STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0250

In re the Marriage of:
Jesse A. Freking, petitioner,
Appellant,

vs.

Audra Jo Buxengard f/k/a Audra Jo Freking,
Respondent.

Filed December 3, 2018
Affirmed in part, reversed in part, and remanded
Schellhas, Judge

Nobles County District Court
File No. 53-FA-15-185

Maryellen Suhrhoff, Muske, Suhrhoff & Pidde, Ltd., Windom, Minnesota (for appellant)

Jacob M. Birkholz, Michelle Olsen, Birkholz & Associates, LLC., Mankato, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Schellhas, Judge; and Smith, John, Judge.*

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

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

SCHELLHAS, Judge

Appellant challenges a district court's grant of child custody, division of property and liabilities, and contempt finding. We affirm in part, reverse in part, and remand.

FACTS

Appellant-father Jesse Freking and respondent-mother Audra Buxengard married in May 2004, and are parents to three children: K.F., born in September 2001; N.F., born December 2007; and C.F., born in June 2011. During their marriage, the parties engaged in farming and father worked as a long-haul trucker for his partly owned corporation, Central Pacific Express, Inc. (CPE), that he formed during the marriage. Mother worked as a bookkeeper for CPE.

In February 2015, Father commenced a marriage-dissolution proceeding. On April 8, based on the parties' stipulation, the district court issued an order for temporary relief, granting the parties joint legal custody, mother primary physical custody, father parenting time, and mother child support from father. On November 19, the court awarded a marital car to mother.

On February 5, 2016, the court dissolved the parties' marriage and reserved the issues of custody, parenting time, and the division of property and liabilities. On March 9, based on the parties' stipulation, the court amended the parenting-time schedule, ordering that "[t]he parties shall have a fifty/fifty (50/50) parenting-time schedule," incorporating alternate weeks, running from Sunday at 7:00 p.m. to Sunday at 7:00 p.m.; "awarded" the

homestead to mother, subject to the first and second mortgages;[1] ordered the forgiveness of father's child-support arrearages if he satisfied the loan against mother's car; and ordered father to make payments on mother's homestead debt. On May 13, the court denied a contempt motion by mother against father and appointed an appraiser for the marital property, including father's trucking-business property. On October 31, based on mother's motion and over father's objection, the court "deemed" the homestead to be mother's non-marital property.

In March and June 2017, the district court conducted a trial of the disputed issues. On July 11, the court issued findings of fact, conclusions of law, order for judgment, and judgment and decree (dissolution judgment), granting the parties joint legal custody of the children; mother sole physical custody of the children, subject to father's parenting time; dividing the parties' marital assets and liabilities; and awarding mother the homestead as nonmarital property. In August, mother moved for emergency relief, seeking a finding of contempt against father for his alleged failure to comply with the final dissolution judgment, regarding the transfer of personal property. On September 3, the court found father to be in contempt and granted mother the relief that she requested.

Regarding the final dissolution judgment, father moved for amended findings and judgment or a new trial. On December 14, 2017, the district court amended the dissolution judgment to allow father "six . . . non-consecutive weeks of additional parenting per year" and denied the remainder of father's requests for relief. On January 24, 2018, by agreement

[1] A third mortgage, securing father's business loan, also encumbered the homestead.

of the parties, the court amended "Paragraph 2 of the Conclusions of Law- Personal Property and attached Exhibit A- to add VIN numbers to the two Peterbilt semi's, the Stepdeck trailer and the 2004 Ford Excursion so that the State of Minnesota can transfer the titles to these items from [father] to [mother]."

Father appeals from the dissolution judgment, both amended judgments, and the September 3, 2017 contempt order.

D E C I S I O N

I.

In reviewing the judgment and amended judgments, we also may review the district court's denial of father's motion for amended findings or a new trial. *See* Minn. R. Civ. App. P. 103.04 ("[T]he appellate courts . . . on appeal from a judgment may review any order involving the merits or affecting the judgment."). We review the denial of a motion for amended findings or a new trial for an abuse of discretion. *Zander v. Zander*, 720 N.W.2d 360, 364–65 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006). "When determining whether findings are clearly erroneous, this court views the record in the light most favorable to the district court's findings." *Id*. at 364 (quotation omitted).

A. Denial of joint physical custody and 50/50 parenting time

The district court granted mother sole physical custody, "subject to reasonable parenting time of [father]," and ordered that "[mother's] residence shall be the primary residence of the minor children." The court's dissolution judgment includes 42 custody and parenting-time findings that reference the following: trial testimony; two expert reports; the parties' relationship, historically and at the time of trial; credibility of trial witnesses;

and each of the best-interest factors listed in Minn. Stat. § 518.17 (2016). Father argues that the court's findings do not support the grant of physical custody to mother.

