

*This opinion is nonprecedential except as provided by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
A22-0943**

In re the Marriage of:

Timothy Daniel Lorbiecke, petitioner,
Appellant,

vs.

Wendy Leigh Lorbiecke,
Respondent.

**Filed March 27, 2023
Affirmed
Gaïtas, Judge**

Wright County District Court
File No. 86-FA-19-254

Timothy Daniel Lorbiecke, Buffalo, Minnesota (self-represented appellant)

Shannon L. Ort, Tasya Rivera Martin, Terzich & Ort, LLP, Maple Grove, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Gaïtas, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Timothy Daniel Lorbiecke challenges the district court's order holding him in constructive civil contempt for refusing to sign a purchase agreement as directed by the district court following the dissolution of appellant's marriage to respondent Wendy

Leigh Lorbiecke. Appellant, who is self-represented, argues that the district court lacked authority to order him to sign the purchase agreement because he had appealed the judgment and decree finalizing the dissolution and the appeal was pending. He also contends that the district court erred in determining that his refusal to sign the purchase agreement was constructive civil contempt. Because the pending appeal did not suspend the district court's authority to enforce the dissolution order, and the district court did not abuse its discretion in ruling appellant in constructive civil contempt, we affirm.

FACTS

In April 2021, the district court entered a judgment and decree finalizing the divorce of appellant and respondent. The district court awarded the marital homestead to appellant—who was residing in the home—subject to a marital lien in favor of respondent. The lien, in the amount of \$43,067, served as the property equalizer for the parties. To satisfy respondent's lien, the district court's judgment and decree required appellant to refinance the mortgage on the home within 90 days of the filing of the judgment and decree. If respondent's lien was not satisfied within the 90-day period, it would begin to accrue interest at the statutory judgment rate until paid in full. The judgment and decree provided that, if the lien was not satisfied when the parties' youngest child turned 18 and graduated from high school, the home was to be sold.

Both appellant and respondent filed motions for amended findings, which the district court denied in October 2021. Appellant then filed a notice of appeal to this court from the April 2021 judgment and decree and the October 2021 order denying amended findings.

In January 2022, while appellant's appeal was pending in this court, respondent filed a motion in the district court seeking enforcement of the April 2021 judgment. Respondent alleged that appellant had stopped making payments on the mortgage and had abandoned the marital homestead. She sought an order requiring, among other things, immediate sale of the home. Appellant acknowledged that he had abandoned the property in his response to the motion. His response also made the following concession: "Respondent may take possession of said property and list it for sale if she wishes." But in his response to the motion, appellant asked the district court to place some of the proceeds of the sale in escrow pending the resolution of his appeal. During a February 2022 hearing before the district court, the parties disagreed about several issues not pertinent to this appeal, but appellant did not contest respondent's request for immediate sale of the home.

In March 2022, the parties entered into a stipulated agreement that became the district court's order. That order authorized respondent to "have sole discretion over the sale of the former marital residence and full authority to convey the property." The order also required appellant to "fully comply and sign without additional delay" any documents necessary "for the purpose of sale." Additionally, the order provided, "Should a purchase agreement require both parties to execute, [appellant] shall be obligated to fully comply." The district court also granted appellant's request for escrow of "all net sale proceeds" pending this court's decision in appellant's appeal of the judgment and decree.

On April 7, respondent filed an emergency motion for an order directing appellant to sign a purchase agreement for sale of the home. Respondent alleged that, while preparing the home for sale, she found extensive damage caused by appellant, including

damage that would require a new septic system. Thus, the property value had diminished, and it had become more challenging to sell the home. Respondent alleged that there was a potential buyer who had made an offer, and she believed there would be no other offers due to the condition of the home. But, according to respondent's motion, appellant refused to sign the purchase agreement. Respondent asked the district court to sanction appellant \$500 per day for each day that he "fail[ed] to execute the required sales documents."

At an April 20 hearing on respondent's emergency motion, the district court heard arguments from appellant, who appeared without counsel, and from respondent about whether appellant should be required to sign the purchase agreement. Appellant did not offer a satisfactory reason for failing to comply with the previous order requiring him to sign any documents required for the sale of the marital home, and the district court subsequently issued a conditional contempt order from the bench. The district court ordered appellant to either sign the purchase agreement or personally appear at a second hearing on April 27 "to show cause why he should not be held in Constructive Civil Contempt of Court for failing to abide by the Court's orders."

On April 27, appellant appeared at the hearing, but still refused to sign the purchase agreement. The district court provided appellant an opportunity to show cause for his refusal. But the district court found that appellant failed to present any legitimate explanation for his refusal. The district court ordered appellant to be confined in the jail. It issued a noncriminal conditional-release order requiring appellant's release from confinement once appellant signed the purchase agreement. On April 29, while appellant remained confined, the district court filed a written order finding appellant to be in

constructive civil contempt of court and ordering appellant to remain confined “until such time that he has executed the purchase agreement.” The district court provided the purchase agreement to the jail so that appellant could sign at any time and be released. The district court’s order stated that the contempt finding was “not to punish [appellant] for past conduct but ordered to compel [appellant’s] future compliance with this Court’s order.”

