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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1609**

In re the Marriage of:

Towobola Abimbola Oladejo, petitioner,
Appellant,

vs.

Olanrewaju Muideen Oladejo,
Respondent.

**Filed February 10, 2025
Affirmed in part, reversed in part, and remanded
Kirk, Judge***

Hennepin County District Court
File No. 27-FA-22-4556

Towobola Abimbola Oladejo, Brooklyn Center, Minnesota (pro se appellant)

Ayodele Mayowa Ojo, West St. Paul, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Frisch, Chief Judge;
and Kirk, Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

In this marriage dissolution appeal, appellant-wife argues that the district court erred in granting both parties joint custody of their four minor children, not compelling

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

respondent-husband to pay childcare costs, granting inadequate child support, determining the value of the house, ignoring wife's claim that husband stole \$12,000 from her, and not granting wife damages. Wife also claims that the district court judge was biased. We affirm in part, reverse in part, and remand for further factual findings.

FACTS

In 2014, appellant Towobola Abimbola Oladejo (wife) and respondent Olanrewaju Muideen Oladejo (husband) were married. The couple share four children who were born in 2014, 2016, 2019, and 2021 respectively. The family lived in a house in Brooklyn Center. Throughout the parties' marriage, wife was the primary caregiver to the couple's children and husband was the family's primary income earner. Wife graduated from college during the dissolution proceeding.

In August 2022, wife petitioned for dissolution of the marriage. As it relates to this appeal, wife requested sole physical and sole legal custody of the children, child support based on each parent's income, that the house be awarded solely to her, and the return of \$12,000 she alleged husband took from her. In response, husband requested joint physical and joint legal custody of the children and that the house be awarded to him,¹ and denied that he took \$12,000 from wife.

A bench trial with testimony from wife and husband was held over three days. The four children were not interviewed. Wife testified that she was the primary caretaker for

¹ Initially in his answer husband requested that the house be sold "and the equity shared equally between the parties." But in a later filing, husband proposed that the district court award him the property.

the children and there were no childcare costs at the time. Wife testified husband was an absent father, he abused her and one of the children, and he stole money from her. Husband testified he was present and active in his children's lives and denied the alleged abuse. Both husband and wife testified about the value and existence of property, income, and debts.

The district court awarded husband and wife joint legal and joint physical custody, required husband to pay \$440 per month in child support and nothing for childcare costs, and granted husband title to the home but required him to pay wife \$34,000 for her equity in the home. The district court did not find wife's assertions that husband is an absent father or that he abused her to be credible. Four days after the court entered its judgment, wife was hired for part-time employment, which would switch to full time when she found a daycare provider.

Wife mailed the district court a letter seeking its permission to file a motion to reconsider, stating that the \$12,000 taken from her and the abuse she suffered was not addressed in the district court's order, and she should have sole physical and sole legal custody of their children. Wife also filed this appeal, which was stayed pending mediation. The request for reconsideration was denied by the district court because the arguments wife made were already resolved in favor of husband or were "mere allegations not supported by any evidence received by the [c]ourt." In January 2024, this court dissolved the stay of appeal.

Wife filed an affidavit claiming the district court judge demonstrated bias, prejudice, or an interest in the outcome of the proceeding. She later amended her filing to state the

relief she was seeking, which was removing the district court judge for bias. The district court denied the petition to remove, finding wife failed to assert any incidents of bias beyond the judge ruling against her.

Wife filed a brief in this court. Husband did not file a brief.

DECISION

I. The district court’s decision to grant husband and wife joint legal and joint physical custody was not clearly erroneous.

Wife argues she should be granted sole legal and sole physical custody of the four children because (1) she has “been their primary guardian since they were born”; (2) there is sufficient proof the children do not want to stay with husband; and (3) husband is “a serial and nonchalant lawbreaker.” The district court determined that joint legal and joint physical custody was in the best interests of the children. It found “[b]oth parents have been involved in the [m]inor [c]hildren’s lives and each plays an important role in ensuring their needs are met.”

There is a rebuttable presumption that joint legal custody is in the children’s best interests. Minn. Stat. § 518.17, subd. 1(b)(9) (2024). “In evaluating the best interests of the child for purposes of determining issues of custody and parenting time, the court must consider and evaluate all relevant factors, including” the 12 factors enumerated in the statute. Minn. Stat. § 518.17, subd. 1(a)(1)-(12) (2024).

To the extent that a party challenges a district court’s findings on factual issues relevant to custody, this court applies a clear-error standard of review. If the facts are not in dispute, we apply an abuse-of-discretion standard of review to a district court’s award of child custody. A trial court has broad discretion in making custody decisions; there is scant if any

room for this court to question a district court's balancing of best-interests considerations.

