STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0750

In re the Marriage of:
Janie Warren Berg, petitioner,
Respondent,

vs.

David A. Berg,
Appellant.

Filed October 25, 2021
Affirmed
Segal, Chief Judge

Dakota County District Court
File No. 19HA-FA-17-406

Scott Rodman, Kendal O'Keefe, Micaela Wattenbarger, Arnold, Rodman & O'Keefe, PA, Bloomington, Minnesota (for respondent)

Bruce E. Goldstein, Goldstein Law Office, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Segal, Chief Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this appeal from a marriage dissolution judgment and decree, appellant-husband claims that the district court erred by imposing a sanction to allow respondent-wife to proceed by default and to bar husband from submitting evidence or cross-examining witnesses. Husband also claims that the district court erred by ordering relief that conflicts with the terms of the parties' antenuptial agreement, failing to equitably divide debt and assets, failing to consider husband's ability to pay the judgment, and ordering husband to pay the receiver's fees, opposing counsel fees, and conduct-based fees. In a related appeal, respondent-wife claims that the district court erred by dismissing her motion to correct 14 alleged clerical mistakes. We affirm.

FACTS

In August 2017, respondent Janie Warren Berg (wife) petitioned the district court for a dissolution judgment to end her nearly 20-year marriage with appellant David A. Berg (husband). The parties signed an antenuptial agreement (the agreement) prior to their marriage, the validity of which is not contested. The agreement provides that, upon dissolution of the marriage, each spouse is to retain what is defined as "separate property" and that marital property is to be divided equally. The agreement further provides that, as a "property settlement," husband agrees to pay wife $50,000 for each full year of the marriage, up to a maximum amount of $1 million or 25% of husband's net worth, whichever is less.[1] If the property settlement amount exceeds $100,000, the amount in excess is to be paid out in installments over five years.

The agreement includes schedules of the "separate property" of husband and wife. Husband's schedule includes a number of businesses and properties, while wife's schedule includes more limited assets. Additional properties and businesses were acquired during

[1] Under the terms of the agreement, wife waived her right to seek spousal maintenance.

the marriage, such that at the initiation of the dissolution proceeding, the parties had an extensive list of marital and nonmarital assets, including seven businesses and more than 20 properties located in Minnesota, Wisconsin, and Florida. Some of the assets were owned by husband prior to the marriage, some were purchased during the marriage, and frequently one business lent money to another—the district court noted there were intercompany loans in excess of $8 million.

Procedural Background

Issues arose early in the dissolution proceedings regarding husband's failure to comply with discovery-related and other orders of the court. Husband continually failed to provide ordered discovery and cooperate with the neutral court-appointed experts retained to value the parties' assets. To help manage the discovery disputes, the district court, with the agreement of the parties, appointed a special master in July 2018 to oversee discovery issues. The special master is a retired district court judge with many years of judicial experience.

Husband also failed to comply with the district court's interim order that husband was to make mortgage and property tax payments for the parties' marital properties. Wife filed motions in February and June of 2018 seeking the appointment of a receiver because of husband's failure to make the ordered payments. The district court denied both motions. It was only after wife alerted the district court that several of the parties' properties had become subject to foreclosure proceedings that the district court appointed a receiver, Lighthouse Management Group, to ensure that payments would be made. The court noted that the receiver had "considerable experience and expertise in acting as a court-appointed receiver." Because husband claimed that he lacked available cash to make the payments, the district court also ordered the sale of property by the receiver to make funds available so that mortgage and other payments could be made.[2]

In November 2018, only about one month after the appointment of the receiver, the receiver informed the district court of a number of concerns regarding husband's lack of cooperation and failure to provide requested financial information and records. Husband's failure to cooperate continued such that the receiver sent two reports to the district court, in March and May 2019, "documenting [husband's] repeated failure to produce even basic documents and information to the Receiver, as ordered by the Court."

