STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1033

In re the Marriage of:
Maria Toso, petitioner,
Respondent,

vs.

Victor Olaf Toso,
Appellant.

Filed June 17, 2013
Affirmed in part, reversed in part, and remanded
Peterson, Judge

Ramsey County District Court
File No. 62-FA-10-151

Susan Marie Gallagher, Gallagher Law Office, Eagan, Minnesota (for respondent)

Kay N. Hunt, Lommen, Abdo Cole King Stageberg P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and Klaphake, Judge.*

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

In this marital-dissolution dispute, appellant-father challenges the district court's maintenance and support awards, the division of marital property and debt, the

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

characterization of certain property as marital rather than nonmarital, the amount of the property-equalization payment, the award of sole legal custody of the parties' children to respondent-mother, the parenting-time schedule, and the award of conduct-based attorney fees. We affirm in part, reverse in part, and remand for further proceedings.

FACTS

Appellant-father Victor Olaf Toso and respondent-mother Maria Toso were married on May 11, 1998, and divorced on January 3, 2012. The parties have two minor children, INT (DOB: January 7, 2000), and JMT (DOB: November 27, 2002).

Mother is a dual United States/Danish citizen. She has the equivalent of a bachelor's degree in business communications from a Danish university. Mother worked in that field for a time, but after the children were born, she was a homemaker for several years. In 2007, she was employed in Minnesota by a Danish company, Coloplast Corporation, but she was laid off in 2009. At the time of the trial, she was receiving unemployment compensation of $566 per week, which ended before the district court issued its dissolution judgment. She was also teaching yoga and doing translation work, earning approximately $520 per month. Mother stated that she was not seeking further education, but that she was looking for work; she noted that her absence from the workforce for eight years and the fact that her work experience was largely in Denmark, not the United States, weakened her resume. Mother testified that she had been looking for a job in corporate communications, but had only secured three interviews. She worked briefly at one job, but lost the job because it involved online marketing, rather than communications. The district court found that mother had been making a

"reasonable and diligent job search" but had "found that her skill set is not in high demand given the reduced needs of businesses during the economic downturn." The court also found that she would benefit from a period of retraining "as she has not had recent long term employment."

Father owns and operates Nada-Concepts, Inc. He has owned the business since 1985, before the parties married. Father is paid $5,000 per month by the business, which is $60,000 yearly. Father owns the building that houses Nada-Concepts and is paid $1,446.08 every two weeks for rent, which is an additional yearly income of $37,598.08. The district court found that father is entitled to receive corporate profits, but the court was not able to determine whether father received any profits in recent years because "the business records were not complete." The court found that father "intentionally reduced his efforts in furtherance of his business during the pendency of the divorce." The court found "that combining the wages paid by the business, personal expenses paid by the business, and rental income paid by the business [father] has a gross annual income of $108,000 and gross monthly income of at least $9,000." Finally, the court found that father received an additional $11,160 per year in medical and dental insurance or expense reimbursement, but it did not include this amount in father's income.

The district court found that both parties had reasonable monthly living expenses of $4,500 and that mother lacked sufficient income to meet her expenses but father had sufficient income to pay spousal maintenance. The district court ordered father to pay mother $3,200 per month in spousal maintenance for 60 months "to allow [mother] to become self-supporting" and "obtain any needed education or retraining."

Based on its findings as to income and its award of maintenance, the district court ordered father to pay $1,056 per month in child support. The district court attributed a monthly gross income of $9,000 to father and reduced that amount by the maintenance award to $5,800. This resulted in a basic child support obligation of $1,056 after a parenting-expense adjustment.

