

*This opinion is nonprecedential except as provided by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
A21-1313
A21-1320**

Wayne O'Connor,
Appellant (A21-1313),
Respondent (A21-1320),

vs.

Byron O'Connor,
Respondent (A21-1313),
Appellant (A21-1320).

**Filed June 13, 2022
Affirmed
Jesson, Judge**

Rice County District Court
File No. 66-CV-18-2742

Bryan R. Freeman, Peter C. Hennigan, Maslon LLP, Minneapolis, Minnesota (for appellant/cross-respondent)

Heidi J. Bassett, Katherine A. Herman, Hellmuth & Johnson, Edina Minnesota (for respondent/cross-appellant)

Considered and decided by Wheelock, Presiding Judge; Jesson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

After farming together as partners for forty years, brothers Wayne and Byron O'Connor tasked the district court with dissolving their partnership. On appeal, they

challenge the court's division of their partnership's property. Wayne¹ argues that the court did not award him enough money, while Byron contends that the court improperly confirmed a third-party neutral's award and abused its discretion by finding that he acted in bad faith. Because we conclude that the district court equitably divided the partnership's property, and the record supports the district court's bad-faith-conduct finding, we affirm.

FACTS

Taking over their father's land, Wayne, appellant and cross-respondent, and Byron, respondent and cross-appellant, began farming grain and raising hogs together in 1975. Generally, Wayne handled the grain farming while Byron oversaw the hogs, but at times they worked together. The brothers did not have a written agreement but operated as a general partnership called O'Connor Brothers, which acquired many parcels of land over the years. In 1991, Wayne and Byron's younger brother began to farm alongside them but did not join the partnership. And in 2012, Wayne and Byron formed two offshoot limited liability corporations (LLCs), one that sold seeds and another that sprayed seeds to increase yields.²

In 2017, the brothers' business relationship began to unravel. Their younger brother decided to separate his farming operation that year. And in 2018, Byron approached Wayne about dissolving the partnership. At this time, the partnership owned real estate worth approximately \$11,000,000 and equipment worth about \$1,500,000. Wayne and

¹ Because the brothers share a last name, we refer to them by first name.

² Before the formation of the LLCs, the partnership conducted the seed-selling business although the work was primarily Wayne's responsibility.

Byron attempted to divide the partnership's assets through mediation, but these efforts failed. Wayne then petitioned the district court for an order dividing the partnership's assets and liabilities.³

In November 2019, the matter proceeded to a court trial. But because the 2019 farming season was ongoing, the trial only addressed the partnership's assets and liabilities through the end of 2018. The district court appointed a senior judge as a third-party neutral to divide the remaining assets and liabilities incurred after the trial.

Trial Order

The task before the district court was to fairly divide the partnership property between the two brothers. To do so, the court had to satisfy the partnership's debt and then split the remaining assets. Finally, the court had to resolve the brothers' claims of entitlement to further compensation. We begin with the district court's undisputed division of property and then turn to its disposition of the brothers' various claims.

The district court started with the partnership's debt. The court found that the total amount owed by the partnership was approximately \$1,200,000. And the total value of the equipment owned by the partnership was \$1,489,650. Accordingly, the court ordered the brothers to sell the partnership's equipment by auction to satisfy the debt.⁴

After accounting for the partnership's debt, the district court turned to its real estate. The court divided the real estate into two parcels. Byron received land worth \$5,855,458,

³ While he did not join Wayne's petition, Byron requested an order from the district court declaring the extent of partnership property.

⁴ Both Wayne and Byron had the opportunity to purchase any of the equipment pre-auction, provided that they notified the other in writing five days before the purchase.

and Wayne received land worth \$5,135,386. As part of this division, because the brothers did not produce sufficient evidence concerning the value of their respective homesteads, the district court ruled that each homestead was a “wash” that did not further factor into its division of real property. And because the total land awarded to Byron possessed a higher value, the district court concluded that Wayne was entitled to \$360,036, half of the difference in value between the two parcels. After making additional adjustments uncontested here, the court awarded Wayne \$141,740.⁵

On appeal, the brothers do not directly challenge the approximately \$11 million award dividing the land and equipment. But each brother asserts that the other owes him more. At trial, Wayne claimed that Byron used \$819,764.64 more of partnership funds to pay for personal expenses than he did and claimed to be entitled to half of those “personal draws.” Wayne also argued that the district court should award him one half of the revenue earned from selling hogs that Byron had deposited into a personal account over the years. In response, Byron contended that Wayne had improperly classified payments to Byron’s children for partnership labor as personal draws attributable to Byron. To contextualize these remaining claims, we begin with some of the partnership’s general practices as explained in uncontested trial testimony and then consider the court’s resolution of the claims.