Upon a marital dissolution, the district court must make "just and proper" orders concerning "the legal custody of the minor children" and "their physical custody and residence." Minn. Stat. § 518.17, subd. 3(a)(1), (2). "In determining custody, the court shall consider the best interests of each child." *Id*., subd. 3(a)(3). "The statute and caselaw make clear that the ultimate issue is the child's best interests as assessed under the *totality of the considered factors*." *Hagen v. Schirmers*, 783 N.W.2d 212, 216 (Minn. App. 2010) (emphasis added). "In evaluating the best interests of the child for purposes of determining issues of custody and parenting time, the court must consider and evaluate all relevant factors." Minn. Stat. § 518.17, subd. 1(a) (listing best-interest factors). "District courts have broad discretion on matters of custody and parenting time." *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). Review of a district court's grant of custody "is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Id*. (quotation omitted). In reviewing a custody determination, "the weight and credibility of . . . testimony are left to the factfinder." *In re Welfare of S.R.K.*, 911 N.W.2d 821, 831 (Minn. 2018).

Father focuses only on the district court's findings that support his argument and ignores numerous other findings that do not, such as: a finding about multiple instances when father exhibited a "cruel and vindictive attitude and willingness to attack and denigrate" mother in front of the children; a finding that mother possesses a flexible work schedule to be home every day with the children after school, and continues to provide the

children with "stability and routine that [they] have become accustomed to . . . maintain[ing] their bedrooms at [mother's] home and [a] regular schedule"; findings that contrast mother's relationship with the children with father's such as: "[father] has *recently* developed an ongoing relationship with the minor children and an ability to parent them, [but] the work obligations of farming are likely to result in [his] significant other having to care for [his] children in addition to her own." (Emphasis added.) We conclude that the court did not clearly err in making these findings and did not otherwise abuse its discretion in consideration of these findings when granting custody. *See Hansen*, 908 N.W.2d at 599 (concluding no abuse of discretion when court considered "stability" and a parent's ability to maintain consistent parenting time when awarding parenting time).

The district court made findings on each best-interest factor. *See* Minn. Stat. § 518.17, subd. 1(a) (listing the best-interest factors). When conducting an analysis of the best-interest factors, a district court "may not use one factor to the exclusion of all others, and the court shall consider that the factors may be interrelated." *Id.*, subd. 1(b)(1). Father challenges the court's finding that mother is the children's primary caretaker. The court found that mother "provided a majority of the care for the children" during the parties' marriage because father "was absent for a significant portion of time spanning from the birth of the minor children until the separation" due to his job. Father provides no support for his argument that his "ability to effectively parent the children coupled with the children's desire and welfare should override the finding that [mother] was the primary caregiver."

One of the best-interest factors is the "ability of each parent to provide *ongoing* care for the child; to meet the child's *ongoing* developmental . . . needs; and to maintain consistency and follow through with parenting time." *Id*., subd. 1(a)(7) (emphasis added). Father argues that the district court erroneously speculated regarding his ability to parent. The court found that both "parents are willing to provide for the ongoing care of the minor children and both have the ability to do so," but expressed concern about father's "work obligations of farming [that] are likely to result in [his] significant other having to care for the minor children," noting that father has prioritized his work over the children in the past. Father also argues that the district court penalized him "for behavior that does not affect the children." But father fails to cite any authority that prevents the court, in assessing the best-interest factors, from considering father's negative behavior toward mother in front of the children. Here, the court considered each best-interest factor, not just the parties' behavior, and therefore did not err in considering the parties' conflict. *See Hansen*, 908 N.W.2d at 600 (stating that, when awarding parenting time, district court would have erred had it not weighed "key factor" relating to parents' conflict). We conclude that the district court did not abuse its discretion in its consideration or analysis of the best-interest factors.

Father challenges the findings and conclusions in a parenting-assessment report (the Brinkman Report), arguing that finding no. 26 is factually wrong because it states that Dr. Brinkman administered tests to father. While the district court could have more clearly stated the finding, we conclude that father misunderstands it. Finding no. 26 mentions "[t]he tests administered" in the Brinkman Report but does not state that Dr. Brinkman tested father. The report reveals that Dr. Brinkman administered five tests to mother; it

does not state that tests were administered to father. The court found that Dr. Brinkman's testimony and her report were credible, explaining that Dr. Brinkman "was a licensed social worker for over 25 years and a licensed psychologist for over 20 years," and has "administered parenting assessments and has provided divorce counseling for over 15 years." Deferring to the district court's credibility determinations, we discern no error in its consideration of the Brinkman Report.

