶ 28 (citation omitted).

CONCLUSION

¶47 The District Court did not err by denying Wilderness's motion requesting Rule 59(e) relief and requesting a new trial because substantial credible evidence supported the jury's verdict. The District Court did not abuse its discretion by awarding the McNains and

Blakes the entirety of the attorney fees and costs they incurred litigating the underlying matter. We remand for the District Court to determine the reasonable attorney fees and costs that the McNains and Blakes incurred on appeal.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ KATHERINE M. BIDEGARAY
/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ INGRID GUSTAFSON