

*This opinion is nonprecedential except as provided by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
A25-0585**

In Re the Custody of MIVB;

Dustin Allen Basting, petitioner,
Appellant,

vs.

Heather Mae Grehn,
Respondent.

**Filed March 2, 2026
Affirmed; motion denied
Bond, Judge**

Anoka County District Court
File No. 02-FA-21-1639

Dustin Allen Basting, St. Paul, Minnesota (pro se appellant)

Sonja M. Nyberg, Collins, Buckley, Sauntry & Haugh, PLLP, St. Paul, Minnesota (for respondent)

Considered and decided by Bond, Presiding Judge; Connolly, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

BOND, Judge

Appellant father challenges a district court order granting respondent mother sole legal and sole physical custody of their minor child and suspending father's parenting time.

We affirm.

FACTS

Appellant Dustin Allen Basting (father) and respondent Heather Mae Grehn (mother) are the parents of a child (child) born in 2015. The parties never married, and they executed a recognition of parentage shortly after child was born. In 2021, father petitioned to establish custody and parenting time for child. Father filed several temporary motions while the matter was pending, requesting, among other things, temporary joint legal and temporary joint physical custody of child, temporary unsupervised parenting time with child, and unlimited telephone contact with child. The district court denied father's temporary motions, maintaining mother's sole physical and sole legal custody of child and awarding father limited supervised parenting time with child for two hours, twice per month.

In November 2023, the parties stipulated to the appointment of a neutral custody and parenting-time evaluator (the evaluator).¹ The evaluator interviewed mother, father, and child, and observed the parties interact with child. The evaluator also reviewed court records, the parties' medical records and psychological evaluations, and child's medical, mental health, and educational records. The evaluator submitted a report recommending that the district court award mother sole physical and sole legal custody and limit father's parenting time to a supervised, therapeutic setting.

In June 2024, a court trial was held at which father appeared pro se. At trial, the district court received testimony from mother, father, the evaluator, father's sister, child's

¹ Father was represented by counsel at the time of the stipulation.

maternal grandmother, and child's paternal grandmother. At the close of trial, the district court issued a verbal order suspending father's parenting time for 60 days based on concerns that child's mental health and behavioral outbursts may be linked to child's visits with father. The district court subsequently issued amended findings of fact, conclusions of law, and an order for custody, parenting time, and child support.² The district court found the testimony of mother, child's maternal grandmother, and the evaluator credible. After conducting a detailed analysis of the statutory best-interests factors, the district court determined it was in child's best interests for mother to retain sole physical and sole legal custody. As to parenting time, the district court found that, based on affidavits from child's daily caregivers and a note from child's therapist, child's "behavior and mental health ha[d] improved since visits with [father] were suspended" and therefore it was in child's best interests for father's parenting time to remain suspended.

Father appeals.

DECISION

Father, a pro se litigant, assigns numerous errors to the district court's order granting mother sole legal and sole physical custody of their minor child and suspending father's parenting time. We begin by setting out certain principles that govern our review.

On appeal, a reviewing court does not presume error; instead, the party seeking relief must identify error and show that it was prejudicial. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975); *Braith v. Fischer*, 632 N.W.2d 716, 724 (Minn.

² The order was amended to include the previously reserved issue of child support, which father does not dispute on appeal.

App. 2001) (applying this aspect of *Midway* in a family-law appeal), *rev. denied* (Minn. Oct. 24, 2001). While “some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules.” *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001).

An assignment of error based on mere assertion, unsupported by argument or authority, is forfeited and need not be considered unless prejudicial error is obvious on mere inspection. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971); *see also State, Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed question); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal). Furthermore, we generally only consider issues presented to, and considered by, the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also Lewis-Miller v. Ross*, 710 N.W.2d 565, 570 (Minn. 2006) (applying this aspect of *Thiele* in a family-law appeal).

