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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-2002**

In re the Marriage of:

Angie Lynn Magnuson Swierzewski, petitioner,
Respondent,

vs.

David Matthew Swierzewski,
Appellant.

**Filed July 20, 2026
Affirmed
Bond, Judge**

Hennepin County District Court
File No. 27-FA-24-679

Joani C. Moberg, Susan A. Daudelin, Hazel N. Bowen, Henschel Moberg, P.A.,
Minneapolis, Minnesota (for respondent)

Richard D. Crabb, Hill Crabb, LLC, Edina, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Bond, Judge; and Chutich,
Judge.*

* Retired justice of the Minnesota Supreme Court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10, and Minn. Stat. § 2.724, subd. 3 (2024).

NONPRECEDENTIAL OPINION

BOND, Judge

In this marital dissolution appeal, appellant-husband challenges the district court's determinations pertaining to (1) child custody and parenting time; (2) child support; (3) classification, valuation, and division of marital property; and (4) payment of the custody evaluator's fee. We affirm.

FACTS

Appellant David Matthew Swierzewski (husband) and respondent Angie Lynn Magnuson Swierzewski (wife) were married in 2009 and have four minor children. In January 2024, wife petitioned the district court to dissolve the marriage and requested sole physical custody and joint legal custody of the children. Husband initially requested joint physical and joint legal custody of the children, but during trial changed the latter request to sole legal custody. Additionally, wife and husband each proposed a parenting-time schedule.

The parties participated in a private custody and parenting evaluation. After interviewing the parties and the children, the custody evaluator recommended joint legal and joint physical custody, and equal parenting time. The custody evaluator addressed wife's allegations that husband had been physically and sexually abusive and that she was afraid to file a report because she did not want to impact husband's job as a police officer. Relying in part on the absence of any medical documentation or evidence of child protection's involvement with the family, the custody evaluator concluded that he could not find that intimate-partner violence had occurred.

The district court held a trial over two days in January and February 2025. The court received numerous exhibits and heard testimony from wife, husband, the custody evaluator, and the parties' financial experts. In May, the district court filed an order for judgment and decree (J&D). In its detailed 34-page order, the district court considered, but ultimately did not adopt, the evaluator's recommendations for custody and parenting time. Instead, the district court found credible wife's testimony that there had been domestic abuse, triggering a presumption that joint legal and joint physical custody was not in the children's best interests. The court analyzed the statutory best-interests factors under Minn. Stat. § 518.17 (2024), determined that the presumption had not been rebutted, and awarded wife sole legal and sole physical custody. The district court also determined that wife's proposed parenting-time schedule was in the children's best interests, made findings as to the parties' incomes, and ordered the parties to split the children's extracurricular expenses based on the parties' incomes and that husband pay half of the evaluator's witness fee. As to property division, the district court denied husband's nonmarital claims, divided the parties' marital property, and ordered husband to pay wife an equalizer payment of \$219,315. The district court administrator later entered judgment on the court's order.

Husband moved for amended findings, which the district court partially granted to correct a clerical error describing husband's requested parenting-time schedule.

Husband appeals.

DECISION

I. The district court did not abuse its discretion in its child-custody and parenting-time determinations.

Husband argues that the district court abused its discretion in awarding custody and parenting time. When determining child-custody and parenting-time issues, the district court must consider the children's best interests. *See* Minn. Stat. § 518.17, subd. 1(a); *Thornton v. Bosquez*, 933 N.W.2d 781, 789 (Minn. 2019). The district court must provide “detailed findings” on each of the statutory best-interests factors and explain how each “led to its conclusions and to the determination of custody and parenting time.” Minn. Stat. § 518.17, subd. 1(b)(1).

The district court has “broad discretion on matters of custody and parenting time.” *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). “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 502, 506 (Minn. 2022) (quotation omitted). We review the district court's factual findings for clear error. *Thornton*, 933 N.W.2d at 790.

