FILED
12/27/2022
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 21-0416

DA 21-0416

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 249

JESS ROMO, et al.,

Plaintiffs and Appellees,

v.

COREY SHIRLEY; OWEN KENNEY; KENT HOGGAN; SURETY LAND DEVELOPMENT, LLC, Utah Limited Liability Corporation;

Defendants and Appellants,

and

USA BIOFUELS, LLC, Utah Limited Liability Corporation; VITALITY NATURAL HEALTH, LLC; EUREKA 93, INC.; GREG RANGER; DAVID RENDIMONTI; ROBERT LEAKER; SEAN POLI; STEPHEN ARCHAMBAULT; VITALITY CBD NATURAL HEALTH PRODUCTS, INC.; JOHN DOES 11-15,

Defendants.

APPEAL FROM: District Court of the Fifteenth Judicial District,
In and For the County of Roosevelt, Cause No. DV-2018-45
Honorable Katherine Bidegaray, Presiding Judge

COUNSEL OF RECORD:

For Appellants Corey Shirley, Owen Kenney, Kent Hoggan and Surety Land Development, LLC:

Mark D. Parker, Michael L. Dunphy, Parker, Heitz & Cosgrove, PLLC, Billings, Montana

For Appellees:

Ben A. Snipes, Ross T. Johnson, Odegaard Kovacich Snipes, P.C., Great Falls, Montana

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Decided: December 27, 2022

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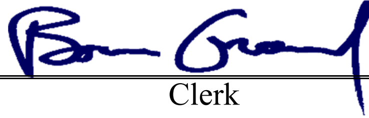

Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Four affiliates of USA Biofuels—Kent Hoggan, Owen Kenney, Corey Shirley, and Surety Land Development—appeal a 2021 Roosevelt County judgment in favor of a group of eastern Montana farmers.[1] Affiliates argue that Farmers could not pursue tort remedies because their case was a contract case, not a tort case. Affiliates alternatively argue that they are entitled to a new trial because Farmers produced insufficient evidence to support the verdict and because the jury was not properly instructed. Hoggan, Kenney, and Surety Land—each shareholders of USA Biofuels—additionally challenge the trial court's summary judgment ruling that they were alter egos of the company. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Hemp is a plant grown to produce a range of industrial and medicinal products, including CBD oil. In 2018, hemp was removed from the list of Schedule I controlled substances and became a federally legal agricultural commodity. Upon this development, two Canadian entrepreneurs—Kenney and Hoggan—planned to enter the hemp and CBD market. They created a company named USA Biofuels, secured investment from Surety

[1] The four appellants were variously affiliated with USA Biofuels, a limited liability corporation (LLC). Surety Land was a manager of USA Biofuels; Surety Land, Hoggan, and Kenney were USA Biofuels shareholders; and Hoggan, Kenney, and Shirley were agents and employees of USA Biofuels and its successor companies. We refer to them as "Affiliates" throughout the opinion. When referring to the entire Defendant group, we use the term "Defendants." We refer to the 25 plaintiffs as "Farmers."

Land, and hired a United States agent named Greg Ranger.[2] Ranger initiated relationships with over two dozen family farms in northeast Montana to grow hemp for USA Biofuels.

¶3 In spring 2018, Farmers entered individual written contracts with USA Biofuels to grow a total of 10,000 acres of hemp. The contracts were nearly identical. They each contained a "minimum acre guaranty" promising $100 per acre once Farmers planted the hemp seed. USA Biofuels also promised a payment once Farmers successfully raised, harvested, and baled the hemp. For this second payment, Farmers were to be paid $500 per dryland acre or $700 per irrigated acre. Half of the second payment was to be paid when the hemp was ready for shipment. The second half was to be paid thirty days later.

¶4 Farmers received the hemp seed in early summer 2018 and planted it. They notified Ranger that seeding was complete and requested their initial payments of $100 per acre. Ranger e-mailed Farmers back, with an attached letter from Hoggan on USA Biofuels letterhead. Hoggan's letter described cash flow bumps but explained that such bumps were ending and that the payments were expected to be made within the week. The payments did not arrive within the week, however, and Farmers initiated lawsuits for breach of contract. Farmers eventually received the initial seeding payments in late August 2018. They took the payments as a positive sign that they would receive their second payments in the fall once they baled the crop.

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[2] In March 2018, USA Biofuels and Vitality Natural Health (Vitality USA)—which was another LLC formed by Kenney and Hoggan and funded by Surety Land—became wholly owned subsidiaries of Vitality CBD Natural Health Products, Inc. (Vitality Canada). In April 2019, Defendant Vitality Canada merged with other companies to form Eureka 93, Inc. Vitality USA, Vitality Canada, and Eureka 93 were all named Defendants.

¶5 Over the summer and fall of 2018, Farmers raised, swathed, and dried a successful crop of hemp—together they baled over 6,600 bales. They accordingly expected their second payments of $500 per dryland acre and $700 per irrigated acre. USA Biofuels never paid.

¶6 Farmers repeatedly reached out to Ranger and his eventual successor, Shirley, about payment for the hemp bales, which remained at the edges of Farmers' fields ready for shipment. Between September and December 2018, Shirley and other corporate representatives responded to Farmers' inquiries on a near-weekly basis. Defendants serially stated that funds existed and would imminently be paid to Farmers. Relying on Defendants' representations, Farmers did not pursue legal action to acquire ownership of the bales for resale and mitigation of damages.[3] The hemp bales deteriorated as winter came and, over the course of this litigation, rotted in Farmers' fields.

¶7 In August 2019, with leave of court, Farmers amended their claims to reflect that although they had received the initial seeding payments, they never received the second payments. Farmers sued USA Biofuels and various affiliated companies, agents, and employees on a variety of contract and tort theories. The lawsuits, filed in four northeastern Montana counties, were consolidated in Roosevelt County by stipulation. The District Court declared, on summary judgment, that USA Biofuels breached its contract and awarded contractual damages against USA Biofuels. Farmers continued to pursue their

[3] Farmers' contracts with USA Biofuels were bailment contracts, which meant that the seed and crop at all times were owned by USA Biofuels. Farmers thus were unable to resell the bales immediately upon breach. By comparison, often under a commodities contract for crops such as hay or corn, farmers may sell the crops to a third party immediately upon breach.

contract and tort claims against the remaining Defendants. The case went to trial in June 2021. Affiliates all appeared and defended. David Rendimonti, CEO of successor company Eureka 93, appeared and defended by counsel only. Farmers abandoned their contract claims and secured a tort judgment exceeding $65 million, comprising $7.5 million in compensatory damages, $2 million in emotional distress damages, and $56 million in punitive damages. Affiliates now appeal; Rendimonti does not.