The parties moved to Denmark in 2005 and remained there until 2006. During that time, father attempted to set up a Nada-Concepts business in Europe. As part of that attempt, the parties borrowed $80,000 from the fiancé of mother's mother. According to mother, the loan was paid off with a $30,000 payment from Nada-Concepts and $50,000 from a home-equity line of credit (HELOC) secured by the homestead. The parties had obtained a HELOC in 2005 in order to fix the homestead so that they could rent it while they were living in Denmark. At the time of the dissolution trial, the HELOC balance was approximately $100,000. Other than mother's testimony about using the HELOC to pay off the loan, neither party offered any evidence about the HELOC. But father submitted a balance sheet to the district court in support of his motion for temporary relief, in which he claimed that the HELOC loan with a balance of $99,587.71 was a business debt. The district court cited this filing in determining that the HELOC loan had been "considered as a source of funds for [father's] business and a debt of the company, to be repaid by Nada-Concepts, Inc."

In 2009, the district court ordered the parties to file joint tax returns. Father filed as married filing separately, and, because of this, mother owed the Internal Revenue Service (IRS) more than $11,000. Mother testified that she had set aside money in a

savings account to pay taxes on the income she earned as a consultant at Coloplast. However, father closed all but one of the joint accounts, including the savings account, and consolidated the accounts into his name. Father testified that he filed separately because mother did not give him the information he requested. The district court concluded that father should be responsible for the IRS debt because father "wrongfully withheld the funds" set aside to pay the tax liability.

Father purchased the building where his business is located in 1997, before the marriage, for $305,000. Father made a down payment of $55,000 and entered into a contract for deed for the $250,000 balance. In 2004, after the marriage, the parties obtained a mortgage loan to pay off the contract for deed, and the mortgage loan was later paid off. At the valuation date, the building was valued at $315,000. The building was used as security for a line of credit used by the business. Father also personally guaranteed repayment of the line of credit. Father presented no evidence of the value of the building on the date of marriage.

The district court found that there was conflicting evidence of the premarital value of the building, because father's testimony about payments he made before the marriage conflicted with written documentation of payments made. Therefore, the district court concluded that the only credible evidence of nonmarital value was the $55,000 down payment; the court used the current assessed value of $315,000 and reduced that amount by $55,000 to arrive at a figure of $260,000 in marital interest in the property. The district court acknowledged the existence of the commercial credit line, but concluded that it was a business debt that was primarily the responsibility of Nada-Concepts and

father as personal guarantor. The district court declined to offset the line of credit from the marital value of the property, because it was solely a business debt, and assigned mother a $130,000 marital interest in the commercial property. Father argues that it is unfair not to deduct the value of the commercial line of credit from the value of the property, particularly when the court awarded father the entire business because of "the significant decline in the value of the business during the period of the marriage," which resulted in the business having "no marital value."

On the valuation date, both parties had retirement accounts. Mother, whose account was valued at $20,000, had withdrawn all of the funds in her account to pay expenses. Father had $74,000 in a retirement account that he claimed predated the marriage. Father provided no documentation about the value of the retirement account on the date of marriage. Mother testified that she did not think that contributions had been made to the retirement account during the marriage, although the record contains two checks that are dated after the marriage and labeled as contributions to the account. The district court found that both retirement accounts were marital property.

Father owned a home before the marriage, which was sold shortly after the marriage in 1998. The district court found that this house was nonmarital property. The parties received $125,315.97 from the sale. Seven months later, in 1999, the parties purchased a home for $204,000, with a $79,500 down payment. Father contends that $79,000 of the down payment was made with nonmarital funds from the sale of his nonmarital home. The second home was sold in 2001, and the parties purchased the current homestead for $380,000, with a down payment of $109,000. Father claims a

nonmarital interest of $146,529, based on the *Schmitz* formula and an estimated current value of $500,000.

The district court concluded that father had not sustained his burden of tracing his nonmarital contribution to the homestead. Although the court found that the cash from the sale of father's nonmarital home was nonmarital property, it noted that father failed to demonstrate that this money was the sole source of the down payment for the second house and both parties were employed at the time. Because father failed to persuade the court that the second house was purchased with nonmarital funds, the court further concluded that the current homestead was entirely marital property.

The district court awarded father the following marital property: the commercial building, his retirement fund, and a car, for a total value of $357,065. The district court awarded mother the following marital property: her retirement fund and a vehicle, for a total of $26,440. Based on this disparity, the district court ordered father to pay mother $165,313 as an equalizer. The district court ordered the homestead sold and the proceeds divided between the parties, but the marital value to be divided between the parties was to be determined without deducting the HELOC debt.

