

*This opinion is nonprecedential except as provided by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
A22-1718**

In re the Marriage of:

Hortensia Salcedo Abad, petitioner,
Respondent,

vs.

Jason Matthew Matasovsky,
Appellant.

**Filed March 11, 2024
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-FA-18-3691

Katie Kelley, Andrew C. Case, Chestnut Cambronne P.A., Minneapolis, Minnesota (for respondent)

Rhia Bornmann Spears, Spears Family Law, P.L.L.C., Minneapolis, Minnesota; and

Erick G. Kaardal, Mohrman, Kaardal & Erickson, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Larson, Judge; and John P. Smith, Judge.*

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

In this dissolution matter, the district court granted the parties joint legal custody and joint physical custody of their minor children and awarded the parties equal amounts of parenting time. We conclude that the district court did not err by excluding the testimony of a proposed expert witness, by finding the existence of domestic abuse, or by not analyzing the eleventh statutory best-interests factor. Therefore, we affirm.

FACTS

Hortensia Salcedo Abad and Jason Matthew Matasovsky were married in 2006. They have three joint minor children. They separated in 2016, and Salcedo Abad petitioned for dissolution of the marriage in 2018.

The case was tried on nine non-consecutive days between February and October 2020. Twenty-two witnesses testified, and 129 exhibits were admitted into evidence. In March 2021, the district court filed an order resolving the issues of custody and parenting time. Specifically, the district court granted the parties joint legal custody and joint physical custody and awarded them equal amounts of parenting time. The district court reserved the issues of child support, spousal maintenance, and division of property.

In October 2022, the parties stipulated to the remaining issues and to a judgment and decree. In the stipulation, the parties waived their respective rights to appeal from the judgment and decree but expressly retained their rights to appeal from the district court's March 2021 order. Matasovsky appeals.

DECISION

I. Exclusion of Expert Witness

Matasovsky first argues that the district court erred by excluding the testimony of his proposed expert witness.

In October 2019, the district court filed a trial-management order that set a trial date of February 10, 2020. The order required the parties to identify their expert witnesses by December 16, 2019, and to disclose expert reports by January 13, 2020. On February 3, 2020, Salcedo Abad objected to Matasovsky's intent to call R. Christopher Barden as an expert witness on two grounds: first, that Matasovsky did not identify Barden or serve an expert report within the deadlines established by the trial-management order and, second, that Barden's testimony would be irrelevant. Matasovsky's attorney responded by letter two days later, stating that her paralegal had attempted to upload expert disclosures to the district court's e-filing and e-service system on December 16, 2019, and did not learn until January 23, 2020, that the attempt was unsuccessful.

The district court considered Salcedo Abad's objection to Barden's testimony during the first day of trial. The district court sustained Salcedo Abad's objection on the ground that Matasovsky had not complied with the deadlines in the trial-management order. Matasovsky later requested reconsideration. In its March 2021 order, the district court identified two reasons for excluding Barden's testimony. The district court first reasoned that Matasovsky had failed to give Salcedo Abad proper notice of Barden and his anticipated expert testimony. The district court also reasoned that Barden's testimony

would “not be useful” to the district court in determining custody and parenting time. *See* Minn. R. Evid. 702.

On appeal, Matasovsky contends that the district court erred on the sole ground that it should have imposed less-drastic measures, such as a continuance and the assessment of costs, and should not have ordered the more-serious sanction of suppression of expert testimony without applying a multi-factor test. *See Dennie v. Metropolitan Med. Ctr.*, 387 N.W.2d 401, 406 (Minn. 1986). In response, Salcedo Abad contends that Matasovsky did not properly preserve his sole argument because he did not seek relief from the district court pursuant to a rule of general practice that specifically applies to technical problems in using the district court’s e-filing and e-service system. *See* Minn. R. Gen. Prac. 14.01(c)(1). Salcedo Abad also contends, in the alternative, that even if Matasovsky’s failure to properly serve the expert disclosures were excused, Barden’s testimony would be inadmissible for the second reason stated by the district court, that it would not assist the district court in resolving the issues of custody and parenting time. Salcedo Abad also notes that Matasovsky did not challenge the district court’s second reason for excluding Barden’s testimony.