STANDARD OF REVIEW

¶8 Whether a party owes a duty of care that may give rise to a tort claim is a matter of law to be decided by the court. *Bassett v. Lamantia*, 2018 MT 119, ¶ 10, 391 Mont. 309, 417 P.3d 299. We review such a conclusion of law for correctness. *Newman v. Lichfield*, 2012 MT 47, ¶ 23, 364 Mont. 243, 272 P.3d 625. We discuss separately the standards of review in our analysis of each remaining issue.

DISCUSSION

¶9 *1. May Farmers recover damages in tort when their relationship with Defendants was grounded in contract?*

¶10 Affiliates argue that Farmers should not have been awarded tort remedies because Farmers brought "purely a contract case." Affiliates point out each Farmer's admission that "the dispute would not have gone to court—*at all*—if the contracts with USA Biofuels had been performed." Because Montana law bars most emotional distress damages and all punitive damages in contract actions, Affiliates argue that the court should not have allowed the jury to consider those damages in this "contract action." *See* §§ 27-1-310, -220, MCA.

¶11 Farmers counter that tort remedies were appropriate because their claims stem not from breach of contract but from Defendants' tortious conduct that occurred after the breach. Farmers point to evidence they produced at trial that, after failing to pay for the bales (the breach), USA Biofuels' representatives strung them along with promises of payment and negligently failed to release the bales to Farmers for resale. Farmers contend that Defendants' misrepresentations of fact, which induced Farmers to withhold pursuing legal action, and their otherwise negligent acts and omissions constituted tortious conduct "completely separate from any contractual duty."

¶12 The District Court repeatedly concluded that Farmers' claims properly were brought as tort claims because they were based on Defendants' post-breach conduct. We address first whether Farmers' claims sounded in contract or tort, second whether there was sufficient evidence for their claims, and third whether the awarded remedies—emotional distress damages and punitive damages—were lawful.

Contract or Tort Case

¶13 When a party's claim is based solely upon a breach of the specific terms of an agreement, the action sounds in contract. We have long recognized, however, that "if a defaulting party, by breaching the contract, also breaches a duty which he owes to the other party independently of the contract," a party may assert a claim of liability in tort. *Dewey v. Stringer*, 2014 MT 136, ¶ 8, 375 Mont. 176, 325 P.3d 1236 (quoting *Boise Cascade Corp. v. First Sec. Bank*, 183 Mont. 378, 392, 600 P.2d 173, 181 (1979)); *Harrington v. Holiday Rambler*, 176 Mont. 37, 46, 575 P.2d 578, 583 (1978). "Separate tort liability depends on whether the breaching party violated a legal duty that would exist

in the absence of a contract . . . . There must be active negligence or misfeasance to support an independent tort claim." *Dewey*, ¶ 8 (citations omitted).

¶14 We have recognized in several cases that contract actions and tort actions in the same case "are not incompatible." *Harrington*, 176 Mont. at 46, 575 P.2d at 583. When a consumer sued a trailer manufacturer for deceitfully misrepresenting the quality of the trailer it had sold to the consumer, we held that the consumer brought the case in tort, "separate and distinct from any action arising out of contract." *Harrington*, 176 Mont. at 47, 575 P.2d at 583. Similarly, we held that even though a carpet seller's "trickery" and "conspiracy" occurred while contracting with a homeowner, the homeowner's case did not arise from contract. *Paulson v. Kustom Enters.*, 157 Mont. 188, 202, 483 P.2d 708, 716 (1971). The homeowner could proceed with proving "a tort arising independent of the contract." *Paulson*, 157 Mont. at 202, 483 P.2d at 716.

¶15 More recently, in *Plakorus v. University of Montana*, we held that some of a university soccer coach's claims arose solely from the university's contractual duties, while others arose from separate duties and could be brought as tort claims. 2020 MT 312, ¶ 27, 402 Mont. 263, 477 P.3d 311. The coach's negligence and invasion of privacy claims were based on duties that arose from the coach's employment contract only and thus could not be brought as tort claims. *Plakorus*, ¶¶ 18-19. The coach's claims for defamation and tortious interference, however, could proceed because the university's duties not to commit such acts arose "from statutes and from common law, independently of any contract." *Plakorus*, ¶ 21. In sum, "merely because a contractual relationship exists that gives rise to

a set of events and a relationship between parties does not mean the only duties existing between those parties with respect to those events are in contract." *Plakorus*, ¶ 16.

¶16 Farmers brought claims for breach of contract and five torts: negligent misrepresentation, fraud, constructive fraud, deceit, and negligence. Farmers sought final judgment on their tort claims alone.[4] Each Farmer's relationship with Defendants was created through contract, but each was entitled to sue in tort upon establishing that a separate duty existed. *Plakorus*, ¶ 16.

¶17 We examine whether Farmers established a separate duty for the tort of negligent misrepresentation. In an early case considering the existence of a legal duty not to make negligent misrepresentations, we held that a Montana stockyard could be sued after its freight agent falsely informed a rancher that the stockyard's scales were in good condition. *Sult v. Scandrett*, 119 Mont. 570, 576-77, 178 P.2d 405, 408 (1947). The stockyard claimed it owed no duty to the rancher, but we disagreed. Because the stockyard knew that the rancher planned to bring his cattle there to be weighed and shipped, the stockyard owed the rancher "the duty to speak with care." *Sult*, 119 Mont. at 576, 178 P.2d at 408. We explained, "An inquiry made of a stranger is one thing; of a person with whom the inquirer has entered, or is about to enter, into a contract concerning the goods which are, or are to be, its subject, is another." *Sult*, 119 Mont. at 576, 178 P.2d at 408 (quoting *Int'l Prods. Co. v. Erie R.R. Co.*, 244 N.Y. 331, 338, 155 N.E. 662, 664 (1927)).

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[4] As stated, the District Court ruled on summary judgment that USA Biofuels breached its contract with Farmers when it failed to pay for the hemp, and the court awarded damages for the breach. USA Biofuels did not appear in the proceedings below and has not appeared in this appeal; the contract damages are not at issue.