The record supports the district court's findings of fact and the findings support the court's grant of sole physical custody of the children to mother. We therefore conclude that the court did not abuse its discretion in granting sole physical custody of the children to mother, subject to father's parenting time.

B. Father's parenting time

Father argues that the district court abused its discretion by not granting him a minimum of 25 percent parenting time and by not granting him more than 25 percent parenting time. An appellate court's review of a district court's grant of parenting time "is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Hansen*, 908 N.W.2d at 596 (quotation omitted).

> In all proceedings for dissolution . . . the court shall, upon the request of either parent, grant such parenting time on behalf of the child and a parent 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) (2016).

1. Grant of a minimum of 25 percent parenting time

The parenting-time law provides that "[i]n the absence of other evidence, there is a rebuttable presumption that a parent is entitled to receive a minimum of 25 percent of the parenting time for the child." *Id*., subd. 1(g) (2016). In the dissolution judgment and its December 14, 2017 amended dissolution judgment, the district court granted father parenting time every other weekend, Thursday evenings from 5:30-7:30, holiday time under a biannual schedule, and six nonconsecutive weeks annually. The court did not define "week," nor did the court make a finding that it intended to grant father less than a minimum of 25 percent of the parenting time for the children.

Father argues that he did not receive a minimum of 25 percent of the parenting time for the children. He argues that he received 98 days or 26 percent parenting time during even years and 91 days or 24 percent parenting time during odd years. Both parties interpret the district court's grant of six nonconsecutive weeks as equal to 30 days, using a five-day "week," rather than 42 days, using a seven-day "week." For two reasons, we conclude that that the court did not err, regardless of whether it intended to grant father parenting time based on a five- or seven-day week.

First, even if the district court intended a five-day week, father receives approximately 25 percent parenting time over a two-year period; in odd years, he receives 25 percent minus one day.[2] We conclude that a one-day shortage in odd years is de minimis,

[2] Father's calculation equates to: 98 days (even years) + 91 days (odd years) = 189 days during a two-year cycle. 189 days / 730 days = 25.89% parenting time over a two-year cycle. 91 days / 365 days = 24.93% parenting time during odd years, whereas if father had an additional day, he'd have over 25 percent parenting time: 92 days / 365 days = 25.21%.

which we ignore on appeal. *See Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 694 n.1 (Minn. App. 2010) (concluding that $400 missing from $29,500 marital appreciation was de minimis error), *review denied* (Minn. Nov. 16, 2010); *see also Hesse v. Hesse*, 778 N.W.2d 98, 105 (Minn. App. 2009) (concluding de minimis change in expenses did not warrant a parenting-time-expense adjustment of child support); *Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (refusing to remand for de minis error in child-support calculation). Second, despite both parties' interpretations, the plain meaning of the court's order does not support the use of a five-day week. *See Black's Law Dictionary* 1731 (9th ed. 2009) (defining "week" as a "period of seven consecutive days"). Assuming that the court intended a seven-day week, father did not receive less than 25 percent parenting time.[3]

2. Request for parenting time in excess of 25 percent

Father argues that the district court erred by not granting him more parenting time with his oldest child, K.F., based on K.F.'s expressed preference. The court found that K.F. was "of a sufficient age and maturity to express his preference" and has "indicated that *he does not wish to spend more time with one [parent] over the other*." (Emphasis added.) Neither party challenges the court's finding. K.F. was 15 years old at the time of trial.[4] A reasonable preference of a child of sufficient age is a statutory best-interest factor. Minn.

[3] Based on a seven-day week, using father's calculation, he receives 110 days or 30% parenting time during even years and 103 days or 28% parenting time in odd years. In a two-year cycle, father therefore receives 213 days / 730 days = 29.18% parenting time.

[4] The dissolution judgment states that K.F. was 16 at the time of trial, but his birthdate reveals that he was 15.

Stat. § 518.17, subd. 1(a)(3); *see also In re Santoro*, 594 N.W.2d 174, 178 (Minn. 1999) ("[District] courts have considered the preferences of children as young as 11 years old in determining visitation."); *Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997) ("Where the child is a teenager, Minnesota courts have taken preferences into account.").