The clear-error standard of review “is a review of the record to confirm that evidence exists to support the decision.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021). “When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* at 223 (quotation omitted). When applying the clear-error standard of review, appellate courts (1) view the evidence in the light most favorable to the findings,

(2) do not reweigh the evidence, (3) do not find their own facts, and (4) do not reconcile conflicting evidence. *Id.* at 221-22. Thus, an appellate court need not engage in extended discussion of the evidence to demonstrate the correctness of the district court's findings; rather, it need only fairly consider all the evidence and determine that the evidence reasonably supports the decision. *Id.* at 222.

A. The district court did not clearly err in finding that domestic abuse had occurred or abuse its discretion in its best-interests analysis.

The district court awarded wife sole legal custody and sole physical custody and adopted wife's proposed parenting-time schedule based, in part, on its determination that husband committed domestic abuse against wife. Husband challenges this factual finding, contending that the district court clearly erred when it found wife's testimony credible and "completely disregarded" his own testimony denying domestic abuse.

One of the statutory best-interests factors the district court must consider is "whether domestic abuse . . . has occurred in the parents' or either parent's household or relationship." Minn. Stat. § 518.17, subd. 1(a)(4). There is a rebuttable presumption that a child's best interests are best served by joint legal custody when either parent requests joint legal custody. *Id.*, subd. 1(b)(9). But, if domestic abuse occurred in the marital household or in either parent's household, the court must instead apply a rebuttable presumption that the child's best interests are *not* best served by either joint legal or joint physical custody. *Id.* "In determining whether the presumption is rebutted, the court shall consider the nature and context of the domestic abuse and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs." *Id.*

The district court found that at least one incident of domestic abuse, as defined in Minn. Stat. § 518B.01, subd. 2 (2024), had occurred based on wife’s testimony about an incident that occurred when she was breastfeeding. The record supports the district court’s finding of domestic abuse. Wife testified that, on one occasion, husband “grabbed [her] breasts so hard there was blood in [her] breastmilk.” Wife explained that she did not disclose the truth about the incident to her doctor because she did not want to jeopardize husband’s job. The district court found that wife testified “remarkably credibly” about this incident of domestic abuse. In making its credibility determination, the district court considered “[w]ife’s demeanor, her consistent narrative at trial, and how she contextualized her lie to the doctor in light of her legitimate concerns about telling the truth and the effects that might have on the family’s well-being.” The district court further found that husband’s efforts to impeach wife on cross-examination were “unsuccessful.” We defer to the district court’s credibility determinations and its resolution of conflicting evidence. *Kenney*, 963 N.W.2d at 222-23. Because the record supports the district court’s factual finding, the district court did not clearly err in finding that domestic abuse had occurred.

Husband also argues that the district court’s deviation from the custody evaluator’s recommendation was an abuse of discretion. But a district court has discretion not to follow a custody recommendation. *Rogge v. Rogge*, 509 N.W.2d 163, 166 (Minn. App. 1993), *rev. denied* (Minn. Jan. 28, 1994). When the district court’s order is contrary to a custody evaluator’s recommendation, the district court must “either (a) express its reasons for rejecting the custody recommendation, or (b) provide detailed findings that examine the same factors the custody study raised.” *Id.*

The district court here did both. The J&D includes detailed findings on each best-interests factor and the court's reasoning that led it to conclude that granting wife sole legal and sole physical custody is in the children's best interests. As to its reasons for rejecting the custody evaluator's recommendation, the court explained:

On the whole the Court found the [evaluation] to be: (i) thoughtful in its factual description of the parties' communication problems and interactions; (ii) perfunctory in how it addressed domestic abuse between the parties; and (iii) ultimately incorrect in its conclusions. The Court will address these issues further, below.

The [evaluation] as a whole makes a number of very accurate factual findings about how the parties relate, but then clearly attempts to steer the parties to understand the other's positions and move beyond their underlying conflict. And this is a noble goal in the context of an assessment designed to help the parties reach an agreement on custody and parenting time. But it is not realistic for *this* family because of the high levels of conflict.

The district court's decision to deviate from the custody evaluator's recommendation was well within its discretion.

