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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1519**

In re the Marriage of: Antoine Versabeau, petitioner,
Appellant,

vs.

Hana Zewde Mekonnen,
Respondent.

**Filed March 27, 2023
Affirmed in part, reversed in part, and remanded; motions granted
Connolly, Judge**

Hennepin County District Court
File No. 27-FA-19-7512

Valerie Arnold, Micaela Wattenbarger, Michael Cain, Arnold & Rodman, P.A.,
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Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

In this post-dissolution appeal, appellant-father challenges the custody and parenting-time schedule for the parties' child, the property division, the spousal maintenance award, the child-support award, the denial of his motion for a new trial or amended findings, and the district court's failures to resolve some tax issues and to make

findings favorable to appellant in some areas. Respondent-mother has filed motions to strike items in appellant's appendix and for need-based attorney fees on appeal. Because we see no abuse of discretion in the custody and parenting-time arrangements, in the child-support award, in the decisions on tax matters, or in the denial of appellant's motion for a new trial or amended findings, we affirm them; because we see a need for further findings as to property division and spousal maintenance, we reverse those decisions and remand them; because the items in appellant's appendix were not part of the record before the district court, we grant respondent's motion to strike them; and because, in light of these determinations, we consider that respondent is entitled to partial attorney fees on appeal, we award them.

FACTS

Appellant Antoine Versabeau, from France, and respondent Hana Mekonnen, from Ethiopia, were married in 2018 and separated in 2019. They are the parents of a daughter, L., born in August 2015. Prior to the dissolution, each party requested sole legal and sole physical custody of L.; appellant wanted a few hours of weekly supervised parenting time for respondent, and she wanted alternate weekends for him. Each party petitioned for an order for protection against the other; both motions were dismissed.

In October 2020, D.R. of Family Court Services did a court-ordered custody and parenting-time evaluation. Her report recommended sole legal and sole physical custody with respondent and parenting time of alternate weekends and Friday nights for appellant. The district court said it "agree[d] with [D.R.] that the parties will never be able to share joint legal or joint physical custody" and found that they "will not be able to work

cooperatively in a way that is in the best interest of [L.].” Neither party has disputed this view.

In May 2021, the dissolution judgment awarded sole legal and sole physical custody of L. to respondent, set appellant’s parenting at alternate weekends and alternate Wednesday nights, and awarded respondent spousal maintenance of \$3,000 monthly for 36 months, monthly basic child support of \$1,206, and monthly child-care support of \$823.

Appellant’s motion for a new trial or amended findings was denied. He challenges the custody and parenting time determination, the property division, the spousal maintenance award, the child support award, the failure to allocate the tax exemption, and the denial of his motion; respondent moves to strike items from appellant’s appendix and seeks need-based attorney fees on appeal.

DECISION

1. Custody and Parenting Time

A district court has broad discretion in making custody determinations. *In re Welfare of C.F.N.*, 923 N.W.2d 325, 334 (Minn. App. 2018), *rev. denied* (Minn. Mar. 19, 2019). A district court also has broad discretion in deciding parenting-time questions. *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017).

The district court established custody based on the 12 best-interest factors of Minn. Stat. § 518.17, subd. 1 (2022). The law “leaves scant if any room for an appellate court to question the [district] court’s balancing of best-interests considerations.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000). In applying these factors, “[t]he court shall not consider conduct of a party that does not affect the party’s relationship with

the child,” Minn. Stat. § 518.17, subd. 1(b)(4), and the fact “[t]hat the record might support findings other than those made by the [district] court does not show that the [district] court’s findings are defective.” *Vangsness*, 607 N.W.2d. at 474.

To challenge the [district] court’s findings of fact [on the best-interest factors] successfully, the party challenging the findings must show that despite viewing that evidence in the light most favorable to the [district] court’s findings (and accounting for an appellate court’s deference to a trial court’s credibility determinations and its inability to resolve conflicts in the evidence), the record still requires the definite and firm conviction that a mistake was made. Only if these conditions are met, that is, only if the findings are clearly erroneous, does it become relevant that the record might support findings other than those that the trial court made.

Id. (quotation omitted).

The district court found that eight of the twelve best interest factors favored respondent and four were neutral. Appellant does not challenge the neutral findings on factors three: the child’s reasonable preference, Minn. Stat. § 518.17, subd. 1(a)(3); six: the history and nature of each parent’s participation in providing care for the child, Minn. Stat. § 518.17, subd. 1(a)(6); and eleven: the inclination of each parent to support the child’s relationship with the other parent and to encourage and permit the child’s contact with the other parent, Minn. Stat. § 518.17, subd. 1(a)(11).