⁵ The further adjustments were based on the district court’s conclusion that Byron owed Wayne \$4,200 for appraisals of partnership property, \$19,950 for loan payments, and \$8,037.50 for expert-witness fees. And the court concluded that Wayne owed Byron \$6,250 for checks not deposited into the partnership account, \$95,057 for personal-vehicle purchases, and \$7,436 for other personal expenses.

Over the life of the partnership, the brothers funded their partnership and personal activities through a shared checking account and operating line of credit. Each could draw freely from the partnership account without consent from the other, although they conferred at the end of each year about their respective personal draws. Wayne handled the bookkeeping and produced records from 1999 through 2018.⁶

The partnership's bookkeeping was largely an after-the-fact process of compiling the profits and expenses at the end of each year. Each brother reported expenses, some personal and others related to partnership business, but they did not verify how the other classified each expense. From this information, Wayne compiled a profit-and-loss sheet each year detailing the partnership's finances. As part of that process, Wayne generated a balance sheet that tracked the brothers' personal draws from partnership funds for personal expenses. Wayne provided these records to Byron each year.

Once Wayne had prepared the profit-and-loss sheets and the balance sheet, he would give them to the partnership's accountant.⁷ The accountant testified that after he received the records from Wayne, they would discuss the preferred amount of income to be reported for the partnership for that year.⁸ After adjusting the partnership income to an agreed-upon level, the accountant would receive information from the brothers (who filed individual tax

⁶ The brothers did not have financial records predating 1999.

⁷ Two accountants testified, the partnership's main accountant and a forensic accountant retained by Byron.

⁸ According to the partnership accountant, the total income claimed could be adjusted by, for example, using deferred-grain contracts, which allowed the partnership to either "push" income into the next year or "pull" income back to the current year, depending on how much income was advantageous for the partnership to report.

returns, instead of a return for the partnership) concerning their personal expenses and income. Then he allocated most partnership profits and expenses between the brothers to keep them below certain income levels for tax advantages.

But the former partnership assets that were now owned by the LLCs were treated differently. The revenues and expenses for one of those businesses were reported on Wayne's return, but Wayne would assign Byron varying amounts of the profits each year. The accountant testified that the amount of profit assigned to Byron "varied to get the tax returns into the most beneficial position with the IRS." And the depreciation in value of a bulk seed system used for one of the LLCs—and the corresponding tax benefit—was allocated entirely to Wayne, although the accountant could not explain why.

With this accounting backdrop in mind, we return to the disputed claims. Although both brothers could draw from the partnership account at will, they were supposed to do so only for partnership expenses, and to repay any partnership funds that were used for personal expenses. Based on the financial records, Wayne argued that he was entitled to \$409,882, half of what he alleged that Byron drew from the partnership from 1999 to 2018 to pay for personal expenses. Byron disputed Wayne's calculation of his personal draws. Byron called a forensic accountant as an expert witness, who testified that Wayne's calculation of the personal draws needed to be adjusted. The forensic accountant identified personal expenses by Wayne that Wayne had characterized as partnership expenses, including personal vehicles, travel, meal expenses, and Wayne's use of partnership funds to build a new garage. Finally, the forensic accountant identified payments made by Byron

to his children for labor performed on behalf of the partnership that Wayne had classified as personal draws by Byron.

Separately, Wayne claimed that Byron had diverted \$185,224.71 in hog-sale revenue from 1992 to 2016.⁹ Byron asserted that he deposited those funds into his personal checking account to pay his children for labor performed on behalf of the partnership. Byron claimed that he paid his children a total of \$356,084 to compensate them for working for the partnership over the years. He asserted that \$134,418.42 of this sum came from the past hog checks and the remaining \$221,667.58 came from his personal funds.

The district court did not directly resolve the personal-draw, hog-check, and labor-compensation claims. The court explained that all of these claims implicated the accounting methods that the parties apparently agreed to use over the life of the partnership. In particular, the court found that Byron's children worked for the partnership, for which they deserved compensation, but determined that how the children were customarily paid was "totally unclear." Because the brothers "appeared to play fast and loose for tax purposes" with their accounting, the court declined to reach any claim that would require it to "go back and re-do the books." Accordingly, the district court declined to further adjust the amount owed to Wayne by Byron on the basis of the personal draws, hog checks, or Byron's children's labor expenses.