Father asserts that the district court's best-interests analysis was "perfunctory." This argument is unavailing. Other than the domestic-abuse finding, husband does not assign error to any other specific finding in the J&D.¹ Moreover, a district 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. *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000). The district court considered and

¹ Husband challenges the district court's reference to an incorrect version of his proposed parenting schedule, but the district court corrected this error in its amended findings.

weighed all 12 best-interests factors and made specific and detailed findings of fact for each factor. We defer to the district court's weighing of the statutory factors. *See In re Welfare of C.F.N.*, 923 N.W.2d 325, 334 (Minn. App. 2018), *rev. denied* (Minn. Mar. 19, 2019).²

Ultimately, husband's arguments challenging custody and parenting time amount to a disagreement with the district court's credibility determinations and its weighing of the evidence. But it is not our role to reweigh the evidence, find new facts, or make credibility determinations. *Kenney*, 963 N.W.2d at 221-22. As such, we conclude that the district court did not abuse its discretion in its custody and parenting-time determinations.

B. The district court did not abuse its discretion by excluding husband's rebuttal evidence.

Husband challenges the district court's denial of his request to introduce evidence to rebut wife's testimony that she had experienced domestic abuse. The district court enjoys broad discretion in making evidentiary rulings, and we will not reverse a district court's evidentiary ruling absent an abuse of that discretion. *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015). "What is proper rebuttal evidence rests almost wholly in

² Husband argues that, in the district court's separate order denying his motion to remove the referee, the district court erroneously stated that it admitted affidavits from the parties' au pairs as rebuttal affidavits, when in fact the affidavits were excluded. We address the issue of the district court's exclusion of husband's proposed rebuttal evidence below. Husband does not assert that the district court made this allegedly erroneous statement in the J&D and does not explain how this error affected his rights. *See* Minn. R. Civ. App. P. 61 (providing that an appellate court "must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties").

the discretion of the trial court.” *Briggs v. Chicago Great W. Ry. Co.*, 80 N.W.2d 625, 629 (Minn. 1957).

At trial, husband requested to submit rebuttal evidence in the form of supplemental affidavits from the two au pairs who had lived with the family for several years. The affidavits purported to describe the family dynamics and allege that the au pairs did not witness domestic violence between husband and wife. Wife objected on the grounds that the affidavits had not been previously disclosed as proposed trial exhibits. The district court sustained wife’s objection, reasoning that the au pairs had not been present during the alleged incidents of domestic abuse and that admitting the untimely affidavits would prejudice wife. The district court also denied husband’s request to allow the au pairs to testify on Zoom,³ because it had denied husband’s request that the au pairs testify remotely in a pretrial order.

We discern no abuse of discretion in the district court’s rulings. Husband does not dispute that, as the district court found, the au pairs were not present during the incident of domestic abuse. As to the potential for remote testimony, the district court’s June 2024 pretrial order required that witnesses testify in-person unless otherwise ordered by the court and set a deadline of November 2024 for any pretrial motions. Husband filed a witness list in December 2024 listing the au pairs as potential witnesses but he did not request permission for the au pairs to testify remotely until January 2025. Husband cites *Maryland v. Craig*, 497 U.S. 836 (1990), and *State v. Tate*, 985 N.W.2d 291 (Minn. 2023), but those

³ The record indicates that the au pairs were not in Minnesota at the time of trial.

cases address whether remote testimony at a criminal trial violates a defendant's Sixth Amendment right to confront witnesses against him and are thus inapposite. *Craig*, 497 U.S. at 843; *Tate*, 985 N.W.2d at 297. Accordingly, the district court acted within its broad discretion in denying husband's requests to submit rebuttal evidence.⁴

II. The district court did not abuse its discretion in determining child support.

Husband argues that the district court's child-support award was an abuse of discretion. A district court has "broad discretion" in determining child support. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

Husband assigns two claims of error to the district court's child-support calculation. First, he argues that the district court clearly erred in calculating his gross income for purposes of child support. The district court must determine a parent's gross income under Minn. Stat. § 518A.29 (2024) in setting the basic child-support obligation of a parent. Minn. Stat. § 518A.34(b)(1) (2024). We will affirm a district court's findings on income "if those findings have a reasonable basis in fact and are not clearly erroneous." *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002) (quotation omitted).