As to the first factor, “the child’s physical, emotional, cultural, spiritual, and other needs and the effect of the proposed arrangements on the child’s needs and development,” Minn. Stat. § 518.17, subd. 1(a)(1), the district court found that respondent had been the primary caregiver of L. since her birth and that respondent’s proposed parenting-time schedule of alternate weekends and Wednesday nights with appellant “better reflects [L.’s]

needs and development.” At trial, appellant proposed a 50/50 parenting time plan, and he argues that the district court abused its discretion in not adopting his plan. But appellant does not show that the district court’s findings were clearly erroneous, and, absent such a showing, the fact that appellant’s plan might have had some advantages is irrelevant. *See Vangsness*, 607 N.W.2d. at 474. The district court found that this factor favors respondent.

As to the second factor, any special medical, mental health, or educational need the child may have, Minn. Stat. § 518.17, subd. 1(a)(2), the district court noted that, although it had previously ordered that L. remain in her Montessori preschool for another year before starting Kindergarten in 2021, appellant decided she should start Kindergarten in 2020 and attempted to disregard the court’s order, scheduling pre-Kindergarten appointments for L. He did not notify respondent of the appointments. While the parties agreed that L. should have therapy, appellant independently chose a clinic and a therapist, then refused to continue with that therapist or to follow his recommendations, which delayed L.’s therapy; appellant objected to the delay. Appellant also objected to respondent’s use of a vegan diet on the ground that it was unhealthy for L., whose pediatrician saw no problems with the diet or L.’s health. The district court found that this factor favored respondent.

Appellant argues that respondent’s acts were similar or analogous to his own acts when she made a decision about schooling without consulting him and lied about L. having COVID-19 in an attempt to thwart L.’s travel to France with appellant. Again, absent a showing that the district court’s finding on this factor was clear error, the district court’s failure to make certain findings about respondent is irrelevant.

The district court found that the fourth factor, whether domestic abuse had occurred with either parent, Minn. Stat. § 518.17, subd. 1(a)(4), was neutral because “[b]oth parties claimed domestic abuse by the other during the course of their relationship. Petitions for both parties were dismissed after hearing.” Appellant objects that the district court erred by relying on D.R.’s report and recommendations “without independent findings regarding the allegations of domestic abuse.” But appellant does not deny the accuracy of the district court’s finding, and other findings the district court might have made are irrelevant. *See Vangsness*, 607 N.W.2d. at 474.

As to the fifth factor, “any physical, mental, or chemical health issue of a parent that affects a child’s safety or developmental needs,” Minn. Stat. § 518.17, subd. 1(a)(5), the district court found that it favored respondent because, although each party has “exaggerated the mental health issues of the other,” D.R. reported that appellant “has gone out of his way to represent [respondent] as mentally unstable without offering specific examples or objective data to support his claims.”

Appellant argues that the district court erred in relying on D.R.’s report and failed to consider “[e]vidence supporting respondent’s chronic untruthfulness.” But this court is to view the evidence “in the light most favorable to the district court’s findings,” not to “resolve conflicts in the evidence.” *Vangsness*, 607 N.W.2d at 474. The district court had no obligation to mention all the evidence that did not support its findings. Viewed in the light most favorable to the finding, D.R.’s evidence provides adequate support.

The seventh factor is each party’s willingness and ability to provide the child’s ongoing care, meet the child’s developmental, emotional, spiritual, and cultural needs, and

maintain consistency and follow through with parenting time. Minn. Stat. § 518.17, subd. 1(a)(7). The district court found the factor favored respondent because appellant had expressed concern about “danger” that L. is in, causing him to make numerous calls to the police, and he has researched mental health issues and parental alienation in an effort to prove respondent is not capable of caring for L. Also, D.R. observed that appellant has “an intrusive parenting style and tends to [overestimate] and underestimate [L.’s] developmental needs, including her readiness for Kindergarten, her supposed eating disorder, and his perception that [L.] is too distressed to leave him at the end of his parenting time.” The district court considered D.R.’s observations to be “supported by the evidence, well-founded, and in [L.]’s best interests.”

Appellant also cancelled D.R.’s parent-child observation of him and L. He argues that the district court failed to consider evidence that respondent had coached L. on how to behave at the observation, namely not playing with appellant because he would be on his phone, and that this was why he cancelled the observation. While this may be true, appellant does not refute the other evidence of his behavior relied on by the district court, and that evidence amply supports the finding that the factor favors respondent.