Wife sought several times to have husband held in contempt of court. Eventually, following an evidentiary hearing, the district court issued an order in July 2019, holding husband in contempt for his failure to comply with orders of the district court and special master.[3] The grounds cited by the district court include the fact that the special master recommended that husband be held in contempt of court because husband "consistently refused to participate in the discovery process in good faith." The special master noted that this was despite the fact that the discovery requests were "reasonable requests that are

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[2] The district court's initial order allowed husband to designate the properties to be sold. Due to ongoing noncompliance by husband, the district court eventually authorized the receiver to make that determination.

[3] From the date of her appointment in July 2018 through June 2019, the special master issued no fewer than six orders related to husband's failure to comply with various discovery requests.

standard in nearly every dissolution of marriage proceeding when significant real and business property is involved."

The district court further noted in its findings that the "court-appointed neutral business evaluator, another well-respected and experienced professional, has not been able to begin his work due [to husband's] failure to provide complete and necessary information." The district court also expressed concern that husband's failure to comply with discovery orders caused multiple continuances of the trial date.

The district court included in its order the fact that prior warnings had been provided to husband:

> Possible sanctions were specifically noted as including but not limited to prohibiting [husband] from supporting claims of nonmarital interest in property or introducing certain evidence to support [husband's] claims at trial, as well as striking [husband's] pleadings and allowing [wife] to proceed by default.

The district court then cautioned that husband "is warned a final time."

The district court included in its order, as the purge conditions, a specific list of outstanding discovery items that husband was to provide and an equally detailed list of specific actions husband was required to undertake to allow the receiver and court-appointed valuation experts to complete their work. The order expressly advised husband that the "[f]ailure to comply with all discovery orders of the Court and Special Master by the date of the review hearing on August 7, 2019 shall result in [wife's] right to proceed by default in this matter."

At the review hearing on August 7, 2019, the parties, in the words of the district court, "vehemently disagreed as to the status of [husband's] compliance" with the district court's July 2019 order concerning outstanding discovery. To determine whether husband had complied, the district court ordered husband to provide a ledger by August 9 listing the discovery he had produced. Husband made no objection to providing the ledger, but nevertheless failed to do so.

The district court directed the special master to conduct a review of whether husband had produced the discovery ordered as part of the purge conditions. The special master reported back to the court that husband had failed to comply with the most basic of wife's requests, noting "that in more than thirty years as an active or senior trial court judge I have never encountered another case in which a party so willfully and deliberately failed to provide timely and complete discovery."[4] After summarizing the procedural history, the repeated warnings, the contempt order, husband's failure to produce the outstanding discovery by the deadline, along with his failure to submit the discovery ledger to the court as ordered, the district court granted wife's request to proceed by default.[5]

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[4] The district court also received, in the same time frame, correspondence from the receiver reporting that, while husband had provided some of the information required in the contempt order, a "significant number of other items required under the Order . . . have not been addressed," including cooperation with the appraisal and business valuation experts and payment of their fees.

[5] A second contempt order was issued against husband in September 2019 because husband refused to sign a warranty deed to allow the receiver to sell a property. Husband chose to spend 90 days in the county jail instead of signing the deed. This contempt order was not challenged by husband on appeal.

At the default proceeding, the district court heard testimony from wife and from wife's valuation expert. Husband was not allowed to participate in the hearing or cross-examine witnesses but was allowed to submit an offer of proof of the evidence and testimony he would have presented at trial, which he provided in writing.

The Judgment

The district court issued its findings of fact, conclusions of law, order for judgment, and judgment and decree (the judgment) based primarily on the testimony and report of wife's valuation expert and the terms of the antenuptial agreement. The district court noted in the judgment, as wife's expert had testified, that due to husband's noncompliance with discovery it was difficult to identify and value all the relevant assets. Wife's expert, for example, had to split her report into two categories, identifying assets where she was able to verify the value through underlying documentation and a category of "unverified assets" where husband had failed to provide necessary access or documentation. The district court found the expert's report and testimony to be credible.