¶18 Here, Farmers entered contracts with USA Biofuels to grow hemp in exchange for payment. Like a stockyard's duty to speak with care to a rancher with whom it did business, Defendants owed the inquiring Farmers a duty to speak with care when representing the availability and timing of funds for payment after Farmers met their contractual obligations. Defendants' false statements prevented Farmers from pursuing legal action that could have mitigated damages. "When the plaintiff alleges a duty imposed by law that does not depend on a contractual provision or breach of a contractual obligation, 'the gravamen of the action is the breach of the legal duty rather than a breach of the contract, and so is a tort.'" *Plakorus*, ¶ 22 (quoting *Billings Clinic v. Peat Marwick Main & Co.*, 244 Mont. 324, 328, 797 P.2d 899, 908 (1990)). Notwithstanding Farmers' contracts with USA Biofuels, and their related relationship with Affiliates, Defendants' alleged repeated false statements after the breach is conduct rooted in tort law. The District Court properly determined that a separate tort duty existed and Farmers could sue for negligent misrepresentation.

¶19 For similar reasons, legal duties existed for the remaining tort claims, which were based on the same conduct but with minor variations in elements of proof. Defendants' other duties similarly arose from statutes and from common law, independently of the contracts, and the elements of each tort and the evidence produced are largely similar.[5]

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[5] There is some question whether a separate duty relating to negligence existed outside of Farmers' contracts. *See* Section 27-1-701, MCA ("Liability for Negligence") (describing each person's responsibility "for an injury occasioned to another by the person's want of ordinary care or skill in the management of the person's property or person"). Defendants raised this challenge during the settling of jury instructions, arguing that every breach of contract could be theoretically recharacterized as negligence. The general duty of care that USA Biofuels owed Farmers in this

See Franks v. Kindsfather, 2005 MT 51, ¶ 17, 326 Mont. 192, 108 P.3d 487 (listing elements of fraud); § 28-2-406, MCA (listing elements of constructive fraud); § 27-1-712, MCA (listing elements of deceit). We do not step through each claim element-by-element because the verdict form—without objection on this point—asked the jury to award one aggregate sum of compensatory damages for the combined tort claims. The District Court correctly determined that Farmers' claims stemmed from Defendants' duties to Farmers existing outside of the contracts.

Sufficiency of the Evidence

¶20 Affiliates argue next that Farmers presented insufficient evidence to prove each element of the alleged torts. We review de novo the sufficiency of evidence to support a jury's verdict. *Giambra v. Kelsey*, 2007 MT 158, ¶ 27, 338 Mont. 19, 162 P.3d 134. In that review, it is not our function "to agree or disagree with the jury's verdict." *Murray v. Whitcraft*, 2012 MT 298, ¶ 26, 367 Mont. 364, 291 P.3d 587 (quoting *Renville v. Taylor*, 2000 MT 217, ¶ 14, 301 Mont. 99, 7 P.3d 400). "[I]f conflicting evidence exists, we do not retry the case because the jury chose to believe one party over the other." *Murray*, ¶ 26 (quoting *Ele v. Ehnes*, 2003 MT 131, ¶ 25, 316 Mont. 69, 68 P.3d 835). We do not disturb on appeal a judgment with substantial record evidence supporting it. *Siebken v. Voderberg*, 2015 MT 296, ¶ 12, 381 Mont. 256, 359 P.3d 1073.

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case may be indistinguishable from the duty imposed by their contractual relationship. *Plakorus*, ¶ 14 ("Tort and contract causes of action may not coexist where the duty allegedly breached arises solely under one."). Nevertheless, any error in allowing the negligence claim to proceed is of no consequence because Defendants were found individually responsible for all five torts. That is to say, even if the negligence claim did not arise from a separate duty, the jury's award is validly based on the other four torts, which contain clearly separate duties from the contractual duty.

Substantial evidence is evidence "that a reasonable mind might accept as adequate to support a conclusion, even if weak and conflicting." *Siebken*, ¶ 12. When the sufficiency of evidence is challenged, it is our job as an appellate court to probe the record for evidence to support the fact-finder's determination. *Murray*, ¶ 26. In doing so, we view the evidence in a light most favorable to the prevailing party. *Neal v. Nelson*, 2008 MT 426, ¶ 15, 347 Mont. 431, 198 P.3d 819.

¶21 We review the evidence as it pertained to Farmers' negligent misrepresentation claim. A successful claim for negligent misrepresentation requires a plaintiff to prove six elements: (1) the defendant made a representation as to a past or existing material fact; (2) the representation was untrue; (3) regardless of actual belief, the defendant made the representation without any reasonable ground for believing it to be true; (4) the representation was made with the intent to induce the plaintiff to rely on it; (5) the plaintiff was unaware of the falsity of the representation and justified in relying upon the representation; (6) the plaintiff, as a result of reliance, sustained damage. *Cechovic v. Hardin & Assocs., Inc.*, 273 Mont. 104, 112, 902 P.2d 520, 525 (1995).

¶22 In this case, Farmers produced e-mails demonstrating that USA Biofuels representatives, in the fall of 2018, made several statements that funds were available and numerous excuses for delay in payment. Ranger e-mailed Farmers in August, stating that "major funds are being transferred sometime in the next couple of days" and that he was "confident that we will have everyone paid up." Ranger e-mailed Farmers again in September, explaining that there was "an unanticipated delay in the release process on the Canadian side" but that "Corporate has confirmed that funds are in place and ready to go."

Shirley sent an e-mail in October stating, "We are still waiting on the next tranche of funds to arrive from our Canadian Head Office. We have been expecting them all week and could receive them at any time, but it could also take another week." In November, Shirley sent another e-mail describing purported incoming funds from a lender and a customer, the sum of which would be used to satisfy Farmers' balance. Shirley stated that, "it looks like we are almost at the goal line payment-wise." Shirley e-mailed again in December, promising that he "will be making every effort over the weekend to have everything ready for first thing Monday to have the wires out and will inform you as soon as the funds hit our account." A few of these statements were future-facing—that Farmers would be paid—and thus do not meet the first element of negligent misrepresentation requiring a misrepresentation "as to a past or existing material fact." *See WLW Realty Partners, LLC v. Cont'l Partners VIII, LLC*, 2015 MT 312, ¶¶ 24-27, 381 Mont. 333, 360 P.3d 1112. The remaining statements, however, were about existing material facts—that funds were in place and that Defendants were working on getting them to Farmers. Affiliates point to no evidence in the record that these funds existed or that Ranger or Shirley had reasonable grounds to believe they did.

