

Glacier Tennis Club, ¶ 21. In doing so, however, we must defer to the original trial court's findings of fact absent an abuse of discretion or evidence of clear error. In re Marriage of Foster, 2004 MT 326, ¶ 9, 324 Mont. 114, ¶ 9, 102 P.3d 16, ¶ 9. No abuse of discretion can be found where substantial credible evidence supports the trial court's findings and judgment. Foster, ¶ 9. Now we pause momentarily to explain the appropriate standard of review to be applied when presented with an appeal of a district court's denial of a lost appeal. The District Court reviewed the actions of the original trial court in the dissolution proceeding, including its findings of fact and conclusions of law. The District Court properly granted Karl's motion for summary judgment having deferred to the original trial court's findings in the dissolution proceeding absent an abuse of discretion, In re Marriage of Foster, 2004 MT 326, ¶ 9, 324 Mont. 114, ¶ 9, 102 P.3d 16, ¶ 9, and having reviewed the original trial court's conclusions of law for correctness. Pablo, ¶ 12.

¶ 25 We, in turn, pursuant to our usual practice review de novo the District Court's grant of summary judgment. Glacier Tennis Club, ¶ 21. The record before a district court in a summary judgment proceeding normally includes undisputed facts to which the district court applies the law. Cole v. Valley Ice Garden, 2005 MT 115, ¶ 4, 325 Mont. 388, ¶ 4, 113 P.3d 275, ¶ 4. A district court makes no factual findings and resolves no factual disputes at the summary judgment stage. Cole, ¶ 4. In a case such as this where Richards appeals the District Court's denial of his lost appeal, however, the record before the District Court included findings of fact entered by the original trial court after a full trial in the dissolution proceeding. The District Court deferred to these factual findings and we too must defer to the original trial court's findings of fact in the dissolution proceeding—the only fact-finding conducted throughout this entire action—absent an abuse of discretion. Foster, ¶ 9. Thus, we apply the same rule of review that would have been applied by this Court on direct appeal of the original trial court's findings. Daugert, 704 P.2d at 604. And no abuse of discretion can be found under such circumstances where substantial credible evidence supports the original trial court's findings in the dissolution proceeding. Foster, ¶ 9.

THEREFORE, IT IS ORDERED that Danny's petition for rehearing is GRANTED to the extent of amending our Opinion as outlined above.

IT IS HEREBY FURTHER ORDERED that, in all other respects, Danny's petition for rehearing is DENIED.

The Clerk of Court is directed to mail a copy of this Order to all counsel of record.

DATED this 19th day of July 2005.

/S/ KARLA M. GRAY

/S/ BRIAN MORRIS

/S/ W. WILLIAM LEAPHART

/S/ JIM RICE