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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0774**

In re the Marriage of:

Jacinda Eve Mills, petitioner,
Respondent,

vs.

Joshua James Mills,
Appellant.

**Filed March 21, 2022
Affirmed in part, reversed in part, and remanded
Jesson, Judge**

Anoka County District Court
File No. 02-FA-19-869

Jacinda Eve Mills n/k/a Jady Eve Mills, Blaine, Minnesota (pro se respondent)

Joshua James Mills, Blaine, Minnesota (pro se appellant)

Considered and decided by Jesson, Presiding Judge; Bryan, Judge; and Smith,
John, Judge.*

NONPRECEDENTIAL OPINION

JESSON, Judge

Following a marriage dissolution, appellant Joshua Mills (father) and respondent Jady Mills (mother) sought a court order to determine child custody, child support, and

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

spousal maintenance. The district court ordered child support from father, concluded that it was in the children's best interests to maintain their current parenting time schedule, and denied father's spousal maintenance request. Father appeals. Because the record supports the district court's income calculations, the district court properly analyzed the best-interests factors for child custody, and the district court was not biased against father, we affirm in part. But because the district court did not consider the marital standard of living when reviewing father's request for temporary spousal maintenance, we reverse and remand in part.

FACTS

Father and mother married in 1997. Father and mother have three children together aged 12, 8, and 7 (children). The marriage was dissolved in a partial judgment and decree entered October 22, 2020. Based on that decree, the parties stipulated to joint legal custody and no label of physical custody, although mother's home is the primary residence of the children for purposes of school registration. A court trial was held in the fall 2020 to resolve the remaining issues, which included parenting time, the parties' incomes, child support, and spousal maintenance. And after the trial, the record was re-opened briefly to receive the parties' 2020 W-2s and final 2020 paystubs.¹

With regard to the parties' incomes, evidence at trial established that father worked in court security with Hennepin County. His 2020 W-2 states that he is paid an hourly

¹ In an email to the parties, the district court law clerk explained that the trial record would be reopened to receive copies of the parties' 2020 W-2s and final 2020 paystubs. It also stated that "submission of this documentation will ensure that the parties' incomes are properly calculated; particularly [mother's] income."

wage of \$35.09. In addition to overtime of \$4,193, the district court determined his yearly pay was \$77,180 with a gross monthly income of \$6,342. Father submitted current monthly living expenses of \$2,917.02.

Mother submitted evidence showing that she worked full-time as a nurse practitioner, and that her income is based on the number of patients she sees with quarterly bonuses if her patient contacts are above a required minimum limit. Mother's gross income, based on her 2020 W-2, was \$130,321.30. The district court calculated mother's monthly gross income as \$10,860.

In addition to information on the parties' incomes and expenses, the evidence included a neutral custody evaluation completed by D.C. (evaluator). The evaluator opined that it was in the best interests of the children to maintain the parenting time schedule used during the dissolution of the marriage. This parenting schedule provided father with parenting time every Thursday overnight and alternate weekends from Thursday after school or daycare until Monday morning. At trial, mother argued that the parenting schedule should be maintained. Father proposed that parenting time be divided equally and that one parent receive all holidays in alternate years.

In an order following trial, the district court concluded that it was in the children's best interests to maintain the at-the-time current parenting schedule. In making this decision, the district court relied—in part—on the facts that father denied the oldest daughter therapy after the parties' separation and that he introduced his new significant other to the children soon after the separation.

After revising father's monthly living expenses down to \$1,978.79 to reflect splitting the utilities with his cohabitating significant other, the district court ordered that father must pay \$1,036 per month in child support, including \$325 for childcare. The district court denied father's requested spousal maintenance of \$559 per month, explaining that he did not establish a budgetary shortfall.

Father appeals.

DECISION

In a pro se brief, father challenges several of the district court's findings, as well as its analysis of the best-interests factors determining parenting time. He further argues that the district court was biased against him.² The majority of father's arguments are challenges to factual findings. When an issue turns on the district court's findings of fact, we review the findings for clear error, "giving deference to the district court's opportunity to evaluate witness credibility" and reversing only if we are 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).

District courts have broad discretion regarding child support and spousal maintenance, and an award will only be reversed on appeal if the court abused its discretion. *Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021) (spousal maintenance); *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984) (child support). An abuse of discretion

² While we accord "some leeway" for pro se appellants, *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987), they are "generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001).

occurs when a district court makes findings unsupported by the record or when it improperly applies the law. *Honke*, 960 N.W.2d at 265. As to father’s claims of partiality, questions of judicial bias are questions of law which we review de novo. *State v. Dorsey*, 701 N.W.2d 238, 246 (Minn. 2005).

