

*This opinion is nonprecedential except as provided by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
A23-1688**

In re the Marriage of:

Donald Gerard Sauve, petitioner,
Appellant,

vs.

Haley Marie Lindstrom, f/k/a Haley Marie Sauve,
Respondent,

County of Kanabec, Minnesota,
Intervenor.

**Filed September 16, 2024
Affirmed; motions denied
Bratvold, Judge**

Kanabec County District Court
File No. 33-FA-21-97

Donald Gerard Sauve, Mora, Minnesota (pro se appellant)

Benjamin Kaasa, Benjamin Kaasa Law Office, PLLC, Duluth, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Reilly,
Judge.*

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

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant challenges the district court’s denial of his motion for a new trial in a marriage-dissolution case. Appellant argues that he is entitled to a new trial based on two irregularities in the proceedings: (1) he “was unable to hear” during the trial and (2) he renewed his earlier motion for a continuance. While this appeal was pending, appellant filed three motions in this court, seeking to supplement the record and attend a conference or hearing in this court. Because the district court did not abuse its discretion in denying appellant’s motion for a new trial, we affirm. We also deny appellant’s three motions.

FACTS

Appellant Donald Gerard Sauve and respondent Haley Marie Lindstrom married in 2000 and had nine children. The parties separated on October 20, 2021, and Sauve petitioned for dissolution on November 19, 2021, requesting joint legal custody, sole physical custody to Lindstrom, and one day of parenting time “during the week” or “as negotiated in the future.” At the time of the petition, seven of the parties’ children were minors. Lindstrom answered and filed a counterpetition seeking sole legal and sole physical custody, child support, dissolution, and division of property.¹

On March 4, 2022, *attorney one* filed a certificate of representation for Sauve. The district court scheduled the matter for trial on July 25, 2022, and ordered the parties to attempt alternative dispute resolution or arrange for a custodial evaluation. On May 25,

¹ Although Lindstrom sought spousal maintenance in her counterpetition, she abandoned that claim before trial.

2022, Lindstrom’s attorney wrote to the district court saying that the parties had hired a neutral custody evaluator but that the evaluator was unable to complete an evaluation in time for the July 25 trial. The district court amended the scheduling order with a new trial date of October 3, 2022, and subsequently extended the trial date to December 12, 2022. On November 18, 2022, attorney one withdrew from representing Sauve.

On November 22, 2022, *attorney two* filed a certificate of representation for Sauve. The next day, attorney two requested a continuance of the trial “based upon [his] recent retention.” The district court granted the continuance and rescheduled the trial for April 17, 2023.

On March 19, 2023, Lindstrom’s attorney wrote to the district court, stating that attorney two “advised that he no longer represents” Sauve. In the email attached to the letter, attorney two stated that he was “not currently licensed to practice.” On March 29, 2023, Sauve retained *attorney three*, who withdrew two days later.

Six days before the scheduled trial date, on April 11, 2023, *attorney Perske* filed a certificate of representation for Sauve and a request for a continuance of the trial. Attorney Perske’s request stated that he was “disappointed with the condition of [Sauve’s] file as it reached [his] desk” and believed “it will result in an inefficient and confusing trial on the merits if conducted” as scheduled. Lindstrom’s attorney opposed the continuance, arguing that the request was not “made in good faith” and was “a form of systemic abuse that keeps [Lindstrom] and the children controlled” by Sauve. The district court denied the continuance, stating, “The Court will only readdress this issue if Mr. Sauve pays his portion of the custody evaluation and makes a significant good faith payment on his temporary

child support obligation. Without doing so the Court cannot find good cause to continue this trial.”

On the morning of trial, attorney Perske renewed his request for a continuance. The district court denied the request, reasoning that there were “multiple delays in this case, it was beyond the timeframe for resolving divorce matters, that [Sauve] had not paid child support or his portion of the custody evaluation and that Mr. Perske was the fourth attorney on this case and appeared prepared to go forward with the trial.”

After a two-day trial, the district court issued findings of fact, conclusions of law, and an order for judgment. The district court dissolved the parties’ marriage, granted Lindstrom sole legal and sole physical custody of the minor children, granted Sauve supervised parenting time, awarded child support, and divided property.

On August 10, 2023, Sauve, still represented by counsel, moved for a new trial. Sauve argued that he was entitled to a new trial based on the district court’s (1) “denial of [his] motions for continuance of the trial date” and (2) “errors of law in the denial of [his] non-marital interest in real property and the overall division of the marital estate and disposition of the real property.” Lindstrom opposed Sauve’s motion for a new trial.