The district court reviewed the parties' interests in the various businesses and noted that there was extensive commingling between the business interests, including more than $8 million in intercompany loans and instances of husband investing marital funds into his own premarital business interests. Despite this, the district court awarded to husband, in full, the businesses husband owned prior to the marriage. The district court also awarded to husband what wife's expert identified as "unverified assets" in the amount of $4,019,928.

The district court granted wife's request that husband reimburse her for the assets she liquidated to pay $167,209 in marital expenses that husband had been ordered but refused to pay, and an additional $63,254.79 for marital expenses she paid in 2018 and 2019. The district court also found that, of the net proceeds from the sale of some of the parties' real properties, wife should be awarded $75,529, and $254,860, representing her total share of the lost marital equity in the properties.

The district court found that husband's conduct added substantial time and expense to the dissolution proceeding due to his unreasonable failure to cooperate with discovery and with the special master and receiver. Thus, the district court awarded wife $154,700 in conduct-based attorney fees but, because wife received some compensation from the sale proceeds of Florida properties, the district court ordered husband to pay a net amount of only $36,241 for the fees.

Given husband's ongoing failure to comply with court orders and to make payments required by those orders, the district court ordered the receiver to "effect and oversee" husband's payment to wife of a final equalizer payment in the amount of $1,263,309, and payment of the conduct-based attorney fees. The district court also ordered that the property settlement payment to wife in the amount of $825,000 ($50,000 x 17 years of marriage, minus $25,000 already paid), should be paid in a single lump sum instead of being paid out over five years as provided in the agreement.

Husband appealed and wife filed a related appeal.

DECISION

I. Husband's claims on appeal were preserved for review.

As a threshold issue, wife argues that husband failed to preserve issues for appeal. Wife bases her argument on an order of this court addressing the timeliness of husband's appeal. We sought briefing on the issue of timeliness because husband filed his appeal more than 60 days after entry of the judgment. In a special-term order, we determined that the appeal was timely nevertheless because husband had filed a motion for amended findings under Minn. R. Civ. P. 52.02.[6] Based on applicable caselaw, we concluded that the motion was sufficient to toll the running of the time to appeal under Minn. R. Civ. App. P. 104.01, subd. 2, even though husband had filed only a barebones motion and had not stated with particularity the findings he was challenging.[7]

Wife argues that, because husband did not identify the findings being challenged in his postjudgment motion, husband failed to preserve any issues for appeal other than sufficiency of the evidence. Wife maintains that husband is thus barred from obtaining review of the default sanction and certain findings of the district court because husband's arguments on these issues are broader than just the sufficiency of the evidence. We reject wife's argument for several reasons.

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[6] That rule provides in part: "Upon motion of a party served and heard not later than the time allowed for a motion for new trial . . . , the court may amend its findings or make additional findings, and may amend the judgment accordingly if judgment has been entered."

[7] The district court, in fact, denied the motion on the grounds that it failed to identify the findings being challenged.

First, we note that the special-term order addressed whether husband's posttrial motion tolled the time to appeal, not whether husband's posttrial motion was sufficient to preserve issues for appeal. The order thus provides no authority for wife's argument concerning the preservation of issues for appeal.

Second, this court held in *Michaels v. First USA Title, LLC*, that a party against whom a default sanction is entered can, even without having brought a motion to vacate the judgment, bring limited challenges. 844 N.W.2d 528, 532 (Minn. App. 2014). As we stated in *Michaels*, although the defaulting party "cannot deny facts or assert facts not put into issue before the district court, or raise procedural arguments not raised below, if adequate relief was available by motion to the district court," review can be obtained on appeal directly from a default judgment on the following three issues: (1) "whether the evidence supports the district court's findings of fact," (2) "whether those findings of fact support the conclusions of law and the judgment," and (3) whether the district court erred in deciding "substantive questions of law that were properly raised during trial." *Id.* (quotations omitted). Here, most of the questions husband seeks to raise in this appeal are within the limited scope of appeal described in *Michaels*.

