

*This opinion is nonprecedential except as provided by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
A25-0504**

In the Marriage of:

Erin Marie Adams, petitioner,
Respondent,

vs.

Cody Dan Adams,
Appellant,

County of Blue Earth,
Intervenor.

**Filed June 8, 2026
Affirmed
Harris, Judge**

Blue Earth County District Court
File No. 07-FA-24-1374

Kenneth R. White, Law Office of Kenneth R. White, P.C., Mankato, Minnesota (for respondent)

Paul W. Brink, Jacob M. Birkholz, Birkholz & Associates, LLC, Mankato, Minnesota (for appellant)

Considered and decided by Bond, Presiding Judge; Harris, Judge; and Florey, Judge.*

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

NONPRECEDENTIAL OPINION

HARRIS, Judge

In this marital-dissolution dispute, appellant challenges the district court's denial of his motion to reopen the dissolution judgment and decree. Appellant argues that the district court (1) erred by determining that he was properly served, (2) erred as a matter of law and abused its discretion by refusing to reopen the dissolution judgment, (3) erred as a matter of law and abused its discretion by failing to address inequities in the dissolution judgment under *Pooley v. Pooley*, 979 N.W.2d 867, 873 (Minn. 2022), and (4) abused its discretion by awarding respondent conduct-based attorney fees. Because we conclude that service was proper and that the district court did not abuse its discretion by denying appellant's motion or by awarding respondent attorney fees, we affirm.

FACTS

In March 2024, respondent-wife Erin Marie Adams informed appellant-husband Cody Dan Adams that she was filing for divorce. After drafting the initial pleadings, wife hired a process server, L.B., to personally serve husband with the summons and petition for dissolution. On April 5, 2024, L.B. attempted to serve husband at his home but was unsuccessful.

According to L.B, she returned to husband's home on April 7, 2024, to attempt service again. L.B. turned into husband's driveway and drove up to the house, where she saw a young man, later identified as husband, working outside. L.B. rolled down her window and called out "Cody Adams." Husband made eye contact with L.B. and told her to get off the property. L.B. got out of her car and told husband that he was being served.

Husband continued to yell at L.B., saying that she was trespassing and that he would call the sheriff. Husband went inside the house, and an older man came outside. The older man was later identified as husband's father, D.A. L.B. told D.A. that husband had been served and then secured the papers between a pole and an electrical box on the property. D.A. watched as L.B. secured the papers between the pole and electrical box. L.B. notified wife and her attorney that she completed service but that she had to "drop serve the papers because [husband] would not take them." L.B. also filed an affidavit of service confirming that she served husband, but that husband "refused to take the papers," and she "told his father [that she] secured the papers in-between the pole and the electrical box."

According to D.A., L.B. drove partially up the driveway but did not come up to the house. D.A. stated that L.B. was around 100-150 feet away from him when she rolled her window down and told D.A. to "come here." D.A. stated that he did not walk up to L.B.'s car because it was raining. D.A. said that L.B. declined to drive up to the house and eventually drove away without speaking to him. D.A. denied receiving any legal papers or seeing papers between the pole and the electrical box.

Husband also denied having any conversation with L.B. According to husband's affidavit, he was working outside wearing earbuds when a "strange unknown woman" showed up at his house. Husband stated that his dog was outside, and he was concerned that his dog might bite L.B., so he brought the dog inside. Husband stated that he was inside his house when he saw L.B. drive away. Husband claimed that he "never got any paperwork in the mail or email or any notice," and only learned of the divorce after wife notified him in July 2024.

But in his responsive affidavit, husband noted that he told L.B. “if you are trespassing, I will call the sheriff. I can’t hear you, but I am bringing my dog in and I will be out.” Husband claimed that he could not hear what L.B. was saying because the dog was barking and he had music playing in his earbuds. Husband also denied that he ever contacted the sheriff.

The next day, L.B. contacted wife’s attorney about whether wife had spoken with husband about the papers. L.B. told wife’s attorney that she secured the papers between the pole and the electrical box. L.B. also recounted her conversation with D.A., and that husband threatened to call the sheriff. L.B. noted that it was sprinkling when she delivered the papers and that the papers could be “soggy.” L.B. recommended that wife contact the sheriff if the papers needed to be served again, as husband had threatened to call the sheriff. Over the next week, the sheriff unsuccessfully attempted to re-serve husband on four occasions. The sheriff also left husband voicemails and left business cards at husband’s home. Husband never answered or otherwise responded to wife’s summons and petition for dissolution. Husband also denied that the sheriff ever contacted him.

