

*This opinion is nonprecedential except as provided by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
A21-1216**

In re the Marriage of: Elizabeth Ann Jones Chidothe, petitioner,
Respondent,

vs.

Edward Chidothe,
Appellant.

**Filed August 15, 2022
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-FA-19-1748

Timothy D. Lees, Lees Family Law, Ltd., Edina, Minnesota (for respondent)

Edward Chidothe, St. Louis Park, Minnesota (pro se appellant)

Considered and decided by Frisch, Presiding Judge; Worke, Judge; and Reilly,
Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this family dispute, appellant-husband challenges the district court's decisions granting respondent-wife's motion to enforce various provisions of the stipulated judgment and decree dissolving the parties' marriage and ordering the appointment of a parenting consultant. We reject husband's argument that the district court should have, sua sponte, granted him more time to respond to wife's motion. We also conclude that husband has

forfeited any challenge to the district court's decision granting wife's motion and that, even if we consider his arguments, they fail on the merits. We therefore affirm.

FACTS

Appellant-husband Edward Chidothe and respondent-wife Elizabeth Chidothe married in October 2012 and had one child together, born in 2014. The parties divorced in June 2020 under a stipulated judgment and decree.

Under the stipulated judgment and decree, the parties were awarded joint legal and joint physical custody of the child. The stipulated judgment and decree ordered the appointment of a parenting consultant to help the parties resolve issues involving the child, and it ordered the parties to "select and retain" the parenting consultant within 30 days after entry of the judgment and decree. Additionally, the stipulated judgment and decree provided that, instead of child support, the parties would "share equally" in certain costs of raising the child (child-related expenses). The party paying a child-related expense was to provide written verification of the payment to the other party, who then was to provide reimbursement within ten days.

Ten months after entry of the judgment and decree, wife brought a motion before the district court, seeking various forms of relief, including enforcement of several terms of the stipulated judgment and decree. Among other relief, wife's motion requested that the district court (1) appoint an identified person to serve as the parties' parenting consultant; (2) order husband to pay wife \$2,765.91 for his one-half share of child-related expenses wife had paid between July 2020 and April 2021; (3) order husband to pay wife \$9,701.31 for her one-half share of a 2018 federal tax refund and to pay one-half of a 2016

California state income tax liability; and (4) order husband to pay wife \$80 in court fees and \$3,000 in attorney fees, which she incurred in bringing the present motion. Wife submitted an affidavit in support of her motion. In the affidavit, wife alleged that husband had refused to sign a stipulation agreeing to the appointment of a parenting consultant, husband had not reimbursed wife for child-related expenses she had paid, and husband had repeatedly failed to respond to wife's communications about the issues raised in her motion.

The district court held a hearing on wife's motion on May 27, 2021. Husband appeared pro se at the hearing. He did not file any responsive documents opposing wife's motion. On the day of the hearing, husband tried to email several documents to the district court. The district court stated at the hearing that it would not consider any of husband's submissions because he did not properly file or serve the documents in accordance with relevant procedural rules. Husband told the district court that he was traveling out of the country during some periods when wife had tried to communicate with him and that he did not receive the documents until he returned to the United States in April 2021. Husband also asserted that he had asked wife's attorney for more time to respond to wife's motion, but the attorney refused to agree to an extension, so he submitted the documents by email to the district court.

The district court granted all of wife's requested relief in a June 16, 2021 order. The district court issued another order on June 25, 2021, appointing the parenting consultant who the parties had agreed upon, in accordance with the parties' stipulated judgment and decree. Husband appeals from the district court's orders.

DECISION

I. The district court did not err by declining to grant husband a continuance.

We first consider husband's contention that he could not adequately respond to wife's motion. He appears to argue that the district court should have granted him a continuance to give him more time to submit evidence. The decision whether to grant a continuance of a hearing is generally within the district court's discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 296-97 (Minn. App. 2007).

Here, husband received both notice and an opportunity to be heard on wife's motion, which satisfies due-process requirements. *See id.* Notice of the motion was mailed to husband's home address in Minnesota more than one month before the motion hearing was held. Husband had the chance to submit responsive documents to the district court, but he failed to do so in a timely and procedurally proper manner. And husband appeared at the motion hearing and was permitted to make arguments before the district court. At the hearing, husband did not request that the district court grant a continuance, nor did he file a post-hearing motion seeking such relief. We therefore see no abuse of discretion in the district court's failure to grant a continuance that husband did not request.