Both the Brinkman Report and a custody study conducted by another service provider were completed when K.F. was 14 years old, and state that he expressed that he did not "spend enough time with [his] father," and would like "more time with [him]." Significantly, when K.F. expressed his parenting-time preference in the Brinkman Report, the parties' parenting time was 50/50 under the district court's March 9, 2016 temporary order, so K.F. arguably was expressing a preference to spend more than 50 percent of his time with father. Yet, the court substantially reduced father's parenting time with K.F. and provided no explanation about why it ignored K.F.'s preference. Based on the record, we conclude that the court erred by reducing father's parenting time with K.F. without explanation, and we therefore reverse and remand for reconsideration of the grant of parenting time to father with K.F. or, alternatively, for more robust findings that support why K.F.'s best interests are served if the court disregards his preference.

Father also argues that "the evidence and the Court's findings support liberal parenting time in excess of 25%," and that the district court should grant him additional parenting time with N.F. and C.F., the parties' two younger children. N.F. and C.F. were ages nine and five at the time of trial. The court found that they were not of a sufficient age or maturity to consider their preferences. Based on this record, we conclude that the district court did not abuse its discretion in its grant of parenting time regarding N.F. and C.F. *See*

Vangsness v. Vangsness, 607 N.W.2d 468, 474 (Minn. App. 2000) ("That the record might support findings other than those made by the [district] court does not show that the court's findings are defective."). We therefore affirm its grant of custody regarding all three children, its grant of parenting time regarding the two youngest children, and reverse and remand its grant of parenting time regarding K.F.

II.

Father challenges the district court's division of assets and liabilities. Based on the dissolution judgment, amended judgments, and our careful review of the record, the district court awarded mother assets that it determined to be marital with an approximate aggregate value of $13,500, excluding any value assigned to the semi-truck property, and to father with an approximate aggregate value of $8,400. Additionally, the court assigned to mother unsecured liabilities totaling approximately $10,349.15, and to father totaling approximately $282,945.24.

A. Property

"Upon a dissolution of a marriage . . . the court shall make a just and equitable division of the marital property of the parties without regard to marital misconduct, after making findings regarding the division of the property." Minn. Stat. § 518.58, subd. 1 (2016). When dividing property, a district court "shall base its findings on all relevant factors," and "shall also consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount of value of the marital property, as well as the contribution of a spouse as a homemaker." *Id.* An appellate court will not "overturn a

district court's evaluation and division of property unless the court abuses its discretion." *Gill v. Gill*, __ N.W.2d __, __, 2018 WL 5274126, at *4 (Minn. Oct. 24, 2018).

A district court abuses its discretion when dividing property if its division lacks a "basis in fact and principle." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). If an appellate court is "left with the definite and firm conviction that a mistake has been made," it "may find the [district] court's decision to be clearly erroneous, notwithstanding the existence of evidence to support such findings." *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997) (quotation omitted).

1. Nonmarital property

When father petitioned for marriage dissolution, he sought an equitable division of the parties' marital property. When mother counter-petitioned for marriage dissolution, she asked for a just and equitable allocation of the parties' personal and real property and made no claim that the homestead was nonmarital. Thereafter, the parties agreed that the homestead would be awarded to mother, and the district court awarded it to mother on March 9, 2016, subject to a first and second mortgage.

On September 1, 2016, the district court ordered that "the homestead [was] . . . deemed [a] marital asset[] to be distributed according to any property settlement or court order." Mother moved to amend the order to reflect that the parties' homestead is her nonmarital asset. Her counsel submitted a supporting affidavit, merely stating: "My client purchased the marital home in July of 2003 before the [parties'] marriage on May 29, 2004." Father objected and moved the court to deny mother "sole ownership of the marital residence." Father submitted a supporting affidavit that stated:

> [Mother] bought the marital residence right before we married. However, it was 100% financed. We both jointly paid the mortgage during the marriage. We also made some improvements to the house. [Mother] cannot claim that she is entitled to 100% ownership. [Mother]'s attorney asked that the Court identify the house and the motorcycle as marital assets and the Court did so on September 1, 2016.

The court nevertheless "deemed" the homestead as mother's nonmarital property on October 31, 2016.

Father argues that the district court erred by ignoring his marital interest in the homestead. A district court shall "conclusively presume[] that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife." Minn. Stat. § 518.58, subd. 1. Appellate courts independently review the issue of whether property is marital or nonmarital, giving deference to the district court's findings of fact. *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 852 (Minn. 2003). Minnesota law defines "marital property" as

> property, real or personal . . . acquired by the parties, or either of them, to a dissolution . . . at any time during the existence of the marriage relation between them. . . . All property acquired . . . regardless of whether title is held individually or by the spouses. . . . Each spouse shall be deemed to have a common ownership in marital property that vests no later than the time of the entry of the decree in a proceeding for dissolution.