While appellant was in jail, this court dismissed his appeal of the judgment and decree because appellant failed to file a brief. Appellant then appealed the district court’s contempt order, which is the instant appeal.¹

DECISION

In his appeal of the district court’s contempt order, appellant challenges both the validity of the order that he refused to follow, which led to the contempt finding, and the contempt proceedings. We reject appellant’s legal challenge to the underlying order and discern no error in the district court’s finding of constructive civil contempt.

I. Notwithstanding appellant’s appeal of the judgment and decree, the district court had authority to order appellant to sign the purchase agreement.

Appellant first argues that the district court had no authority to order him to sign the purchase agreement because he had appealed the district court’s judgment and decree, which addressed the parties’ interest in the marital home. He argues that his appeal of the

¹ Respondent moved to dismiss this appeal, contending that appellant’s challenge to the district court’s contempt order is moot because appellant was released from jail and the appeal of the judgment and decree was dismissed. We denied the motion to dismiss on the ground of mootness.

judgment and decree suspended the district court's authority to issue additional orders concerning the marital home. We construe appellant's argument as a challenge to the district court's jurisdiction to entertain a specific claim for relief, which is a question of law that we review de novo. *City of Waite Park v. Minn. Off. of Admin. Hearings*, 758 N.W.2d 347, 352 (Minn. App. 2008) (reviewing de novo whether an appeal deprived the district court of jurisdiction to consider a claim brought after the appeal was taken), *rev. denied* (Minn. Feb. 25, 2009).

In support of his argument, appellant cites Minnesota Rule of Civil Appellate Procedure 108.01. The rule provides that “the filing of a timely and proper appeal suspends the [district] court’s authority to make any order that affects the order or judgment appealed from.” Minn. R. Civ. App. P. 108.01, subd. 2. However, the rule also states that, notwithstanding a pending appeal, the district court “retains jurisdiction as to matters independent of, supplemental to, or collateral to” the ruling being appealed. *Id.* Collateral matters over which a district court retains jurisdiction pending appeal include enforcement of an order or judgment. *David N. Volkmann Constr., Inc. v. Isaacs*, 428 N.W.2d 875, 876-77 (Minn. App. 1988) (citing *Spaeth v. City of Plymouth*, 344 N.W.2d 815, 824 (Minn. 1984)). Thus, although the district court has no authority to modify or set aside rulings at issue in an appeal, it may enforce those rulings while the appeal is pending. *Id.*

Although a party may move to stay enforcement of a judgment or order pending appeal, an appeal does not automatically stay enforcement. *See* Minn. R. Civ. App. P. 108.01, subd. 1. Except under circumstances that do not apply here, there is no stay of enforcement unless the district court specifically orders one. *Id.*

Here, appellant did not seek—and the district court did not grant—a stay of the judgment and decree pending the prior appeal. Thus, the district court had authority to enforce the provisions of that judgment while appellant’s prior appeal was pending.² The district court’s subsequent orders requiring the sale of the marital property—including the order directing appellant to sign the purchase agreement that was the basis for the contempt finding—were collateral orders enforcing the judgment and decree. Notwithstanding appellant’s prior appeal, the district court had authority to issue these enforcement orders. We therefore reject appellant’s challenge to the validity of the order underlying the district court’s finding of contempt.

II. We discern no error in the district court’s decision finding appellant to be in constructive civil contempt.

Appellant next challenges the district court’s decision finding him to be in constructive civil contempt for refusing to comply with the order to sign the purchase agreement. He contends that the procedures the district court followed to find him in contempt were unlawful. And he argues that the district court’s contempt finding was erroneous. On appeal, a reviewing court will not reverse a district court’s decision to invoke its contempt powers absent an abuse of discretion. *Mower Cnty. Hum. Servs. ex rel. Swancutt v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996).

² We also note that appellant *agreed* to allow respondent to sell the home while his appeal was pending, thereby assenting to the enforcement of some provisions of the judgment and decree. Furthermore, in enforcing the judgment, the district court was mindful of appellant’s pending appeal. The district court ordered the proceeds of the sale to be placed in escrow until the conclusion of the appeal.

Constructive civil contempt “may” occur when an individual disobeys a lawful court order. Minn. Stat. § 588.01, subd. 3(3) (2022). “When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, the person may be imprisoned until the person performs it. . . .” Minn. Stat. § 588.12 (2022).