On September 12, 2023, the district court denied Sauve’s motion for a new trial, determining that it “properly used its discretion in denying the continuance.” The district court noted that the “case had been continued well beyond the typical timeline for a dissolution case,” Sauve “had still not paid his portion for the custody evaluator” or “child support,” attorney Perske “was prepared sufficiently to move forward with the trial,” and

“[f]urther delays would result in prejudice to [Lindstrom] who was singly shouldering the financial burdens of the children.”

Sauve appeals.

DECISION

I. The district court did not abuse its discretion by denying Sauve’s new-trial motion.

Sauve challenges the district court’s denial of his motion for a new trial, arguing that he is entitled to a new trial based on two irregularities in the proceedings: (1) he “was unable to hear” during the trial and (2) the district court should have granted his renewed motion for a continuance.

Appellate courts “review a district court’s decision to grant or deny a new trial for an abuse of discretion.” *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). “A district court abuses its discretion when evidence in the record does not support the factual findings, the court misapplied the law, or the court settles a dispute in a way that is against logic and the facts on record.” *Foster v. Foster*, 802 N.W.2d 755, 757 (Minn. App. 2011) (quotation omitted). A new trial may be granted based on an “[i]rregularity in the proceedings of the court, referee, jury, or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial.” Minn. R. Civ. P. 59.01(a). “An irregularity is a failure to adhere to a prescribed rule or method of procedure not amounting to an error in a ruling on a matter of law.” *Boschee v. Duevel*, 530 N.W.2d 834, 840 (Minn. App. 1995) (quotation omitted), *rev. denied* (Minn. June 14, 1995). A

party seeking a new trial based on an irregularity “must prove (1) an irregularity occurred and (2) they were deprived of a fair trial.” *Id.*

- A. Sauve preserved no error about hearing difficulties, the district court appropriately addressed Sauve’s request for hearing accommodation, and the record does not support Sauve’s claim of any difficulty hearing during the trial.**

For the first time on appeal, Sauve argues that an “irregularity occurred” when the district court “failed to accommodate [his] hearing loss” in violation of the Language Access Plan for the Minnesota Judicial Branch (the plan). Lindstrom argues that Sauve “did not adequately preserve the issue for appeal and it should be deemed waived.” Alternatively, Lindstrom argues that Sauve’s “hearing issues were addressed during trial through a stipulation of counsel with the court’s approval” and that “the trial transcript establishes that [Sauve] was able to hear.”

Although Sauve moved for a new trial in the district court, his motion did not argue that he had any hearing difficulties during the trial. Minnesota has long followed “the general rule that matters such as trial procedure, evidentiary rulings and jury instructions are subject to appellate review *only* if there has been a motion for a new trial in which such matters have been assigned as error.” *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986) (emphasis added) (reaffirming the rule). The supreme court has articulated strong reasons for this rule:

[T]he motion for a new trial provides both trial court and counsel with a unique opportunity to eliminate the need for appellate review or to more fully develop critical aspects of the record in the event appellate review is sought. Counsel is required to focus the trial court’s attention on the specifics of an objection which, though properly framed during trial, might

not have been fully explained or the impact of which might not have been understood during trial. The trial court is given time for reflection and the opportunity to consider the context in which the alleged error occurred and the effect it might have had upon the outcome of the litigation. In short, it is given the opportunity to correct its own errors without subjecting the parties and the appellate courts to the time, expense and inconvenience involved in an appeal.

Id. at 201-02; *see also County of Hennepin v. Bhakta*, 922 N.W.2d 194, 197 (Minn. 2019)

(“Matters of trial procedure, evidentiary rulings, and jury instructions occurring at trial are subject to appellate review *only* if they are assigned as error in a motion for a new trial.” (emphasis added)).

The only two grounds for a new trial raised in Sauve’s motion were the “denial of [Sauve’s] motions for continuance of the trial date” and “errors of law in the denial of [Sauve’s] non-marital interest in real property and the overall division of the marital estate and disposition of the real property.” Because Sauve’s new-trial motion did not contend that he had any hearing difficulty during trial, the issue is not preserved for appeal. Error preservation may affect the scope of review on appeal. *See* Minn. R. Civ. App. P. 103.04 (“The scope of review afforded may be affected by whether proper steps have been taken to preserve issues for review on appeal, including the existence of timely and proper post-trial motions.”); *Bhakta*, 922 N.W.2d at 197.²

Setting aside Sauve’s failure to preserve any error in a new-trial motion, Sauve’s brief to this court also fails to articulate what irregularity occurred or how he was deprived

² Similarly, appellate courts “generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted).

of a fair trial by any hearing difficulty. *See Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (stating that an appellant has the burden to show error); *Boschee*, 530 N.W.2d at 840 (stating that, to obtain a new trial based on an irregularity in the proceedings, the movant “must prove (1) an irregularity occurred and (2) they were deprived of a fair trial”).