In re Welfare of C.F.N., 923 N.W.2d 325, 334 (Minn. App. 2018) (citations and quotation omitted), *rev. denied* (Minn. Mar. 19, 2019).

We surmise wife's arguments to reference (1) "the history and nature of each parent's participation in providing care for the child"; and (2) "the reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference" under Minn. Stat. § 518.17, subd. 1(a)(3), (6). Wife's third argument is not specifically enumerated in the statute but appears to be that the district court should have considered husband's criminal record.

First, the district court found that "both parents actively participate in the lives and care of the [m]inor [c]hildren." The court acknowledged wife's testimony that she has been the primary caregiver for the children, preparing them for school, extracurriculars, and healthcare. The district court also acknowledged husband's testimony that he is involved with the children's education, physical health, and activities. Wife has not provided any new arguments on appeal that the district court has not already heard. And although wife may have been the children's primary caretaker, and that factor is significant, "it cannot be used as a presumption in determining a child's best interests." *Schumm v. Schumm*, 510 N.W.2d 13, 14 (Minn. App. 1993), *see* Minn. Stat. § 518.17, subd. 17 1(b) (1) (noting that the district court "may not use one factor to the exclusion of all others").

Second, all four children were under ten years old, and the district court found them “to be of insufficient ability, age, and maturity to express an independent, reliable preference.” “Whether to interview children to ascertain their preferences as to custody is within the [district] court’s discretion.” *Knott v. Knott*, 418 N.W.2d 505, 509 (Minn. App. 1988), *see* Minn. Stat. § 518.166 (addressing a district court’s interviews of children). Wife has provided no support for her argument that the district court abused its discretion in not interviewing the children, and our review shows no obvious prejudicial error on the point. Therefore, relief is not required here. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (“An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.”).

Third, the district court did not address whether husband had a criminal record outside of its domestic abuse analysis. The district court did not find wife’s testimony of alleged abuse by husband of her and one of the children to be credible. Child Protective Services discontinued its investigation of the alleged abuse of the child and law enforcement never arrested or filed charges against husband when wife alleged domestic abuse. The district court found “[h]usband’s testimony regarding these issues significantly more credible than [w]ife’s testimony.” The district court considered what information it had about husband’s criminal history and it did not clearly err in the determination it made.

The district court analyzed—and made specific findings on—all 12 enumerated factors set forth in Minn. Stat. § 518.17, subd. 1, and determined joint physical and joint legal custody was in the best interest of the four children. “[T]here is scant if any room for

this court to question a district court’s balancing of best-interests considerations.” *C.F.N.*, 923 N.W.2d at 334 (quotation omitted). We conclude that the district court did not clearly err in its determination.

II. The evidence supports the district court’s finding there were no childcare costs.

Wife argues that husband must pay for childcare because she has acquired a job and can no longer watch the children all the time. The district court found there were no childcare costs.

“Unless otherwise agreed to by the parties and approved by the court, the court must order that work-related or education-related childcare costs of joint children be divided between the obligor and obligee based on their proportionate share of the parties’ combined monthly PICS.”² Minn. Stat. § 518A.40, subd. 1 (2024). The district court has broad discretion to provide for the support of the parties’ children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Woolsey v. Woolsey*, 975 N.W.2d at 502, 506 (Minn. 2022) (quotation omitted).

At the time of the dissolution proceeding, the district court found there were no childcare costs. At trial, when asked if there were any childcare costs, wife testified: “[R]ight now I’m the only one taking care of them, so I don’t have any expense on the

² PICS is short for “[p]arental income for determining child support” and “means gross income minus deductions for nonjoint children allowed under section 518A.33.” Minn. Stat. § 518A.26, subd. 15 (2024).

children.” Wife spoke to babysitting costs in the past when she went to school in person, but her classes were online at the time of trial. Wife does not argue on appeal that the finding of no childcare costs was wrong at the time the court made the decision. Instead, she argues that she has a job now and needs money for childcare. Wife’s remedy is not for this court to reverse the district court’s order, but she can move the district court to modify the order. Minn. Stat. § 518A.39 (2024). “In cases where there is a substantial increase or decrease in childcare expenses, the parties may modify the order under section 518A.39.” Minn. Stat. § 518A.40, subd. 4(c) (2024).

Minnesota Statutes section 518A.39 allows for the modification of orders, including both childcare and child support amounts. These modifications can be based on a substantial change in parental income or “the addition of work-related or education-related childcare expenses.” Minn. Stat. § 518A.39, subd. 2(a)(1), (7). These orders are built to be modified if a change in circumstances “makes the terms unreasonable or unfair.” *Id.*, subd. 2(a). Wife can seek these modifications in district court moving forward.