In April 2024, the district court mailed to husband a notice of case filing. In May 2024, the district court mailed to husband a notice of remote hearing setting the matter for a scheduling conference. And in July 2024, wife served and filed documents seeking a default because more than thirty days had passed since the date of service and husband did not serve an answer. The district court filed a document titled “Notice of Judicial Determination” in which it stated that the scheduling conference would proceed, and that scheduling a default hearing would be addressed at that time. After the scheduling hearing,

the district court mailed a notice for a default hearing. At the default hearing wife appeared, but husband did not. The district court received testimony from wife and discussed the proposed order. The district court then filed its findings of fact, conclusions of law, and order for judgment. Later, the district court administrator entered judgment on the order.

Husband moved to void the judgment and decree for lack of jurisdiction and lack of proper service and to reopen the judgment under Minnesota Statutes section 518.145, subdivision 2 (2024). Husband also sought an award for reasonable attorney fees. In a memorandum supporting his motion, husband argued that service was improper because he and L.B. were not within speaking distance. Husband also denied refusing service, maintaining that L.B. made “zero actual attempt at physical service.” In response, wife requested that the district court deny husband’s motion in its entirety and award conduct-based attorney fees.

After a hearing, the district court denied husband’s motion in its entirety. The court found that L.B. actions, including stating that she had papers to serve, calling the name of the person she was attempting to serve, and posting those papers on the property, would convince a reasonable person that personal service was being attempted. The district court concluded that husband’s refusal to speak to L.B. or come back outside did not defeat personal service because service may not be avoided by physically refusing to accept the summons. The district court determined that husband failed to prove at least one statutory ground by the preponderance of the evidence to support reopening the judgment under section 518.145. And, the district court ordered husband to pay wife \$2,500 in conduct-

based attorney fees for unreasonably contributing to the length and expense of the proceeding by attempting to evade service and refusing to engage in the proceedings.

Husband appeals.

DECISION

I. The district court did not err by determining that husband was properly served.

Husband first argues that the district court erred by denying his motion to void the judgment and decree for ineffective service of process.

Effective service of process is a question of law that we review de novo. *Shamrock Dev. Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008). “But in conducting this review, we must apply the facts as found by the district court unless those factual findings are clearly erroneous.” *Id.* “[T]he Minnesota Rules of Civil Procedure shall apply to Family Law actions except where they are in conflict with applicable statutes.” Gen. R. Prac. 301.01(a). To the extent that a conflict between the Minnesota Rules of Civil Procedure and the family court rules exists, the family court rules govern. Minn. Gen. R. Prac. 301.01(d). Minnesota Rule of Civil Procedure 4.03(a) states that an individual may be served with a summons “personally or by leaving a copy at the individual’s usual place of abode with some person of suitable age and discretion.”

Minnesota Statutes section 518.11 (2024) governs service of process in marriage dissolutions. Section 518.11(a) provides that in a dissolution proceeding, “copies of the summons and petition shall be served on the respondent personally.” Minn. Stat. § 518.11(a).

“Personal [service] ‘is satisfied if the process server and the defendant are within speaking distance of each other, and such action is taken as to convince a reasonable person that personal service is being attempted’ because ‘service cannot be avoided by physically refusing to accept the summons.’” *Drews v. Fed. Nat’l Mortg. Ass’n*, 850 N.W.2d 738, 742 (Minn. App. 2014) (quotation omitted). When a respondent challenges service of process, “the plaintiff must submit evidence of effective service.” *DeCook v. Olmsted Med. Ctr. Inc.*, 875 N.W.2d 263, 271 (Minn. 2016). “An affidavit of service is usually strong evidence of proper service.” *Drews*, 850 N.W.2d at 743-44 (quotation omitted). “Once the plaintiff submits evidence of service, a [respondent] has the burden of showing that the service was improper.” *DeCook*, 875 N.W.2d at 271 (quotation omitted).