Minn. Stat. § 518.003, subd. 3b (2016). "The presumption of marital property is overcome by a showing that the property is nonmarital property." *Id.* A spouse seeking to claim nonmarital property must prove the property's nonmarital character by a preponderance of the evidence. *Baker v. Baker*, 753 N.W.2d 644, 649–50 (Minn. 2008).

Minnesota court's use a modified *Schmitz*[5] formula "to determine marital and nonmarital interests in property . . . acquired before the marriage." *Antone*, 645 N.W.2d at 102. The modified formula provides that

> 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 equity increase is characterized as marital property.

Id. (quotation omitted). Parties create marital equity when they use marital funds to reduce the mortgage balance of a property during the marriage. *Id*. at 103.

In this case, before trial and based solely on the affidavit of mother's counsel,[6] the district court "deemed" the homestead to be mother's nonmarital property over father's objection and counter-motion. The court made no findings to support its nonmarital characterization in its pretrial order and none in the dissolution judgment or amended judgments. Neither party submitted any evidence at trial to prove the marital or nonmarital character of the homestead. The dissolution judgment merely awards the homestead to mother as nonmarital property, adopting the appraised value of $63,000 (which neither

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[5] *See Schmitz v. Schmitz*, 309 N.W.2d 748, 750 (Minn. 1981) (establishing formula to determine extent of marital and nonmarital interests in asset purchased with nonmarital assets).

[6] We note that, while absent evidence to the contrary, statements of counsel can be accepted as true, *Thomas v. Ross*, 412 N.W.2d 358, 360 (Minn. App. 1987); statements of counsel not based on personal knowledge lack evidentiary worth, *see State ex rel. Sime v. Pennebaker*, 9 N.W.2d 257, 259 (Minn. 1943) (holding that counsel's affidavit attesting to facts known by party "furnishes nothing of evidentiary worth" because it was obviously founded on mere hearsay). This record is, at best, unclear about how mother's attorney would have personal knowledge of the facts relevant to whether the marital home was mother's nonmarital property.

party challenges on appeal), subject to a first mortgage in the amount of $40,074.15, and a second mortgage in the amount of $15,712.38.[7]

The district court erred by wholly classifying the homestead as nonmarital before trial and failing to apply the modified *Schmitz* formula to apportion the parties' marital and nonmarital interests in the homestead. *See id*. (concluding that district court erred by not applying modified *Schmitz* formula to apportion marital and nonmarital interests in a property acquired before the marriage but maintained during it). We therefore reverse the court's characterization of the homestead as wholly nonmarital and remand to the district court to afford the parties an opportunity to provide evidence necessary for application of the modified *Schmitz* formula to apportion marital and nonmarital interests in the homestead.

2. Marital property

Father argues that the district court failed to make findings that "reflect its rationale for its allocation of assets and debts," and that this court therefore must reverse and remand for further findings. We agree. "The idea of marital property is grounded in the principle that marriage is a partnership and that each partner should get out of the marriage a fair share of what was put into it." *Gill*, 2018 WL 5274126, at *4 (quotations omitted). Excluding any marital interest in the homestead, the district court divided the parties' marital assets as follows:

[7] As to a third mortgage in the amount of $174,515.72, the district court found that the mortgagor, Farm Service Agency (FSA), had agreed to release its lien on the homestead upon payment of $4,500, and ordered father to pay this amount to release the homestead.

	Mother	Father
Mother's bedroom set	$200*[8]	
Child's bedroom set	X	
Particle board hutch	$100*	
Second child's bedroom set	X	
Recliner chair	X	
Flat screen TV and stand	X	
Two lamps	X	
Dining room set	$150*	
Christmas tree and decorations	X	
Bathroom towels	X	
Kitchen items	$300*	
Bedding and blankets	X	
Drapes/window treatments	X	
Washer and dryer	$300*	
Dixon lawn mower	X	
Custom motorcycle	$4,500	
2004 Ford Excursion	$9,970*	
Mini Cooper automobile	$0.00*	
Entertainment center	X	
Kirby vacuum	X	
Height-measurement chart	X	
Child's Cat and Hat ornament	X	
Wood bench	X	
Deep-freezer chest	$50*	
Burn pit	X	
Ariens snow-blower	X	
Fuel-oil barrel	X	
Children's clothing	X	
School pictures	X	
John Deere Gator	$0.00*[9]	
Insurance proceeds	$8,000	$8,000
New washing machine	$700	
Master bedroom bedding	X	
Paper shredder	X	

[8] The court noted that it did not assign values to the "vast majority of the items of personal property" because they "were not appraised" and "little evidence [existed] to determine the fair market value of the individual items." The asterisks identify personal-property values found in the record but not assigned by the district court. We defer to the district court on remand to adopt or reject the values listed.