Factor eight, the effect on the child’s well-being and development of changes to home, school, and community, Minn. Stat. § 518.17, subd. 1(a)(8), was also found to favor respondent, because appellant “continued to advocate for [L.] to begin Kindergarten in 2020, despite this Court’s order that she would begin Kindergarten in the fall of 2021.” The district court observed that appellant’s “unreasonable pursuit of his positions demonstrates an inability to compromise or consider the impact of his choices on [L.]” and

that “the difficulties surrounding the parenting attempts have created significant and unnecessary stress for [L.]”

Appellant argues that the district court erred in saying it had ordered that L. would enter Kindergarten in 2021 because the order in question concerned the location of the school, not the grade L. would enter. But the order does address whether L. should begin Kindergarten:

The court believes it is in [L.]’s best interest to wait a year to begin Kindergarten. She has not been qualified by [the school district] to start school early. More importantly, this has been a difficult year for [L.], largely due to the conflict emanating from her parents’ highly-contentious divorce. . . . [T]he court . . . feels that the risk of moving her up too quickly is greater than the risk of holding her back.

Contrary to appellant’s contention, the district court did not err in saying it had ordered that L. not enter Kindergarten until 2021 or in finding that the factor favored respondent, who shared the court’s view that L. should wait a year to start Kindergarten.

The district court also found the ninth factor, “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,” Minn. Stat. § 518.17, subd. 1(a)(9), to favor respondent. It based this finding on D.R.’s observation that appellant did not recognize “the potential impact of suddenly, and without warning, [L.] losing everything familiar to her, including her relationship with [respondent].” Although the district court found appellant’s proposed 50/50 parenting time arrangement “more realistic” than his initial proposal, the district court still “remain[ed] concerned about [appellant’s] commitment to allowing [L.] to spend time with [respondent’s] extended family.”

Appellant argues that the schedule adopted will make it difficult for [L.] to spend time with his extended family, which is in France. Again, this may be true, but it does not make the finding that the factor favors respondent clearly erroneous.

Factor ten is “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.” Minn. Stat. § 518.17, subd. 1(a)(10). The district court found it favored respondent because limiting L.’s time with respondent by reducing it from its present level could suggest to L. that respondent is not capable of caring for her and “supports [appellant’s] false narrative that he is the superior parent and that [respondent] cannot be trusted.” But the district court also noted that, if appellant could focus on managing his own anxiety and building his parenting skills rather than on perceived deficits in respondent, L.’s “global needs and the benefits of two parents actively involved in her world will prevail.” Appellant opposes this by citing the benefits he perceives in his 50/50 proposal, but again, he does not show that the district court’s finding is clearly erroneous.

The twelfth factor is “the willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize [the child’s exposure] 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)(12). The district court’s finding that it favored respondent is supported by incidents in which appellant claimed that respondent was mentally ill, endangered L., was incapable of parenting, and required supervision; an incident in which appellant was over an hour late in returning L., who was screaming and very distressed; an incident in which, despite a court order to the

contrary, appellant contacted respondent's employer, a daycare provider, to object to L. receiving daycare at respondent's workplace; incidents in which appellant sent respondent texts implying that she was mentally unstable, and incidents in which he kept L. from respondent, including one incident in which he returned L. only in response to a court order. Again, appellant challenges this finding by claiming that the district court omitted "material facts" that show his support of L.'s relationship with respondent, but there is no showing of clear error.

The primary consideration in a custody determination is the best interests of the child. *Pikula v. Pikula*, 374 N.W.2d 705, 711 (Minn. 1985). While some of the facts in the record were not included in the district court's findings, none of those findings, especially when the evidence is viewed in the most favorable light, is clearly erroneous, and therefore other possible findings are irrelevant. *See id.* There is no basis to overturn the district court's determination that eight of the twelve best-interest factors favored respondent. Based on the finding that the parties will never be able to cooperate in a joint custody relationship, the district court concluded that sole legal and sole physical custody with respondent was in L.'s best interests.

2. Marital Property Division

District courts have broad discretion over the division of marital property. . . ." *Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005). "This court will affirm the district court's division if it has an acceptable basis in fact and principle even though this court might have taken a different approach." *Passolt v. Passolt*, 804 N.W.2d 18, 25 (Minn. App. 2011), (quotation omitted), *rev. denied* (Minn. Nov. 15, 2011).