I. The record supports the district court’s income calculations.

First, father challenges the factual findings underlying his income calculation. Father asserts that the district court miscalculated his income, causing him to pay too much in child support. To address this argument, we turn to the child-support-calculation statute. In order to calculate the appropriate amount of child support, a district court must calculate each parent’s “gross income” pursuant to Minnesota Statutes section 518A.29 (2020). Gross income “includes any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions,” and various other types of payments listed in the statute. Minn. Stat. § 518A.29(a). It does not include, however, “compensation received by a party for employment in excess of a 40-hour work week,” subject to several provisions. *Id.* A district court’s calculation of income “must be based in fact and will stand unless clearly erroneous.” *Newstrand v. Arend*, 869 N.W.2d 681, 685 (Minn. App. 2015) (quotation omitted), *rev. denied* (Minn. Dec. 15, 2015).

Here, the district court used father’s year end 2020 W-2 to determine his hourly rate of pay and overtime. Father’s W-2 clearly notes his hourly wage as well as the number of hours he worked in 2020, including overtime. And notably, father did not demonstrate that his overtime should not be included, which is his burden to prove. Minn. Stat.

§ 518A.29(b)(2)(i)-(iv). Given this record, we conclude that the district court’s calculation of father’s gross income is not clearly erroneous.

But father argues that the district court, in calculating his gross pay, committed three errors. First, father infers from the district court’s statement that “submission of [the 2020 W-2s] will ensure that the parties’ incomes are properly calculated; *particularly [mother’s] income*” that his income was not properly calculated because he was not explicitly mentioned like mother was. (Emphasis added.) But part of the need for a reopened record was that—unlike father’s consistent hourly pay—mother’s salary is based on a commission that makes her salary figure more complicated to calculate. The phrasing of this explanation does not point to any unfairness or lack of consideration toward father by the district court.

Second, father argues that the court miscalculated his income by roughly \$10,000 because the district court calculated his annual gross income using his hourly rate of pay and overtime instead of his 2020 W-2 and pay stub.³ But as explained above, both the hourly rate of pay and overtime came from his 2020 W-2. Father does not demonstrate

³ Father also argues that he should have been allowed to include his uniform expenses as an asset because wife is allowed to include her education costs. While “expenses” may be relevant to a district court’s finding of a party’s ability to provide self-support or pay maintenance under Minnesota Statutes section 518.552, subdivision 2 (2020), expenses are, for the most part, not relevant to calculation of “gross income” under Minnesota Statutes section 518A.29. Additionally, in reviewing the allocation and division of marital property, student loan debts are treated the same as assets. *Dahlberg v. Dahlberg*, 358 N.W.2d 76, 80 (Minn. App. 1984).

how this is clearly erroneous, as looking to his year-end pay stub is a proper way to determine his hourly rate.

Third, father alleges that ordering his significant other split utilities and rent 50/50 defies logic and is an abuse of discretion because—by court order—she is not allowed to be in the apartment when he has custody of the children. But context matters. Here, the district court found that father and his significant other had been blatantly *violating* the original order as his significant other was, for the most part, not leaving the apartment during father’s periods of child custody. Because his significant other was found to be effectively living with father full time—and father did not contend otherwise—ordering the utilities be split is not erroneous.

Because the district court properly calculated father’s income and other expenses to determine his monthly child support payment figure, the district court did not abuse its discretion.

II. The district court properly analyzed the best-interests factors.

Next, father argues that the district court improperly considered the best-interests factors when it concluded that the current parenting schedule was appropriate. Father asserts that a proper analysis of the best-interests factors should have prompted the district court to award equal custody time to the parents.