[9] The Mini Cooper and John Deere Gater are listed without value because it is fully encumbered by a loan.

Bathroom scale	X	
Garage heater	X	
Black and Decker took kit	X	
ShopVac	X	
TV	X	
VCR	X	
DVD player	X	
Luggage set	X	
Guns		$5,600
Tools		$10,000
2001 Harley Davidson		$0.00[10]
One-half value of guns	$2,800[11]	$2,800
One-half value of tools	$5,000[12]	$5,000
Semi-truck property[13]		
2001 Peterbilt semi-truck	$30,000*	
2009 Peterbilt semi-truck	$53,000*	
2013 semi-truck trailer	$25,000*	

The district court's findings are insufficient to enable our proper review. The findings do not enable us to ascertain the court's rationale for its disparate division of personal property. We therefore remand for additional findings. *See Rosenfeld v. Rosenfeld*, 249 N.W.2d 168, 171 (Minn. 1976) (stating that findings of fact addressing the relevant criteria "(1) assure consideration of the statutory factors by the family court; (2) facilitate appellate review of the family court's [decision on the question at issue]; (3) satisfy the parties that this important decision was carefully and fairly considered by the family court"); *see also In re Civil Commitment of Ince*, 847 N.W.2d 13, 26 (Minn. 2014) (citing this aspect of *Rosenfeld*); *Dick v. Dick*, 438 N.W.2d 435, 437 (Minn. App. 1989)

[10] The 2001 Harley Davidson is encumbered by the FSA loan.
[11] Father is ordered to pay mother one-half the value of his guns.
[12] Father is ordered to pay mother one-half the value of his tools.
[13] The semi-truck property is encumbered by a credit-union loan, but the record does not contain the unpaid balance.

(remanding for additional findings when district court included "no stated explanation" for award of property in parties' respective possession, "none of which was valued by the [district] court in its findings").

3. Property owned by third party

A district court "in a dissolution proceeding . . . lacks personal jurisdiction over a nonparty and cannot adjudicate a nonparty's property rights." *Danielson v. Danielson*, 721 N.W.2d 335, 339 (Minn. App. 2006); *see also Fraser v. Fraser*, 642 N.W.2d 34, 38 (Minn. App. 2002) (noting that Minn. Stat § 518.58 (2000) "does not authorize the district court to adjudicate the interests of third parties"). When a district court divides a marital asset in which a nonparty has an interest, the court has three options: (1) exclude the asset from the dissolution judgement and later divide the marital portion of it as "omitted property"; (2) award each party a percentage interest in the later-determined marital interest of the asset; or (3) include the asset in the dissolution judgment while recognizing that it may have to reopen the judgment and adjust its award pending a determination of the nonparty's interest. *Danielson*, 721 N.W.2d at 340.

Here, the district court found that "there were two [John Deere Gators]. [Father] and his brother equally owned these business assets." The court noted that one John Deere Gator "was titled in Justin Freking's name."[14] The court awarded one of the John Deere Gators to mother even though it acknowledged the ownership interest in that Gator of Justin Freking. The record supports the court's finding that Justin Freking, a nonparty, possessed

[14] Justin Freking is father's brother.

some interest in both John Deere Gators. The court therefore erred by failing to make sufficient findings of fact and conclusions of law as to why it awarded one of the John Deere Gators to mother without addressing Justin Freking's interest in it. *See id.* (stating that regardless of the method a district court uses to address a nonparty asset, the court "is required to make sufficient findings of fact and conclusions of law to explain its decision").

B. Apportionment of marital debt

Minnesota law allows for the apportionment of marital debts. *Hattstrom v. Hattstrom*, 385 N.W.2d 332, 337 (Minn. App. 1986), *review denied* (Minn. June 30, 1986). "[E]quitable considerations" should guide a district court's distribution of rights and liabilities. *Id*. "A [district] court's apportionment of marital debt is treated as a property division and reviewed under an abuse of discretion standard." *Berenberg v. Berenberg*, 474 N.W.2d 843, 848 (Minn. App. 1991), *review denied* (Minn. Nov. 13, 1991). A district court's decision dividing marital debt "must be affirmed if it has an acceptable basis in fact and principle, even though this court may have taken a different approach." *Bliss v. Bliss*, 493 N.W.2d 583, 587 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993).

