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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1529**

In re the Marriage of: David Michael Kedrowski, petitioner,
Appellant,

vs.

Olga Kedrowski,
Respondent.

**Filed July 1, 2019
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-FA-15-6991

David Kedrowski, Saint Louis Park, Minnesota (pro se appellant)

Alex Brusilovsky, Eden Prairie, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

In this marital-dissolution action, appellant-father argues that the district court abused its discretion by denying his new-trial motion, refusing to disqualify the judicial officer for bias, awarding spousal maintenance to respondent-mother, dividing the parties' debt, awarding parenting time, and awarding conduct-based attorney fees. We affirm.

FACTS

This appeal arises out of a marital-dissolution action between appellant-father David Michael Kedrowski and respondent-mother Olga Kedrowski, who are the parents of a minor child born in 2011. The parties were married in March 2010, and separated in August 2015. Following their separation, father drafted a petition for dissolution, but did not file the petition with the court. Instead, the matter was opened upon the filing of mother's answer and counter-petition for dissolution of marriage on October 8, 2015. The parties reached an agreement regarding interim parenting time, and this parenting-time agreement was incorporated into a court order dated June 9, 2016. The district court issued an order for temporary relief on September 22, 2016, requiring father to pay temporary spousal maintenance and temporary basic child support.

The district court held a trial in December 2017, and issued its findings of fact, conclusions of law, order for judgment, and order on April 5, 2018, dissolving the parties' marriage. The court made determinations on the issues of physical custody, parenting time, spousal maintenance, child support, and related issues. The court granted sole physical custody of the child to mother and ordered the parents to share joint legal custody of the child. The court found that mother had demonstrated a need for temporary spousal maintenance, and that father had the ability to meet his own needs while contributing to her needs. The court awarded mother \$2,000 per month in temporary spousal maintenance for a period of four years. The court found that the parties' combined basic support obligation for their child was \$1,791 per month, and that father's share of that obligation was \$1,072 per month. Lastly, the court found that father had "unreasonably contribute[d]

to the length or expense of the proceeding” and awarded mother conduct-based attorney fees of \$10,000.

Following the court’s April 5, 2018 judgment and decree, father moved for a new trial, for sanctions against mother’s attorney, and for amended findings. Mother moved to declare father a frivolous litigant and stay adjudication of his motions. The court denied the motions on August 24, 2018. On September 17, 2018, father appealed the April 5, 2018 judgment and decree, and the August 24, 2018 order denying his post-decree motions.

D E C I S I O N

I. The district court did not abuse its discretion when it denied father’s motion for a new trial.

Father argues that the district court abused its discretion by denying his motion for a new trial. An appellate court generally defers to the district court’s broad discretion in deciding whether to grant a new trial. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

Father’s motion for a new trial cited Minnesota Rule of Civil Procedure 59.01(a), (b), (d), (f), and (g), which allow for a new trial for irregularity in the proceedings depriving the moving party of a fair trial, misconduct, newly-discovered material evidence, legal errors, or where the decision is not justified by the evidence or is contrary to law (respectively). Generally, whether to grant a new trial is discretionary with the district court. *Peller v. Harris*, 464 N.W.2d 590, 593 (Minn. App. 1991). Here, the district court noted that while father filed a 43-point motion seeking a new trial, father specifically connected “none of those [43] points” to any of the bases he cited for a new trial. When a

party seeks a new trial, the bases under rule 59.01 for that new trial must be identified “explicitly and with specificity.” *Swartwoudt v. Swartwoudt*, 349 N.W.2d 600, 602 (Minn. App. 1984), *review denied* (Minn. Sept. 12, 1984); *see* Minn. R. Civ. P. 7.02(a) (requiring motions to “state with particularity the grounds therefor”); *see also City of E. Bethel v. Anoka Cty. Hous. & Redev. Auth.*, 798 N.W.2d 375, 378 (Minn. App. 2011) (citing these authorities when reviewing a district court’s decision on a motion for a new trial). While father’s motion explicitly identified five bases for a new trial under rule 59.01, his undifferentiated argument did not address why any of his 43 points merited a new trial under any of the cited bases. Thus, his argument lacked the requisite specificity, and the district court did not abuse its discretion in denying his motion on that basis.¹

Despite the defects in father’s motion for a new trial, the district court addressed, as best it could, the merits of each of the bases set forth in rule 59.01 for a new trial mentioned by father. While our affirmance of the district court’s determination that father’s motion was fatally defective makes it unnecessary to review the district court’s decision on the merits of father’s motion, in the interest of completeness, we review the bases father argues to this court.