⁹ Wayne added this claim after filing his petition for dissolution because he discovered these check deposits in the course of discovery.

After the trial, both brothers moved for amended findings. They agreed that the district court's order contained certain factual errors. Because of various delays, the parties agreed to a June 2020 hearing on their respective post-trial motions.

The Senior Judge's Awards

While the post-trial motions pended, the court-appointed senior judge filed his first award in May 2020. The senior judge divided the 2019 grain between the brothers based upon ownership of the underlying real estate, and he adjusted the land award slightly because the trial order did not exclude 0.95 acres of land owned by the brothers' mother. Then, dividing the remaining assets and liabilities of the partnership, the senior judge awarded Wayne a total of \$274,856.05, an amount Wayne received in addition to the trial award.

The senior judge drafted a preliminary award and sent it to the brothers so he could consider any requests for changes. After receiving the preliminary award, Byron objected, claiming the senior judge had exceeded the scope of his authority. The senior judge concluded that Byron's objections were unfounded because he requested that the senior judge decide matters beyond the scope of the district court's order, and because Byron did not object to the procedure until after he received a copy of the preliminary award.

In July 2020, the senior judge issued a second award. This award principally concerned the auctioning of the partnership's equipment to satisfy its debt. Wayne purchased 32 pieces of partnership equipment before the auction. One of the items Wayne purchased included the entirety of the tools in a partnership shop, for which Wayne paid \$23,000. But Byron's son claimed that he owned many of the tools that Wayne bought

and removed those tools from the shop. Byron's son also claimed to own a \$4,000 Oliver 70 tractor that Wayne bought. The senior judge ordered that all items removed from the partnership shop, including the tractor, be returned. If the items were not returned, Byron would owe Wayne replacement costs.

Then, because the trial order treated the brothers' homesteads as a wash, Wayne requested that equipment for one of the LLCs—which was affixed to his homestead—be considered part of that wash. The senior judge granted the request and noted that any fixtures to Byron's property would be exempted from the auction as well. After receiving this award, Byron moved to remove the senior judge as the third-party neutral, contending that the senior judge was biased against him for failing to rule on his objections.

In January 2021, the senior judge issued a third award. He awarded Wayne replacement costs because the missing shop tools were never returned. The senior judge further found that Byron and the younger brother removed a John Deere tractor from the auction site before the auction. Because that tractor was also never returned, the senior judge found that Byron purchased the tractor for its appraised value. The senior judge awarded Wayne \$24,418.77 after resolving final debts between the brothers.

Post-Trial Motions

Both brothers sought to amend the trial order in various respects, and Byron brought another motion objecting to the senior judge's awards. The district court granted in part and denied in part the brothers' motions to amend the trial order.¹⁰ The court amended the

¹⁰ The judge who oversaw the trial had retired at this point, so a different judge decided the brother's post-trial motions.

order to correct mathematical errors and fully account for Wayne's son's interest in partnership property.¹¹ But apart from correcting computational errors, the district court denied the brothers' remaining motions. The court concluded that the trial order considered Wayne's personal-draw and hog-check claims and declined to award relief, a decision the court found "no persuasive evidence to question."

After receiving the senior judge's final award, Byron requested another hearing in district court on his objections to that award. Byron argued that the senior judge deprived him of due process by failing to hold a hearing and exceeded the scope of the authority given to him by the court. Wayne requested that the court enforce the senior judge's award, and he moved for attorney fees.

The district court confirmed the senior judge's awards and granted Wayne's motion for attorney fees. The court concluded that Wayne was entitled to fees because Byron took and destroyed property, was dishonest on multiple occasions, and disobeyed orders from the court and the senior judge. The court awarded Wayne \$74,463.50 in attorney fees.

In total, the district court divided just under \$11 million in real estate between the brothers. The court adjusted this award to account for the difference in value of the land awards and ordered the brothers to auction off their equipment worth about \$1.5 million to satisfy partnership debts. And the court further adjusted its award based on certain

¹¹ As part of this adjustment, the district court reduced Wayne's trial award from \$141,740 to \$81,552.29. Adding this adjusted award to both senior judge awards, Wayne received a total award of \$380,827.11.

expenses that the brothers demonstrated, but it declined to make other adjustments requested by the brothers that it found were unproven.