Before a district court can invoke its authority to hold an individual in constructive civil contempt, it must follow certain procedural requirements. The Minnesota Supreme Court has specified the following minimum requirements that a civil-contempt proceeding must meet:

- (1) the court has jurisdiction over the subject matter and the person;
- (2) a clear definition of the acts to be performed;
- (3) notice of the acts to be performed and a reasonable time within which to comply;
- (4) an application by the party seeking enforcement giving specific grounds for complaint;
- (5) a hearing, after due notice, to give the nonperforming party an opportunity to show compliance or the reasons for failure;
- (6) a formal determination by the court of failure to comply and, if so, whether conditional confinement will aid compliance;
- (7) an opportunity for the nonperforming party to show inability to comply despite a good faith effort; and
- (8) the contemnor’s ability to gain release through compliance or a good faith effort to comply.

Swancutt, 551 N.W.2d at 223 (citing *Hopp v. Hopp*, 156 N.W.2d 212, 216-17 (Minn. 1968)); *see also* Minn. Stat. § 588.04(a) (2022) (“In cases of constructive contempt, an affidavit of the facts constituting the contempt shall be presented to the court . . . who may either issue a warrant of arrest to bring the person charged to answer or, . . . upon notice,

or upon an order to show cause . . . may commit the person to jail, impose a fine, or both . . .”).

A district court’s contempt order “can be either remedial or punitive.” *State v. Tatum*, 556 N.W.2d 541, 544 (Minn. 1996). Civil contempt orders, which are “designed to induce future performance of a valid court order, not to punish for past failure to perform,” are remedial. *Mahady v. Mahady*, 448 N.W.2d 888, 890 (Minn. App. 1989). By contrast, criminal contempt orders are punitive. *Tatum*, 556 N.W.2d at 544. Our supreme court recommends that “courts considering a contempt penalty determine at their earliest convenience whether the purpose of the contempt proceeding is remedial or punitive.” *Id.* at 545.

Against this legal backdrop, we now consider the contempt proceedings in appellant’s case. Initially, we note that the scope of our review is limited because appellant did not order the full record on appeal. While we have the documents filed with the district court and the transcripts and exhibits from the underlying marriage dissolution proceedings, appellant failed to obtain the transcripts of the February 2022 hearing or transcripts of the April 20 and 27 contempt proceedings for our review.³ “An appellant

³ Appellant’s brief asserts that this court never instructed him how to order the record. But it is the appellant’s duty to order a transcript “of those parts of the proceedings not already part of the record which are deemed necessary for inclusion in the record.” Minn. R. Civ. App. P. 110.02, subd. 1(a). Moreover, “[w]hen an appellant acts as attorney pro se, appellate courts are disposed to disregard defects in the brief, but that does not relieve appellants of the necessity of providing an adequate record and preserving it in a way that will permit review.” *Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990), *rev. denied* (Minn. Apr. 13, 1990).

has the burden of providing an adequate record for appeal. Error cannot be presumed.” *Custom Farm Servs., Inc. v. Collins*, 238 N.W.2d 608, 609 (Minn. 1976).

Although we do not have the full record of the proceedings, the district court issued a detailed order. Based on our review of the district court’s reasoning, we discern no error.

There is no merit to appellant’s argument that the district court failed to comply with the procedural requirements for a contempt finding. The district court had personal jurisdiction over appellant, clearly identified the act to be performed, gave appellant over one week to comply with the order to sign the purchase agreement, scheduled an evidentiary hearing to provide appellant with an opportunity to show compliance or explain his failure, made a formal determination of noncompliance, found that conditional confinement would likely induce compliance, and gave appellant the opportunity for immediate release from jail upon signing the purchase agreement. *See Swancutt*, 551 N.W.2d at 223. Given these circumstances, we conclude that the district court satisfied the procedural requirements for constructive civil contempt.

Appellant also seems to challenge the district court’s ultimate determination that his refusal to sign the purchase agreement was constructive civil contempt warranting the confinement. Based on our review of the limited record and the district court’s order, the district court did not abuse its discretion in determining that appellant’s steadfast refusal to follow the order to sign the purchase agreement was an act of constructive civil contempt and that the confinement would induce compliance.

Appellant’s brief raises several additional challenges to the district court’s contempt order for the first time on appeal and provides little, if any, analysis of those issues. His

brief alleges that the district court judge was biased, that appellant agreed to the sale of the property under duress, and that the district court's ruling violated appellant's federal and state constitutional rights, including the prohibition against cruel and unusual punishment and the right to "freedom of conscience."

Generally, we do not address issues that were not presented to and considered by the district court in the proceedings below. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981) (declining to address a constitutional issue raised for the first time on appeal). Likewise, we do not consider issues that are unsupported by legal argument or citation to supporting authority. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal).

We note that adverse rulings alone are insufficient to impute bias to a judge, *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986), and that the record before us reveals no evidence of judicial bias. As to appellant's remaining issues, we conclude that appellant forfeited them by failing to raise them before the district court and by providing this court with insufficient briefing.

Affirmed.