Third, under Minn. R. Civ. App. P. 103.04, this court can address questions in the interests of justice. On the unique facts of this unusual case, we conclude that, to the extent the questions raised by husband are beyond the scope of review discussed in *Michaels,* it will be judicially efficient to address those questions in the interests of justice.

We thus reject wife's claim that issues raised by husband in this appeal are not properly before this court, and we will consider husband's claims on their merits.

II. The district court did not err by imposing a sanction of default against husband or in the findings and conclusions challenged by husband on appeal.

A. The Default Sanction

Husband argues that the district court erred by entering a default sanction against him, barring him from presenting evidence and cross-examining witnesses at trial. “The trial judge has wide discretion to issue discovery orders and, absent clear abuse of that discretion, normally its order with respect thereto will not be disturbed.” *Kellar v. VonHoltum,* 568 N.W.2d 186, 190 (Minn. App. 1997) (quoting *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen,* 454 N.W.2d 916, 921 (Minn. 1990)), *rev. denied* (Minn. Oct. 31, 1997). The Minnesota Rules of Civil Procedure allow a district court to grant sanctions when a party or officer fails to obey an order to provide or permit discovery. Minn. R. Civ. P. 37.02(b). The court

> may make such orders . . . as are just, and among others the following:
>
> (1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
>
> (2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
>
> (3) An order striking pleadings or parts thereof, staying further proceedings until the order is obeyed, dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party[.]

Id.

Appellate courts review a district court’s imposition of discovery sanctions for abuse of discretion. *Frontier Ins. Co. v. Frontline Processing Corp.,* 788 N.W.2d 917, 922

(Minn. App. 2010), *rev. denied* (Minn. Dec. 14, 2010). Factors to be considered in determining whether a sanction constitutes an abuse of discretion include whether:

> (1) . . . the court set a date certain by which compliance was required, (2) . . . the court gave a warning of potential sanctions for non-compliance, (3) . . . the failure to cooperate with discovery was an isolated event or part of a pattern, (4) . . . the failure to comply was willful or without justification, and (5) . . . the moving party has demonstrated prejudice.

Id. at 923. Although a default judgment is a severe sanction, "[w]hen a party 'has willfully and without justification or excuse refused to comply with discovery orders' that party has 'forfeited the right to a trial of the case on the merits.'" *Id.* at 922 (quoting *Breza v. Schmitz*, 248 N.W.2d 921, 922 (Minn. 1976)).

Here, the district court concluded that all five of the above criteria had been satisfied, and we agree. With regard to the first two factors, the district court set a final compliance date in the contempt order and expressly warned husband both in the contempt order and in a preceding order that failure to comply with discovery obligations would result in sanctions, "including but not limited to prohibiting [husband] from supporting claims of nonmarital interest in property or introducing certain evidence to support [husband's] claims at trial, as well as striking [husband's] pleadings and allowing [wife] to proceed by default."

In addition, at the August 7, 2019, hearing to review whether husband had complied with the purge conditions in the contempt order, the district court directed husband to provide a discovery ledger to the court by August 9, identifying the discovery he had produced. At the hearing, the district court gave husband yet another warning that, if he failed to provide the ledger to the court, he would likely be subject to sanctions, including allowing wife to proceed by default. Neither husband nor his attorney objected to the deadline, but husband never provided the ledger. The district court thus gave husband clear deadlines and warnings.

Turning to the third and fourth factors, husband's repeated failure to comply with orders of the district court and special master are well documented in the record and form a consistent pattern, with no justification offered by husband.

Finally, with regard to the question of prejudice to wife, the district court found that wife incurred "immense costs" as a result of the protracted proceedings and could not properly prepare for an evidentiary hearing on the merits due to husband's failure to comply with discovery. Indeed, wife's valuation expert had to submit a report with a significant number of assets identified as "unverified" because of husband's failures to allow access and provide financial information and documents.