The district court awarded the parties joint physical custody of the children and gave mother sole legal custody. The district court made detailed findings about the best-interest factors and the joint-custody factors. Father challenges the district court's finding that the children are too young to express a preference and contends that the district court confused legal and physical custody. Father also contends that the district court erred by awarding unequal amounts of parenting time, despite the fact that he has

joint physical custody, by permitting the children to spend time in Denmark each summer with maternal relatives without awarding him compensatory time.

The district court found that father "has been the cause of substantial delay in the administering of this matter," raised issues that "the Court considers to be irrelevant or unmeritorious," controlled funds belonging to both parties, was uncooperative with discovery, violated the court's order regarding filing joint income taxes, and changed attorneys multiple times, causing mother to incur unnecessary attorney fees. Based on these findings, the court concluded that father should pay $30,000 of mother's attorney fees. Father moved for amended findings or a new trial, and the motion was heard by a different judge because the trial judge retired. The reviewing judge found that father had failed to show error in the findings or a basis for a new trial, but instead merely disagreed with the trial court. The reviewing judge ordered father to pay an additional $3,324.32 in attorney fees, based on his failure to cite to portions of the transcript to support his motion for amended findings, his apparent belief that mere disagreement with the trial court was a sufficient basis for the motion, his lack of cooperation in the sale of the homestead, and his behavior that "prolonged the hearing."

D E C I S I O N

I.

Father argues that the district court abused its discretion by awarding mother spousal maintenance of $3,200 per month for five years. The district court may award spousal maintenance to a party who is unable to provide for reasonable needs, particularly during a period of re-education or training. Minn. Stat. § 518.552, subd. 1(a)

(2012). When doing so, the district court must consider the obligor's ability to pay spousal maintenance. *Id.*, subd. 2(g) (2012). We review the district court's maintenance award for an abuse of discretion. *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). The district court abuses its discretion if its maintenance order is based on clearly erroneous findings. *Id.* "Findings of fact are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id*. (quotation omitted). This is not an easy test to meet. "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Vangness v. Vangness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

> To challenge the [district] court's findings of fact successfully, the party challenging the findings must show that despite viewing the evidence in the light most favorable to the [district] court's findings (and accounting for an appellate court's deference to a [district] court's credibility determinations and its inability to resolve conflicts in the evidence), the record still requires the definite and firm conviction that a mistake was made. Only if these conditions are met, that is, only if the findings are "clearly erroneous," does it become relevant that the record might support findings other than those that the [district] court made.

Id. We view the record in the light most favorable to the district court's findings and defer to the district court's credibility determinations. *Id.* at 472.

Father challenges the district court's findings as to the parties' income. We see no error in the court's determination of mother's income as $520 per month; this figure is supported by the record. The district court's determination of father's income is less straightforward; the district court found that father had a gross monthly income of

$9,000, based on this salary of $5,000 per month, rental payments of $1,446.08 every two weeks, and "personal expenses paid by the business," which the district court did not specify. The district court also found that father was entitled to receive corporate profits, but the court acknowledged that the corporate records submitted were incomplete and it was not able to determine whether father had received such income in recent years. Father denies receiving any other income, but the evidence suggests that his business pays for health insurance and a car that he uses for both business and personal transportation. In addition, mother testified that father received bi-weekly checks in the net amount of $3,303. Father provided no information about his net income. The tax records produced by the parties suggest additional income figures for father, some greater than the $9,000 gross monthly income that the district court found, and some less. Finally, the district court found that father "has intentionally reduced his efforts in furtherance of his business during the pendency of the divorce."

Taken as a whole, there is sufficient evidence in the record to support a range of income figures, including the district court's finding of $9,000 gross per month. On this record, we cannot say that the district court's findings as to father's income are clearly erroneous.