Wayne and Byron both appeal on separate issues. We consolidated the appeals into the present matter.

DECISION

The brothers contest different aspects of the district court's division of partnership property. Wayne argues that the district court erred by not awarding him relief for his personal-draw and hog-check claims. Byron challenges the court's confirmation of the senior judge's awards and its grant of attorney fees to Wayne. We begin with Wayne's claims.

I. The district court acted within its discretion by determining that Wayne did not meet his burden on his personal-draw claim.

The district court explained that it did not reach "certain claims" that involved the brothers' reporting methods because: "If the Partnership chose to report certain items in certain ways for tax purposes the Court is not in a position to re-do that for them." Wayne asserts that either the court forgot to award him relief on his personal-draw claim, or that if the court reached this claim, it erred as a matter of law by rejecting it.

Wayne argues that he is entitled to \$409,882, one half of the amount that he calculated that Byron withdrew from the partnership in excess of what he (Wayne) did. He is correct that as a general matter, partnership profits and expenses are to be shared evenly between partners. Minn. Stat. § 323A.0401(b) (2020). But Wayne's attempt to style this

issue as one of pure law fails because Byron’s alleged personal draws are part of the district court’s overall distribution of partnership property—not a separate claim.

An action for partnership dissolution is one for equitable relief. *Maus v. Galic*, 669 N.W.2d 38, 42 (Minn. App. 2003); *see* Minn. Stat. § 323A.0104(a) (2020) (recognizing that principles of equity supplement chapter governing partnerships). District courts sitting in equity wield broad discretion to fashion a remedy based on the unique facts of a particular case. *Gabler v. Fedoruk*, 756 N.W.2d 725, 730 (Minn. App. 2008) (quotation omitted). An equitable decision will not be overturned absent an abuse of that wide discretion. *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 23-24 (Minn. 2011).

Here, the district court implicitly found that Wayne had not met his burden on his personal-draw claim. As plaintiff, Wayne bore the burden of proving his claim by a preponderance of the evidence.¹² *Carpenter v. Nelson*, 101 N.W.2d 918, 921 (Minn. 1960). Wayne contends that he met this burden because he produced the profit-and-loss and balance sheets, on which the trial order relied in part. The district court *did* adjust the amount owed to Wayne on the basis of certain expenses contained in these records, such as the amount spent by Wayne on personal vehicles and personal-care expenses. But the court implicitly concluded that other claimed expenses, such as Wayne’s total personal-draw calculation, were unsupported.

Testimony from the two accountants underscores the difficulty of evaluating the records that Wayne relied upon to prove his personal-draw claim, and in doing so supports

¹² At oral argument, Wayne agreed that he bore the burden of proof for this claim.

the district court's equitable decision. For example, the partnership accountant explained that after adjusting the total partnership income to an agreed-upon level, he would assign income and expenses to each brother "and adjust some other figures and try to get it close to a 50/50." As part of this evening-up process, the partnership accountant testified that he and Wayne would assign Byron a certain percentage of profits from the seed-selling business each year, although the depreciation in value of its equipment was always reported on Wayne's return. In short, verifying Wayne's total personal-draw calculation would require the court to comb through each brother's returns for each of the nineteen years that Wayne produced accounting records.

And the forensic accountant disputed the accuracy of Wayne's calculation of the brothers' personal draws. He testified that there were "some adjustments that need to be made" to Wayne's records, including personal-vehicle expenses, personal-care-and-meal expenses, travel expenses, and finally the cost of building Wayne's garage. Wayne withdrew these sums from the partnership but did not record any of them as personal draws. The forensic accountant also identified payments made by Byron to his children that Wayne classified as personal draws by Byron. Finally, he testified that he "saw no economic basis" for Wayne's practice of assigning seed-sale profits to Byron "except for allocating tax liability."

In sum, the records that Wayne relied upon to prove his personal-draw claim do not satisfy his burden of proof. Wayne did not report many of his own personal expenses as personal draws, and some of what he reported as personal draws by Byron (e.g. at least some of the payments to Byron's children) were in fact partnership expenses. This

inconsistent reporting, coupled with the additional confusion caused by the strategic allocation of profits to both brothers for tax advantages, supports the district court's decision to decline to resolve claims that would require it to reach back through years of unclear records.