The district court gave husband many opportunities to come into compliance, along with clear warnings of the consequences of his continued failure to comply with the court's orders. Husband, however, persisted in flouting the orders of the court, including the order to provide the court with something as simple as a discovery ledger. Based on this record, we discern no abuse of discretion by allowing wife to proceed by default.

B. Alleged Violation of the Terms of the Antenuptial Agreement

Husband asserts several arguments in support of his claim that the district court erred by ordering relief that allegedly deviated from the agreement. First, husband argues that the district court violated the terms of the agreement when it ordered husband to pay immediately, in a lump sum, the $825,000 property settlement he owed to wife under the agreement, instead of spreading out the payments over five years as provided in the agreement. Second, husband argues that the district court violated the terms of the agreement by giving the receiver control over his premarital assets. Husband's third argument is that the district court violated the agreement by awarding assets to wife that constituted premarital property of husband. We reject all three claims.

Turning to husband's first argument, the district court accelerated the payment of the property settlement because of "Husband's demonstrated contempt and lack of compliance with court orders." The district court determined "that enforcing the payment schedule in the Antenuptial Agreement is not likely to lead to regular, timely payments by Husband, and is instead likely to result in enforcement proceedings." The court stated that, "[a]s a result, . . . it is reasonable and appropriate to order Husband to pay this additional property settlement in one lump sum from available resources." It was thus husband's own conduct during the proceedings that caused the district court to order the acceleration of the payment.

As discussed above, the district court has discretion to impose sanctions "as are just" for violations of court orders. Minn. R. Civ. P. 37.02(b); *Frontier*, 788 N.W.2d at 922-23. Exercise of this discretion is particularly appropriate when, as is the case here, the order accelerating the property settlement payment no doubt conserved judicial resources by avoiding unnecessary enforcement actions. *See Hous. & Redevelopment Auth. of City of St. Paul v. Kotlar*, 352 N.W.2d 497, 499 (Minn. App. 1984) (balancing the district court's interest in "prevent[ing] unnecessary and inexcusable delays, and . . . promot[ing] the public interest in keeping court dockets free of stale claims" with the "primary objective of the law to dispose of cases on the merits" (quotations omitted)).

We reject husband's second argument—that the appointment of a receiver violated the terms of the agreement because the receiver was given control over his premarital property—for similar reasons.

We review the appointment of a receiver for an abuse of discretion, viewing the facts in the light most favorable to the prevailing party. *Equity Tr. Co. Custodian ex rel. Eisenmenger IRA v. Cole*, 766 N.W.2d 334, 341-42 (Minn. App. 2009); *see also Minn. Hotel Co. v. ROSA Dev. Co.*, 495 N.W.2d 888, 891 (Minn. App. 1993). The scope of a receiver's powers are as allowed by statute and the general equity powers of the district court. Minn. Stat. § 576.29 (2020); *Equity Tr. Co.*, 766 N.W.2d at 341-42.

The district court originally appointed the receiver after husband repeatedly failed to comply with the court's interim order that he pay the mortgages and property taxes for certain real properties. The appointment was in accordance with the broad powers of the district court in dissolution actions and under the Minnesota receivership statute. The district court was also well within its authority to extend the appointment of the receiver to ensure that the equalizer and other payments ordered in the judgment would be made in a timely manner to wife.[8] Minn. Stat. § 576.25, subd. 3 (2020).

Husband's final claim is that the district court awarded assets to wife that constituted husband's "separate property" under the agreement. To the extent we can discern the basis for husband's argument, it appears to refer to the court's finding that husband had commingled assets, including the transfer of funds from a marital business to one of husband's premarital businesses. The district court, nevertheless, awarded husband full ownership in his premarital businesses, in accordance with the terms of the antenuptial agreement, despite the evidence of commingling. This argument is thus also without merit.