Wife cites no evidence that the district court abused its discretion. We affirm the district court’s decision not to impose childcare support obligations on husband at the time of trial.

III. The district court did not abuse its discretion by not imposing higher child support payments.

Wife argues that \$440 per month for child support is not enough for four children and requests an increase in husband’s child support obligation. The district court determined that wife had a gross monthly income of \$1,909 and husband had a gross

monthly income of \$5,400.³ Based on the Minnesota Child Support Guidelines, the district court determined husband's "basic support obligation is \$440 per month."

"Unless otherwise agreed to by the parents and approved by the court, when establishing basic support, the court must order that basic support be divided between the parents based on their proportionate share of the parents' combined monthly" PICS. Minn. Stat. § 518A.35, subd. 2 (2024). There is a table to determine basic support in the statute based on income and number of children. *Id.* The district court's broad discretion to provide for the support of the parties' children is abused "by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey*, 975 N.W.2d at 506 (quotation omitted); *Rutten*, 347 N.W.2d at 50.

The district court attached a child support guidelines worksheet to its order to show how it calculated husband's \$440 monthly child support obligation. At trial, wife agreed that child support should be "based upon the Minnesota Child Support Guidelines." On appeal, wife makes no argument that child support was not correctly calculated, only that it is not enough for four children. She cites no supporting authority for why this determination must be reversed.

³ The district court listed husband's monthly income as both \$5,440 and \$5,400. This discrepancy does not impact his child support obligations under the guidelines, as he would pay \$440 per month under either amount.

No error is obvious on mere inspection because the district court complied with the Minnesota Child Support Guidelines and showed its work. We affirm the district court's child support determination.

IV. The district court's determination that husband paid \$7,000 towards the mortgage from nonmarital funds since the valuation date of the home lacked sufficient factual support.

Wife argues that the equity in the house was "falsified and undervalued." She wants proof of the amount "from an independent registered realtor because [husband] is fond of aligning and [colluding] with people to peddle falsehood." Alternatively, wife requests that the property be sold and the proceeds shared between her and husband. The district court found there was "equity in the home of approximately \$75,000." The district court also found husband had made mortgage payments "since the valuation date in the amount of \$7,000." The district court credited that money to husband and split the remaining \$68,000 in half. Thus, the district court determined "Husband shall pay Wife \$34,000 for her marital portion of the equity in the home."

A district court's valuation of an asset is a finding of fact that "shall not be set aside unless clearly erroneous on the record as a whole." *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). Valuation is often an approximation "and it is only necessary that the value arrived at lies within a reasonable range of figures." *Hertz v. Hertz*, 229 N.W.2d 42, 44 (Minn. 1975). "Determining whether property is marital or nonmarital, however, is an issue over which [appellate courts] exercise independent review," with deference given to district court's factual findings. *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 852 (Minn. 2003).

At the time of trial, wife and husband still lived together in the family home. In her dissolution petition, wife requested that she be awarded ownership of the home but did not know the value of the home or any information about the mortgage. In his proposed findings of fact, conclusion of law, order for judgment, and judgment and decree submitted after the trial concluded, husband suggested a finding of fact that the “current estimated fair market value of the property is \$288,000 according to neighborhood appraisal and comparative market analysis of similar properties in the same environment.” He also proposed a finding that the outstanding mortgage was \$213,000 and the equity in the home was \$75,000. Husband proposed a \$7,000 credit for principal paid down on the mortgage since the initial case management conference and suggested that, because wife could not afford monthly mortgage payments, he be ordered to pay her a \$34,000 equalizer payment for the real estate.

The district court adopted husband’s proposed findings. Wife did not provide the district court with figures related to the mortgage, market value, and equity of the property, so the district court relied on the figures provided by husband. Wife cites no authority to support her argument that an “equity document from an independent registered realtor” is required. And caselaw suggests otherwise. *See Bury v. Bury*, 416 N.W.2d 133, 136 (Minn. App. 1987) (noting that the owner of property is “presumptively acquainted with its value” and may generally testify as to its value without any particular foundation being laid); *but cf. Lehman v. Hansord Pontiac Co.*, 74 N.W.2d 305, 309-10 (Minn. 1955) (stating that “if there is an apparent lack of knowledge on the part of the owner as to value of his property, the same goes to the weight of the testimony given but not to the competency of that

testimony”). It was not clear error for the district court to rely on the market value, mortgage, and equity numbers provided by husband.