Minnesota Statutes section 518.17, subdivision 1(a) (2020), sets forth twelve factors that the district court must consider when evaluating the best interests of the children. The statute articulates twelve factors to consider in evaluating the best interests of a child:

(1) a child's physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child's needs and development;

(2) any special medical, mental health, or educational needs that the child may have that may require special parenting arrangements or access to recommended services;

(3) the reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference;

(4) whether domestic abuse . . . has occurred in the parents' or either parent's household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs;

(5) any physical, mental, or chemical health issue of a parent that affects the child's safety or developmental needs;

(6) the history and nature of each parent's participation in providing care for the child;

(7) the willingness and ability of each parent to provide ongoing care for the child; to meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time;

(8) the effect on the child's well-being and development of changes to home, school, and community;

(9) the effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child's life;

(10) the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent;

(11) except in cases in which domestic abuse . . . has occurred, the disposition of each parent to support the child’s relationship with the other parent and to encourage and permit frequent and continuing contact between the child and the other parent; and

(12) the willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the child.

Minn. Stat. § 518.17, subd. 1(a)(1)-(12). The district court must make detailed findings on each factor based on the evidence presented, and must “explain how each factor led to its conclusions and to the determination of custody and parenting time.” *Id.*, subd. 1(b)(1) (2020).

Where a party contests the district court’s weighing of factors or its ultimate decision regarding custody, we review the disputed conclusion for an abuse of discretion. *E.g.*, *Thornton v. Basquez*, 933 N.W.2d 781, 794 (Minn. 2019); *Goldman*, 748 N.W.2d at 282. We do not reweigh the best-interests factors. *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000) (holding that there is “scant if any room for an appellate court to question the [district] court’s balancing of best-interests considerations”).

Here, father challenges every factor, but focuses primarily on the first and third factors, which we address separately before turning to the remaining factors.

Children's Physical and Emotional Needs

For the first factor, the children's physical and emotional needs, father argues that the evaluator was morally and ethically required to tell the children's psychologist that she was performing a child custody evaluation when she interviewed the psychologist. In making this argument, father effectively challenges the credibility of the evaluator, who favored mother's requested parenting time schedule. But we defer to the credibility determination of the district court. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). And more to the point, the evaluator only makes a recommendation to the district court, they do not issue the ultimate decision. Father's request that this court reweigh all the factors due to the evaluator's alleged error is misplaced.

Father also contends that it was not in the best interests of the children for mother to inform them that the reason for the parties' separation was that father had an affair. But the district court agreed with the father on this point. The court stated it was not advisable for mother to have done so. Accordingly, this is not a question of a clearly erroneous factual finding. Father simply wants us to reweigh this and conclude that it is in the best interests of the children to have equal parenting time. This defies the abuse of discretion standard and our caselaw about restraint in reweighing the best-interests factors. *Vangsness*, 607 N.W.2d at 477. The district court did not abuse its discretion when weighing this first factor.

Reasonable Preference of the Children

For the third factor, the reasonable preference of the children, father alleges two factual errors. The first is that the evaluator did not effectively explain the possibilities for

parenting time to the younger daughter. In essence, he argues that the evaluator was required to ask each child if they wanted equal parenting time, compared to asking if they liked the current parenting plan. But father does not demonstrate that this question phrasing violates a statutory requirement, or otherwise constitutes error.

Father also argues that the district court erred when it described father's introduction of his significant other to his children as "shortly after" the separation, because he actually waited three months. But the record reflects that the district court knew the time was three months and discerned this period of time was "shortly after" the parents' separation. This factual determination falls within the district court's wide discretion.

Because father failed to demonstrate how these findings were clearly erroneous, the district court did not abuse its discretion when weighing this factor.

Remaining Factors

For factors four, five, six, and twelve, father argues that we should reweigh the factors to support an award in favor of equal parenting time.⁴ But we do not normally reweigh the best-interests factors and father does not demonstrate why we should do so here. *Id.*

Father contends that the seventh, eighth, and ninth factors are in error because the district court is using the same facts—particularly the presence of his significant other around the children, and his refusal to allow his oldest daughter to go to therapy—in

⁴ Father's challenges against factors two, ten, and eleven have no discernable legal or factual argument. *See Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (stating that the court of appeals declines to address allegations unsupported by legal analysis or citation). Therefore, we do not address these challenges.

assessing multiple factors. But father does not point to caselaw saying that the district court is not allowed to highlight the same facts it finds concerning or persuasive when analyzing more than one factor.

In sum, the district court's analysis of the best-interests factors is supported by the record, and father has failed to meet his burden of establishing error on appeal. The district court did not abuse its discretion in its careful determination of the parenting-time schedule.

III. The district court was not biased against father.

Next, father argues that the district court was biased against him based on how it ruled on who can style the daughters' hair before dance competitions and a statement by the judge concerning the judge's personal finances.