The district court found that husband is employed by the City of Minneapolis as a police lieutenant. Because husband did not provide exhibits regarding his income at trial, the court ordered him to produce 2024 and 2025 paystubs and other income documentation

⁴ Husband asserts that the district court abused its discretion by adopting wife's proposed-order language in the J&D. While verbatim adoption of a party's proposed findings and conclusions of law is discouraged, it is not itself reversible error. *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992), *rev. denied* (Minn. Feb. 12, 1993). Here, while the district court did adopt some of the language from wife's proposed order, the J&D contains many significant changes from wife's proposed order.

by February 2025. Husband did so. The district court then calculated husband's gross income by including overtime pay, which included time-and-a-half and double overtime that husband had earned since at least 2021, and prorating the overtime amount over a four-year average.

Husband does not dispute that overtime pay is properly included in his gross income. *See* Minn. Stat. § 518A.29(b) (providing that gross income does not include overtime pay if a parent demonstrates the overtime began after the filing of the petition for dissolution and shows other factors are met). And husband does not challenge the district court's findings regarding the number of overtime hours worked, the amount of overtime income earned, or the method of averaging the overtime income over the four-year period. *See Veit v. Veit*, 413 N.W.2d 601, 606 (Minn. App. 1987) ("An average takes into account fluctuations and more accurately measures income."). Instead, husband contends that the district court erred because it disregarded a memorandum by the Chief of Police, submitted by husband as an exhibit, stating that overtime opportunities would be limited in the future.

Husband's argument is contradicted by the record. In the J&D, the district court addressed the memorandum, stating:

Husband argues that his overtime pay should not be included because the Chief of Police recently issued a memo limiting double overtime pay opportunities. However, "[w]here overtime income has been a regular, steady source of income for the past several years, the court may properly include the overtime income in the income used to calculate child support, *although the opportunity to work overtime in the future may decrease.*" *Cross v. Cross*, A24-0477, 2024 WL 4751267, at *5 (Minn. Ct. App. Nov. 12, 2024) (citing *Strauch v. Strauch*, 401 N.W.2d 444, 448 (Minn. App. 1987)). (emphasis added).

The district court therefore did not “disregard” husband’s evidence. Further, the district court reasoned that, if husband’s overtime income is significantly reduced in the future, husband could bring a motion seeking a modification of child support based on changed circumstances. We are satisfied that the district court’s overtime calculation has a reasonable basis in fact and was not clearly erroneous. *See Ludwigson*, 642 N.W.2d at 446.

Second, husband argues that the district court incorrectly determined that both parties had requested an upward deviation in child support. Husband maintains that he actually requested a *downward* deviation of basic child support to \$0 and that the district court’s misstatement is clear error warranting a reversal of its child-support determination.

Child support refers to payment “for basic support, child care support, and medical support.” Minn. Stat. § 518A.26, subd. 20 (2024). Basic support, in turn, includes expenses related to “a child’s housing, food, clothing, transportation, and education costs, and other expenses relating to the child’s care.” *Id.*, subd. 4 (2024). District courts must follow certain procedures when calculating the presumptive child-support obligation. Minn. Stat. § 518A.34(a) (2024). The district court may, at the parties’ request, consider statutory factors to determine whether to deviate from the presumptive child-support obligation. Minn. Stat. § 518A.43, subd. 1 (2024).

Wife requested that the district court order child support based on husband’s current income and that the district court divide the expenses of the children’s extracurricular activities between the parties based on parental income for determining child support. Husband requested a 50/50 division of the children’s expenses. The J&D addressed upward deviation in child support, noting that “both parties’ proposed orders ask the Court

to address extracurricular expenses for the [c]hildren” and that the “main dispute is whether those expenses should be divided equally, or in proportion to their income.” The district court considered the extent of the children’s activities, wife’s testimony that the guideline child support would not cover those expenses if she had to pay for them, husband’s gross monthly income, and the standard of living the children would enjoy if the parties were living together. Ultimately, the court determined that it was appropriate to divide the costs of the children’s extracurricular activities based on each party’s income.