Appellant objects to the omission of two specific items from the district court's calculations. The first was a diamond ring. The district court found that, (1) in 2017, appellant gave respondent a ring worth \$12,000, which became her nonmarital asset; (2) in 2019, appellant exchanged that ring for one worth \$19,000, of which \$7,000 became marital property, and (3) appellant's testimony about the location of the \$19,000 ring was more credible, so he was awarded the \$7,000. Appellant objects to the district court's having made "no offset" for the ring in the division of assets, not mentioning it in the Conclusions of Law, and "fail[ing] to make any calculation regarding the value of the debts and assets it was awarding to each party." Respondent argues that the district court properly apportioned the value of the diamond ring and notes that each party testified that the other was in possession of it.

The second item was \$45,117 in cash withdrawn by respondent from her savings account in June 2018. Appellant argues that this should be presumed to be a marital asset, absent proof to the contrary. At trial, each party testified that the other had these funds. Respondent argues that testimony showed this was her nonmarital asset and that there is no evidence that it still exists, so the district court did not err by omitting it.

The district court did not include any valuation of the various items awarded to each party. Respondent claims that she was awarded \$4,940.96 from the sale of the house and debts of \$2,162 for a total property award of \$2,778.96, and that, if the marital value of the diamond ring, which she evidently assumes to be \$11,000, was awarded to her, her total award was \$13,778.96. Respondent also claims appellant had a property award of \$69,319.45, which was reduced by \$7,000 for the diamond ring, by \$4,548.48 credit for

improvements on the house, and by \$26,099 in debts, leaving him with an award of \$31,671.97. In his reply brief, appellant argues that respondent used incorrect values, an example being her statement that his IRA was \$5,675 when it was actually \$318.82 on the valuation date. Appellant objects again in his reply brief to the district court's failure to "make specific findings to value the parties' assets and liabilities, rendering an analysis of the extent of the inequity of the property division or the basis for it impossible."

Given the absence of findings of fact as to the specific values of the property items awarded to each party, we cannot properly review the property division. We therefore remand it for further findings and for the district court to re-evaluate its property division in light of whatever findings it may make on remand.

3. Spousal Maintenance

A district court has broad discretion in determining the level and duration of spousal maintenance. *Taylor v. Taylor*, 329 N.W.2d 795, 797 (Minn. 1983). An award of temporary spousal maintenance is appropriate where the spouse has made the requisite showing of need and a temporary award will facilitate the attainment of self-sufficiency. *Dobrin v. Dobrin*, 569 N.W.2d 199, 203 (Minn. 1997). "Implicit in Minn. Stat. § 518.552 is that the spouse seeking maintenance demonstrate the need therefore" *Id.* at 202.

The district court found that appellant's gross monthly income was \$14,564 from his full-time job while respondent's gross monthly income was \$1,893 from her part-time, \$21.03-per-hour job as a special education paraprofessional. The district court also found that respondent was not voluntarily underemployed, would need education and certification to make her self-sufficient, and sought spousal maintenance for three years to "complete a

certificate class . . . and improve her job prospects.” The district court ordered that respondent receive temporary spousal maintenance of \$3,000 monthly for 36 months to enable her to do this.

Appellant’s primary challenge to the spousal-maintenance award is that the district court made insufficient findings under Minn. Stat. § 518.552, subd. 2 (2022), which requires consideration of: (1) the financial resources of the party seeking maintenance, including marital property apportioned to that party, and the party’s ability to meet needs independently; (2) the time needed to acquire training or education sufficient to find appropriate employment; (3) the standard of living established during the marriage; (4) the duration of the marriage, and the length of absence of employment, if any; (5) the loss of earnings, seniority, or retirement benefits foregone by the spouse seeking maintenance; (6) the age and physical and emotional condition of the spouse seeking maintenance; (7) the ability of the spouse providing maintenance to meet that spouse’s needs while providing maintenance; and (8) the contribution of each party in the acquisition, preservation, depreciation, or appreciation on the amount or value of the marital property, and the contribution of the spouse as a homemaker or in furtherance of the other’s employment or business. “Even where the record supports the [spousal maintenance] decision, the failure to make specific findings compels a remand.” *Stevens v. Stevens*, 501 N.W.2d 634, 637 (Minn. App. 1993).

Here, except for the findings as to the parties’ gross monthly incomes, there is almost no financial information about either party’s situation that would enable review of a spousal maintenance award. The award of spousal maintenance is reversed and remanded

for further specific financial findings; the district court has discretion as to whether to reopen the record.

4. Child Support

The district court has broad discretion to provide for the support of the parties' child. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

Appellant raises two objections to the child-support award. First, he argues that the district court erred in calculating his income because it did not consider \$14,564 as his gross monthly income. But the child support guidelines worksheet shows that the district court did use the correct figure.