In determining that wife properly served husband, the district court relied on our nonprecedential decision in *Koivu v. Koivu*, A20-0814, 2021 WL 856105 (Minn. App. Mar. 8, 2021), *rev. denied* (Minn. May 26, 2021).¹ In that case, the process server attempted to serve appellant, a professional hockey player, at a hockey arena. *Koivu*, 2021 WL 856105, at *2. As Koivu entered the tunnel to the locker room, the process server said his name, made eye contact with him, and held out the documents. *Id.* Koivu put his head down and continued walking. *Id.* The process server then dropped the documents in front of Koivu and said, “you have been served.” *Id.* Koivu heard someone yell “you’ve been served,” and saw the papers fall onto the ground. *Id.* The security guard rushed over to pick up the papers and Koivu saw that the documents were divorce papers. *Id.* The district

¹ We cite this nonprecedential opinion as persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1(c).

court determined that Koivu was within speaking distance of the process server because he could hear someone say “you have been served.” *Id.* The district court also noted that Koivu was aware that his wife was seeking a divorce. *Id.* We concluded that service was proper because under these facts a reasonable person would be convinced that service was being attempted. *Id.*

Similar to *Koivu*, L.B. called out “Cody Adams.” Husband made eye contact with L.B. before telling her to get off the property. Husband nevertheless asserts that L.B.’s actions would not convince a reasonable person that personal service was being attempted because she was never within speaking distance of him and simply left the documents “outside in the rain.” We disagree. Husband yelling at L.B. and threatening to call the sheriff demonstrates that they were within speaking distance of each other. Notably, L.B.’s affidavit stated that husband “completely leaves out [my] verbal contact with him, me telling him I had papers to be served, and him then threatening to call the sheriff’s department on me for trespassing.” And while L.B. placed the documents between the pole and the electrical box, she did so *after* husband physically refused to accept them.

Husband also claims he was unaware service was being attempted because L.B. was merely “a stranger driving onto [husband’s] property uninvited.” But evidence in the record establishes that husband knew wife was seeking a divorce. Like in *Koivu*, wife mailed copies of the summons and petition to husband on March 6, 2024, and on April 17, 2024, which husband received. Wife also sent husband text messages explicitly stating that she was filing for divorce.

We see no clear error in the district court's finding that husband understood that service was being attempted when L.B. arrived at his home. Therefore, the district court did not err in determining that husband was properly served and denying husband's motion to void the judgment.

II. The district court acted within its discretion when it denied husband's motion to vacate and reopen the dissolution judgment under Minnesota Statutes section 518.145, subdivision 2.

Husband next argues that the district court abused its discretion by denying his request to reopen the dissolution judgment under Minnesota Statutes section 518.145, subdivision 2, because (1) surprise, mistake, inadvertence, and excusable neglect of fact required the decree to be reopened, (2) there was newly discovered evidence, and (3) wife committed fraud by misrepresenting the parties' assets and debts. We address each argument in turn.

"Minnesota law generally precludes parties from reopening marital judgments and decrees after they exhaust their appellate remedies." *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022). "Subject to the right of appeal, a dissolution judgment and decree is final when entered, unless in a timely motion a party establishes a statutory basis for reopening the judgment and decree." *Thompson v. Thompson*, 739 N.W.2d 424, 428 (Minn. App. 2007) (citing Minn. Stat. § 518.145, subs. 1, 2 (2006)). "The sole relief from a dissolution judgment and decree lies in meeting the requirements of Minn. Stat. § 518.145, subd. 2." *Knapp v. Knapp*, 883 N.W.2d 833, 835 (Minn. App. 2016) (quotation omitted). "The moving party must prove at least one of the statutory grounds for vacating by a preponderance of the evidence." *Id.*

“An appellate court will not reverse a district court’s decision to grant or withhold relief under section 518.145 . . . except for an abuse of discretion.” *Bender*, 971 N.W.2d at 262. “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.” *Id.* (quotation omitted). “A district judge’s findings of fact are not set aside unless clearly erroneous.” *Knapp*, 883 N.W.2d at 835 (quotation omitted).

A. Mistake, Inadvertence, Surprise, or Excusable Neglect

Husband argues that the district court abused its discretion by refusing to reopen the dissolution judgment based on surprise, mistake, inadvertence, and excusable neglect under section 518.145, subdivision 2(1).

“On motion, a district court ‘may relieve a party from a judgment and decree’ based on ‘mistake, inadvertence, surprise, or excusable neglect.’” *Id.* (quoting Minn. Stat. § 518.145, subd. 2). Relief may be granted if the movant establishes “(1) a debatably meritorious claim, (2) a reasonable excuse for the movant’s failure or neglect to act, (3) the movant acted with due diligence after learning of the error or omission, and (4) no substantial prejudice will result to the other party if relief is granted.” *Safeco Ins. Co. v. Holmgren Bldg. Repair, Inc.*, 946 N.W.2d 638, 645 (Minn. App. 2020) (quoting *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016)), *rev. denied* (Minn. Sept. 15, 2020); *see also Bender*, 971 N.W.2d at 263 (“Because Rule 60.02 and section 518.145 are virtually identical, we use cases evaluating Rule 60.02 when addressing the application of section 518.145.” (quotation omitted)). “It is generally for the district court to determine whether

the excuse offered by the movant is true and reasonable under the circumstances.” *Cole v. Wutzke*, 884 N.W.2d 634, 639 (Minn. 2016).