But spousal maintenance requires a balancing of the obligee spouse's needs and the obligor spouse's ability to pay. Minn. Stat. § 518.552, subds. 1-2; *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982). When setting the amount and duration of a maintenance award, the district court considers several matters, including financial need, the time necessary for retraining and education, and the duration of and living

standard during the marriage. *Kampf*, 732 N.W.2d at 633-34. The district court relied heavily on mother's need for retraining or education, despite a total lack of support in the record for mother's need or desire for retraining. Mother testified that she was not seeking further education or retraining; on this record, we are unable to review the reasonableness of the number of years of spousal maintenance awarded. The district court's findings about need and the parties' standard of living support a maintenance award, but we cannot find a basis in the record for the court to rely on the need for further education or retraining. We, therefore, reverse the maintenance award and remand the issue of spousal maintenance to the district court for findings on mother's need for retraining or education and the effect of this need on the duration of any maintenance award. The court may, in its discretion, reopen the record if necessary.

II.

A parent is obligated to provide for a child's support. *Korf .v Korf*, 553 N.W.2d 706, 710 (Minn. App. 1996). To determine a parent's child-support obligation, the district court must determine the parties' gross incomes and then apply the guidelines in Minn. Stat. §§ 518A.34, .35 (2012). "Gross income" includes any form of periodic payments, with certain exceptions. Minn. Stat. § 518A.29 (2012). But "[i]f a parent is *voluntarily* unemployed, underemployed, or employed on less than a full-time basis . . . child support must be calculated based on a determination of potential income." Minn. Stat. § 518A.32, subd. 1 (2012) (emphasis added). There is a rebuttable presumption that a parent can be employed on a full-time basis. *Id.* Whether a parent is voluntarily

unemployed is a factual finding that this court reviews for clear error. *Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009).

The district court found that mother was not voluntarily unemployed, underemployed, or employed on less than a full-time basis. Rather, the district court found that mother "continues to diligently look for employment but has found that her skill set is not in high demand given the reduced needs of businesses during the economic downturn." Mother testified that she continued to apply for jobs in her field of business communications, worked as a translator when jobs became available, and qualified as a yoga instructor and had two regular yoga jobs and substituted for other instructors on occasion. She stated that she had three interviews for communications jobs and had worked briefly for one company, although it became clear that she was not qualified for that job. On these facts, the district court's finding that mother was not voluntarily unemployed, underemployed, or employed on less than a full-time basis is not clearly erroneous. We, therefore, conclude that the district court did not abuse its discretion by refusing to calculate a potential income figure, which requires a finding of voluntary unemployment, underemployment, or refusal to work full time.

But the child-support calculations also require deduction of father's maintenance obligation from his gross income. Because we are remanding the issue of spousal maintenance, we also direct the district court to determine father's child-support obligation based on the parties' circumstances following any change in father's spousal-maintenance obligation.

III.

"The division of marital debts is treated in the same manner as division of assets." *Justis v. Justis*, 384 N.W.2d 885, 889 (Minn. App. 1986), *review denied* (Minn. May 29, 1986). We review the district court's apportionment of debt for an abuse of discretion. *Id.* 888-89. The district court's division of marital property will be affirmed if there is "an acceptable basis in fact and principle even though [the appellate court] might have taken a different approach." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). The district court's findings of fact will not be set aside unless clearly erroneous. *Id.*

Father challenges the district court's assignment of the HELOC debt, the IRS debt, and the commercial line of credit as his sole responsibility. The district court found that father used the HELOC loan as a "source of funds" for his business and for the European Nada-Concepts venture, and that the HELOC loan was a business debt. Father disputes this and states that the HELOC was used for home improvements, but father does not cite to any record evidence that establishes this, except for mother's comment that the parties used $30,000 in 2005 to make repairs so that the parties could rent out the house while they were living in Denmark. Father has provided no evidence explaining why the balance at the time of the dissolution was $99,000 or whether any payments had been made, and he has not refuted mother's testimony that $50,000 was used to pay off a loan for the European venture. The district court also noted that father claimed the HELOC as a business debt in his original statement of assets filed with the court.

An appellate court does not presume that error exists. *Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949). "[T]he burden of showing error rests upon the one

who relies upon it." *Id.* (quotation omitted). The district court's HELOC findings are supported by the record, and father has not provided any evidence to the contrary.

