

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0060**

In re the Marriage of:
Bryan Larry Lovas, petitioner,
Appellant,

vs.

Stacy Ann Lovas, n/k/a Stacy Ann Gades,
Respondent.

**Filed December 13, 2021
Reversed and remanded
Slieter, Judge**

Olmsted County District Court
File No. 55-FA-19-1814

Jill I. Frieders, O'Brien & Wolf, L.L.P., Rochester, Minnesota (for appellant)

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Considered and decided by Slieter, Presiding Judge; Cochran, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this marital-dissolution appeal, appellant challenges the district court's rulings to:

(1) proceed by default because he arrived late to trial, (2) deny his motion to vacate the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

default judgment, (3) order him to pay respondent permanent spousal maintenance, and (4) order him to pay conduct-based attorney fees. Because the district court abused its discretion by proceeding by default, we reverse and remand for trial, and we do not address the remaining issues.

FACTS

Appellant-husband Bryan Larry Lovas and respondent-wife Stacy Ann Lovas married in 2008 and have four minor children. Husband petitioned for dissolution in 2019. The parties engaged in several mediation sessions preceding the dissolution trial. Through mediation, the parties reached an oral agreement regarding custody and parenting time though it was not reduced to writing.

The district court¹ delayed the start of trial by one day so that the parties could continue mediating the remaining issues. After mediating the entire day and into the evening without reaching settlement, wife's attorney asked the district court to again delay the trial for a few hours because she believed "that a tentative agreement [had] been reached." The district court, through staff email communication and less than one hour before the trial start time, denied the request to delay trial and told the parties to report for trial by 9:00 a.m.

Wife and her attorney timely appeared for the dissolution trial at 9:00 a.m. Husband and his attorney were not present because husband's attorney, who did not see the email

¹ This case was heard by a referee who recommended findings and orders to the district court. Once the district court confirms the referee's findings, the findings become the order of the court, Minn. Stat. § 484.70, subd. 7 (2020), and we review the order like any other district court order.

from court staff denying further delay, told husband to meet at her office to discuss the terms of the pending settlement agreement. The district court waited 30 minutes, told wife it was “going to default this matter out,” and began the hearing with only wife testifying and in response to questions by her attorney. Husband arrived 19 minutes after the district court commenced the proceeding and his attorney arrived a few minutes after that.

Following completion of the default hearing, the district court issued the judgment and decree (J&D) dissolving the marriage between husband and wife. As part of the J&D, the district court ordered that husband pay temporary spousal maintenance to wife in the amount of \$1,500 per month for one year and \$1,000 per month for two additional years, terminating on June 30, 2022.

In July 2019, husband moved to vacate the judgment based on excusable neglect. In September 2019, the district court granted husband’s motion in part and denied it in part and reopened the J&D only as to the issues regarding division of personal property and allocation of marital debt. In March 2020, husband separately moved to modify his spousal maintenance obligation due to the impact to his income because of the COVID-19 pandemic. In a May 2020 order, the district court temporarily suspended husband’s spousal-maintenance obligation “until 60 days after the peacetime emergency [declared by the governor because of the COVID-19 pandemic] has ended, or the sale of the homestead, whichever occurs first.”

Following an evidentiary hearing regarding the reopened issues, the district court issued its order modifying the J&D in November 2020. In its order, the court *sua sponte* ordered husband to resume paying wife \$1,000 in spousal maintenance “until further order

of the court.” The district court also ordered husband to pay wife \$4,000 in conduct-based attorney’s fees. Husband appeals.

DECISION

Though husband raises four issues on appeal, our analysis begins and ends with husband’s first argument—that the district court abused its discretion in proceeding by default. Because we conclude that the district court abused its discretion in proceeding by default—and that issue is dispositive—we need not reach the merits of the other issues husband raises on appeal.²

At the outset, we note that the district court did not make findings explaining why it was proceeding by default. The district court explained to appellant and his counsel, who were not allowed to take part during the proceeding, that default was “a tough lesson to learn and a tough lesson to learn this way, but that’s just the way things work.” Generally, a district court may not enter a default judgment absent notice to the parties. Minn. R. Civ. P. 55.01(b); *see also Lindberg v. Lindberg*, 331 N.W.2d 479, 479 (Minn. 1983) (applying rule 55.01 to a marital dissolution case). Because there was no such notice to husband, the district court in this case could not enter a default judgment pursuant to rule 55.01. But a district court does have the inherent authority to proceed by default as a sanction. *Peterson*