We are not persuaded otherwise by husband's various assertions about why he could not adequately respond to wife's motion. In his appellant's brief, husband asserts that (1) he was outside the country when wife brought her motion; (2) he contracted COVID-19 while traveling; (3) the district court at first agreed to give husband an extension to respond to wife's motion but the district court later did not allow him more time; and (4) the district court's online submission site was not functioning and he could not submit

documents. To support some of these assertions, husband included in his appellate addendum several documents showing his travel arrangements between December 2020 and June 2021, as well as a few email exchanges. But none of these alleged facts or additional documents were part of the record before the district court.¹ “The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.” Minn. R. Civ. App. P. 110.01. We “may not consider matters outside the record on appeal.” *Stageberg v. Stageberg*, 695 N.W.2d 609, 613 (Minn. App. 2005), *rev. denied* (Minn. July 19, 2005). Because husband never submitted these documents or evidence of these other facts to the district court, they are not part of the record on appeal, and we do not consider them.²

¹ At the motion hearing, husband told the district court that he was traveling in March 2021 and that he “received the documentation when [he] got back from out of the country in April.” This fact is part of the record before the district court, and we may consider it. But this fact does not support husband’s assertion in his appellant’s brief that wife filed her motion while he was out of the country. The record shows that wife filed her motion on April 27, 2021, and the district court held a motion hearing one month later, in late May. Husband’s reference to receiving “documentation” at the motion hearing appears to refer to other communications that wife attempted with husband before she filed her motion.

² In her respondent’s brief, wife requested that this court strike the materials in husband’s submissions that are outside the record on appeal. A party requesting relief from this court generally must file a written motion. Minn. R. Civ. App. P. 127. Because wife did not file a motion, her request to strike portions of husband’s submissions is not properly before this court. In resolving this appeal, though, we have confined our review to the scope of the record on appeal as defined by Minn. R. Civ. App. P. 110.01.

We also note that many of husband’s submissions that are outside the appellate record are contradicted by the record on appeal, or they do not support his contention that he could not adequately respond to wife’s motion. For these reasons, even if we were to consider husband’s additional facts and documents, we would not reach a different result.

Husband also asks this court to grant relief under Minnesota Rules of Civil Procedure 59.01 and 60.01. Neither provision applies. Rule 59.01 allows a district court to grant a new trial for various reasons, including irregularity in the proceedings, or accident or surprise. Minn. R. Civ. P. 59.01(a), (c). Rule 60.01 allows the district court to correct clerical mistakes “arising from oversight or omission.” Minn. R. Civ. P. 60.01. Husband did not seek relief from the district court under either rule. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (noting that appellate courts generally address only those questions previously presented to and considered by the district court); *Crowley v. Meyer*, 897 N.W.2d 288, 293 (Minn. 2017) (applying *Thiele* in a family-law appeal). Moreover, relief under rule 60.01 is not appropriate because husband does not assert that the district court’s errors were merely clerical mistakes. As a result, husband is not entitled to relief under the rules of civil procedure.

II. The district court did not err by granting wife’s motion.

Husband challenges several aspects of the district court’s June 16 and June 25, 2021 orders. He generally asserts that “[t]he district court erred in determining appointment of parental consultant, child related expense fees, attorney fees, court fees[,] and tax obligations and benefits.” But husband’s brief develops no argument about how the district court erred in reaching any of these decisions.

This court does not address arguments that are inadequately briefed. *State, Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997); *see also Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal). “An assignment of error based on mere assertion and not supported by any

argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.” *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971); *see also Braith v. Fischer*, 632 N.W.2d 716, 725 (Minn. App. 2001) (applying *Schoepke* in a family-law appeal), *rev. denied* (Minn. Oct. 24, 2001); *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (“[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who relies upon it.”). Because husband’s brief contains no legal analysis or argument explaining how the district court erred in its decisions, we conclude that husband’s argument on these points is forfeited.

Even if we were to consider husband’s arguments on the merits, we would affirm the district court’s decision. Husband appears to challenge the aspects of the district court’s decisions relating to: (1) the appointment of a parenting consultant; (2) child-related expenses; (3) tax obligations and benefits; and (4) attorney fees. We address each in turn.