And we do not perceive an abuse of discretion in the district court's assignment of the IRS debt to father. Father was ordered to file a joint tax return for 2009 and, instead, filed separately. Father took over the bank account into which mother had deposited enough money to cover her tax liability for her work as an independent contractor for Coloplast, leaving mother with no resources to pay the tax debt. Although father claims that mother failed to provide him with the information needed to file jointly, both parties were under the jurisdiction of the district court at the time, and father did not seek an order compelling mother to provide the information. This is a sufficient basis for the district court to assign this debt to father.

Finally, father challenges the district court's refusal to offset mother's marital interest in the commercial building by the balance of the commercial line of credit. The commercial line of credit is used by father's business and is paid for by father's business; the line of credit fluctuates according to draws on it and payments made. Although the line of credit is secured by the commercial building, it is used to facilitate cash flow in the business. Father was awarded the business free of any marital interest mother had in the business. The district court's conclusion that the commercial credit line should be considered solely a business debt and should not reduce the value of mother's interest in the commercial building, which is marital property, is not an abuse of discretion.

IV.

We review whether property is marital or nonmarital de novo, but defer to the district court's findings of fact. *Baker v. Baker*, 753 N.W.2d 644, 649 (Minn. 2008). All property acquired during a marriage is presumed to be marital; property acquired before the marriage is nonmarital. Minn. Stat. § 518.003, subd. 3b (2012); *Antone*, 645 N.W.2d at 100-01. "To overcome the presumption that property is marital, a party must demonstrate by a preponderance of the evidence that the property is nonmarital." *Id.* at 101.

Father contends that his SEPIRA account is nonmarital, based on mother's testimony that she did not "believe" any contributions to the account had been made during the marriage. But the record contains no information about the value of the SEPIRA on the date of marriage, whether there has been an increase in value, and whether any increase is due to marital effort; if the record does contain such information, father has failed to cite the location of the information. We observe that the record includes evidence of at least two contributions that Nada-Concepts made to the SEPIRA during the marriage. Absent any supporting documentation, father has not demonstrated by a preponderance of the evidence that the SEPIRA is nonmarital; therefore, the district court's findings are not clearly erroneous.

Father also asserts a greater nonmarital interest in the parties' homestead. Father submitted a *Schmitz* calculation tracing his nonmarital interest in the homestead. A party may trace a nonmarital interest, either through records or by credible testimony. *Kerr v.*

Kerr, 770 N.W.2d 567, 570 (Minn. App. 2009) (credible testimony). We review whether a nonmarital interest has been traced as a question of fact. *Id.* at 571.

> The *Schmitz* formula may be used to determine marital and nonmarital interests in property acquired during the marriage with a nonmarital down payment. The present value of a party's nonmarital interest in a marital homestead is calculated by dividing the party's equity in the property at the time of purchase by the value of the property at the time of purchase and then multiplying by the value of the property at the time of dissolution; the remainder of the equity increase is marital property.

Id. at 570 (quotation and citation omitted). "The present value of a [nonmarital interest in property acquired before the marriage] is the proportion the net equity at the time of [the marriage] bore to the value of the property at the time of [the marriage] multiplied by the value of the property at the time of separation. The remainder of equity increase is characterized as marital property." *Antone*, 645 N.W.2d at 102 (quotation omitted).

The district court found that the proceeds of the sale of father's premarital home were nonmarital. But the district court stated that father "has not provided any documentation or persuasive credible testimony showing that the $79,500 down payment [on the parties' first marital home] came *directly* from the sale proceeds of [father's premarital home] and was not from marital assets." The court noted that the purchase of the first marital home occurred seven months after the sale of the premarital home and that both parties were working at the time. The district court rejected father's assertion that the down payment came solely from the sale of his home as not credible. We defer to the district court's assessment of witness credibility. *Vangness*, 607 N.W.2d at 472.