Father argues that the district court inequitably and unjustly apportioned to him nearly all of the parties' marital debt without making appropriate findings to support its apportionment. The court apportioned the parties' marital debt as follows:[15]

	Mother	**Father**
AAI Collections Midwest	$4,224.17	$4,224.18

[15] We also note that father listed and testified about debt to PHI Financial Services of ($49,933.97) incurred by him and mother as a "seed loan." The court acknowledges this debt as a marital liability but does not apportion the debt between the parties or make findings concerning its apportionment.

Avera	$1,513.02	$1,513.03
Midland	$2,242.90	$2,242.90
AMI	$80.36	$80.35
AAA Collections	$185.11	$185.11
Schoonover (custody study fee)	$950	$950
Maurice's	$1,113.76	
Herberger's	$139.83	
Portfolio Recovery Associates		$14,214
IRS debt		$68,119.46
CBCS (energy-bill debt collector)		$609.30
Appraisal fee		$500
Truck-repair bills		$15,894.18
FSA loan		$174,515.72.

1. FSA loan

The record includes father's list of liabilities, which states that the parties incurred the FSA loan "as a married couple to farm." Father testified that he and mother "farmed together" during 2013, the same year in which the parties signed the FSA mortgage that encumbers the homestead. The district court made no findings about the purpose of the debt and, without explanation, allocated the entire FSA debt—the parties' largest debt—to father. The court noted in finding no. 31 that mother "never signed the Note." We cannot ascertain the significance of the court's notation and therefore cannot assess whether the court erroneously found that the debt was not marital debt solely because mother did not sign the note. We conclude that the court erred by allocating the entire FSA debt to father without making any explanatory findings.

2. IRS debt

The district court similarly allocated to father the entire IRS debt related to unpaid payroll taxes by CPE, father's partly owned, now-dissolved trucking corporation.[16] The court found the IRS debt accrued in 2011-2012, and that mother maintained the books for the company and "held various other forms of employment." The court also found that the parties' testimony established that the debt resulted from CPE's failure to pay payroll taxes. But the court made no findings to explain its rationale for allocating the entire IRS debt to father. As such, the findings are insufficient to enable our review of father's claim of error.

3. Conclusion

The district court's apportionment of the parties' unsecured debt lacks adequate findings to enable our review. *See Rosenfeld*, 249 N.W.2d at 171. Neither the dissolution judgment nor the amended judgments include any findings about the parties' employment or incomes. Without additional findings, we cannot determine whether the court's apportionment of debt is just and equitable. We conclude that the court erred by failing to provide an explanation for the substantial disparity of the court's apportionment of debt between the parties, and we therefore reverse the debt apportionment and remand for additional findings, and, to the extent the district court may deem it necessary, a reapportionment of those debts. *Cf. Hattstrom*, 385 N.W.2d at 337 (affirming division of $21,000 debt to husband and $412 to wife when husband earned substantial income and

[16] We take judicial notice of records of the Minnesota Secretary of State, which reflect that the state administratively dissolved CPE on March 14, 2016. *See* Minn. R. Evid. 201(b) ("A judicially noticed fact must be . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.").

benefits, wife was unemployed and suffering from a depressive episode, and husband had financial ability to support wife).

Father argues that the court's debt apportionment is punitive and reflects the court's antipathy toward him. *See Sirek v. Sirek*, 693 N.W.2d 896, 900 (Minn. App. 2005) ("The district court may not divide the property on the basis of marital misconduct."). Finding no. 23 reflects that the court found that father lacked credibility with respect to at least one property-related issue, his tools. But we defer to the district court's credibility determinations. *Sefkow v, Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

III.

Father challenges the district court's September 3, 2017 contempt order, in which the court found that: father failed to deliver within 30 days of entry of the dissolution judgment the items of personal property awarded to mother in Exhibit A to that judgment; father failed to make the June 1 and July 1, 2017, payments to the First Century Federal Credit Union (the credit union) on a loan secured by two semi-trucks, a 2001 Peterbilt 379 550HP Cat Engine and a 2009 Peterbilt 389 550HP Cat Engine, and a 2013 Transcraft 53' Stepdeck trailer (semi-truck property), causing the credit union to declare the loan in default and therefore to demand surrender of the semi-truck property; father surrendered the semi-truck property to the credit union on August 22, 2017; mother had "the financial ability to pay off the debt" and was "willing to do so in order to get possession" of the semi-truck property; father failed to deliver to mother the semi-truck property certificates of title; prior to August 23, 2017, father incurred semi-truck repair bills in the amount of $15,894.18; and that father was "in contempt of Paragraph 1, Page 17" of the dissolution

judgment for "the willful and intentional failure to deliver any of the assets listed on Exhibit A" within 30 days of the dissolution judgment.