Appellate courts presume that district court judges have discharged their duties properly. *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008). Adverse rulings by a judge do not, by themselves, constitute judicial bias. *State v. Sailee*, 792 N.W.2d 90, 96 (Minn. App. 2010), *rev. denied* (Minn. Mar. 15, 2011). The bias must be proved in light of the record as a whole. *Hannon*, 752 N.W.2d at 522.

Daughters' Hair

Father contends that the district court erred and was biased against him when ruling that mother is allowed to style the daughters' hair during dance competitions, including weekends where father has custody.

Father appears to argue that the district court decided he could not style hair because of his gender. But the district court noted that father is not allowed in the women's locker room during competitions, which is where the girls prepare their hair before a competition.

As this is the dance company's policy, the determination by the district court that mother style the daughters' hair before competitions is neither erroneous nor demonstrates bias against father.⁵

Judge's Statement on Financial Interests

Next, father argues that the district court was biased because of a comment that suggested it had a financial interest in the dance company that his daughters regularly attend. The district court's statement in question was that "both of my daughters danced competitively for literally years at Northern Force Dance Company. I think that the second floor that they put on there, I personally paid for." Read in context, this appears to be a comment about how much money the judge spent on her daughters' dance activities. Father's suggestion that the judge actually has an investment in the second floor of the dance company strains reality. And father also does not explain or point to why, even if the judge was a part-owner of the dance company, she would side with mother over who does the daughters' hair before competitions.

Given the record as a whole, because father was unable to establish that the district court acted improperly, as well as failing to otherwise establish any prejudice or error, the district court was not biased against father.

⁵ Father also challenges the district court's failure to stop mother from interrupting him during questions about their daughters' hair as biased against him. Father did not demonstrate that this was an error, particularly in light of the number of interruptions he also committed during the proceeding.

IV. The district court did not evaluate the marital standard of living when considering spousal maintenance.

Next, father challenges the denial of temporary spousal maintenance.⁶ The district court may grant spousal maintenance if a party “is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances.” Minn. Stat. § 518.552, subd. 1(b) (2020).

Here, the district court concluded that father is not in need of spousal maintenance because he can meet his own necessary monthly living expenses. But the district court did not consider father’s expenses with the marital standard of living in mind. Minn. Stat. § 518.552, subd. 2(c) (2020);⁷ *see also Melius v. Melius*, 765 N.W.2d 411, 416 (Minn. App. 2009) (“In determining spousal maintenance, the district court *must* consider the standard of living established during the marriage.” (emphasis added)). And in his request for temporary spousal maintenance, father testified that as a married couple he and mother were able to purchase luxury vehicles, go on vacation, and enjoy fine dining and entertainment—a lifestyle he now is unable to afford.

Because the district court did not consider the marital standard of living as required by statute, we reverse in part and remand for further findings to review father’s request for

⁶ While the district court said that father failed to specify a request for permanent or temporary spousal maintenance, the record reflects that he requested 60 months of temporary maintenance.

⁷ While the district court noted this statute in the order, the subsequent findings do not reflect consideration of the marital standard of living.

temporary spousal maintenance with the marital standard of living in mind.⁸ The district court may reopen the record in its discretion.

In sum, we affirm on the issues of the calculation of father's income, the best-interests factors, and judicial bias, but remand on the narrow issue of temporary spousal maintenance.

Affirmed in part, reversed in part, and remanded.

⁸ Father further contends that because the children's daycare, Adventures Plus, no longer requires full-time enrollment to stay enrolled due to the pandemic, he should not have to pay as much as the children do not use Adventures Plus fulltime. Both father and mother agree that circumstances surrounding daycare has changed due to Adventures Plus reducing some restrictions following vaccinations and the governor's peacetime emergency being lifted. But these changes occurred after the district court made its factual findings and the changes father argues to this court are not reflected in the record presented to this court. *See* Minn. R. Civ. App. P. 110.01 (defining the record on appeal). We may not base our decision on matters that were not received into evidence by the district court and that are outside the record on appeal. *In re Welfare of J.P.-S.*, 880 N.W.2d 868, 874 (Minn. App. 2016). This matter may instead be considered in a motion to modify child support at the district court level or at the district court's discretion while this case is on remand. Minn. Stat. § 518A.39, subd. 2(a) (2020) (stating that a child-support order may be modified upon a showing of a substantial change in circumstances that makes the order "unreasonable and unfair").