The district court’s findings that an upward deviation in child support for the children’s extracurricular activities is warranted are supported by the record evidence and are not clearly erroneous. *See Ludwigson*, 642 N.W.2d at 446.

III. The district court did not abuse its discretion in its division of marital property.

Husband challenges several aspects of the district court’s property division: (1) denial of his nonmarital claims; (2) classification, valuation, and division of marital property; and (3) payment of the custody evaluator’s fee.

In a marital-dissolution proceeding, the district court must make a “just and equitable” division of the parties’ marital property. Minn. Stat. § 518.58, subd. 1 (2024). “An equitable division of marital property is not necessarily an equal division.” *Crosby v. Crosby*, 587 N.W.2d 292, 297 (Minn. App. 1998), *rev. denied* (Minn. Feb. 18, 1999). The district court has broad discretion to evaluate and divide property in a marital dissolution, and it “will not be overturned except for abuse of discretion.” *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). As noted above, “[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*, 975 N.W.2d at 506 (quotation omitted). Appellate courts will affirm a property division if the district court “had an acceptable basis in fact and principle” even though another court might have made a different determination. *Antone*, 645 N.W.2d at 100.

A. The district court did not err in determining that husband failed to prove his nonmarital claims.

Husband contends that the district court erred by denying his nonmarital claims to various pieces of property. A district court must classify property as “marital property” before valuing and dividing the property between the parties. Minn. Stat. § 518.58, subd. 1. Generally, “marital property” is defined as any real or personal property acquired by the parties during the marriage and before the valuation date. Minn. Stat. § 518.003, subd. 3b (2024). Property is presumed to be marital if it is acquired during the marriage and before the date of valuation “regardless of whether title is held individually or by the spouses in a form of co-ownership.” *Id.* To overcome the presumption that property is marital, a spouse must prove, by the preponderance of the evidence, that the property is nonmarital. *Baker v. Baker*, 753 N.W.2d 644, 649 (Minn. 2008).

“When nonmarital and marital property are commingled, the nonmarital investment may lose that character unless it can be readily traced.” *Wiegers v. Wiegers*, 467 N.W.2d 342, 344 (Minn. App. 1991). The party seeking to have property classified as nonmarital, in this case husband, bears the burden of proving “by a preponderance of the evidence that the asset is readily traceable to a nonmarital source.” *Hafner v. Hafner*, 406 N.W.2d 590, 593 (Minn. App. 1987). Appellate courts review de novo whether property is marital or

nonmarital. *Gill v. Gill*, 919 N.W.2d 297, 301 (Minn. 2018). But we defer to the district court’s underlying factual findings and set them aside only if they are clearly erroneous. *Id.* Further, “[w]hether a nonmarital interest has been traced is . . . a question of fact.” *Kerr v. Kerr*, 770 N.W.2d 567, 571 (Minn. App. 2009).

1. Homestead and Vanguard Roth IRA

Husband argues that the district court erred by failing to award him his full claimed nonmarital interests in the homestead and his Vanguard Roth IRA. We disagree.

At trial, the parties agreed that husband had a nonmarital interest in the homestead but disputed the amount. Wife posited that husband’s nonmarital interest in the home was \$100,710. Husband contended that his nonmarital interest was \$106,337 because he made an additional payment toward the mortgage principal approximately three months after the parties purchased the home, half of which was from his nonmarital funds. After hearing testimony from husband, wife, and the parties’ experts, the district court found that husband did not provide bank statements or other evidence substantiating “the amount, date or source of the alleged overpayment.” Accordingly, the district court found husband had not proven either that any overpayment was made or, if it was made, that the payment was solely from husband’s nonmarital funds and it determined that husband’s nonmarital interest in the homestead is \$100,710.