We review the district court's determination of whether a party has adequately traced nonmarital funds as a question of fact. *Kerr*, 770 N.W.2d at 571. Father must show by a preponderance of the evidence that property acquired during the marriage is nonmarital in nature in order to overcome the presumption that property acquired during the marriage is marital. *Antone*, 645 N.W.2d at 100. The district court's finding that father did not adequately trace the nonmarital funds is not clearly erroneous.

Father also argues that the district court abused its discretion by not finding a greater portion of the value of the commercial building to be nonmarital. The district court found that father purchased the commercial building for $305,000, with a $55,000 down payment. But the court noted that the other documents that father produced to show the nonmarital nature of the property were "conflicting" and that it could not "consider that evidence as credible." In addition, father did not provide the district court with evidence of the value of the building at the time of the marriage, which is an essential piece of evidence for applying the *Schmitz* formula. Father had the burden of showing the nonmarital nature of the property by a preponderance of the evidence but failed to produce essential information. The district court's determination was not an abuse of discretion.

V.

The district court has broad discretion in dividing marital property. *Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 699 (Minn. App. 2010), *review denied* (Minn. Nov. 10, 2010). The district court must "make a just and equitable division of marital property of the parties without regard to marital misconduct, after making findings regarding the

division of property." Minn. Stat. § 518.58, subd. 1 (2012). While the division of marital property must be "just and equitable," it need not be mathematically equal. *Sirek v. Sirek*, 693 N.W.2d 896, 900 (Minn. App. 2005). We will reverse the district court's division of marital property only for a clear abuse of discretion. *Crosby v. Crosby*, 587 N.W.2d 292, 296 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999).

Father argues that the division of marital property is not equitable because the district court ordered him to assume all of the marital debt and awarded him his car and his SEPIRA as marital property, when in fact, father asserts, these items are nonmarital property. Father has not cited to anything in the record that shows ownership of the car; he cites only a portion of the transcript in which the company accountant testified that Nada-Concepts paid for father's car and its maintenance. We have already affirmed the district court's characterization of the SEPIRA as marital property. The greater portion of the equalizer payment rests on the district court's award of the commercial building to father; the district court determined that this was a marital asset valued at $260,000. Therefore, $130,000 of the $165,000 equalizer payment represents mother's marital interest in the commercial building.

Finally, the district court's decision to order father to assume all of the marital debt does not necessarily make the division of property unjust and inequitable. *See Crosby*, 587 N.W.2d at 297 (rejecting argument that property division was inequitable when one party was made responsible for all marital debt but received larger award of marital assets). Father also was awarded the entire business as nonmarital property because its value was less at the time of the dissolution than at the time of marriage.

While this is true, the district court nevertheless valued the business at $114,000, which provides father with a substantial nonmarital asset.

We note that the district court ordered that father make the equalizer payment over a period of three years, or $55,104.33 per year, which ameliorates some of the daunting aspect of the equalizer payment. *See Kennedy v. Kennedy*, 376 N.W.2d 702, 705 (Minn. App. 1985) (stating that property settlements paid over a period of time are "ordinarily favored").

VI.

"The district court has broad discretion in making child custody, parenting time, and child-support determinations. . . ." *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002). We will not disturb the district court's findings of fact unless they are clearly erroneous. *Vangness*, 607 N.W.2d at 472. We view the record in the light most favorable to the district court's findings and defer to the district court's credibility determinations. *Id.* Minn. Stat. § 518.17, subd. 1 (2012), sets forth 13 best-interest factors that the court may consider when making a custody determination. No single factor outweighs the others. Minn. Stat. § 518.17, subd. 1. Also, when the parties seek either joint legal or joint physical custody, the court must consider the additional four factors set forth in Minn. Stat. § 518.17, subd. 2 (2010). There is a rebuttable presumption that joint legal custody is in the best interests of a child. Minn. Stat. § 518.17, subd. 2. The district court must make detailed findings of the best-interest factors and the joint-custody factors. *Id.*, subds. 1, 2. The district court made extensive findings of both the best-interest and the joint-custody factors.