¹ Father is a pro se litigant. While pro se litigants may receive some latitude, they are held to the same standards as attorneys. *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). The district court did not abuse its discretion by limiting its consideration of the issues to only the information provided by father. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (“[A] party cannot complain about a district court’s failure to rule in [the party’s] favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question.”), *review denied* (Minn. Nov. 25, 2003).

First, father claims he is entitled to a new trial because the district court violated the law by requiring the parties to obtain preapproval from the court before filing motions. The district court denied the motion on that ground, finding that limitations on father's motions "fall into the category of what can be considered case management." We agree. The district court is responsible for case management and has broad discretion to determine the procedural calendar of a case. *McIntosh v. Davis*, 441 N.W.2d 115, 119 (Minn. 1989). The Minnesota Rules of Civil Procedure vest the district court with significant latitude regarding the management of its cases. *See generally* Minn. R. Civ. P. 16.01 (noting that the purpose of pretrial case-management hearings and orders includes "establishing early and continuing control so that the case will not be protracted because of lack of management"). The Minnesota Rules of Family Court Procedure further grant the district court discretion to limit the amount of time parties may use to present oral arguments and evidence supporting or opposing a motion. Minn. R. Gen. Prac. 303.03(d). During the pretrial phase of the case, the district court issued a scheduling order containing a general provision regarding motion practice and stating that, "In the event either party desires to bring a formal motion during the pendency of the proceeding, that party shall make a request to schedule such a motion by letter. The letter shall only identify the issues a party is requesting be addressed by formal motion." Given the broad discretion afforded to district courts to manage their cases, we determine that the district court did not abuse its discretion by denying father's new-trial motion related to pretrial orders.

Second, father argues that the district court abused its discretion by denying his request for a new trial, and argues that he was deprived of a fair trial by the district court's

refusal to allow him to depose mother. In November 2017, husband filed correspondence with the court requesting leave to take mother's deposition. Mother's counsel requested that the deposition be suspended because husband's motion for removal of the judicial officer was under advisement at the time. The court offered to suspend the deposition request until husband's motion to remove the judicial officer was addressed, or to proceed with the request to depose mother with another judicial officer. Father failed to respond to the court's communication. In light of father's failure to respond, the district court suspended the request until the matter for removal of the judicial officer was resolved. Father did not take any action regarding the deposition after the removal issue was addressed. Therefore, the district court did not abuse its discretion by denying his request for a new trial on that basis.

Lastly, father contends that the district court abused its discretion by denying his request for a continuance. District courts should liberally grant continuances to allow for sufficient discovery. *Rice v. Perl*, 320 N.W.2d 407, 412 (Minn. 1982). Nevertheless, the district court has great discretion to set its calendar, and we will not reverse its decision to deny a continuance request absent an abuse of discretion. *Id.* Upon review of the record, we discern no abuse of discretion in the district court's decision to deny father's continuance motion.

II. The district court did not abuse its discretion when it denied father's motion to remove a judicial officer for alleged bias.

Father challenges the district court's denial of his motion to remove the judicial officer for bias. A motion to remove a judicial officer for bias must first be heard by the

officer who is the subject of the motion; and if denied, the motion may be reconsidered by the chief judge of the judicial district. Minn. R. Gen. Prac. 106. A judicial officer who has presided at a motion or other proceeding may not be removed absent an affirmative showing of prejudice demonstrated by the presiding judge. Minn. R. Civ. P. 63.03. Absent an abuse of discretion, we will not disturb a district court's decision to deny a motion to remove a judge for alleged bias. *Matson v. Matson*, 638 N.W.2d 462, 469 (Minn. App. 2002).

Father argues that the judicial officer demonstrated bias by refusing to hear him, disregarding his right to parent, flouting the law, treating the parties disparately, and participating in the Family Court Enhancement Project (FCEP). Father failed to adequately support these allegations, and nothing in the record suggests that the judicial officer demonstrated prejudice or bias. A judge who can preside fairly over the proceedings is not "required to step down upon allegations of a party which themselves may be unfair or which simply indicate dissatisfaction with the possible outcome of the litigation." *Carlson v. Carlson*, 390 N.W.2d 780, 785 (Minn. App. 1986) (quotation omitted), *review denied* (Minn. Aug. 20, 1986). And the suggestion that the district court's decisions do not favor father does not, standing alone, indicate bias. *See Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986) (adverse rulings are not sufficient to demonstrate bias for the purpose of removing a judge). On this record, we conclude that the district court did not abuse its discretion by denying father's motion to remove the assigned judge. Accordingly, father is not entitled to relief on this ground.