Second, appellant argues that the district court failed to adjust child support to account for his overpayment and respondent's underpayment of the childcare provider for three months, November-December 2020 and January 2021. Respondent argues that appellant "did not identify [this dispute] as a trial issue nor did he seek any amendment or correction of the January 26, 2021, order modifying child support after it was issued." Appellant does not refute this in his reply brief. Absent any indication that this issue was before the district court at trial, there was no error in not addressing it.

5. 2020 Tax Filings and Allocation of Dependency Exemption

In his proposed Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree, appellant included decisions as to the parties 2020 tax filings and the allocation of L.'s tax exemption. He argues that "[t]he district court committed clear error by failing to address" these items. But Minn. Stat. § 518A.38, subd. 7 (2022), provides that a district court "may allocate income tax dependency exemptions for a child," and Minn.

Stat. § 645.44, subd. 15 (2022), provides that “[m]ay’ is permissive.” Moreover, whether to consider the tax consequences of a property distribution lies within the district court’s discretion. *Maurer v. Maurer*, 623 N.W.2d 604, 607 (Minn. 2001). Therefore, the district court had no obligation to address the 2020 tax consequences or to allocate the exemption, and there is no error in its failure to do so.

6. Denial of Motion for a New Trial or for Amended Findings

Finally, appellant argues that the district court clearly erred in making findings not supported by the record and abused its discretion in denying appellant’s motion for a new trial or for amended findings. The district court said in its order denying the motion:

7. The majority of [appellant’s] proposed amended findings and conclusions are based on his argument that the court omitted certain material facts, or that its conclusions were not supported by sufficient evidence. This is another way of saying that the Court should have drawn different factual inferences, or different credibility findings, from the evidence. His proposed changes simply seek to reargue the evidence from trial, and thus constitute a motion for reconsideration.

8. [Appellant] also asserts that the Court should delete certain unhelpful details, or include additional details he views as helpful to his claims. That the Court did not write its findings and conclusions as [appellant seeks], including every piece of testimony or exhibit that he believes are favorable to his case, and excluding details or findings that he finds unfavorable, is not the same as demonstrating that the Court’s findings and conclusions are defective or not supported by the evidence.

. . . .

10. Ultimately, [appellant’s] motion merely demonstrates that there was conflicting evidence offered at trial. This is not sufficient to justify amended findings.

The district court did not abuse its discretion in denying appellant's motion for amended findings or a new trial, and we affirm the denial.

7. Motion to Strike

Respondent moves to strike certain items from the appendix to appellant's brief because they "were not submitted to the trial court and were not a part of the underlying record" as defined in Minn. R. Civ. App. P. 110.01: "documents filed in the trial court, the exhibits, and the transcript of the proceedings." Appellant states that the items are "illustrative summaries of information already included in the record" but does not assert that they are part of the record. Therefore, we grant respondent's motion to strike them, because our review is limited to the record. *See Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988); *MacDonald v. Brodkorb*, 939 N.W.2d 468, 474 (Minn. App. 2020).

8. Attorney Fees on Appeal

Attorney fees under Minn. Stat. § 518.14, subd. 1, may be awarded at any point in the proceeding. And whether to award need-based attorney fees on appeal is discretionary with this court. Need based attorney fees as well as costs and disbursements shall be awarded in an amount necessary to enable a party to carry on or contest the proceeding if the court finds (a) the fees are necessary for a good-faith assertion of rights; (b) the payor has the ability to pay the award; and (c) the recipient lacks the ability to pay his or her own fees. Minn. Stat. § 518.14, subd. 1.

Clark v. Clark, 642 N.W.2d 459, 466 (Minn. App. 2002) (citation and quotations omitted).

Respondent asks this court to grant her need-based attorney fees of \$29,500 for this appeal. We find that the statutory criteria are met: an award of fees is necessary for a good-faith assertion of respondent's rights, appellant has the ability to pay respondent's fees, and

respondent lacks the ability to pay her attorney fees on appeal. *See* Minn. Stat. § 518.14, subd. 1 (2022). However, each party has prevailed on some of the issues. We affirm the district court on the most significant issues of custody and parenting time, as well as the denial of appellant's motion for a new trial or amended findings, the child-support award, and the decision not to address the tax issues. But we remand the marital property division and reverse and remand the spousal maintenance award, largely because we have too little information on the parties' financial circumstances to review them properly; moreover, we are aware that our decision may alter those circumstances. Therefore, a complete award of attorney fees would not be appropriate. We conclude that an award of two-thirds of respondent's claimed attorney fees, or \$19,470, is proper.

Affirmed in part, reversed in part, and remanded; motions granted.