But there is no indication in the record whether the \$7,000 husband paid came from marital or nonmarital funds. “All property acquired by either spouse subsequent to the marriage and before the valuation date is presumed to be marital property[.]” Minn. Stat. § 518.003, subd. 3b (2024). Nonmarital property is property acquired: during a marriage as a specific “gift, bequest, devise or inheritance to one spouse but not the other”; by a spouse before the marriage, [or] after the valuation date, “excluded by a valid antenuptial contract”; or is from the exchange or increase of value of otherwise nonmarital property. Minn. Stat. § 518.003, subd. 3b(a)-(e) (2024). “The court shall value marital assets for purposes of division between the parties as of the day of the initially scheduled prehearing settlement conference,” unless the parties agree on a different date, or the court finds another date is “fair and equitable.” Minn. Stat. § 518.58, subd. 1 (2024).

In husband’s proposed findings of fact, conclusion of law, order for judgment, and judgment and decree, he suggested “credit on the principal paid down amount of the mortgage in the amount of \$7,000.00 that he has solely made since the time of the” initial case management conference. The district court adopted this proposal in its judgment. But while husband may have solely made the payments after the valuation date, there is no indication in the record that the money used to pay for the mortgage was acquired after the valuation date. “For nonmarital property to maintain its nonmarital status, it must either be kept separate from marital property or, if commingled with marital property, be readily traceable.” *Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 696 (Minn. App. 2010) (quotation

omitted), *rev. denied* (Minn. Nov. 16, 2010). And while a district court may trace the source of property based on testimony, *Doering v. Doering*, 385 N.W.2d 387, 391 (Minn. App. 1986), there was no testimony on whether the payments on the mortgage since the valuation date came from marital or nonmarital property. Husband and wife were also still living in the house together at the time of trial. If the payments cannot be traced to nonmarital funds, then wife should receive credit for half of the \$7,000.

The district court's determination that the \$7,000 in payments made by husband should be treated as his nonmarital property requires further factual findings. Thus, we reverse and remand on this issue. On remand, the district court shall readdress whether husband's \$7,000 in payments were made from his nonmarital property and, in light that determination, whether the associated equity in the house was marital or husband's nonmarital property. The district court shall then reevaluate whether, and if so to what extent, the property division needs to be adjusted. Additionally, a maintenance award depends, in part, on the property division. *See* Minn. Stat. § 518.552, subds. 1(a); 2(a). Thus, on remand, the district court may—to the extent necessary—reevaluate its maintenance rulings in light of whatever decision(s) it makes on the remanded property questions. Whatever decisions the district court makes on these matters on remand shall be supported with findings of fact explaining those decisions.

V. The district court did not clearly err by not addressing in the order wife's claim for \$12,000 stolen from her by husband.

Wife alleges that husband stole \$12,000 from her and it appears she requests that this court order the money returned to her. The district court questioned wife about this

during trial but did not address this allegation in its order. In the district court's order denying wife's motion to remove, the court provided that wife "again stated her belief that [husband] stole \$12,000 from her—an assertion litigated in the parties' dissolution proceedings."

The district court did not address wife's assertion that husband stole \$12,000 from her in its findings of fact. "Appellate courts cannot assume a district court erred by failing to address a motion, and silence on a motion is therefore treated as an implicit denial of the motion." *Palladium Holdings, LLC v. Zuni Mortg. Loan Tr.* 2006-OA1, 775 N.W.2d 168, 177-78 (Minn. App. 2009), *rev. denied* (Minn. Jan. 27, 2010). An implicit finding is subject to a clear error standard of review. *Vettleson v. Special Sch. Dist. No. 1*, 361 N.W.2d 425, 428 (Minn. App. 1985). Clear error does not permit an appellate court to reweigh evidence, reconcile conflicting evidence, or "engage in fact-finding anew," but instead "is a review of the record to confirm that evidence exists to support the decision." *In re Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotation omitted). Because the district court is the primary fact-finder and has "the advantage of observing the witnesses in view of all the circumstances surrounding the entire proceeding, an appellate court's duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision." *Id.* at 222 (quotations omitted).

At trial, wife claimed the money husband allegedly stole was from her tax refund. She testified that the money was kept in a piggy bank placed in her luggage in her home, and husband took the money and hid it. The district court had the opportunity to evaluate

wife's credibility on this issue and make its findings. *See id.* Wife does not assert any new arguments or reasons why the district court's finding, or lack thereof, was clear error.

The district court did not clearly err in not addressing wife's allegation that husband stole \$12,000 from her because it is in the best position to evaluate witness credibility. If the district court did not find wife's assertion of theft to be credible it did not need to consider the allegation in its division of assets.