III. The district court did not abuse its discretion when it awarded mother temporary spousal maintenance.

Husband challenges the district court's temporary-spousal-maintenance award of \$2,000 per month to mother. We review a district court's spousal maintenance award for an abuse of discretion. *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). We review a district court's factual findings regarding spousal maintenance for clear error. *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009). "Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotation omitted). We view the record in the light most favorable to the district court's findings. *Vangsness*, 607 N.W.2d at 472.

Spousal maintenance is "an award made in a dissolution . . . proceeding of payments from the future income or earnings of one spouse for the support and maintenance of the other." Minn. Stat. § 518.003, subd. 3a (2018). A district court may award spousal maintenance if it finds that the party seeking maintenance "lacks sufficient property, including marital property apportioned to the spouse, to provide for [the] reasonable needs of the spouse" or "is unable to provide adequate self-support . . . through appropriate employment." Minn. Stat. § 518.552, subd. 1 (2018). If the district court awards maintenance, it must consider eight statutory factors to determine the duration and the amount of the award. *Id.*, subd. 2 (2018). "No single factor is dispositive." *Maiers*, 775 N.W.2d at 668. The district court balances the financial needs of the spouse seeking

maintenance and the ability to meet those needs against the financial condition of the spouse from whom maintenance is sought. *Erlandson*, 318 N.W.2d at 39-40.

Father challenges the district court's calculation of the parties' incomes and expenses. "A district court's determination of income for maintenance purposes is a finding of fact and is not set aside unless clearly erroneous." *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004). Based on our review of the record, we determine that the district court's factual findings regarding father's income and expenses are not clearly erroneous. Father's financial disclosure statement shows that he is employed full time and earns \$11,666.68 per month. The parties stipulated that father's gross annual income is \$140,000. Father did not offer a list of his monthly living expenses into evidence during trial. However, based upon the evidence that was presented, the court found that father's reasonable monthly living expenses are \$5,389. The district court's factual findings are supported by uncontested evidence in the record.

The court found that mother worked part-time time as a Russian tutor and earned \$8,860, in 2016 and \$5,662 in the first 11 months of 2017. Father argues that the district court erred by declining to impute income to mother because she was employed full-time at the time of trial. *See Carrick v. Carrick*, 560 N.W.2d 407, 412 (Minn. App. 1997) (providing that maintenance obligation should be calculated based on income at the time of trial). However, the court found—and the evidence supports this finding—that mother's job was a temporary job and ran from November to December 2017. Mother testified that she was not a permanent employee. The district court did not clearly err by refusing to impute income to mother. The court also made factual findings related to mother's monthly

living expenses and found that her current reasonable monthly living expenses are approximately \$4,002. The court awarded wife \$2,000 per month in temporary spousal maintenance to satisfy mother's basic needs. The court's factual findings are supported by witness testimony and by the exhibits entered into evidence at trial.

Based upon its careful analysis of the eight statutory factors and in light of the record as a whole, we determine that the district court's factual findings are not clearly erroneous. We therefore affirm the district court's decision to award mother \$2,000 per month in temporary spousal maintenance.

IV. The district court did not abuse its discretion when it divided the parties' marital debt.

Father challenges the district court's division of marital debt. "District courts have broad discretion over the division of marital property and appellate courts will not alter a district court's property division absent a clear abuse of discretion or an erroneous application of the law." *Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005). In dividing marital debts, the district court follows the same principles that it follows when dividing marital property. *Dahlberg v. Dahlberg*, 358 N.W.2d 76, 80 (Minn. App. 1984).

Father argues that the district court erred and made insufficient findings in determining that he was solely responsible for a 2016 tax debt. The parties filed separate tax returns for tax year 2016. Father's 2016 tax return indicated that he paid \$14,851 in federal taxes, but owed an additional \$29,201 in federal taxes for the same year. The court found that father took a tax distribution of \$60,706 in 2016, and reported \$18,370 in spousal maintenance payments, when his total court-ordered temporary spousal maintenance

obligation was only \$4,000. Based on these findings, the district court determined that father was responsible for his own tax liability for 2016. A review of the record reveals that the court's findings are not clearly erroneous, and we discern no abuse of discretion by the district court.