Finally, Minn. R. Civ. App. P. 128.02, subd. 1(c), requires that in a formal brief, “[e]ach statement of a material fact shall be accompanied by a reference to the record.” Citations to the record “are particularly important where . . . the record is extensive.” *Hecker v. Hecker*, 543 N.W.2d 678, 681 n.2 (Minn. App. 1996), *aff’d*, 568 N.W.2d 705 (Minn. 1997). A failure to cite to the record violates Minn. R. Civ. App. P. 128.03 and “[a] flagrant violation of the rules to fail to provide citations to the record may lead to non-consideration of an issue or dismissal of an appeal.” *Brett v. Watts*, 601 N.W.2d 199, 202

(Minn. App. 1999) (quotation omitted), *rev. denied* (Minn. Nov. 17, 1999). Father’s brief provides no citations to the record, even though the record consists of ten volumes of documents totaling more than 1,440 pages and 3 volumes of transcripts totaling over 400 pages. Although we do not conclude that father’s failures to cite to the record are flagrant, we note that the failure to comply with the rules diminishes the persuasiveness of his brief. *See id.* (noting that a party’s failure to comply with procedural rules can “diminish a brief’s persuasiveness”).

With those principles in mind, we turn to father’s claims of error.

I. The district court did not abuse its discretion by suspending father’s parenting time.

We understand father’s first challenge to be to the district court’s determination to suspend his parenting time. “District courts have broad discretion on matters of custody and parenting time.” *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). We will not reverse a district court’s parenting-time decision absent an abuse of that discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). “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.” *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quotation omitted). Further, we will uphold a district court’s findings of fact underlying a parenting-time decision unless they are clearly erroneous. *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). “A finding is clearly erroneous if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000)

(quotations omitted). In determining whether findings are clearly erroneous, we defer to the district court’s credibility determinations and view the record in the light most favorable to the district court’s findings. *Id.*

“[U]pon the request of either parent,” a district court shall “grant such parenting time . . . as will enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child.” Minn. Stat. § 518.175, subd. 1(a) (2024). “In the absence of other evidence, there is a rebuttable presumption that a child must receive a minimum of at least 25 percent of the parenting time with each parent.” Minn. Stat. § 518.175, subd. 1(g) (2024). But this presumption does not guarantee equal parenting time. *See Manthei v. Manthei*, 268 N.W.2d 45, 45 (Minn. 1978) (“[Parenting-time] rights are not absolute and are to be exercised only when in the best interest of the child.”). The parenting-time statute allows restrictions on parenting time if the district court finds that “parenting time is likely to endanger the child’s physical or emotional health or impair the child’s emotional development.” Minn. Stat. § 518.175, subd. 5(c)(1) (2024).

Here, the district court suspended father’s parenting time with child because it concluded that father’s “parenting time endangers [child’s] mental and emotional health and well-being and is not in [child’s] best interest.” The district found that child’s ongoing psychological distress and behavioral outbursts were “directly related to visits with [father]” and that, “[a]fter a break from supervised visits with [father,] [child’s] behaviors have started to improve.” The district court also made extensive factual findings relevant to child’s best interests, including those pertaining to: mother’s role as child’s primary caregiver since child’s birth; the history of domestic abuse perpetrated by father against

mother; father's reluctance to facilitate child's relationship with mother; child's expressed fear of father; father's mental-health struggles and apparent unwillingness to remain medication compliant; father's repeated violation of an order for protection and criminal domestic-abuse no-contact order; and child's expressed preference not to have supervised parenting time with father. The district court's findings are supported by the record. Therefore, the district court did not abuse its discretion by determining that parenting time would endanger child's "physical or emotional health or impair [child's] emotional development" and by restricting father's parenting time. Minn. Stat. § 518.175, subd. 5(c)(1).

II. The district court did not abuse its discretion in excluding father's exhibits.

Father argues that the district court improperly excluded most of his exhibits at trial. "We afford the district court broad discretion when ruling on evidentiary matters, and we will not reverse the district court absent an abuse of that discretion." *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015).