The district court stated two reasons for excluding Barden’s testimony. Matasovsky has challenged only the first reason. Matasovsky’s failure to challenge the second reason is, in essence, a forfeiture of his challenge to the district court’s exclusion of Barden’s testimony. This is so because “an argument for reversal that is not raised in an appellant’s principal brief is forfeited.” *Hunter v. Anchor Bank, N.A.*, 842 N.W.2d 10, 17 (Minn. App. 2013), *rev. denied* (Minn. Mar. 18, 2014). Furthermore, “when a party fails to raise an

argument in its opening brief, . . . the initial party is precluded . . . from raising that issue in its reply brief.” *In re Application of Otter Tail Power Co.*, 942 N.W.2d 175, 181 n.5 (Minn. 2020). Because Matasovsky has not challenged the district court’s second reason for excluding Barden’s testimony, we must presume that the second reason is a valid reason for the district court’s ruling. Consequently, even if the district court’s first reason for excluding Barden’s testimony was erroneous, that error would be a harmless error. *See* Minn. R. Civ. P. 61.

Thus, Matasovsky has not established that the district court erred by excluding the testimony of his proposed expert witness.

II. Finding of Domestic Abuse

Matasovsky next argues that the district court erred by finding that he committed domestic abuse against Salcedo Abad.

A determination of child custody requires a district court to evaluate the best interests of the children. *See* Minn. Stat. § 518.17, subd. 1(a) (2022). In doing so, a district court “must consider and evaluate all relevant factors,” including 12 statutory factors. *Id.*, subd. 1(a), 1(a)(1)-(12). The fourth factor asks, in part, “whether domestic abuse, as defined in section 518B.01, has occurred in the parents’ or either parent’s household or relationship.” *Id.*, subd. 1(a)(4). Section 518B.01 defines the term “domestic abuse,” in relevant part, to mean the commission of the following acts against a family or household member: “(1) physical harm, bodily injury, or assault; [or] (2) the infliction of fear of imminent physical harm, bodily injury, or assault.” Minn. Stat. § 518B.01, subd. 2(a) (2022).

In analyzing the fourth statutory best-interests factor, the district court made approximately eight pages of findings of fact. The district court described multiple incidents in which Matasovsky engaged in physical conduct toward Salcedo Abad, including one that caused her pain, which allows an inference that Matasovsky inflicted “physical harm” or “bodily injury” on Salcedo Abad. *See id.*, subd. 2(a)(1). The district court also described multiple incidents in which Matasovsky engaged in conduct that caused Salcedo Abad to be fearful, which satisfies the second part of the definition of domestic abuse. *See id.*, subd. 2(a)(2). In the last sentence of its eight-pages-long analysis of the fourth factor, the district court added that Matasovsky’s “behavior has been patterned, intimidating and dominating over mother, and can be defined as coercive control.”

Matasovsky contends that the district court erred by finding that domestic abuse occurred based on conduct that is not within the statutory definition of domestic abuse. Specifically, Matasovsky contends that the district court found that he engaged in domestic abuse by engaging in “coercive control,” not by engaging in any conduct that is described in the statutory definition of domestic abuse. That contention ignores all the findings that preceded the district court’s use of the phrase “coercive control.” We do not interpret the district court’s order to state that Matasovsky engaged in domestic abuse solely because he engaged in coercive control. Rather, it is obvious that the district court found that Matasovsky engaged in several acts that satisfy the statutory definition of domestic abuse and that the district court also used the phrase “coercive control” to characterize some of Matasovsky’s conduct. The district court’s statement about “coercive control” is not the

linchpin of the district court's analysis of the fourth best-interests factor. In addition, Matasovsky does not argue that the district court clearly erred in its findings of historical facts.

Thus, the district court did not err by finding that Matasovsky engaged in domestic abuse against Salcedo Abad.

III. Eleventh Best-Interests Factor

Matasovsky last argues that the district court erred by not considering the eleventh statutory best-interests factor.

As stated above, a district court generally must “consider and evaluate all relevant factors, including” 12 statutory factors. Minn. Stat. § 518.17, subd. 1(a). But the eleventh statutory factor includes an exception that makes it inapplicable in certain circumstances. The eleventh statutory factor provides for consideration of “the disposition of each parent to support the child’s relationship with the other parent and to encourage and permit frequent and continuing contact between the child and the other parent,” but it does not apply “*in cases in which domestic abuse as described in clause (4) has occurred.*” *Id.*, subd. 1(a)(11) (emphasis added).

In this case, the district court did not analyze the eleventh factor because of the exception in subdivision 1(a)(11). The district court expressly said so: “Because the Court has found that domestic abuse has occurred, this factor will not be considered.” The district court’s reason for not analyzing the eleventh best-interests factor is confirmed by our conclusion that the district court did not err by finding that Matasovsky engaged in domestic abuse against Salcedo Abad. *See supra* part II.

Thus, the district court did not err by not considering the eleventh statutory best-interests factor.

Affirmed.