C. Husband's Challenges to the District Court Findings

Husband argues that several of the district court's findings must be reversed as erroneous. Findings of fact will only be set aside if they are clearly erroneous, and this court must give "due regard" to the district court's opportunity to judge the credibility of the witnesses. Minn. R. Civ. P. 52.01; *Kerr v. Kerr*, 770 N.W.2d 567, 569 (Minn. App. 2009). We address husband's challenges to various findings of fact below.

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[8] The district court found it noteworthy that, instead of "signing a single document" to allow the sale of a property subject to the receivership, husband chose to be confined for 90 days for civil contempt of court. The district court referenced this as part of its justification for extending the receivership postjudgment, stating that "[t]his incident is but a recent, stark example of many findings that fill the court record, which foretell that [husband's] lack of cooperation with court orders will be ongoing after judgment has been entered." The court further commented that "[t]o the Court's knowledge, the document remains unsigned by [husband]."

1. Allocation of Parties' Marital and Nonmarital Debt

Husband maintains that the district court erred by allocating "virtually all" debt to him in the judgment, when it should have been allocated equally pursuant to the terms of the agreement. "Whether property is marital or nonmarital is a question of law we review de novo, but we will disturb the district court's underlying factual findings only if they are clearly erroneous." *Kerr*, 770 N.W.2d at 569. Nonmarital property retains its nonmarital status only if it is "kept separate from marital property or, if commingled with marital property, . . . readily traceable." *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). The party asserting that property is nonmarital bears the burden of establishing the nonmarital interest in the property by a preponderance of the evidence. *Crosby v. Crosby*, 587 N.W.2d 292, 296-97 (Minn. App. 1998), *rev. denied* (Minn. Feb. 18, 1999).

Specifically, husband claims that "the marital assets in Florida were purchased with fully documented loans from non-marital businesses that were fully accounted for on the books of those businesses" and that the debt from the loans thus should have been shared equally with wife as provided by the terms of the antenuptial agreement. The court concluded, however, that it is "impossible to fairly value marital business interests whose real value may have been compromised as a result of Husband's commingling or loan forgiveness to favor his pre-marital business interests." The court also noted that it is "Husband's burden to trace his non-marital interests," but that "Husband failed to provide any non-marital tracing relative to his business interests despite being ordered to do so by the Court and Special Master." The court thus found "reasonable and credible" the "characterizations [by wife's expert] of marital and non-marital interests" and the "verified net asset[]" value of each of those interests.

In this appeal, husband has similarly failed to point to evidence to demonstrate clear error by the district court. Even if we considered husband's offer of proof to be part of the record, we would still affirm the district court's findings because the offer of proof contains no more than conclusory and otherwise unsupported assertions.

2. Division of Assets in Fair, Just, and Equitable Manner

Husband claims that the district court failed to divide the parties' assets in a fair, just, and equitable manner because the judgment does not consider the tax consequences to husband caused by the receiver's sale of husband's nonmarital assets to cover payments ordered by the court. Husband also complains that the receiver's choice of properties to sell exacerbated the tax consequences. Husband's problems, however, were the result of his own failure to comply with the court's orders. Had he complied with the orders, no receiver would have been appointed. In addition, the properties were only sold by the receiver because husband claimed he lacked available cash. And the district court initially allowed husband to designate which properties should be sold. It was only after husband failed to cooperate with the receiver to identify properties that the district court eventually gave that authority to the receiver. Moreover, to the extent that husband is referring to tax consequences on nonmarital property, any taxes due would be his responsibility to pay and not a marital debt to be shared.

3. Consideration of Husband's Ability to Pay

Husband argues that the district court erred by failing to consider his lack of "any liquidity" to pay the amount owed and that he could not make the payments regardless because his assets were under the receiver's control. We also reject this argument. The district court's finding that husband had significant assets well in excess of the amount he was ordered to pay to wife is supported in the record. The fact that husband might need to sell assets to pay the sum owed to wife is contemplated and proper under the dissolution statute. Minn. Stat. § 518.58, subd. 3(a) (2020). Finally, husband's argument that the court's order required him to do the impossible by making payments to wife when his assets were under the control of the receiver is specious. As husband knows, the receiver would be making the payments on husband's behalf.