¶23 Farmers also produced evidence that Defendants made these misrepresentations with the intent to induce Farmers to rely on them. Shirley testified that, during the summer and fall of 2018, he and Kenney were attempting to court investors, make an initial public offering on the stock market, and obtain a commodity dealer's license from the Montana Department of Agriculture. In their marketing materials and financial statements, they included the value of the unprocessed hemp as a substantial part of their assets. By making

payment promises to Farmers, Defendants induced Farmers to wait before seeking legal possession of the hemp bales. In the meantime, the bales remained a listed asset for Defendants. Farmers also testified that they believed the funds were coming because they had been paid, albeit late, the initial seeding payment. Farmers further testified about the financial and emotional injuries they suffered because they waited to act, watching the bales rot on the edges of their fields as the hemp market crashed.

¶24 Based on this evidence, "[w]e have an inquiry such as might be expected in the usual course of business made of one who alone knew the truth. We have a negligent answer, untrue in fact, actual reliance upon it, and resulting proximate loss." *Sult*, 119 Mont. at 576, 178 P.2d at 408. Though Affiliates presented a conflicting version of events, we conclude when viewing the evidence in a light most favorable to the prevailing party that the record contains substantial credible evidence to support the jury's finding that Farmers proved the tort of negligent misrepresentation. Farmers thus could pursue related tort damages.

¶25 For the same reason we did not analyze the existence of a duty for each tort claim, it is unnecessary to analyze the sufficiency of evidence for the remaining torts. The jury was instructed to award compensatory damages if it found for Farmers on the question of Defendants' "negligence, fraud, constructive fraud, negligent misrepresentations *or* deceit." (Emphasis added.) The jury found that USA Biofuels and each Affiliate was individually responsible for all five torts and awarded $7.5 million in compensatory

damages.[6] The verdict form described the compensatory award as a "single award for all Plaintiffs collectively" for "lost profit or other prospective gain resulting from defendant(s)['] acts." On appeal, Affiliates do not argue that it was error for the court to submit the five tort claims together for the purpose of assessing damages. Because the award was not divided by claim, and because Affiliates do not challenge the sufficiency of evidence to support each claim, we need not address the individual sufficiency of evidence of the remaining four tort claims. The compensatory damages award may remain undisturbed based on the jury's finding of responsibility.[7]

Emotional Distress Damages

¶26 In accordance with law, the jury was instructed that emotional distress "includes mental anguish or suffering, sorrow, grief, fright, shame, embarrassment, humiliation, anger, chagrin, disappointment, or worry." Section 27-1-310, MCA. The jury awarded emotional distress damages to Farmers in individual awards ranging from $75,000 to $200,000.

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[6] The court determined as a matter of law that Eureka 93 committed negligence, negligent misrepresentation, fraud, constructive fraud, promissory estoppel, and deceit. The court also determined as a matter of law that Rendimonti committed negligence, negligent misrepresentation, and deceit. The Special Verdict Form instructed the jury to award damages for injury caused by Eureka 93 and Rendimonti, in addition to any damages it identified for which the other Defendants were responsible. The jury did so, awarding $9.5 million for lost profit and emotional distress caused by all Defendants.

[7] Affiliates also raise the argument that they are not individually liable because they acted within the scope of an agency relationship. The jury, however, found each Defendant liable for his or its individual wrongs. Section 28-10-702, MCA ("[A]n agent is responsible to third persons as a principal for acts . . . when the agent's acts are wrongful in their nature."); *Williams v. DeVinney*, 259 Mont. 354, 361, 856 P.2d 546, 551 (1993) (concluding that negligent misrepresentation was a wrongful act).

¶27 Damages for emotional distress are prohibited in contract actions unless the action involved "actual physical injury to the plaintiff." Section 27-1-310, MCA. Because Farmers' case sounded in tort, they were entitled to seek damages for emotional distress without needing to demonstrate actual physical injury. We consider Affiliates' claim that Farmers' alleged distress is not the type that can support recovery of emotional distress damages.

¶28 We review de novo whether there is sufficient evidence of distress to support an award of emotional distress damages. *Giambra*, ¶ 27. The decision to submit emotional distress damages to the jury is reviewed for abuse of discretion. *Giambra*, ¶ 28.

¶29 Affiliates argue that such damages are barred in this case by our decision in *Childress v. Costco Wholesale Corp.*, 2021 MT 192, 405 Mont. 113, 493 P.3d 314. We held in *Childress* that a family who had various items of personal property taken from their stolen vehicle could not recover emotional distress damages because the items were not so "intrinsically intertwined" with the family's dynamic that without the items "their 'personal identity' would be irreparably impacted." *Childress*, ¶ 14. Instead, the family was deprived of "fungible property whose value is derived from its utility." *Childress*, ¶ 14. Affiliates argue that Farmers' damages similarly were "purely economic."

¶30 Farmers counter that their distress implicated the loss of use and enjoyment of land and that such implication warrants emotional distress damages. In support of this argument, Farmers cite *Maloney v. Home & Investment Center, Inc.*, in which we held that emotional distress damages are appropriate for torts involving real property and plaintiffs'

"subjective relationship with the property on a 'personal-identity' level." 2000 MT 34, ¶ 71, 298 Mont. 213, 994 P.2d 1124.

¶31 In its order on post-trial motions, the District Court determined that the jury's individualized awards indicated that the jury considered the unique nature of each Farmer's emotional distress. The court concluded that Farmers provided testimony regarding specific circumstances each faced and that their testimony reflected distress regarding their real property. Some Farmers testified that after investing time and land into the hemp crop but receiving no payment, they were unable to properly clothe and feed their children. Several Farmers testified to the distress of having to drive past rotting stacks of bales at the edge of their property. As part of the financial fallout, some Farmers lost portions of their family farms; others lost leases and equipment. The court concluded that Farmers' distress exceeded what Affiliates had characterized as a few sleepless nights and uncomfortable conversations with bankers.

¶32 Emotional distress damages, as a matter of law, are not appropriate in all tort cases. *Maloney*, ¶ 57. Determining whether damages for emotional distress are appropriate depends on a case's peculiar facts. *Maloney*, ¶ 71. "[E]motional distress damages resulting from purely economic loss in non-contractual matters are rarely compensated . . . . The implication stems . . . from the notion that in the world of business transactions most all emotional distress is of the 'transient and trivial' variety." *Maloney*, ¶ 66.