V. The district court did not abuse its discretion in awarding parenting time.

Father argues that the district court abused its discretion by only awarding father twenty-five percent of parenting time. “The district court has broad discretion in determining parenting-time issues and will not be reversed absent an abuse of that discretion.” *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). A district court abuses its discretion if its findings are unsupported by the evidence or if it misapplies the law. *Id.* We will uphold the findings of fact underlying a parenting-time decision unless they are clearly erroneous. *Id.*

The best interests of the child are central to awarding parenting time. Minn. Stat. § 518.17, subd. 1(a) (2018). When evaluating whether a parenting-time schedule is in the best interests of the child, the district court must consider the same best-interest factors used in custody determinations, make detailed findings with respect to each factor, and explain how each factor led to its conclusions. *Id.*, subd. 1(a)-(b) (2018). No single factor is dispositive, and the court must consider that the factors may be interrelated. *Id.*, subd. 1(b)(1).

Here, the district court carefully considered each statutory factor and made detailed findings supporting each factor. The district court found that: (1) the child did not have special needs requiring special arrangements; (2) the child could not express an

independent, reliable preference regarding custody; (3) the parties had “a volatile relationship history;” (4) neither parent had mental health conditions interfering with his or her parenting capacity; (5) mother was primarily responsible for the child’s day-to-day needs; (6) each parent provided the child with appropriate structure, guidance, nurturance, and challenge; (7) there would be no change to the child’s school or community under either party’s custody; (8) neither party’s proposed arrangements would significantly impact the child’s other family relationships; (9) the child “still needs to spend a significant amount of time with mother given the history of caregiving”; (10) it was “difficult” to ascertain whether father would be able to move forward from the acrimonious divorce and focus on child, rather than mother; and (11) there were significant concerns about father’s ability to cooperate in the rearing of the child.

Father claims that the district court placed too much emphasis on two orders for protection mother obtained against father in August 2015. But the record shows that the court considered these orders in the context of analyzing the statutory factors as a whole. The court found mother’s allegations of domestic abuse against father to be “credible,” although it could not conclude that such abuse was “pervasive or ongoing.” The court noted that father “alluded that mother had committed domestic abuse against him,” but that father failed to present any direct evidence supporting those allegations. This court gives deference to the district court’s assessment of credibility where the parties present conflicting evidence. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Here, the district court did not abuse its discretion by considering mother’s allegations of abuse as one of many best-interest factors relating to parenting time.

Based on its analysis of the statutory factors, the court found that it was in the child's best interest for father to have regular parenting time during the school year on every other weekend, on every other Tuesday to Wednesday at school time, and on every other Tuesday from Wednesday at 7:00 p.m. During the summer, father was granted regular parenting time for every other weekend from Thursday until Monday, and for Tuesday after daycare until Wednesday morning at daycare. The court also set forth a parenting time schedule for holidays and for vacation time. In reaching its decision regarding parenting time, the district court properly applied the law and considered the statutory factors enumerated in Minn. Stat. § 518.17, subd. 1(a). Because the district court's findings are supported by the record evidence, we conclude that the district court did not abuse its discretion in its parenting-time award.

VI. The district court did not abuse its discretion when it awarded mother conduct-based attorney fees.

Father challenges the district court's award of conduct-based attorney fees to mother. A district court may levy conduct-based attorney fees "against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2018). The requesting party bears the burden of establishing that the other party's conduct unreasonably contributed to the length or expense of the proceeding. *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001). The district court must make findings explaining the basis for the award. *Brodsky v. Brodsky*, 733 N.W.2d 471, 477 (Minn. App. 2007). A district court's award of attorney fees will not be reversed absent

an abuse of discretion. *Haefele v. Haefele*, 621 N.W.2d 758, 767 (Minn. App. 2001), review denied (Minn. Feb. 21, 2001).

Here, the district court found that father's conduct contributed to the length and expense of the proceedings, and those findings are amply supported by the record. Father filed several motions for sanctions against mother's attorney, filed civil actions against mother asserting claims for malicious prosecution and abuse of process, and attempted to depose mother's attorney and call him as a witness at trial. The court found that mother incurred \$17,396.67 in attorney fees and costs, excluding fees and costs incurred for trial. The court found that father "unreasonably contribute[d] to the length or expense of the proceeding," and that it was "appropriate for father to pay conduct-based attorney fees in the amount of \$10,000." We discern no abuse of discretion in the district court's award of conduct-based attorney fees, and we affirm the award.

Affirmed.