Regarding the Vanguard Roth IRA, husband challenges the district court’s determination that his nonmarital interest in that account is \$12,548, rather than \$47,769. The district court found that, at the time of the parties’ marriage in 2009, husband had a Roth IRA with a balance of \$12,548. On April 10, 2015, husband transferred the entire

balance of this account—then more than \$46,000—into a Vanguard Roth IRA. Husband testified that the entire value of the Vanguard Roth IRA as of April 10, 2015, was nonmarital because it reflected only the premarital balance and growth in the Roth IRA he had before the marriage and because he made only two marital contributions to the Vanguard Roth IRA during the marriage. But the district court found that husband had not provided any account statements for his premarital Roth IRA between the marriage and April 9, 2015, that husband’s testimony on account activity was not credible or reliable, and that husband’s financial expert acknowledged that his calculation of the premarital portion of the Roth IRA as of April 10, 2015, was impossible to verify. The district court therefore determined that husband had not met his burden of proving his nonmarital claim.

Husband’s arguments on appeal principally challenge the district court’s credibility determinations, an argument that is unavailing under the standard of review. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (explaining that appellate courts neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the fact-finder). Our review of the record shows that the district court’s factual findings are supported by the record and not clearly erroneous.⁵ The district

⁵ Husband also argues that the district court erred in awarding him a nonmarital \$12,548 interest in his Vanguard IRA instead of a \$14,936 interest. These two figures are based on two account statements, the lower one from before the marriage and the higher one from shortly after the parties were married. Given that it is husband’s burden to prove an interest in nonmarital property, *Kerr*, 770 N.W.2d at 569, that the district court chose to use the most recent confirmed account balance before the marriage instead of one from shortly after was not an abuse of discretion.

court therefore did not err in determining that husband failed to prove his nonmarital claims in the homestead and the Vanguard Roth IRA.

2. Vanguard Brokerage Account

Husband argues that the district court erred by failing to award him his full claimed nonmarital interest of \$62,257 in his Vanguard brokerage account. We again disagree.

The district court found that, at the time of marriage in 2009, husband had a NavPoint Financial brokerage account, which was comprised of a money-market account and securities. On April 10, 2015, husband transferred \$38,000 from his NavPoint brokerage account into the Vanguard brokerage account. The district court found, and wife's expert agreed, that husband had a nonmarital claim in the Vanguard brokerage account in the amount of \$44,264, which corresponded to the securities portion of the NavPoint brokerage account. But the district court determined that husband had not proven that the money-market portion of his NavPoint brokerage account that was transferred into the Vanguard brokerage account was nonmarital. In so doing, the district court found that husband had not provided statements of activity on the NavPoint brokerage account between 2010 and 2015 and that husband's testimony that there was no account activity during this five-year period is not credible.

Husband's argument that the district court erred in denying his full claimed nonmarital interest in the Vanguard brokerage account because it should have credited his testimony fails for the same reasons cited above. The district court made credibility and fact determinations with support in the record. *See Pechovnik*, 765 N.W.2d at 99 (stating that appellate courts will not reconcile conflicting evidence and defer to the district court's

witness credibility determinations). Under these circumstances, the district court did not err in determining that husband's claimed nonmarital interest in the Vanguard brokerage account in the amount of \$62,257 was not properly traced.

3. Deferred Compensation Plan and Healthcare Savings Account

Husband next argues that the district court erred by denying his claims for a nonmarital interest in the pre-tax portion of his Minnesota Deferred Compensation Plan in the amount of \$8,400 and in his Healthcare Savings Account (HSA) in the amount of \$1,840. More specifically, husband challenges the district court's evidentiary ruling striking exhibit 242—paystubs which he offered to support these nonmarital claims—from the record.

Husband's claim is resolved by the district court's detailed evidentiary ruling, which we have carefully reviewed and conclude was well within the district court's discretion. *See Doe 136*, 872 N.W.2d at 879 (stating that appellate courts do not reverse a district court's evidentiary ruling absent an abuse of discretion). The district court found that husband failed to comply with the pretrial order requiring the parties to exchange trial exhibits and upload them in a viewable format to the Minnesota Digital Exhibit System by December 23, 2024, that husband had been repeatedly notified that the exhibit 242 was not viewable, and that the inability to view the exhibit prejudiced wife. These findings are supported by the record. Husband cites no caselaw or other legal authority in support of his argument that the district court abused its discretion by striking exhibit 242 from the record. Accordingly, we conclude that the district court did not abuse its discretion in

striking exhibit 242 or err in denying husband's marital claims in his deferred compensation plan and HSA.