Broadly summarized, the district court concluded that joint physical custody was in the children's best interests, noting in particular the children's good relationship with both parents and relatives, and the capacity of both parents to provide love and affection. The district court also reviewed the joint-custody factors and concluded that (1) the parties could not cooperate when making decisions about the children, citing father's statement that he intended to go to "war" with mother and his disrespectful action of submitting a nude picture of mother to the court; (2) the lack of a method for resolving disputes, particularly in light of father's desire to control mother; (3) although the parties agree on many issues about the children, it would reduce conflict to have one parent having "sole authority over the significant decisions in the children's upbringing;" and (4) although there was no evidence of domestic abuse as defined by statute, the court had misgivings about father's authoritarian attitude. Finally, the court relied on the custody evaluation, which recommended sole legal custody for mother but joint physical custody for the parties. The district court noted that mother "is clearly the more flexible party" and "would be more willing and likely to listen to [father's] input in a more open, accepting and generous way." The district court found mother's testimony "credible" and found that father "is quite difficult to deal with in relation to resolving disputes concerning the care and raising of the parties' children." The district court's findings are well-supported in the record, and its award of sole legal custody to mother is not an abuse of discretion.[1]

[1] Father argues that the district court abused its discretion by finding that the children were too young at ten and seven years old to express a preference as to custody. In light

Father also contests what he describes as an unequal award of parenting time, in particular, the portion of the parenting-time order that orders that "the children's time in Denmark take precedence over [father's] time with the children and with no compensatory time for [father]." Both children are dual Danish/United States citizens. By virtue of this status, both are eligible for "significant educational opportunities in Denmark." The district court scheduled parenting time for father on alternating weekends and every Wednesday for four hours. The court designated certain holidays either to one party or to both parties on an alternating basis. The court also designated up to four weeks for travel to Denmark during the summer. Each parent received up to three weeks of vacation time during school breaks but not exclusively during the summer. Father has the right to designate his three weeks first. In addition, any weeks not designated for travel to Denmark, or selected as vacation time by a parent, or involving an assigned holiday, would be alternated between the parties. The court specifically noted that "it is anticipated and acceptable that the parenting time may not be exactly equally divided [because of the Denmark weeks]."

The district court has broad discretion in matters of parenting time. *Matson*, 638 N.W.2d at 465. The district court's grant of time to be spent in Denmark is supported by findings and is not an abuse of discretion. Although father would like to have equal parenting time, the district court does not abuse its discretion so long as there is a reasonable basis for its determination. *Hagen v. Schirmers*, 783 N.W.2d 212, 215-17 (Minn. App. 2010); *see Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984) (stating that a

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of the level of conflict between the parties, this was not an abuse of discretion.

district court abuses its discretion when it reaches "a clearly erroneous conclusion that is against logic and the facts on the record").

VII.

The district court may order a dissolution party to pay attorney fees if he or she "unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2012). The district court's award of conduct-based attorney fees is reviewed for an abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007). The district court must provide findings that support the award of conduct-based attorney fees. *Geske v. Marcolina*, 624 N.W.2d 813, 817 (Minn. App. 2001). "Conclusory findings on the statutory factors do not adequately support a fee award." *Id*. The party seeking fees has the burden of proof; "[a]n award of conduct-based fees . . . may be made regardless of the recipient's need for fees and regardless of the payor's ability to contribute to a fee award." *Id.* at 818.

The trial judge made findings that father raised "irrelevant or unmeritorious issues," was uncooperative, not credible, "disrespectful," and changed attorneys several times. The trial judge, however, failed to identify which issues it found irrelevant or unmeritorious, which uncooperative actions delayed or increased the cost of trial, or whether father's change of attorneys was wholly unjustified. The trial judge noted that father's violation of the court's order to file income taxes jointly caused mother to incur "unnecessary legal expenses," but father was ordered to assume this debt. These findings are too conclusory to adequately support an attorney-fee award. *See Geske*, 624 N.W.2d at 817. Without more detailed findings, we cannot determine if father's conduct

unreasonably contributed to the length or expense of the proceeding. We, therefore, reverse both awards of attorney fees and remand for additional findings.

Affirmed in part, reversed in part, and remanded.