4. Requiring Husband to Pay the Receiver's Fees, Opposing Counsel Fees, and Conduct-Based Fees

Husband's final argument is that the district court erred by ordering husband to pay the receiver's fees, opposing counsel fees, and conduct-based fees based on purported discovery violations. We disagree.

The district courts may award "reasonable expenses, including attorney fees" against a party whose conduct unreasonably increases the costs of litigation. Minn. R. Civ. P. 37.02(b); *see also* Minn. Stat. § 518.14, subd. 1 (2020) (allowing a district court, in a proceeding under chapter 518, to award conduct-based attorney fees). And, as made clear by the district court, it was husband's "bad-faith conduct" that generated both the costs associated with the receiver, and a significant unnecessary increase in wife's attorney fees. The court stated:

> In its 24 years on the bench, this Court can say, without hyperbole, that it has never seen such fees incurred in a dissolution proceeding. They shock the conscience, and were driven by Husband's choices and actions.

The district court also pointed out that the award of opposing counsel fees was limited to added fees incurred by wife "solely . . . due to Husband's unreasonable conduct that prolonged the length and expense of these proceedings" and that wife's total attorney fees were "substantially higher" than the amount awarded.[9]

On this record, we discern no abuse of discretion on the part of the district court in requiring husband to pay these fees.

III. The district court did not err in denying wife's motion to correct clerical mistakes.

By notice of related appeal, wife argues that the district court erred by denying her motion to correct 14 alleged clerical mistakes under Minn. R. Civ. P. 60.01. The rules of civil procedure allow a court to correct "[c]lerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission . . . at any time upon its own initiative or on the motion of any party." Minn. R. Civ. P. 60.01. We review

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[9] The district court noted that it denied reimbursement to wife of attorney fees that "appeared only partially related to Husband's unreasonable conduct" as well as fees that wife would have incurred regardless of husband's conduct. The district court also identified several actions taken by husband during the litigation that drove up wife's litigation costs but that the court did not include in the fee award, such as an unsuccessful petition to this court for a writ of prohibition, and the fees wife incurred in a federal suit husband filed against wife, the receiver, and special master related to the dissolution.

the denial of a motion to correct clerical mistakes for abuse of discretion. *See State Inc. v. Sumpter & Williams*, 553 N.W.2d 719, 723 (Minn. App. 1996), *rev. denied* (Minn. Nov. 20, 1996).

Before addressing the merits of wife's argument, it is useful to review the procedural background of wife's motion. Wife first brought a motion for amended findings under Minn. R. Civ. P. 52.02 to amend what she now asserts are the 14 alleged clerical mistakes. The district court denied wife's motion as untimely because it was brought more than 30 days after service of the notice of filing of order and entry of the judgment.[10]

After the denial of the motion to amend, wife filed a second posttrial motion styled as a motion to correct clerical mistakes under Minn. R. Civ. P. 60.01. The district court ultimately denied this motion as well.[11] The district court reasoned that wife's "request . . . asks the [district court] to go further than correct simple clerical [mistakes] and instead amend the Judgment and Decree with substantive changes." The district court determined that it could not "review the requested amended findings without a substantial re-evaluation of the record already established—including credibility and other determinations," and that wife was seeking "substantive as contrasted with clerical fixes that will require the evaluation of witness testimony." The district court thereby denied the motion.

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[10] Wife does not challenge the district court's denial of her motion for amended findings.

[11] Due to the retirement of the judge who had presided over the trial, a different judge considered wife's second motion.