Appointment of parenting consultant. Under the stipulated judgment and decree, the parties agreed to select and retain a parenting consultant within 30 days of entry of the judgment and decree. According to wife’s affidavit accompanying her motion, the parties agreed on an individual to use as the parenting consultant in July 2020. But husband never signed the proposed stipulated order to appoint that person as the parenting consultant. In its June 2021 orders, the district court appointed the parenting consultant to which the parties had agreed, under the stipulated judgment and decree. The district court did not err

by enforcing the provisions of the stipulated judgment and decree and appointing a parenting consultant consistent with the parties' agreement.

Child-related expenses. Under the stipulated judgment and decree, the parties agreed to equally share certain child-related expenses, and one party was to reimburse the party who incurred the expenses. Wife's affidavit accompanying her motion enumerated various child-related expenses between July 2020 and April 2021 for which husband had not yet reimbursed her. Wife alleged that husband's share of these expenses totaled \$2,765.91. The district court ordered husband to reimburse wife that amount. We conclude that the district court did not err when it relied on wife's submissions and enforced the parties' stipulated judgment and decree about child-related expenses.

Tax obligation and refund. In August 2020, wife received a notice from the Internal Revenue Service that she was due a federal tax refund of \$19,402.62 for 2018. When wife did not receive the refund after several weeks, she learned that the refund check had been sent to the marital residence. Around the same time, wife received a notice from the State of California that an adjustment had been made to the parties' jointly filed taxes for 2016, and that husband and wife owed \$5,129.18 in California state income taxes. In its June 16, 2021 order, the district court ordered husband to pay wife \$9,701.31 for her one-half share of the 2018 federal tax refund and to pay his one-half share of the 2016 California state tax liability. The district court reasoned that, because the tax refund and tax liability related to years when the parties were married, it was "fair and equitable that both the refund and liability be shared equally" between the parties.

We see no error in the district court’s decision. Neither the 2018 tax refund nor the 2016 tax liability was included as an asset or debt to be divided in the stipulated judgment and decree. The stipulated judgment and decree provided that, if there were any assets that were not disclosed or divided, the district court retained jurisdiction over those assets “for the purpose of making an equitable division thereof.” And caselaw supports the district court’s decision to treat the tax obligation as a marital debt, and the tax refund as a marital asset, when neither was addressed in the stipulated judgment and decree. *See Marshall v. Marshall*, 350 N.W.2d 463, 466-67 (Minn. App. 1984) (remanding for the district court to order husband to pay wife half of tax refund attributable to income earned before the parties’ separation agreement). The district court’s decision to divide the tax obligation and the tax refund equally between the parties is permitted under the parties’ stipulated judgment and decree and follows our caselaw.

Attorney fees. Wife asked the district court to award conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1 (2020), for fees related to bringing her motion. That statute provides, “Nothing in this section . . . precludes the district court from awarding, in its discretion, additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding.”³ Minn. Stat. § 518.14, subd. 1. The district court reasoned that attorney fees were appropriate because husband “ignored

³ Neither party questions whether Minn. Stat. § 518.14, subd. 1, provides a substantive basis for awarding conduct-based attorney fees given the supreme court’s order in *Anderson v. Anderson*, No. A16-2006 (Minn. Aug. 6, 2018) (order). For purposes of this appeal, we assume without deciding that the statute provides a basis for the attorney-fees award. *See Madden v. Madden*, 923 N.W.2d 688, 702 (Minn. App. 2019) (taking same approach).

his obligations and requirements to attempt mediation, forcing [wife] to seek the [c]ourt's involvement to enforce the parties' agreement." We will not reverse the district court's award of conduct-based attorney fees unless there is an abuse of discretion. *Sanvik v. Sanvik*, 850 N.W.2d 732, 737 (Minn. App. 2014).

The record supports the district court's finding that husband unreasonably contributed to the length of the proceeding. Much of the relief that wife requested in her motion sought to enforce provisions of the stipulated judgment and decree that husband was not cooperating with wife to fulfill. The stipulated judgment and decree provided that the parties were to retain a parenting consultant within 30 days of entry of the judgment and decree. Despite the parties having agreed on a parenting consultant in July 2020—which was within the time contemplated by the stipulated judgment and decree—husband never signed the stipulated order appointing the parenting consultant. As a result, no parenting consultant was appointed before wife filed her motion nine months later, in April 2021. The record supports the district court's finding that wife's motion was necessary only because husband failed to communicate with her and resolve the issues outside of court. We discern no abuse of discretion in the district court's decision to order husband to pay wife's attorney fees incurred in bringing the motion.

For these reasons, we conclude that the district court did not abuse its discretion by granting wife's motion.

Affirmed.