¶33 A plaintiff may seek damages on independent claims of negligent or intentional infliction of emotional distress or may seek "parasitic" emotional distress damages as an element of damages for other claims. *Childress*, ¶¶ 8-9. Independent claims require

plaintiffs to demonstrate distress "so severe that no reasonable person could be expected to endure it." *Childress*, ¶ 8 (quoting *Sacco v. High Country Indep. Press*, 271 Mont. 209, 335, 896 P.2d 411, 426 (1995)). Plaintiffs asserting parasitic claims, on the other hand, do not have to demonstrate that heightened standard of proof. *Childress*, ¶ 9. Instead, for parasitic damages, "the severity of the distress affects the amount of damages recovered but not the underlying entitlement to recover." *Childress*, ¶ 9 (quoting *White v. Longley*, 2010 MT 254, ¶ 48, 358 Mont. 268, 244 P.3d 753). And "the amount of damages is not the amount which in our opinion would compensate the injured party; rather, 'it is a question of what amount of damages will the record in the case support when viewed, as it must be, in the light most favorable to the plaintiff.'" *Maloney*, ¶ 71 (quoting *French v. Ralph E. Moore, Inc.*, 203 Mont. 327, 336, 661 P.2d 844, 849 (1983)).

¶34 This Court has differentiated between distress caused by damage to real property and distress caused by damage to personal property, recognizing the unique emotional impact of harm to real property. *Childress*, ¶¶ 12-13. Emotional distress damages typically are prohibited in cases where "the underlying harm is economic." *Childress*, ¶ 10. But the law makes an exception for cases involving the disruption of use and enjoyment of real property. *Childress*, ¶ 11.

¶35 In *Maloney*, plaintiff landowners—the Maloneys—testified that they were devastated when the adjacent property they had been promised was wrongfully sold to someone else. They painfully watched as the purchaser built a home on the precise location where they envisioned their own retirement home would rest one day. They later saw the property sold for almost six times what they may have paid for it themselves. *Maloney*,

¶¶ 69-70. We concluded that because the Maloneys' injuries involved the use and enjoyment of land, the emotional distress they suffered was compensable. *Maloney*, ¶ 69. We reasoned that the Maloneys

> "were not developers in search of investment property to buy, improve, and then sell for purely economic gain; rather, they had formed a subjective relationship with the property on a 'personal-identity' level. That compensable emotional distress would arise from the tortious interference with the Maloneys' rights to the property in question should have been clearly foreseeable by any person professionally involved with such transactions."

Maloney, ¶ 71.

¶36 *Maloney* concerned an independent claim for emotional distress damages. In *Rubin v. Hughes*, however, we recognized that a nuisance claim demonstrating interference with enjoyment of their property may support an award of parasitic emotional distress damages. 2022 MT 74, ¶ 34, 408 Mont. 219, 507 P.3d 1169. The property-owner plaintiffs testified about the negative effects of their neighbors' behavior (building barriers, surveilling, etc.) on their enjoyment of property: they no longer viewed their property as a dream; they felt discomforted on their own property; the neighbors' actions had a deleterious impact on personally significant family memories; and the plaintiffs no longer received visitors. We concluded that their testimony "demonstrated a subjective relationship with their property on a 'personal-identity level' supporting emotional distress damages." *Rubin*, ¶ 33.

¶37 Here, Farmers testified about their decades-long connection with the land, their hopes to pass their family farms on to their children, their despair about the hemp crop rotting and becoming infested with rodents and mold, their annoyance and physical

sickness at seeing the rows of deteriorating hemp bales, their stress talking to bankers, their forced sale of land and equipment they owned, and their inability to feed their families. Like in *Maloney* and *Rubin*, Farmers were distressed by viewing the effects on their land and became disillusioned with being landowners. Whereas in *Childress* the family was unable to show a subjective relationship with the fungible stolen items, here Farmers showed a personal-identity connection to their family farms—farms they hoped to be able to pass to future generations. These Farmers were not corporate entities interested only in a profit for shareholders. They demonstrated that their property-related distress warranted the emotional distress awards rendered by the jury.

¶38 In addition to their overarching claim about insufficient evidence of distress, Affiliates single out in their briefing two Farmers—Amber Anderson and Stephanie Anderson. Amber and Stephanie each received emotional distress awards of $75,000, the smallest individual amount the jury awarded. Amber and Stephanie are married to Beau and Ty Anderson, respectively. Both Beau and Ty testified at trial. Affiliates argue that Amber and Stephanie produced insufficient evidence of distress because neither testified.

¶39 In determining whether substantial evidence supports the verdict, we view the evidence in a light most favorable to the prevailing party. *Neal*, ¶ 15. Our review of Amber's and Stephanie's husbands' testimony reveals evidence that a "reasonable mind might accept as adequate" to support a finding of emotional distress on behalf of their wives. *See Siebken*, ¶ 12. Beau testified about Amber's involvement: she helped make the decision to contract with USA Biofuels and she attended the initial meeting with a USA Biofuels representative. Beau testified about the financial and emotional impacts of

Defendants' conduct. He described going into debt, taking out loans, and refinancing, including paying $6,000 for an appraisal on an 80-acre piece of their property. He referred to "Amber and I" when discussing the steps they took to stay afloat. When asked how it impacted him and his wife personally, he responded, "It was very stressful . . . as husband and wife of course it was stressful because we were $400.00 an acre short on the crop that we raised for a company that wouldn't pay us." Finally, Beau testified about the stress of being the spokesman for the group of Farmers and shouldering the responsibility of having involved others. Ty Anderson repeatedly described his farm as a "family farm." He described the hemp crop as having "mice and mold, net wrap was shot," and stated that the bales still sat on the edges of their fields at the time of trial. When asked about what being unable to sell the hemp bales did to the family farm financially, he responded that the farm experienced financial stress, that the relationship with their banker deteriorated, and that it became harder to obtain an operating loan. As to emotional distress, Ty testified that he was sure he had "aged a few years."

¶40 Beau and Ty Anderson's testimonies demonstrated the impacts of Defendants' conduct on their wives, who were involved with their family farms and depended on the farm's success for their day-to-day existence. They met the broad definition of emotional distress given to the jury and in accordance with state law, which includes not only "mental anguish or suffering," but also "shame, embarrassment, humiliation . . . disappointment, or worry." Parasitic emotional distress damages do not require a heightened standard of proof; proof of any of these conditions of distress is sufficient. Beau and Ty provided substantial evidence, "even if weak," that reasonable minds could accept as adequate to

support a finding that Amber and Stephanie had experienced emotional distress. *See Siebken*, ¶ 12.