The district court appropriately exercised its discretion by so doing. This is particularly true given the equitable nature of the partnership dissolution process and the extent of the assets here. When the record is unclear—as it is with respect to the personal draws and tax allocation—the appropriate role for an appellate court is to determine whether the award was equitable under the circumstances. *Maras v. Stilinovich*, 268 N.W.2d 541, 544 (Minn. 1978). Here, the court divided the partnership land, awarded each brother over \$5,000,000 in real estate, and awarded Wayne half the difference in value between his land and Byron's. Because the records do not support Wayne's claim, and because the brothers apparently agreed to these reporting methods for more than a decade, the court's division of property is equitable.¹³

To persuade us otherwise, Wayne argues first that the district court found that his records were accurate and, it simply forgot to award him half of Byron's excessive draws. But the district court, in ruling on the post-trial motions, found that the trial order included Wayne's personal-draw claim when it stated that it was “not reaching certain claims.” We

¹³ Wayne also contends that the district court found his balance sheets reliable and therefore was required to award him for the amount shown by those records. But that the district court used the balance sheets does not mean that it found they were entirely accurate. In fact, the court adjusted entries from the balance sheets where it had sufficient evidence to do so and implicitly concluded that it lacked information to evaluate other entries.

review such a factual finding for clear error, and we will not set it aside unless we are left with a firm conviction that a mistake was made. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). We have no such conviction here.¹⁴ The district court did not abuse its discretion by declining to make such an award.

II. The district court acted within its discretion by declining to award Wayne compensation on his hog-check claim.

Next, Wayne contends that the district court was required to award him \$92,612, half of the hog-sale proceeds that Byron deposited into a personal account.¹⁵ Byron claimed that he used these funds to compensate his children for past labor performed for the partnership. Like the personal-draw issue, this claim also implicates the district court's exercise of its equitable powers to divide the partnership property. *Schoenborn v. Schoenborn*, 402 N.W.2d 212, 214-15 (Minn. App. 1987). Accordingly, we review this decision for an abuse of discretion. *Gabler*, 756 N.W.2d at 730.

¹⁴ Finally, Wayne asserts that not awarding him half of Byron's excess personal draws would be inequitable because in effect he is being forced to finance Byron's personal expenditures. But, according to the testimony of the forensic accountant, Wayne misclassified numerous personal expenses by himself as partnership expenses and partnership expenses by Byron as personal expenses. And Wayne bore the burden of proving that he should be awarded half of specific expenditures by Byron. For some expenses, such as the appraisal fees, loan payments, and expert-witness fees, Wayne made this showing, and the court accordingly adjusted its award. But the records provided by Wayne do not support his claim that the district court abused its discretion by not awarding him an additional \$409,882.

¹⁵ Wayne also argues that because he made this showing, the burden shifted to Byron to justify not depositing the checks in the partnership account. But he did not make this burden-shifting argument before the district court, and we do not reach it. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Here, the district court, in refusing to award Wayne this relief, explained that it viewed this issue as intertwined with Byron's claim that Wayne had misclassified payments to Byron's children over the years. The court concluded that both claims arose from "hard feelings" caused by the dissolution and reasoned that:

The evidence clearly showed that Byron's children did a lot of work on the hog side for Byron. Certainly they were entitled to get paid. What is totally unclear is how they were paid over the years. This also is an area where the Partners apparently, and without objection, had a method of paying Byron's children based on what tax law permitted without any identification. There has been no testimony explaining those details to this Court. Therefore this Court will not make an award of sums due at this time. The Partners chose, years ago, to handle these expenses in this fashion. This Court has no facts before it to rule otherwise today. The Partners are left with the way they chose to do business years ago.

(Emphasis added.) Because both brothers' claims involved years of going back through records complicated by their agreed-upon reporting methods, the court implicitly concluded that neither Wayne's hog-check claim nor Byron's claim that Wayne had improperly classified payments to Byron's children as personal draws were supported by the record.