The district court determined that husband did not meet his burden to show that relief was warranted based on surprise, mistake, inadvertence, or excusable neglect under section 518.145, subdivision 2(1). The district court concluded that husband’s refusal to engage in the process, despite having a full and fair opportunity to present evidence, did not warrant reopening of the judgment.

Husband claims that his failure to act was based on improper service and insufficient notice of the court hearings. Because this argument is based on husband’s assertion that he was not properly served, and because, above, we rejected that assertion, we need not further address this argument.

B. Newly Discovered Evidence

Husband argues that the district court abused its discretion by refusing to consider newly discovered evidence regarding the correct value of the homestead. Alternatively, husband argues that wife owed him a fiduciary duty under Minnesota Statutes section 518.58, subdivision 1(a) (2024) to provide accurate financial information, and failure to do so warrants reopening of the judgment.

Minnesota Statutes section 518.145, subdivision 2(2), allows courts to “relieve a party from a judgment and decree” based on “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial.” Minn. Stat. § 518.145, subd. 2(2). The district court may reopen a judgment if the moving party shows: (1) the newly discovered evidence was not discoverable before the relevant proceeding,

despite exercising reasonable diligence, (2) the evidence is “relevant and admissible,” and (3) the evidence is likely to affect the outcome of the case, and is not “cumulative, contradictory or impeaching.” *Bender*, 971 N.W.2d at 263 (quotations omitted). “Whether these factors have been met is within the [district] court’s sound discretion.” *Id.*

The district court found that husband did not identify any newly discovered evidence that warranted the reopening of the dissolution judgment. Rather, husband merely asserted that the financial figures presented at the default hearing were incorrect. The district court also determined that husband’s reliance on section 518.58, subdivision 1(a), was improper because husband did not engage in the dissolution proceedings and failed to show what marital debts or assets were allegedly transferred, encumbered, concealed, or disposed of without his consent.

On appeal, husband does not point to any newly discovered evidence in the record. Instead, husband appears to suggest that any alleged inaccuracies at the default hearing were new to *him*. But husband’s argument overlooks the district court’s finding that he did not engage in the proceedings. And section 518.145 does not relieve a party from a judgment when that judgment is the result of a process in which they actively chose not to participate.

Husband’s claim that wife violated her fiduciary duty under section 518.58, subdivision 1(a), also lacks merit. The purpose of this section is to prevent the disposal of marital assets during the pendency of a marital dissolution without consent of the other party. Minn. Stat. § 518.58, subd. 1(a). Husband does not identify any marital assets or debts that were transferred, encumbered, concealed, or disposed of by wife during the

dissolution proceedings. Rather, husband appears dissatisfied with the property division upon default. Thus, the district court acted within its discretion by denying husband's motion to reopen the judgment based on newly discovered evidence.

C. Fraud

Next, husband contends that the district court abused its discretion by refusing to reopen the dissolution judgment based on fraud or misrepresentation under section 518.145, subdivision 2(3).

In a dissolution proceeding, ordinary fraud does not require an affirmative misrepresentation or an intentional course of concealment, unlike fraud upon the court, because parties to a marriage dissolution have a duty to disclose all assets and liabilities completely and accurately. *Bollenbach v. Bollenbach*, 175 N.W.2d 148, 155 (Minn. 1970).

The district court found that husband failed to establish by the preponderance of the evidence that wife intentionally misrepresented or failed to disclose the parties' debts and assets. The district court noted that because the dissolution proceeded in default, no formal discovery was completed. Accordingly, the district court concluded that wife provided the most accurate information possible at the default hearing without husband's participation in the proceedings.

Husband asserts that wife committed fraud by intentionally misrepresenting their debts and assets, and by misleading the court into believing that the dissolution decree was fair or equitable. We are not convinced. Our review of the record establishes that the district court did not abuse its discretion in concluding that wife provided it with the best information she had. At the default hearing, wife did not testify that the information she

provided was precise. Instead, she confirmed that the information regarding the parties' debts, assets, real property, spousal maintenance, child support, and parenting time was accurate to the best of her knowledge. And husband did not provide evidence to rebut wife's financial information. Thus, the district court did not abuse its discretion by denying husband's motion to reopen the judgment and decree based on fraud.