B. The district court's valuation and allocation of the parties' marital property is supported by the record.

Husband argues that the district court erred in its valuation and allocation of marital property. A district court's valuation of property is a finding of fact and will not be set aside unless it is clearly erroneous. *See Vangsness*, 607 N.W.2d at 472. The district court is not required to be exact in its valuation of assets, as long as its valuation "lies within a reasonable range of figures." *Passolt v. Passolt*, 804 N.W.2d 18, 25 (Minn. App. 2011) (quotation omitted), *rev. denied* (Minn. Nov. 15, 2011).

1. Wife's Vehicle

Husband challenges the district court's valuation of wife's vehicle at \$17,530. That valuation is supported by the record.

Wife testified that, due to mechanical issues, she traded in her vehicle a few months after the valuation date of December 31, 2023, and received \$17,530. The district court rejected husband's argument that it should use the Kelly Blue Book value for the vehicle at the valuation date, which was \$20,849. The district court explained:

Blue book values are often used by the Court when an actual sales price is not known. But in this case, the amount of money Wife actually received for her car *is* known because she traded it in shortly after the presumed valuation date. To the extent Husband's proposed value of Wife's car is an accurate value rather than an estimate, the Court finds that using the value as of the trade in date is fair and equitable.

While the district court typically must value marital assets as of the valuation date, it may use another date if it “makes specific findings that another date of valuation is fair and equitable.” Minn. Stat. § 518.58, subd. 1. Because the district court made specific findings why using the trade-in date was fair and equitable and because its finding as to the vehicle’s value is not clearly erroneous, the district court did not abuse its discretion. *See Vangsness*, 607 N.W.2d at 472.

2. Wells Fargo Accounts

Husband contends that the district court erred in allocating a Wells Fargo checking account and a Wells Fargo savings account to him as of their value at the valuation date, arguing that the accounts were used exclusively by wife after the valuation date. The district court determined that it was equitable to award the Wells Fargo accounts to husband because:

Wife credibly testified that she incurred expenses relating to housing that Husband did not incur. In the beginning of this matter, the parties were utilizing a “nesting” schedule. When Husband was exercising his parenting time in the home, Wife testified that she had to pay for a hotel room. However, when Wife was exercising her parenting time, Husband testified that he would stay with his parents at no cost. Wife then moved out of the home due to the conflict the “nesting” schedule was causing. She testified that she incurred additional expenses to secure new housing, such as paying a security deposit and buying new furniture.

These findings are supported by the record. Further, the district court found that wife credibly testified that husband closed the Wells Fargo accounts without telling her and that, “due to [h]usband’s unilateral closure of these accounts, a number of her automatic monthly payments, including the payment for her car loan, did not go through

and she incurred late fees as a result.” These findings, which husband does not challenge on appeal, are also supported by the record. The district court therefore did not abuse its discretion in awarding the Wells Fargo accounts to husband at the values as of the valuation date. *See Antone*, 645 N.W.2d at 100 (stating that an appellate court will affirm a district court’s division of marital property so long as the district court’s determination has an “acceptable basis in fact and principle.”).

3. Husband’s Pension

Husband argues that the district court erred in calculating wife’s marital portion of his Minnesota Public Employees Retirement Association pension. “The valuation and division of pension rights is generally a matter for the trial court’s discretion.” *Taylor v. Taylor*, 329 N.W.2d 795, 798 (Minn. 1983).

As the district court found, the parties agreed that wife is entitled to one-half of the marital portion of husband’s pension but disagreed on how to calculate the marital portion. Husband acknowledged that his actual pension amount would eventually be calculated based on his five highest earning years of service (high-five) at the time of retirement, but he maintained that wife’s portion should be calculated using the five highest earning years of service during the marriage because otherwise wife would benefit from work that he did after the marriage. For her part, wife requested that the marital portion be calculated based on the actual amount the pension would pay out; namely, using the five actual highest earning years of service.

