

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0175**

Roger D. Anderson,
Respondent,

vs.

Cheryl Kaliszewski,
Appellant.

**Filed August 24, 2020
Affirmed
Slieter, Judge**

Washington County District Court
File No. 82-CV-19-1335

Roger D. Anderson, St. Paul, Minnesota (attorney *pro se*)

Cheryl Kaliszewski, Oakdale, Minnesota (*pro se* appellant)

Considered and decided by Cochran, Presiding Judge; Slieter, Judge; and Bryan,
Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Cheryl Kaliszewski appeals the district court's denial of her claimed exemption from garnishment of funds held in her bank account, arguing that the district court clearly erred in finding that the funds are not exempt from garnishment. Because

appellant failed to satisfy her burden of proving that the funds are exempt, the court's findings are not clearly erroneous and we affirm.

FACTS

The district court, in a decision which preceded the order we now review, granted respondent Roger D. Anderson summary judgment for \$12,689.40 against Kaliszewski for breach of a legal retainer agreement. Kaliszewski did not appeal the judgment.

Anderson subsequently served a nonearnings garnishment summons on Wells Fargo with notice to Kaliszewski. Kaliszewski responded by asserting that her funds were exempt from garnishment because she received government benefits and earned limited wages.¹

Before the hearing on the garnishment matter, Anderson submitted the garnishment summons to the district court along with the following documents: (1) a letter from the Social Security Administration showing Kaliszewski had not received Supplemental Security Income (SSI) since 2008 and had not received Social Security Disability Insurance (SSDI) since August 2019, and (2) bank records from Kaliszewski's Wells Fargo account for August and September 2019.

¹ Kaliszewski also argues for an exemption based on benefits of "an accident, disability or retirement pension or annuity." Kaliszewski does not explain, and we cannot discern from the record, what funds she believes are exempted on this basis. Additionally, although Kaliszewski demonstrated that she receives Social Security retirement income, she has not argued or shown how it is exempt. These issues were not ruled on by the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts will generally not consider matters not considered the district court). Because it is her burden to establish error on appeal, we affirm the district court. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944).

On November 20, 2019, Kaliszewski filed a response with the district court asserting that she receives SSDI, Social Security, Medicare Parts A, B, and D, and income from a part-time job in which she earns less than \$290 per week. She attached documents showing that she received Social Security retirement and was enrolled in Medicare Part A and B. Kaliszewski also submitted bank statements from her Wells Fargo account from August to November 2019 and an earnings statement reflecting hourly employment for two weeks in September 2019, and \$10,652.64 in year-to-date earnings.

Following a hearing during which the district court heard arguments from both parties, the district court denied Kaliszewski's exemption claim. The district court found that Kaliszewski did not receive SSI or SSDI, and that the bank records showed no deposit of Medicare Part B or D funds into the relevant bank account. Based on these findings, the district court determined that Kaliszewski did not have a valid exemption claim and ordered that the garnishee retain possession and control of the funds. Kaliszewski appeals.

D E C I S I O N

Whether funds are exempt from garnishment is a question of fact. *Investors Savs. Bank v. Miller*, 440 N.W.2d 168, 171 (Minn. App. 1989). "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of witnesses." Minn. R. Civ. P. 52.01. "On appeal, a [district] court's findings of fact are given great deference" *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). Kaliszewski bears the burden of showing how the district court clearly erred. *See*

Loth v. Loth, 35 N.W.2d 542, 546 (Minn. 1949) (“[T]he burden of showing error rests upon the one who relies upon it.”)

A creditor may begin an ancillary proceeding to a civil action for recovery of money through a garnishment summons “at any time after entry of a money judgment in the civil action.” Minn. Stat. § 571.71(3) (2018). But some funds are exempt from garnishment. Minn. Stat. § 550.37, subd. 1 (2018). We analyze the relevant exemptions below.

I. The district court did not clearly err by finding that Kaliszewski failed to prove an exemption from garnishment.

We first examine the record to determine whether the district court made clearly erroneous findings to deny the exemption claim. As discussed below, the record supports the district court’s findings that Kaliszewski failed to demonstrate that she received exempt funds that were deposited into the bank account within 60 days of Anderson’s garnishment summons.