To distinguish "clerical mistakes" that can be corrected at any time after entry of a judgment from other types of errors, district courts look to such factors as whether the alleged mistake is only "one of form" or is otherwise "apparent upon the face of the record and capable of being corrected by reference to the record only." *Wilson v. City of Fergus Falls*, 232 N.W. 322, 323 (Minn. 1930). A clerical mistake is a mistake "by the court which cannot reasonably be attributed to the exercise of judicial consideration or discretion." *Id.* "Great caution" must be exercised in granting relief for a clerical mistake "lest it become a shield behind which to conceal an attack upon the verdict itself." *Egge v. Egge*, 361 N.W.2d 485, 488 (Minn. App. 1985) (quotation omitted). Clerical mistakes can only be used to "make the judgment or record speak the truth and cannot be used to make it say something other than what originally was pronounced." *Id.* (quotation omitted).

Wife claims that the alleged mistakes are either obvious oversights or involve discrepancies between the court's findings and the report of her valuation expert and, thus, qualify as clerical mistakes that the district court should have corrected under Minn. R. Civ. P. 60.01. We are not persuaded.

We will address first several errors identified by wife that are contained in a spreadsheet on page 3 of Appendix A to the judgment. These errors appear to involve arithmetic errors. For example, it appears that the court added, instead of subtracting, the listed debts to the assets, such that the net asset calculations for the row with the total marital value and value assigned to husband and wife are in error. A second arithmetic mistake appears in the calculation of the list of four debts assigned to husband in the debt row on the same page of Appendix A. Instead of adding together the four debts assigned to husband, the total line simply repeats the amount of the most substantial debt.

Even if we assume that these are "clerical mistakes" under rule 60.01, we cannot conclude that the district court abused its discretion in denying wife's motion to correct these mistakes. Wife has the burden of establishing that she was prejudiced by these arithmetic errors. *See* Minn. R. Civ. P. 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."); *see also Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) ("Although error may exist, unless the error is prejudicial, no grounds exist for reversal."). Wife fails to identify what, if any, prejudice she may suffer if these mistakes are not corrected. Indeed, the correction of these errors may in fact be to wife's detriment.[12] Absent demonstrated prejudice to wife, wife has not carried her burden of showing that the district court abused its discretion in denying correction of these alleged arithmetic mistakes.

The remainder of wife's requested corrections relate to issues that require the exercise of judicial discretion that are not appropriate to address on a motion to correct clerical mistakes. For example, wife cites to the fact that the district court failed to award a business, Petroleum Services, U.S.A., to either party in the conclusions of law, even though it was identified as a marital asset with a net value of $95,942 in the findings of fact, paragraph XIV(e)(ii)(4). Wife argues that the court intended to award Petroleum

[12] We note that husband has vigorously opposed wife's motion to correct clerical mistakes both in front of the district court and on appeal.

Services to husband, because the court awarded the other marital businesses to husband. That is not wholly accurate, however. The court did award the marital businesses to husband, but ordered that wife was entitled to one-half of the proceeds from the sale of the inventory of a different marital business, Industrial Space & Products, LLC, and that the award of another marital business, EZ Lease & Lend, Inc., was subject to wife's interest in a townhome and an automobile held by the business. Thus, the omission by the court of assigning ownership to either party is beyond a simple "clerical mistake" that can be addressed pursuant to a motion brought under Minn. R. Civ. P. 60.01.

Other alleged errors cited by wife appear to be primarily based on the fact that the district court failed to include a valuation or calculation made by wife's expert witness. Although the district court adopted most of the conclusions of wife's expert, we cannot conclude that the failure to adopt all of them can be characterized as a clerical mistake. Indeed, in at least one instance (finding of fact XIV(3)(ii)(3)), the district court expressly rejected the estimate provided by wife's expert of the value of the inventory in a building owned by Industrial Space & Products, LLC. Thus, we cannot conclude that the district court's failure to adopt all of the valuations and calculations of wife's expert was a mere clerical mistake on the part of the court.

We discern no abuse of discretion by the district court in denying wife's motion to correct clerical mistakes as being beyond the scope of authority to modify a judgment under Minn. R. Civ. P. 60.01.

Affirmed.