¶41 We conclude that sufficient evidence of emotional distress supports Farmers' awards and that the District Court did not abuse its discretion in sending emotional distress damages to the jury.

Punitive Damages

¶42 Montana law bars plaintiffs from recovering punitive damages in any action arising from contract or breach of contract. Section 27-2-220(2), MCA. This rule is typical of other jurisdictions. 11 Corbin on Contracts § 59.2 (2022). It rests on the theory that an aggrieved party in a contract case should be placed in the same economic position as if the contract had been performed, but not a better position. 11 Corbin on Contracts § 55.11 (2022). We have consistently held, however, that a party may recover punitive damages for tort claims, even if the relationship between the tortfeasor and injured party at some point involved a contract. *See, e.g.*, *Harrington*, 176 Mont. at 47, 575 P.2d at 583; *State ex rel. Dimler v. Dist. Court*, 170 Mont. 77, 82, 550 P.2d 917, 920 (1976); *Grenfell v. Anderson*, 2002 MT 225, ¶ 80, 311 Mont. 385, 56 P.3d 326; *Daniels v. Dean*, 253 Mont. 465, 474, 833 P.2d 1078, 1084 (1992). As reasoned above, the District Court properly submitted Farmers' tort claims to the jury after concluding that Defendants harmed Farmers separately from the USA Biofuels contract breaches. Punitive damages accordingly were an appropriate remedy for Farmers to seek.

¶43 We must determine, then, whether the evidence in this case supported an award of $56 million in punitive damages. Punitive damages may be awarded in cases only where

a defendant has committed “actual fraud or actual malice.” Section 27-1-221(1), MCA; *Weter v. Archambault*, 2002 MT 336, ¶ 40, 313 Mont. 284, 61 P.3d 771. In this case, the jury rendered individual punitive damage awards, ranging from $1 million to $10 million, against each Defendant. The District Court reviewed the jury’s award and concluded that it was not above the limits of Montana law and could remain undisturbed.

¶44 Affiliates argue that the punitive damages award should be vacated because it is unsupported by the facts. They claim that two awards of $10 million against USA Biofuels and its eventual successor, Eureka 93, demonstrated that the verdict was a product of passion and prejudice, unmoored from the evidence. They contend that these awards indicate that the jury “implicitly found” that the companies were worth at least $330 million because of a Montana statute limiting punitive damage awards to “$10 million or 3% of a defendant’s net worth, whichever is less.” Section 27-1-220(3), MCA. They argue that the jury’s implicit finding cannot be reconciled with the District Court’s summary judgment ruling that USA Biofuels was assetless. Affiliates also briefly argue that the award violates several of the statutory factors district courts must consider when reviewing punitive damage awards. Section 27-1-221(7)(b), MCA.

¶45 Farmers respond that Montana’s punitive damage cap applies only if a defendant “first meets his burden of demonstrating an accurate calculation of his net worth.” *Blue Ridge Homes, Inc. v. Thein*, 2008 MT 264, ¶ 70, 345 Mont. 125, 191 P.3d 374. They contend that Affiliates offered no documentary evidence and only weak testimonial evidence regarding their net worth. They also point out that USA Biofuels and Eureka 93 did not appear or participate in the litigation and thus presented no evidence of their net

worth. Farmers argue that while the District Court determined that USA Biofuels was undercapitalized at the time of contracting, that determination did not prove USA Biofuels' assets at the time of trial for the purpose of deciding punitive damages.

¶46 District courts must review punitive damages awards to determine whether they should be increased, decreased, or left undisturbed. Section 27-1-221(7), MCA (listing nine factors for courts to consider when reviewing punitive damage awards). We review a district court's punitive damages findings under the three-part *DeSaye* test to determine whether they are clearly erroneous. *Deonier & Assocs. v. Paul Revere Life Ins. Co.*, 2004 MT 297, ¶ 39, 323 Mont. 387, 101 P.3d 742 (citing *Interstate Prod. Credit v. DeSaye*, 250 Mont. 320, 820 P.2d 1285 (1991)). We first review the record to see if the findings are supported by substantial evidence. Second, if the findings are supported by substantial evidence, we determine if the trial court has misapprehended the effect of the evidence. Third, if substantial evidence exists and the effect of the evidence has not been misapprehended, this Court still may conclude that a finding is clearly erroneous when, although there is evidence to support it, a review of the record leaves us with the definite and firm conviction that a mistake has been committed. *Deonier*, ¶ 39. The ultimate decision of a district court to enter judgment on a punitive verdict and the application of the statutory punitive damage cap are reviewed for abuse of discretion. *Blue Ridge Homes* ¶ 20.

¶47 We first consider whether the District Court's findings regarding the jury's punitive damage award were supported by substantial evidence in the record. The court found the following facts. Each Defendant had "actively and intentionally participated in a scheme

to build a publicly traded, global CBD life sciences company." Shirley and Hoggan made claims without a good-faith basis that Farmers would be paid what they were owed. Surety managed USA Biofuels and lent a substantial amount of money to its eventual co-subsidiary, Vitality USA. Documentary evidence demonstrated that Kenney had been heavily involved in the operations of USA Biofuels and Vitality USA, despite his trial testimony to the contrary. Defendants harmed Farmers separately from the contract breaches by "fraudulently and negligently claiming," over the course of several months, that Farmers would be paid. These statements induced Farmers not to take legal action. Defendants unreasonably released the bales a year later when the bales were rotted and worthless. Defendants chose to spend a few million dollars on a hemp processing facility in New Mexico in November 2018 instead of paying Farmers. By participating in this scheme, each Defendant knew or intentionally disregarded that they were involved in operations that had a high probability of injuring Farmers and deliberately proceeded to act with indifference or conscious disregard to this high probability. Defendants committed these injurious acts because their ownership of the hemp bales was paramount to claiming the bales as an asset in presentations to investors, in their commodity dealer's license application with the State, and a desired bid to enter the public stock market to increase their personal wealth. The court summed up its findings: "Evidence convinced the jury that Defendants engaged in reckless, malicious, and fraudulent conduct under Montana law in their dealings with [Farmers]."