A. Public-Assistance Exemption

Minnesota statutes delineate certain exemptions for needs-based public assistance. Minn. Stat. § 550.37, subd. 14 (2018) (“All government assistance based on need, and the earnings or salary of a person who is a recipient of government assistance based on need, shall be exempt from all claims of creditors including any contractual setoff or security interest asserted by a financial institution.”). The statute specifically identifies SSI, Medicare Part B premiums, and Medicare Part D extra help payments as forms of public assistance exempted from garnishment. *Id.* For property to qualify for this exemption, “[t]he burden of establishing that funds are exempt rests upon the debtor.” *Id.* Forms of

public assistance other than those specifically identified in the statute may qualify for exemption. *Id.* (“For the purposes of this chapter, government assistance based on need includes but is not limited to”). The exemption applies for “60 days after deposit in any financial institution.” *Id.*

1. SSI and SSDI Payments

Beginning with Anderson’s purported receipt of SSI and SSDI payments, the district court credited the documentary evidence submitted by Anderson at the time of the hearing. The district court received documentation from the Social Security Administration dated October 2, 2019, stating,

Social Security’s needs-based program is Supplemental Security Income (SSI). [Kaliszewski] has not received payments for SSI, since September 2008. [Kaliszewski] received Social Security Disability Insurance (SSDI) from December 2007 up until August 2019. [Kaliszewski] has Medicare A and Medicare B, still active. The State of Minnesota was paying for [Kaliszewski’s] Medicare B premiums from August 2016 to June 2017.

Kaliszewski’s documentary evidence, submitted November 20, 2019, shows SSDI payments made to her ending on August 2, 2019, consistent with the letter from the Social Security Administration. Based on this evidence, the district court found that Kaliszewski did not receive SSI or SSDI. This finding is supported by the record and is therefore not clearly erroneous.

2. Medicare Payments

Kaliszewski’s argument as to how the court erred in its findings regarding Medicare payments is unclear. The district court found that she did not deposit “any cash benefits

from Medicare Part B or Medicare Part D extra help” in her Wells Fargo account. Kaliszewski filed documents with the district court purporting to show that she receives Medicare Parts A, B, and D. However, the documents she filed only show enrollment in Medicare Parts A and B. This fits the correspondence submitted by Anderson from the Social Security Administration which makes no reference to Medicare Part D. Therefore, Kaliszewski’s claim that she receives payments from Medicare Part D is unsupported and the district court did not make a clearly erroneous finding. *See* Minn. Stat. § 550.37, subd. 14 (requiring the debtor to meet a burden to show funds qualify as exempt as public assistance).

Next, Kaliszewski presents no legal argument on appeal that Medicare Part A qualifies as public assistance exempt from garnishment. Although Minn. Stat. § 550.37, subd. 14, provides a nonexhaustive list of public assistance benefits which qualify as exempt, the list does not identify Medicare Part A. Because Kaliszewski does not make an argument that it does qualify, we decline to address the issue here. *State, Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (stating appellate courts decline to reach inadequately briefed issues). More critically, the record does not reflect that she receives Medicare Part A benefits. Kaliszewski provided documentation that showed she is enrolled in Medicare Part A, but not that she receives any funds from that program.

Finally, the bank records submitted by Kaliszewski do not show that she placed any of the Medicare Part B funds that she received into the Wells Fargo account at issue. *See*

Minn. Stat. § 550.37, subd. 14. The district court’s finding as to a lack of exempt Medicare benefits was not clearly erroneous.

3. Exempt Earnings Due to Recipient of Governmental Assistance

Finally, Kaliszewski claims an exemption based upon her earnings as a recipient of public assistance. Kaliszewski provided an earning statement to the district court showing that, until October 4, 2019, she received \$10,652.64 from hourly employment earnings. First, it must be noted that the garnishment summons notes that it is not seeking employment earnings. This resolves the matter consistent with the district court’s decision. Even if the summons sought earnings, for the reasons noted below, the district court’s finding was not clearly erroneous.

An exemption may apply “60 days after deposit into any financial institution, whether in a single or joint account.” *Id.* Kaliszewski must trace those funds to establish an exemption for this garnishment. *Id.* Although Kaliszewski provided employment documentation, she did not provide documentation showing her employment wages were deposited into this particular bank account beyond September 6, 2019—62 days before Anderson’s November 7, 2019 nonearnings garnishment summons. It is Kaliszewski’s burden to trace these funds. *See id.* Because Kaliszewski bears the burden to trace funds, the district court did not erroneously determine that this exemption was inapplicable.

Affirmed.