In connection with its contempt finding, the district court ordered father to sign a release so that mother could obtain information from the credit union about the semi-truck equipment; ordered mother to pay the credit-union debt; ordered father to reimburse mother for "the actual loss of equity" in the semi-truck equipment due to father's failure to pay the June 1 and July 1, 2017 payments to the credit union; ordered father to reimburse mother for "the actual out of pocket expenses she pays" to the credit union and for "all interest and late fees she paid up to and through July 2, 2017 in order to obtain possession of the collateral within fifteen (15) days of this order"; and ordered father to be solely responsible for payment of the semi-truck repair bills, incurred prior to August 23, 2017; and awarded mother attorney fees.

In dissolution proceedings, holding a party in contempt serves "to secure future compliance of a court order by one party to vindicate the rights of the other party." *Tatro v. Tatro*, 390 N.W.2d 461, 464 (Minn. App. 1986) (citing *Minn. State Bar Ass'n v. Divorce Assistance Ass'n*, 248 N.W.2d 733, 741 (Minn. 1976)). A court can find a party in contempt if (1) the party failed to comply with a court order, and (2) conditional confinement "is reasonably likely to produce compliance fully or in part." *Id*. (citing *Hopp v. Hopp*, 156 N.W.2d 212, 217 (Minn. 1968)). A district court "has broad discretion to hold an individual in contempt." *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). "The district court's decision to invoke its contempt powers is subject to reversal for an abuse of discretion," and we "will reverse the factual findings

of a civil contempt order only if [the] findings are clearly erroneous." *In re Welfare of J.B.*, 782 N.W.2d 535, 538 (Minn. 2010). A district court makes a clearly erroneous finding if the finding is "against logic and the facts on record." *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016).

Here, the record is unclear as to whether the district court's contempt order is a conditional or a final order. *See Johnson v. Johnson*, 439 N.W.2d 430, 431 (Minn. App. 1989) (stating that only final contempt order or contempt finding that cannot be purged is appealable). We therefore review the court's contempt order under Minn. R. Civ. App. P. 103.04, which states that we "may review any other matter as the interest of justice may require."

Father argues that "no order exists" to serve as the basis for a contempt finding, but father ignores the record. The district court provided father with clear instructions in its July 12, 2017 order to deliver to mother "within 30 days" of the order "all items of personal property listed and set forth," which included the semi-truck property. The record reflects that father delivered the semi-truck property to the credit union following receipt of the credit union's notice of default and failed to deliver to mother any of the items of personal property awarded to her.[17]

[17] The 30-day period to deliver the semi-truck property to mother ended on August 11, 2017. According to an August 1 letter mailed to father from the credit union, father failed to make the semi-truck property loan payments for June and July 2017. On August 10, 2017, the credit union mailed mother and father a notice of default, citing the district court's transfer of ownership of the semi-truck property to mother, and father's failure to make timely payments as reasons for the default.

Father also claims that the district court erred in its calculation of interest contained in the contempt order but offers no explanation about how the court erred and cites to no authority to support his argument. "An assignment of error on mere assertion, unsupported by argument or authority, is forfeited and need not be considered unless prejudicial error is obvious on mere inspection." *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), *review denied* (Minn. Apr. 26, 2017). Our inspection of the contempt order reveals no "obvious" "prejudicial error," and we therefore disregard father's argument. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975) ("It is well to bear in mind that on appeal error is never presumed. It must be made to appear affirmatively before there can be reversal." (quotation omitted)).

The record supports the district court's finding that father violated the July 12, 2017 order by "willfully and intentionally" failing to deliver to mother the semi-truck property within 30 days. *See Crockarell*, 631 N.W.2d at 836 ("A party guilty of contempt may not purge himself by showing that he has voluntarily placed himself in a position where he is unable to conform to the court's order when he has allowed the means of complying with that order to pass through his hands and out of his control." (quotation omitted)). The district court therefore did not abuse its "broad discretion" in finding father in contempt, and we therefore affirm the contempt order.

Affirmed in part, reversed in part, and remanded.