¶48 "Substantial evidence" is "evidence which a reasonable mind might accept as adequate to support a conclusion." *Deonier*, ¶ 40 (quoting *Sandman v. Farmers Ins. Exch.*,

1998 MT 286, ¶ 40, 291 Mont. 456, 969 P.2d 277). Our review of the record reveals support for the District Court's findings of an intentional multi-layered corporate scheme, numerous false representations over the course of months for corporate or personal gain, and a resulting loss to Farmers. Though not undisputed, there is record evidence that the reasonable minds of the Roosevelt County jury could accept as adequate to support the conclusion that the Defendants had committed "actual fraud" warranting punitive damages.

¶49 On appeal, Affiliates take issue with only three of the nine statutory factors a court must consider when reviewing a punitive damages award: the nature and reprehensibility of the defendant's wrongdoing; the intent of the defendant in committing the wrong; and the defendant's net worth. Section 27-1-221(7)(b)(i), (iii), (vi), MCA. As to the nature and reprehensibility of their conduct, Affiliates argue that no Defendants "were even accused of fraud or deceit regarding the initial contract's formation" and that Farmers did not "make any specific showing of actionable conduct" by any Defendant. Affiliates' argument misses the mark. Defendants were accused of and found responsible for fraud and deceit in their post-breach actions—any lack of fraud in contract formation is irrelevant. As to intent, Affiliates argue that their intentions were "certainly innocuous and no secret; they all sought to make money." The District Court found that Defendants intended to commit the wrongs in order to gain financially with little regard to Farmers. Our review of the record similarly reveals substantial evidence that Defendants intended to string Farmers along for their own advantage by listing the unpaid-for hemp bales in their marketing materials and financial statements in order to court investors, procure a state agricultural license, and make an initial public offering for their own personal gain.

¶50 Finally, as to net worth, Affiliates argue that they do not possess wealth nearly to the degree to justify the magnitude of the award. A defendant bears the burden to prove that its net worth does not support an award of punitive damages. *Cartwright v. Equitable Life Assurance Soc'y of the U.S.*, 276 Mont. 1, 37, 914 P.2d 976, 999 (1996); *Blue Ridge Homes*, ¶ 62. Because USA Biofuels and Eureka 93 did not appear at trial and thus produced no evidence of their net worth, the awards of $10 million rendered against them are not capped based on net worth and thus are lawful. *See* § 27-1-220(3), MCA. No Affiliate produced financial statements or other documentary evidence regarding net worth. Only one Affiliate, Kenney, testified in the punitive damages phase; his testimony regarding net worth was limited. He stated that his own net worth was down $18 million, that he and Hoggan had pursued a hand sanitizer business that failed and cost them $4.5 million, that Surety Land had "nothing," and that Shirley had given his last $10,000 to his attorney. Based on this weak evidence, the District Court correctly concluded that Defendants did not provide sufficient evidence to prove net worth. *See Harrell v. Farmers Educ. Co-op Union*, 2013 MT 367, ¶ 92, 373 Mont. 92, 314 P.3d 920.

¶51 Our review of the record does not reveal that the District Court misapprehended the effect of the evidence and does not leave us with a definite and firm conviction that a mistake has been made. Thus, under the *DeSaye* test, we conclude that the District Court's findings related to punitive damages were not clearly erroneous.

¶52 Affiliates additionally argue that the statutory cap on punitive damage awards should apply to the Defendant group collectively and not to each Defendant. That is, they

argue that punitive damages should be capped at $10 million for the entire case and not capped at $10 million for each Defendant. Affiliates requested a jury instruction indicating as much, but the District Court denied it. The District Court addressed the argument in its order on post-trial motions. It explained that while USA Biofuels was a "shell company" without assets at the time of contracting, by the time of trial it had become a subsidiary of Vitality Canada and ultimately merged with several companies to form Eureka 93. Evidence of the relative assets and net worth of these companies was not presented to the jury during trial or during the consideration of punitive damages.

¶53 The interpretation and construction of a statute is a matter of law, and we review de novo whether a district court correctly interpreted and applied a statute. *State v. Triplett*, 2008 MT 360, ¶ 13, 346 Mont. 383, 195 P.3d 819. Section 27-1-220, MCA, limits an award for punitive damages to "$10 million or 3% of a defendant's net worth, whichever is less." The explicit wording of the statute indicates that the cap is individual to each defendant because it states that the cap is either $10 million or 3% of *a defendant's*—singular—net worth. There is no indication from the Legislature that the cap is to be applied to a defendant group. Instead, the statutory purpose of punitive damages is written with an eye toward individual conduct. Juries award punitive damages "for the sake of example and for the purpose of punishing *a defendant*." Section 27-1-220(1), MCA (emphasis added). Not every defendant's conduct may be equally reprehensible, if at all.

¶54 Affiliates cite an unreported case from the U.S. District Court for the District of Montana holding that where a plaintiff makes the case that multiple defendants acted as one entity and each defendant was the "alter ego" of the others, the plaintiff is estopped

"from switching theories to apply the punitive damages cap on an individual defendant basis." *Hull v. Ability Ins. Co.*, No. CV-10-116-BLG-RFC, 2012 U.S. Dist. LEXIS 173487, at *6 (D. Mont. Dec. 6, 2012). The federal court examined the same state statutory cap at issue in this case, concluding that the "plain text of the statute imposes the $10 million cap on the total award, not on each defendant." *Hull*, at *5.

¶55 *Hull* is readily distinguishable, and we find it unpersuasive. For starters, the *Hull* jury awarded a single award of $32 million against a defendant group. *Hull*, at *2. Here, Farmers proceeded against each Defendant individually when it came to punitive damages. The jury found each Defendant liable for actual fraud and followed the special verdict form, making separate punitive awards based on each Defendant's own conduct. The jury's finding that Defendants acted in concert was directed to Farmers' negligence claims for the purposes of allocating responsibility, if needed, among the various faulty parties. *See* § 27-1-703, MCA. Further, as described below, the District Court's alter ego determination at the summary judgment stage did not materially affect the final judgment, in which each Defendant was found to be individually responsible for each tort.

¶56 The federal court in *Hull*, without explanation, stated that the plain text of the statute imposes a cap on the total award, but it considered the statute in the context of one aggregate claim for a collective group of defendants. In our reading, the statute does not plainly impose a collective cap and such a cap would be contrary to the statutory purpose of punitive damages, which is to punish an individual defendant's conduct. Section 27-1-220(1), MCA. The District Court thus correctly determined that the statutory cap for punitive damages applied to each Defendant individually.