The district court acted within its discretion by so concluding. Like Wayne's personal-draws argument, both claims here would require the court to sift back through years of unclear financial records. Although the hog checks were partnership proceeds, the court found that Byron's children were entitled to compensation for the labor they performed. Based on the evidence before it, the court did not abuse its discretion by

concluding that neither Wayne nor Byron met their respective burdens of proof concerning the hog checks and payments to Byron's children.¹⁶

III. The district court acted within its discretion by confirming the senior judge's awards.

Byron contends that the district court should not have confirmed the senior judge's award concerning replacement costs for the equipment that went missing from the partnership shop, the John Deere tractor, and the farming equipment attached to Wayne's home. We review the findings of fact confirmed by the court for clear error.¹⁷ *Rasmussen*, 832 N.W.2d at 797. When reviewing a bench trial, we view the record in the light most favorable to the judgment. *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). And we review the district court's confirmation of the senior judge's award—as part of its property division—for an abuse of discretion. *Schoenborn*, 402 N.W.2d at 214-15. With this in mind, we consider Byron's claims.

¹⁶ Once more, Wayne argues that he is entitled to one half of the hog checks as a matter of law. But just like Wayne's personal-draws claim, the court's decision to decline to reach this issue is an aspect of its equitable division of partnership property. *Schoenborn*, 402 N.W.2d at 214-15.

¹⁷ Byron contends that we can review de novo all of the district court's conclusions that are based on the senior judge's findings because those findings are based on documentary evidence instead of testimony. Yet the case that Byron cites to support this proposition, *N. States Power Co. v. Williams*, 343 N.W.2d 627, 630 (Minn. 1984), relies on an outdated version of Minnesota Rule of Civil Procedure 52.01. *City of Lake Elmo v. City of Oakdale*, 468 N.W.2d 575, 578 (Minn. App. 1991). Rule 52.01 has since been amended to state that: "Findings of fact, *whether based on oral or documentary evidence*, shall not be set aside unless clearly erroneous." Minn. R. Civ. P. 52.01 (emphasis added).

Replacement Costs

Byron claims that the district court erred by awarding Wayne \$81,554 in replacement costs for the items that went missing from the partnership shop. Wayne paid a total of \$27,000 for property that he never received. Accordingly, the senior judge ordered Byron to return the missing equipment or pay its value. Because the property was never returned, the senior judge awarded Wayne replacement costs. The record supports the amount of the award because Wayne incurred both replacement costs and attorney fees in connection with the missing property. The senior judge reasoned that \$40,777 would compensate Wayne for those costs and the missing equipment. And because this sum would come from partnership money—half of which already belonged to Wayne—the senior judge awarded Wayne \$81,554. Viewing the record in the light most favorable to the judgment, the senior judge did not clearly err by awarding Wayne replacement costs for the missing equipment.

Byron's due-process objections to the contrary are not persuasive. The district court empowered the senior judge to "decide any disputes between the parties relating to the Partnership's 2019 activities and issue an award" accordingly. And the senior judge was given "the discretion to conduct a one- to two-day hearing," if he concluded one was necessary. He determined that it was not. Byron has not shown that the senior judge abused his discretion by relying on the inventory list prepared by the auctioneer and a photograph of the tractor in Byron's son's possession.¹⁸

¹⁸ Byron further argues that the district court did not consider his objections, but the court considered and rejected his objections in the second post-trial order.

Tractor

Next, Byron argues that the record does not support the senior judge's finding that he took the John Deere tractor. Wayne's counsel raised the issue of a John Deere tractor, valued at \$425, to the senior judge after the auctioneer alerted him that Byron and the younger brother had come to the auction site and removed the tractor. Byron did not deny doing so. But he contends that because the information came to the senior judge through a hearsay statement, the award must be reversed.

Hearsay is an out-of-court statement being offered in evidence to prove the truth of the matter asserted. Minn. R. Evid. 801. Hearsay is generally inadmissible. Minn. R. Evid. 802. But statements by counsel are not evidence. *State v. Matthews*, 779 N.W.2d 543, 552 (Minn. 2010). And even if the statement from Wayne's counsel was erroneously considered by the senior judge, the error is harmless unless Byron can demonstrate that he was prejudiced by its use. *Moore v. State*, 945 N.W.2d 421, 437 (Minn. App. 2020). To prove prejudice, Byron must show that not considering the statement might reasonably have changed the outcome of the proceeding. *Olson ex. Rel. A.C.O. v. Olson*, 892 N.W.2d 837, 842 (Minn. App. 2017). Because the senior judge could draw inferences from his experiences with the parties concerning the missing tractor—including that Byron never denied taking it—and in light of the overall nearly \$11 million distribution split almost evenly between the brothers, Byron has not shown prejudice. See *Pearce v. Village of Edina*, 118 N.W.2d 659, 670 (Minn. 1962) (allowing courts to draw inferences from the evidence submitted). Harmless errors must be disregarded. Minn. R. Civ. P. 61.