² Among the other issues raised by husband is that the district court erred by its *sua sponte* modification of its initial order awarding wife temporary spousal maintenance. We agree this was an error. The district court may amend a spousal maintenance obligation *sua sponte* only to correct a clerical error. *See Rogers v. Rogers*, 622 N.W.2d 813, 822 (Minn. 2001) (allowing the district court to *sua sponte* modify a child support obligation to correct a clerical error); *Hamann v. Hamann*, 479 N.W.2d 751, 753 (Minn. App. 1992) (“Trial court findings are required when the court addresses modification issues.”).

v. 2004 Ford Crown Victoria VIN: 2FAHP74WX4X158445, 792 N.W.2d 454, 462 (Minn. App. 2010) (“[D]istrict courts possess inherent authority to impose sanctions as necessary to protect their vital function”). Hence, from this record and because we have no specific findings from the district court, we presume the court proceeded by default as a sanction for husband’s late arrival for trial. Based upon this record, we now analyze whether proceeding by default is a proper sanction.

We will not reverse a district court’s decision to enter default judgment absent an abuse of discretion. *Black v. Rimmer*, 700 N.W.2d 521, 525 (Minn. App. 2005), *rev. dismissed* (Minn. Sept. 28, 2005). “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or rendering a decision that is against logic and the facts on record.” *Knapp v. Knapp*, 883 N.W.2d 833, 835 (Minn. App. 2016) (quotation omitted).

A district court must “act cautiously when the sanction imposed is that of default judgment, which is the most severe in the spectrum of sanctions provided by statute or rule.” *Chicago Greatwestern Office Condo. Ass’n v. Brooks*, 427 N.W.2d 728, 731 (Minn. App. 1988) (addressing default as sanction for failure to comply with discovery rules). As a result, the district court’s discretion is more constrained in imposing default judgment as a sanction than in imposing less severe sanctions. *Id.* In determining the severity of the sanction to be imposed, the district court should consider as the primary factor any prejudice to the benefitting party caused by the sanctionable conduct. *Id.* at 730-31 (citing cases in which prejudice to benefitting party was emphasized). Other factors to consider may include the nature of the sanctioned party’s noncompliance and whether it would

deprive the other party of a fair trial. *Id.* at 731. Finally, the district court must explain its reasons for imposing its chosen sanctions. *Id.*

As we have explained, we infer that the district court sanctioned husband with default due to his lateness for trial. *See, e.g., Modaff v. Comm'r of Pub. Safety*, 664 N.W.2d 400, 402 (Minn. App. 2003) (stating that remand for additional fact finding is unnecessary when we are able to infer findings from district court's conclusions). The sanctionable conduct is that husband arrived less than one hour late to the original 9:00 a.m. trial-start time. But because the district court delayed the start of trial to 9:30 a.m., husband arrived only 19 minutes after the trial started. The facts in this record preceding husband's late arrival, which facts also reveal minimal prejudice to wife, lead us to conclude that imposing the sanction of a default judgment was an abuse of discretion.

First, husband was directed by his attorney to come to her office on the morning of trial rather than report to court. Caselaw has generally expressed reluctance to penalize a party for an attorney's mistake or other matters outside of their control. *See Duenow v. Lindeman*, 27 N.W.2d 421, 429 (Minn. 1947) (stating that "[c]ourts will relieve parties from the consequences of the neglect or mistakes of their attorney, [sic] when it can be done without substantial prejudice to their adversaries") (citations omitted); *Nguyen v. State Farm Mut. Auto. Ins. Co.*, 558 N.W.2d 487, 489 (Minn. 1997) (citing this aspect of *Duenow*).

Second, prior to the instruction from husband's attorney to report to her office, both parties had been actively attempting to resolve all issues by participating in several mediation sessions. Of note, the parties continued their final mediation session the day

before trial and the district court was aware of and had supported this effort. At approximately 4:30 that afternoon, court staff told the parties that, “if [they] reached an agreement; and it was in writing, and [they] both had signed it” that the parties should file that agreement with the district court. Otherwise, the parties were told “to report for trial at 9:00 a.m.” when the parties would “put the full agreement on the record” or proceed with trial. The record indicates that both parties believed settlement was imminent. It was wife’s attorney who, the evening before trial was to begin, sought the additional delay because “a tentative agreement [had] been reached,” and husband’s attorney stated, when she was allowed to provide an explanation to the district court of their late arrival, that she was reviewing the proposed agreement with husband.

Based upon the facts in this record, which reveal minimal prejudice to wife caused by husband’s late arrival, and because default judgment is the most severe sanction that a district court can impose, the district court abused its discretion. Therefore, we reverse and remand to the district court to vacate the judgment and proceed to trial.³ This decision does not impact the portion of the judgment dissolving the parties’ marriage, which husband explicitly does not contest.

Reversed and remanded.

³ Our ruling does not preclude the parties from resuming settlement efforts prior to trial.