Sauve’s brief on appeal contends that he made a “clear request for hearing accommodations” during trial and that the district court “decided to proceed” with the trial despite knowing the hearing-assistance “equipment [in the courtroom] was non-functional.” Sauve argues that the district court failed to meet the plan despite Sauve’s “clear request for hearing accommodations.”³ The plan provides that all “limited-English speaking and deaf or hard of hearing Minnesotans” have a right to “language access . . . when they are using the court system.” Minn. Jud. Branch, *Language Access Plan* 9 (2020), https://www.mncourts.gov/mncourtsgov/media/scao_library/Court%20Interpreter/MJB-Language-Access-Plan.pdf [<https://perma.cc/CE6P-T4UV>]. The plan states that, under the Americans with Disabilities Act, “district courts must provide auxiliary aids and services . . . to all deaf and hard of hearing court users.” *Id.* at 10.

Sauve’s argument is unavailing for two reasons. First, Sauve’s claim of an irregularity in the trial proceedings is not supported by the record. The district court

³ Sauve also argues that the district court failed to comply with Title VI of the Civil Rights Act. Title VI provides, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d (2018). Because Sauve does not argue that the district court failed to accommodate his hearing issues on the basis of race, color, or national origin, Sauve cannot rely on Title VI.

acknowledged that the courtroom's hearing-assistance equipment was not functioning. Before calling Sauve to testify at trial, attorney Perske stated that, "due to hearing loss, [Sauve] was having trouble hearing the witnesses" and that attorney Perske was "concerned" about "the dialogue due to [Sauve's] hearing loss." The parties' attorneys proposed that attorney Perske could "utilize the lectern close" to the witness box to question Sauve; the district court agreed. The district court noted that the court "used to have some hearing assistance device" but "they're not working." Attorney Perske stated that he "understood" and "this was the workaround."

Before examining Sauve, attorney Perske clarified that Sauve could "hear [him] okay " and stated, "[I]f there's a question that you cannot hear, please just let us know." During Sauve's testimony, he did not indicate he was having any difficulty hearing. At one point, attorney Perske asked Sauve whether he had heard a specific part of the custody evaluator's earlier testimony. Sauve responded, "I heard it."

After Sauve testified, attorney Perske rested, and Lindstrom's attorney called Lindstrom to testify. During Lindstrom's testimony, the district court interrupted to request that she "pull the microphone really close" and "speak really loud" because the district court thought "Sauve [was] having a hard time hearing." When Lindstrom's attorney resumed his examination after a recess, he reminded Lindstrom to "keep [her] voice volume elevated" when testifying. At the end of Lindstrom's testimony, attorney Perske called Sauve back "for a few rebuttal questions" and clarified at the outset that Sauve could hear him. In short, after developing a "workaround," neither attorney Perske nor Sauve

suggested that Sauve experienced any hearing difficulty or that Sauve required any other accommodation.

Second, Sauve’s brief to this court points out no instance of hearing difficulty or any prejudice to him as a result of hearing difficulty. Sauve seems to argue that he was deprived of a fair trial because he was unable “to address testimony” because of trouble hearing. But Sauve does not identify what testimony he did not hear or could not address—despite having the opportunity to review the trial transcript.

Thus, Sauve preserved no hearing difficulties for review on appeal, his brief to this court has not shown that any irregularity in the proceedings occurred, and he has asserted no prejudice because of difficulties hearing during trial.

B. The district court did not abuse its discretion by denying a motion for a new trial based on Sauve’s renewed request for a continuance.

Sauve argues that an irregularity in the proceedings occurred “when the court denied [his] request for a continuance.” Lindstrom argues that Sauve fails to show “how he was prejudiced by the denial of his continuance requests.”

“The granting of a continuance is within the discretion of the trial court, and its ruling will not be reversed absent a showing of a clear abuse of discretion.” *Jones v. Jones*, 402 N.W.2d 146, 149-50 (Minn. App. 1987). When evaluating “the denial of a continuance motion, the critical question is . . . whether the denial prejudiced the outcome of the trial.” *Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 419 (Minn. App. 2010).

Six days before trial, attorney Perske filed a certificate of representation for Sauve and requested a continuance of the trial. Attorney Perske stated that he could not find a

“witness or exhibit list” for Sauve, had “received only partial discovery,” and believed “an inefficient and confusing trial on the merits” would result absent a continuance. The district court denied the request for a continuance, stating that it could not “find good cause to continue this trial” unless “Mr. Sauve pays his portion of the custody evaluation and makes a significant good faith payment on his temporary child support obligation.”