A district court may exclude evidence when a party fails to comply with a scheduling order. Rule 16.06 provides in part: "If a party or party's attorney fails to obey a scheduling or pretrial order, . . . the court, upon motion or upon its own initiative, may make such orders with regard thereto as are just, including any of the orders provided in Rule 37.02(b)(2), (3), (4)." Minn. R. Civ. P. 16.06. Rule 37.02 allows the court to file an order "prohibiting [the disobedient] party from introducing designated matters in evidence." Minn. R. Civ. P. 37.02(b)(2).

Before trial, the district court issued a scheduling order requiring the parties to upload their proposed exhibits to the Minnesota Digital Exhibit System (MNDES) within three days of trial and provide copies of their exhibits to the opposing counsel or pro se party within 14 days of trial. The scheduling order provided that “[f]ailure to do so may result in exclusion of an exhibit from evidence.” While father uploaded multiple exhibits to MNDES, he failed to provide physical copies of his exhibits to mother’s attorney as required by the scheduling order. The district court provided father with additional time to print and provide his exhibits to opposing counsel by the first day of trial, but father did not do so. Mother stipulated to the admission of four of father’s exhibits but objected to the remaining exhibits. The district court excluded father’s remaining exhibits for failure to comply with the scheduling order. On this record, we discern no abuse of discretion in the district court decision to exclude father’s exhibits. *See* Minn. R. Civ. P. 16.06, 37.02.

III. The district court did not make clearly erroneous credibility determinations.

Father appears to argue that the district court made erroneous credibility determinations. We will “set aside a district court’s findings of fact only if clearly erroneous, giving deference to the district court’s opportunity to evaluate witness credibility.” *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). Under the clear-error standard, we will not reweigh evidence, engage in fact-finding, or reconcile conflicting evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021); *see also Ewald v. Nedrebo*, 999 N.W.2d 546, 552 (Minn. App. 2023) (citing *Kenney* in a family-law appeal), *rev. denied* (Minn. Feb. 28, 2024). Accordingly, we “need not go

into an extended discussion of the evidence to prove or demonstrate the correctness” of the district court’s findings. *Kenney*, 963 N.W.2d at 222 (quotation omitted).

Father first argues that the district court clearly erred in accepting the evaluator’s “biased” recommendation “without review or scrutiny.” The record reflects that the district court found the evaluator credible and assigned “substantial weight” to the evaluator’s recommendation only after the court extensively reviewed the evaluator’s findings, education, and professional experience, which included 20 years working as a neutral custody and parenting-time evaluator. We defer to the district court’s credibility determination. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (“Deference must be given to the opportunity of the [district] court to assess the credibility of the witnesses.”); *see also* Minn. R. Civ. P. 52.01 (stating that “due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses”).

Second, father argues that the district court erred in disregarding paternal grandmother’s testimony. Paternal grandmother testified that she had never seen child afraid of father, father was an excellent parent, and mother was vindictive and “an actress.” The district court heard the testimony of paternal grandmother and found it was not credible, a determination to which we must defer. *See id.*

Third, father argues that the district court erred finding credible mother’s attorney’s statement that father never provided her physical copies of his exhibits as required by the scheduling order. The district court credited mother’s attorney’s statement “as an officer of the [c]ourt” that she never received father’s trial exhibits. Again, we must defer to the district court’s credibility determination. *See id.*

Accordingly, we conclude that the district court did not make clearly erroneous credibility determinations.

IV. The district court did not violate the Minnesota Code of Judicial Conduct.

Father alleges that the district court violated various rules under the Minnesota Code of Judicial Conduct. “Whether a judge has violated the Code of Judicial Conduct is a question of law, which we review de novo.” *State v. Dorsey*, 701 N.W.2d 238, 246 (Minn. 2005).