III. The district court acted within its discretion by denying husband's motion to reopen the dissolution judgment based on alleged inequities pursuant to *Pooley*.

Alternatively, husband contends that the district court abused its discretion and failed to meet its statutory obligation under Minnesota Statutes section 518.58 (2024) to ensure the dissolution decree was "just and equitable," as set forth under *Pooley*, 979 N.W.2d at 875-78.

In *Pooley*, the district court granted the parties' dissolution without knowledge that the parties had not disclosed their retirement accounts. 979 N.W.2d at 871-72. At the time of the dissolution, husband's 401(k) account was worth \$235,000, while wife's 401(k) had a zero balance. *Id.* Wife moved to "enforce, clarify, or amend the dissolution decree," and sought half the value of husband's retirement accounts or equitable division of the omitted asset. *Id.* at 872. Wife asserted that the parties agreed to split the retirement accounts equally. *Id.* But husband maintained that the parties agreed to keep their own retirement accounts, and in exchange, husband agreed to assume extra expenses and debt. *Id.* The district court denied wife's motion, holding that dividing the omitted asset after the fact would create an "unfair windfall." *Id.* This court affirmed. *Id.* The supreme court reversed, reasoning that the district court not only had the power to divide the omitted asset,

but that it was statutorily mandated to do so under Minnesota Statutes section 518.58. *Id.* at 877-78. Accordingly, the supreme court concluded that by failing to consider the omitted retirement account, the district court violated its duty to ensure that all property divisions are fair and equitable. *Id.* at 879.

Relying on *Pooley*, husband asserts that the district court abused its discretion by failing to reopen the dissolution judgment because it “made no attempt to ensure that the property division was done justly and equitably” under section 518.58. Husband’s reliance on *Pooley* is misplaced. As an initial matter, *Pooley* involves the omission of assets. The facts before us do not involve omitted assets, nor does husband point to any. Furthermore, the district court here based its findings on the relevant facts provided under section 518.58 before making “a just and equitable division of the marital property.” Minn. Stat. § 518.58, subdivision 1. The district court considered each party’s age, health, occupation, income, and individual needs in its dissolution decree. The district court met its statutory obligation. Any inequities contained in the dissolution decree are directly attributed to husband’s failure to participate in the proceedings. “[A] party cannot complain about a district court’s failure to rule in [the party’s] favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question.” *Thompson*, 739 N.W.2d at 431 (quoting *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *rev. denied* (Minn. Nov. 24, 2003)). Accordingly, we conclude that the district court acted within its discretion by denying husband’s motion to reopen the dissolution judgment based on inequity under *Pooley*.

IV. The district court acted within its discretion by awarding wife conduct-based attorney fees.

Lastly, husband contends that the district court abused its discretion by awarding wife conduct-based attorney fees.

Conduct-based attorney-fee awards “are discretionary with the district court.” *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007). “In proceedings under chapter 518, a district court may, in its discretion, award attorney fees against a party who unreasonably contributes to the length or expense of the proceeding.” *Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007) (quotations omitted) (citing Minn. Stat. § 518.14, subd. 1 (2006)). “An award of conduct-based attorney fees is reviewed for an abuse of discretion.” *Id.*

The district court awarded wife \$2,500 in conduct-based attorney fees. The district court determined that husband unreasonably contributed to the length of the proceedings by attempting to evade service when he knew wife was filing for divorce, failing to appear at the hearings despite being notified by mail, and bringing a motion to reopen the judgment for reasons that were solely attributable to his refusal to engage in the proceedings.

Husband argues that he did not evade service because “no personal service was ever attempted.” Husband also asserts that he did not refuse to engage in proceedings because he only learned about the dissolution when the district court entered its judgment. Husband denies ever receiving the court’s hearing notices, despite evidence in the record confirming they were mailed to him. Husband’s arguments are unavailing.

The record establishes that L.B. properly served husband at his home. Moreover, husband knew wife was filing for divorce because she informed him on several occasions and mailed him copies of the summons and petition. The record also shows that husband received the hearing notices. Husband may not claim inadequate notice of the hearings because he did not read his mail. *See In re. License of W. Side Pawn*, 587 N.W.2d 521, 522 (Minn. App. 1998) (“The city cannot be held responsible for relator’s failure to read his mail.”), *rev. denied* (Minn. Mar. 30, 1999).

While the district court’s order does not point to specific facts to support its determination that husband evaded service, we conclude that its award for conduct-based attorney fees is substantially supported by the record. Therefore, we discern no abuse of discretion.

Affirmed.