¶57 We conclude that the District Court did not abuse its discretion when it entered judgment on the punitive damages award.

¶58 *2. Did the court err in instructing the jury?*

¶59 Farmers' contracts stated that the hemp crop was to be owned at all times by USA Biofuels. Before the end of trial, Defendants requested a jury instruction stating, "USA Biofuels was under no legal duty to surrender the bales of hemp to the plaintiffs." The District Court denied the instruction.

¶60 Affiliates argue that the District Court's refusal of the instruction warrants a new trial, given the court's acknowledgment that the contractual language clearly demonstrated USA Biofuels' ownership of the bales. Affiliates contend that this error afforded plaintiffs "open field running to assert that USA Biofuels somehow nefariously asserted ownership of the bales and wrongfully refused to surrender them," giving rise to the jury's large verdict.

¶61 Farmers counter that the District Court properly denied the jury instruction because the instruction included the vague term "legal duty," which conflated contractual obligations with other legal duties USA Biofuels may have owed to Farmers. Farmers do not claim they owned the bales under the bailment contracts but argue that they had a legal interest in the bales in the form of a lien. Farmers also contend that they had a possible legal interest in the bales because Defendants promised the State, as part of their agricultural licensure process, that they would pay Farmers prior to delivery or taking ownership of the hemp in a storage situation. Farmers argue that had Defendants not made several promises of payment, Farmers would have acted to enforce these legal interests.

¶62 We review a trial court's decision regarding jury instructions for abuse of discretion. *Warrington v. Great Falls Clinic, LLP*, 2019 MT 111, ¶ 10, 395 Mont. 432, 443 P.3d 369. Jury instructions "must fully and fairly instruct the jury regarding the applicable law." *Maier v. Wilson*, 2017 MT 316, ¶ 16, 390 Mont. 43, 409 P.3d 878 (quoting *Peterson v. St. Paul Fire & Marine Ins. Co.*, 2010 MT 187, ¶ 22, 357 Mont. 293, 239 P.3d 904). We consider the instructions in their entirety and in connection with other instructions given and evidence introduced at trial. *Warrington*, ¶ 10. If the instructions as a whole state the applicable law of the case, a party cannot demonstrate prejudice to its substantial rights by the refusal of a different proposed instruction. *Warrington*, ¶ 10.

¶63 We agree with Farmers that the District Court did not abuse its discretion in rejecting the proposed instruction. Farmers successfully disputed the idea that USA Biofuels had no legal duty to surrender the bales by presenting a case that they could have pursued various legal recourses had it not been for Defendants' misrepresentations. Without the instruction, Defendants still were free to, and did, produce evidence of their contractual ownership of the bales. Reflecting that evidence, the District Court instructed the jury that, "A party who executes a written contract is presumed to have read and understood the contract and assented to its terms." In light of this given instruction, the evidence presented at trial, and the vagueness of the term "legal duty" in the proposed instruction, we conclude that Affiliates have not demonstrated that the denial of the instruction affected their substantial rights. *Warrington*, ¶ 10. The District Court did not abuse its discretion when it denied the instruction.

¶64 *3. Did the court err in ruling, on summary judgment, that three shareholders were alter egos of USA Biofuels?*

¶65 Farmers sought a ruling on summary judgment that they could pierce USA Biofuels' corporate veil and hold three USA Biofuels shareholders—Kent, Hoggan, and Surety Land—liable for the company's torts and breaches. Following consideration of the parties' submissions, the District Court determined that Shareholders failed to produce substantial evidence to raise a genuine issue of material fact about veil-piercing. The court accordingly held that Shareholders were "alter egos" of USA Biofuels and would be jointly and severally liable for the company's torts and breaches proven in this action.

¶66 Shareholders acknowledge on appeal that the alter ego determination did not ultimately form the basis of any portion of the money judgment against them. They argue nonetheless that the District Court inappropriately decided this fact-based issue at the summary judgment stage. They further contend that § 35-8-304, MCA, protects members of an LLC from liability without applicable exception. Finally, they rely on a federal bankruptcy case, *In re Atlantis Water Sols., LLC*, BAP No. MT-18-1315-BKuF, 2019 Bankr. LEXIS 3133 (B.A.P. 9th Cir. Oct. 1, 2019), to argue that the District Court erred in basing the veil-piercing on "undercapitalization alone."

¶67 Farmers respond that the District Court's ruling applied only to a judgment for breach of contract and, because no breach-of-contract claims were included in the final judgment, the issue is not properly before the court. This argument is incorrect because the District Court's summary judgment order states that Shareholders were to be held "jointly and severally liable for the torts and breaches" that USA Biofuels committed

against Farmers in this action. The District Court's ruling thus applied to a judgment for torts as well. Farmers also defend the District Court's ruling on the merits.

¶68 We find it unnecessary to consider the merits of this claim. Shareholders state in their briefing that they must appeal the issue to avoid "downstream collateral effects." They do not explain such possible consequences, however, or develop additional argument after acknowledging that the judgment on appeal does not raise the issue. The jury's verdict found each Defendant responsible for each tort and found further that Defendants acted in concert with one another in committing negligence and negligent misrepresentation. The jury accordingly did not apportion fault among Defendants when awarding compensatory damages. Under the jury's verdict, each Defendant is jointly and severally liable for the damages. Section 27-1-703(1), MCA ("[E]ach party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of."). The alter ego determination aside, Shareholders are responsible for the compensatory damages.

¶69 Affiliates are correct that the District Court's alter ego ruling is immaterial to the final judgment in the case, and they do not develop their argument about "collateral effects" or explain why this issue merits further analysis. It is not the Court's job to conduct legal research on a party's behalf, to guess a party's precise position, or to develop legal analysis that may lend support to that position. *Osman v. Cavalier*, 2011 MT 60, ¶ 8, 360 Mont. 17, 251 P.3d 686. We conclude it is unnecessary to consider this issue, especially given our

upholding of the verdict otherwise. *See* M. R. Civ. P. 61 (dictating that courts must disregard all errors and defects that do not affect a party's "substantial rights").

CONCLUSION

¶70 The jury's verdict in favor of Farmers and the District Court's final judgment on the verdict are affirmed in their entirety.

/S/ BETH BAKER

We Concur:

/S/ MIKE McGRATH
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR
/S/ JIM RICE