The district court determined that wife’s proposal was fair and equitable and husband’s, in contrast, was not. The court reasoned that, “[h]usband will get the

opportunity to earn years (and maybe decades) of interest off his share of [w]ife's 401(k), but [w]ife will be capped at an amount established based on the value of the account now" and wife would not be able to access the funds for many years. As such, the district court awarded one-half of the marital portion of husband's pension to wife and ordered that husband's high-five average salary be calculated based on the 60 consecutive months of husband's highest earnings.

Husband maintains that the district court erred by calculating the marital portion of his pension using a high-five calculation based on his eventual actual highest earning years of service, rather than the highest marital earning years of service. For support, husband cites *Janssen v. Janssen*, 331 N.W.2d 752 (Minn. 1983). There, the supreme court explained that nonvested pensions are included within the definition of marital property and directed that the proper way to divide the marital portion of a pension is "a division—as part of the judgment and decree—ordering apportionment of the future benefits *only if and when such benefits are paid.*" *Id.* at 756 (emphasis in original).

We are not convinced that *Janssen* establishes that the district court abused its discretion in calculating the marital portion of husband's pension. *Janssen* does not require district courts to use a marital high-five calculation when determining *the amount* that should be allocated to the marital portion of the pension. Husband also cites *Taylor*, 329 N.W.2d 795, to support his argument that the district court impermissibly used the overall high-five calculation in the pension-benefit division. But *Taylor* held that vested pensions are marital property and established two permissible methods for dividing pension benefits, neither of which would preclude the district court from using the overall high-five

calculation as opposed to the marital high-five. 329 N.W.2d at 797-99. Husband cites no other authority for his proposition that the district court was required as a matter of law to use a high-five calculation when determining the value of the marital portion of his pension and we are aware of none.

To the extent that husband argues that the district court's division of his pension was inequitable, we are not persuaded. The district court explained that using the overall high-five calculation, rather than a marital high-five calculation, was equitable because husband was to receive a portion of wife's 401(k) which, being a direct contribution plan, could be invested immediately. The court reasoned that wife should also be able to capture future value of husband's pension plan within her marital portion, which she could not otherwise access until it paid out.

The law provides that equitable divisions need not be equal, *Sirek v. Sirek*, 693 N.W.2d 896, 900 (Minn. App. 2005), and that a district court's valuation of marital property need only have an "acceptable basis in fact" to pass clear-error review, *Antone*, 645 N.W.2d at 100. We conclude that the district court's valuation of the marital portion of husband's pension is sufficiently based in fact and not clearly erroneous. Accordingly, the district court did not abuse its discretion.⁶

⁶ Husband additionally argues that the district court erred in not offsetting wife's share of the distribution based on her Social Security benefits. Wife notes correctly that husband has forfeited this argument by failing to raise it in the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally only consider issues presented to and decided by the district court).

C. The district court did not abuse its discretion in ordering the parties to split the custody evaluator's fee.

Husband lastly argues that the district court erred in requiring him to pay one-half of the custody evaluator's witness fee because the evaluator's contract required the party who subpoenaed the witness to pay the fee, and wife was the one who subpoenaed the custody evaluator. "The judge of any court of record, before whom any witness is summoned or sworn and examined as an expert in any profession or calling, may allow such fees or compensation as may be just and reasonable." Minn. Stat. § 357.25 (2024). We review the district court's witness-fee award for an abuse of discretion. *See Buscher v. Montag Dev., Inc.*, 770 N.W.2d 199, 209 (Minn. App. 2009).

Here, the district court explained:

The Trial Order provided that "[e]xcept for good cause shown, a party's expert's direct examination will be entirely by their pre-marked, written report. Any expert retained by a party must be made available at trial for cross examination (unless waived in writing by the opposing party). Mr. Hyland was a neutral expert. Both parties offered his report to the Court in their exhibits. Because Husband did so, he was required by the Trial Order to make Mr. Hyland available for cross examination at trial. . . . Mr. Hyland was also a neutral expert, making it further reasonable for the parties to share the expense of his trial appearance.

Husband does not identify any reason why the district court's ruling is an abuse of discretion and we discern none. The district court therefore did not abuse its discretion by requiring the parties to split the custody evaluator's fee.

Affirmed.