Equipment

Byron asserts that the district court erred by exempting the equipment that was attached to Wayne's homestead from the auction. The district court reasoned that the senior judge—having been appointed to resolve issues arising from the implementation of the dissolution order—had the authority to exempt the equipment. At this point, the district court had already ordered that the parties' homesteads were to be treated as a wash. Accordingly, the court concluded that it was reasonable to conclude that property affixed to a homestead should not be subject to auction.

As noted above, the division of partnership property is an equitable decision. *Maus*, 669 N.W.2d at 42. And a district court sitting in equity has wide discretion to fashion a remedy based on the unique facts of a particular case. *Gabler*, 756 N.W.2d at 730. Here, Byron has not shown that the court abused its discretion by treating the equipment attached to Wayne's property like the rest of Wayne's homestead.¹⁹

IV. The district court acted within its discretion by granting Wayne attorney fees.

Byron argues that the district court abused its discretion by awarding Wayne attorney fees because the record does not support the court's conclusion that Byron acted in bad faith. Byron did not challenge the reasonableness of the fees awarded before the district court. A district court should consider all relevant circumstances when determining

¹⁹ Byron further argues that even if the equipment was not subject to auction, he should have received half of its value because the district court found that it was partnership property. But he did not make this argument before the district court. We will not consider arguments raised for the first time on appeal. *Thiele*, 425 N.W.2d at 582.

an award of attorney fees. *Green v. BMW of N. Am., LLC*, 826 N.W.2d 530, 537 (Minn. 2013).

The district court concluded that Wayne was entitled to attorney fees because Byron “engaged in bad faith, vexatious, and wanton conduct, and also disobeyed and disregarded orders.” Some of Byron’s conduct found by the court to justify attorney fees included his destruction and taking of property, being dishonest, disobeying court orders, and driving up Wayne’s attorney fees. The record supports these findings. Byron took approximately \$20,000 worth of grain that did not belong to him and destroyed a padlock Wayne put in place to prevent additional theft.²⁰ He testified falsely concerning a purported right of first refusal.²¹ Byron also took grain in defiance of one order and refused to return Wayne’s property in spite of another. And Byron caused Wayne to incur unnecessary fees with respect to a loan he refused to pay, interfering with Wayne’s attempt to buy partnership equipment before the auction, and his care of the partnership hogs.²² Further, Wayne’s

²⁰ Byron splits hairs by suggesting that he did not take Wayne’s property because the district court found that his behavior with the respect to the grain was “wrong,” not that he “stole” it. The record supports this finding of bad faith regardless of the specific word used by the court.

²¹ At a deposition before trial, Byron testified that he and the younger brother signed a right of first refusal to partnership property in 2017. Wayne paid an expert to analyze the document, and the expert concluded that it was created in 2019 based on analysis of the ink and paper. At trial, Byron testified that he was mistaken at the deposition, and that he and the younger brother had created the document in 2017 but did not sign it until 2019. But he never produced the original document allegedly created in 2017.

²² Byron argues that the record does not support this finding because a veterinarian opined that the hogs were adequately cared for, and it is normal for some piglets to die during farrowing. But Wayne’s son found decomposing piglets in the barn, and Wayne incurred fees attempting to remedy the situation. Because Wayne’s concern was reasonable, the record supports the court’s finding of bad-faith conduct with respect to Byron’s care of the hogs.

counsel provided detailed billing statements related to the district court's findings of bad faith. *See Farrar v. Farrar*, 383 N.W.2d 436, 441 (Minn. App. 1986) (upholding fees proved by statements), *rev. denied* (Minn. May 22, 1986). Accordingly, the district court did not abuse its discretion by granting Wayne attorney fees.²³

In sum, the district court acted within its discretion in dissolving the brothers' partnership. The court divided the existing assets and liabilities of the partnership as evenly as possible under the circumstances and declined to reach claims that would require it to reach back through years of unclear records. The record supports both the senior judge's awards and the district court's finding that Byron acted in bad faith.

Affirmed.

²³ Finally, Byron argues that the district court should have held a hearing on the issue of attorney fees and that the amount awarded is excessive. But because he did not raise either issue before the district court, we do not consider them. *Thiele*, 425 N.W.2d at 582.