Attorney Perske renewed his request for a continuance at the beginning of the trial. Perske added, “[R]egardless of the court’s decision on the continuance request, [opposing counsel] and I have gone through the list of both petitioner and respondent’s exhibits, and we’ve reached a substantial amount of agreement as to stipulating the admissibility of those.” The district court again denied the request, stating that the case was “substantially over” the timeline for divorce cases, “given all of the delays,” and that attorney “Perske appear[ed] to be prepared to go” to trial.

After the trial, Sauve moved for a new trial based on the district court’s denial of a continuance. The district court denied the motion. The district court found that the “case had been continued well beyond the typical timeline for a dissolution case.” The district court stated that it “had granted a continuance” in November 2022 “prior to the April 2023 continuance request to allow additional time for [Sauve] to prepare . . . due to the fact that [Sauve] had new counsel” before attorney Perske. The district court also found that “[f]urther delays would result in prejudice to [Lindstrom] who was singly shouldering the financial burdens of the children” and that Sauve “had not paid child support” or “his portion for the custody evaluator.” And the district court determined that, “although Mr.

Perske had been on the case for one week, Mr. Perske had put in a lot of work within that week and was admittedly prepared to move forward with the trial.”

Sauve’s brief to this court fails to show any irregularity in the denial of his renewed continuance request or that he was prejudiced by the denial. Sauve argues that attorney Perske “was not allowed the time to prepare [Sauve]” to testify such that Sauve “was unable to tell [his] story effectively” and that attorney Perske did not have “time to subpoena the witnesses [they] needed to testify.” Sauve’s arguments are unavailing. Sauve filed his dissolution petition in November 2021 and had over a year to prepare for trial. The trial was originally scheduled for July 25, 2022, but because of issues with the custody evaluation and Sauve retaining attorney two as new counsel, the district court rescheduled the trial three times, ultimately moving it to April 17, 2023. Though attorney Perske filed a certificate of representation six days before the April 2023 trial date, Sauve had been represented by three other attorneys since March 4, 2022. And the district court determined that attorney Perske was prepared to proceed with trial.

As with the hearing difficulties raised for the first time on appeal, Sauve does not articulate any prejudice because of the denial of the continuance request. Sauve called five witnesses at trial and does not specify what additional witnesses were “needed.” Sauve offered his own testimony as well as testimony from the custody evaluator and three of Sauve’s friends. Sauve also had the opportunity to cross-examine Lindstrom, the only witness Lindstrom’s attorney called. We conclude that the district court did not abuse its discretion in denying a new trial based on the denial of Sauve’s renewed motion for a continuance.

In sum, the district court did not abuse its discretion by denying Sauve's motion for a new trial based on irregularities in the proceedings resulting from the district court's accommodation of Sauve's hearing difficulties or the denial of a renewed continuance request.

II. Sauve's appellate motions are denied.

Sauve filed three motions with this court. Sauve's first motion stated, "Due to the fact that the requested book photos w/ children + photos of residence + possibly other docs (home receipt?) are as yet unavailable delay hearing to give the opportunity to obtain them. Also giving time to review attached materials and modify/add as needed. 14 days continuance." Sauve's second motion sought to "supplement file with attached documents originally submitted for hearings at district court." Along with his motion, Sauve submitted hundreds of pages of documents, photos, and a flash drive. Sauve's third motion asked this court for an "opportunity to attend a conference/hearing" at which his "litigation is being discussed in order to advocate [his] case in person."

Lindstrom opposes Sauve's three motions. As for the first two motions, Lindstrom argues that "appellate review is limited to what was in the transcripts and orders of the trial court" and that "the additional submissions are not a part of the district court record." Lindstrom construes Sauve's third motion as a request for oral argument and argues that "[t]his matter is submitted on [the] briefs because [Sauve] is not represented by counsel."

"The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases." Minn. R. Civ. App. P. 110.01. "An appellate court may not base its decision on matters outside the record on

appeal, and may not consider matters not produced and received in evidence below.” *Thiele*, 425 N.W.2d at 582-83. The supplemental materials submitted by Sauve are either already included in the district court record—in which case supplementation is not necessary—or were not part of the district court record—in which case supplementation is inappropriate. The materials also include motions previously filed in this appeal that were resolved by an order of this court. Accordingly, we deny Sauve’s first and second motions to supplement the record.

As to his third motion, “an appeal will be placed on a nonoral calendar and deemed submitted on the briefs on that calendar date . . . [w]hen any party involved in the appeal is not represented by counsel.” Minn. R. Civ. App. P. 134.06. Sauve is not represented by counsel on appeal. Also, to the extent that Sauve’s motion sought to attend this court’s conference of his case, he cites no legal authority entitling him to this relief. We therefore deny Sauve’s third motion “to attend a conference/hearing.”

Affirmed; motions denied.