Father first contends that the district court violated rule 2.9(A) by engaging in prohibited ex parte communications by “conferring with another judge.” *See* Minn. Code Jud. Conduct Rule 2.9(A) (stating that generally, “[a] judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter”). Father fails to provide a citation to this alleged ex parte communication, and our review of the record uncovered none. Thus, we do not address this argument. *See Wintz*, 558 N.W.2d at 480 (declining to reach an issue “in the absence of adequate briefing”).

Father next contends that the district court violated rules 2.2 and 2.3(A), which provide that “[a] judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially” and “without bias or prejudice.” Minn. Code Jud. Conduct Rules 2.2, 2.3(A). Father argues that the district court exhibited bias against him by: (1) excluding his exhibits on “technicalities”; (2) relying on “biased” expert testimony from the evaluator; (3) referring to him as “the defendant,” suggesting “systemic bias and a presumption of guilt”; and (4) disregarding his “reasonable arguments.” We have already

determined that the district court did not abuse its discretion in excluding father's exhibits for failure to comply with the scheduling order and did not clearly err in its factual findings, including its determination that the evaluator's testimony and recommendations were credible. Further, father does not cite to the record to support his assertion that the district court referred to him as "the defendant," and our review of the record fails to show any such instance. As a result, we do not reach this issue. *See Wintz*, 558 N.W.2d at 480.

Finally, while father alleges that the district court erred in disregarding his "reasonable arguments," a mere adverse ruling is not proof of bias, *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986), and we presume that a district court judge "has discharged her duties properly," *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008). Thus, father is not entitled to relief on his claims of judicial bias.

V. Father's remaining arguments are forfeited.

Father raises multiple constitutional arguments for the first time on appeal. Specifically, father argues: (1) the district court failed to apply a "constitutional presumption of equal parenting time" in suspending his parenting time; (2) Minn. Stat. § 257.541 (2024) is unconstitutional because it deprives biological, unwed fathers of equal protection under the law; (3) the district court violated his First Amendment right to free speech in admitting his social-media posts and videos at trial; (4) the district court violated his procedural due-process right to be heard and present evidence by excluding his exhibits; and (5) the district court denied him his constitutional right to confront his accusers by relying on hearsay evidence. Father further argues that the district court made evidentiary errors at trial, including by admitting a note that father contends was unauthenticated and

contained hearsay and by admitting hearsay testimony from mother and a therapist. And he asserts various claims related to the evaluator's alleged bias and "history of dishonesty and serious professional misconduct."

We have carefully reviewed father's remaining claims of error and conclude that they are forfeited because they are unsupported by legal arguments or citation to legal authority, were not raised in the district court or properly preserved for appellate review, are not supported by the record, or because prejudicial error is not obvious on mere inspection. *See Wintz*, 558 N.W.2d at 480 (concluding that inadequately briefed issues need not be addressed when no prejudicial error was obvious on mere inspection); *Thiele*, 425 N.W.2d at 582 (stating that a reviewing court generally may not consider issues that were not presented to, and considered by, the district court); *In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981) (providing that an appellant cannot raise a constitutional issue for the first time on appeal); *In re Welfare of D.N.*, 523 N.W.2d 11, 13 (Minn. App. 1994) ("Evidentiary rulings 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." (quotation omitted)), *rev. denied* (Minn. Nov. 29, 1994). We therefore do not address them.

VI. Mother's motion to strike is denied as moot.

Mother moved to strike portions of father's addendum because it contains materials that were not presented to the district court and are not part of the record on appeal. The record on appeal is limited to "documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any." Minn. R. Civ. App. P. 110.01. Generally, an appellate court may not base its decision on materials outside the record on appeal and may

not consider matters not produced and received into evidence in the district court. *Thiele*, 425 N.W.2d at 582. Because we have not relied on the portions of husband's addendum that mother is requesting we strike, we deny the motion to strike as moot. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007) (denying motion to strike as moot when court did not rely on challenged materials).

Affirmed; motion denied.