VI. There was no reason for the district court to consider damages for emotional and physical harm.

Wife asserts "the respondent hasn't been charged for physical and emotional damage." The district court did not address any claims for emotional or physical damage in its order.

The subject of a divorce "proceeding is a dissolution of the marriage and the resolution of issues involving child custody, child support, spousal maintenance, and property division. Thus, the tortious actions of a party are not a part of the marital dissolution. . . ." *G.A.W., III v. D.M.W.*, 596 N.W.2d 284, 288 (Minn. App. 1999), *rev. denied* (Minn. Sept. 28, 1999).

Even if husband's allegedly tortious actions could be part of the marital dissolution case before us, wife did not bring claims of assault, battery, intentional infliction of emotional distress, or any other tort in district court. The trial was held to resolve the issues of "legal custody, physical custody, parenting-time schedule, child support, healthcare coverage, childcare support, spousal maintenance . . . , property division, an equalizer payment, business interests, real property, retirement funds, and debt allocation." Wife can

still attempt to bring tort claims seeking damages for physical and emotional harm done to her in an action that is separate from the underlying dissolution proceedings in this case—her claims would not be barred by collateral estoppel or res judicata. *Id.* at 287-89, 91. But no tort claims were presented to the district court and wife has presented no arguments for why this should be considered for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.”).

VII. The district court did not abuse its discretion in denying the motion to remove.

Wife appears to argue that the district court was biased, and she was not given a fair hearing. Wife filed an affidavit alleging that the district court judge demonstrated bias against her because the judge (1) told her not to open a folder while talking in court, (2) told her she seemed easily distracted, (3) tried to make her upset, (4) told her “not to talk when the interpreter refuse[d] to say what [she] said[,]” and (5) sided with husband as shown by the judge’s determinations in the dissolution order. Wife amended the affidavit to include additional claims of judicial bias, including that the judge required wife to speak in English and that she should not discuss the past abuse.⁴

The district court found wife “failed to articulate any incidents or arguments of bias exhibited by this judicial officer.” The district court determined that wife was unhappy

⁴ Wife requested a Yoruba interpreter, but the record shows that she understands and can speak some English. At trial, the district court judge continuously reminded wife to only speak in Yoruba for the sake of the interpreters and the court reporter.

with the judge's rulings but stated that "unfavorable rulings do not demonstrate bias on the part of the judicial officer." The district court denied wife's motion to remove the judge for bias.

"No judge shall sit in any case if disqualified under the Code of Judicial Conduct." Minn. R. Civ. P. 63.02. "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned. . . ." Minn. Code Jud. Conduct Rule 2.11(A). We presume that the district court judge properly discharged her or his duties. *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008). "Whether a judge's impartiality may reasonably be questioned is determined by an 'objective examination into the circumstances surrounding the removal request.'" *In re Jacobs*, 802 N.W.2d 748, 752 (Minn. 2011) (quoting *Powell v. Anderson*, 660 N.W.2d 107, 116 (Minn. 2003)). We look to whether a reasonable examiner, based on the facts and circumstances, would "question the judge's impartiality." *Id.* (quoting *State v. Burrell*, 743 N.W.2d 596, 601 (Minn. 2008)). "Whether a judge is disqualified from presiding over a case is a question of law, which [appellate courts] review de novo." *Id.* at 750.

We have previously concluded that no judicial bias existed when there was "nothing in the record except appellant's allegation to indicate that the trial judge was either unfair to [wife] or biased in favor of [husband]." *Gummow v. Gummow*, 375 N.W.2d 30, 34 (Minn. App. 1985). Nor do prior adverse rulings constitute bias. *Greer v. State*, 673 N.W.2d 151, 157 (Minn. 2004). Most of wife's arguments appear to be that the judge was biased because the judge sided with husband. Ruling against wife, on its own, is not enough to establish bias. *Id.*

Wife further alleges, without citation to authority, that “the defendant and his attorney [were] consistently falsifying information, hiding and destroying exhibits, . . . and [using] deceptive character practices in the court to mislead the judge.” But—as stated before—an assignment of error in a brief based on “mere assertion” and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *Schoepke*, 187 N.W.2d at 135. Wife provided no evidence to support her assertion that husband and defense counsel were destroying exhibits or lying. The district court properly considered both parties’ presentation of the facts and found husband’s version to be more credible. That is not evidence of bias. *See Greer*, 673 N.W.2d at 157. The district court did not err in denying wife’s petition for removal of the judge for bias.

Affirmed in part, reversed in part, and remanded.