STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0781

In re the Marriage of:

David Gordon Wingad, petitioner,
Respondent,

vs.

Janet Marie Wingad,
Appellant.

Filed September 27, 2021
Affirmed
Smith, Tracy M., Judge

Dakota County District Court
File No. 19HA-FA-18-144

David Gordon Wingad, Lakeville, Minnesota (pro se respondent)

Janet Marie Wingad, Eagan, Minnesota (pro se appellant)

Considered and decided by Larkin, Presiding Judge; Hooten, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this marital-dissolution appeal, appellant argues that the district court erred (1) by denying her request for spousal maintenance and by not reserving the issue, (2) by improperly calculating her nonmarital interest in the parties' real property, (3) by ordering the sale of the marital homestead, (4) in its treatment of a life-insurance policy, and (5) by

not including two loans in its division of marital debts. Appellant also argues that the district court judge was biased against her. We affirm.

FACTS

Respondent David Gordon Wingad (husband) and appellant Janet Marie Wingad (wife) married in 1982. The parties separated in June 2015, and husband filed a petition for dissolution of marriage in March 2018. They had no joint minor children at the time of dissolution.

In August 2019, following a trial, the district court entered its judgment and decree. Wife moved for amended findings or a new trial. After a hearing, the district court granted wife's motion in part and denied her motion in part in an amended judgment and decree (the J&D).

Several provisions of the J&D are at issue here and are more fully discussed below. Briefly, the district court denied wife's request for spousal maintenance and denied her request to reserve jurisdiction over the issue. In addition, the district court made awards of nonmarital and marital property interests with respect to two pieces of real estate—the parties' marital homestead and rental property in Faribault that the parties owned. The district court also ordered the sale of the marital homestead to relieve husband of his mortgage obligation. The district court divided the parties' life insurance policies based on the named policyholder and stated that the parties are "under no obligation to name the other party as beneficiary of any life insurance policy." The district court also apportioned the marital debts according to the party who incurred the debts.

Wife appeals.

DECISION

Wife represents herself in this appeal. As a pro se appellant, wife is given some leeway in complying with court rules but "is still not relieved of the burden of, at least, adequately communicating to the court what it is [she] wants accomplished and by whom." *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987) (citation omitted). We do not presume that the district court has erred; the party asserting error has the burden of showing it. *Horodenski v. Lyndale Green Townhome Ass'n*, 804 N.W.2d 366, 372 (Minn. App. 2011). Wife thus has the burden of demonstrating error, and reversal is inappropriate unless she does so. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944).

From wife's brief, we discern six categories of alleged error, which we address in turn.

I. The district court did not abuse its discretion by denying spousal maintenance.

Wife argues that the district court erred by denying her request for spousal maintenance. We review a district court's decision regarding spousal maintenance for an abuse of discretion. *See Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). And we review a district court's factual findings underlying a spousal-maintenance award for clear error. *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009). A district court clearly errs when there is no reasonable evidence in the record to support the district court's findings. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013).

A district court may grant a request for spousal maintenance if it finds that the spouse seeking maintenance either (1) "lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse

considering the standard of living established during the marriage"; or (2) "is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment." Minn. Stat. § 518.552, subd. 1 (2020); *see also Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (stating that an award of maintenance depends on a showing of need). If spousal maintenance is appropriate, the district court must set maintenance, after considering several factors, "in amounts and for periods of time, either temporary or permanent, as the court deems just." Minn. Stat. § 518.552, subd. 2 (2020).[1] Weighing the factors requires the district court to conduct "a balancing of the recipient's need against the obligor's ability to pay." *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001).

The district court denied wife's request for spousal maintenance for several reasons. First, wife provided neither a proposed amount of spousal maintenance nor a written budget. Second, the district court found that wife can meet her reasonable monthly needs. Third, the district court found that husband could not afford paying a spousal-maintenance obligation due to his own expenses.

[1] These factors include: (1) the financial resources of the requesting party, (2) the time necessary for and the probability of the requesting party to find employment and become self-supporting, (3) the standard of living during the marriage, (4) the duration of the marriage and the length of any absence from employment by the requesting party, (5) the loss of earnings, seniority, retirement benefits, and other employment opportunities by the requesting party, (6) the age and health of the requesting party, (7) the ability of the paying spouse to afford spousal maintenance, (8) each party's role in the acquisition, preservation, depreciation, or appreciation in the amount of value of the marital property. Minn. Stat. § 518.552, subd. 2.

Wife makes five arguments challenging the denial of her request for spousal maintenance. We address each in turn.

A. The district court made a harmless error calculating husband's income.

Wife argues that the district court erred when calculating husband's monthly income. A district court's determination of income is a finding of fact that will not be set aside unless clearly erroneous. *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004).

The district court determined that husband's monthly income was $5,179.78. That determination was based on a spreadsheet submitted by husband and his testimony at trial. Part of that income calculation was $172.65 per month from husband's federal government retirement annuity. This was the correct amount until March 2018, when husband stopped paying for a life-insurance policy with the proceeds from the annuity. But, the record shows, and husband does not dispute, that after cancelation of the life-insurance policy the amount husband received each month from the federal government retirement annuity increased to $471. This $298.35 increase to husband's income changed husband's monthly income to $5,478.13. Thus, the district court's finding regarding husband's income was clearly erroneous.

While the district court did err, wife did not meet her burden of showing the error prejudiced her. "Although error may exist, unless the error is prejudicial, no grounds exist for reversal." *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987); *see Sinda v. Sinda*, 949 N.W.2d 170, 176 (Minn. App. 2020) (applying this concept in a maintenance dispute and noting that the burden to show prejudice is on the party seeking relief); Minn.

R. Civ. P. 61 (requiring harmless error to be ignored). One of the district court's reasons for denying wife's request for spousal maintenance was husband's inability to pay. *See* Minn. Stat. § 518.552, subd. 2(g). The district court based this determination on husband's debt and his inability to increase his income due to health issues—determinations that wife does not contest. Wife has not shown that the district court's error in calculating husband's income should change the ultimate determination that husband cannot afford spousal maintenance. Thus, wife has not met her burden of showing this error prejudices her.

B. Wife did not establish error regarding her income.

Wife next argues that the district court erred when calculating her income. The district court found that wife's monthly income was between $3,300.33 and $3,383.67. The district court based this determination on wife's work earnings and her receipt of regular, periodic gifts from her mother. Wife claims the district court erred in three ways.

First, wife claims the district court miscalculated what she earns as a special education paraprofessional. The district court determined that wife earns $2,957 per month during the school year, which, when prorated over twelve months, equals $2,217 per month. This amount equals earnings of $26,604 per year. Wife argues that the district court's determination is not supported by the record because her Social Security earnings record shows wife earned a maximum of $24,422 per year, and that the district court did not properly determine which or how many days of the year she works.

An income determination need only be within a "reasonable range of figures." *Schreifels v. Schreifels*, 450 N.W.2d 372, 373 (Minn. App. 1990) (quotation omitted). Evidence in the record shows that the district court's determination of wife's income is

reasonable. Wife's Social Security earnings record shows a consistent increase in her earnings of around $1,000 per year from 2005 to 2017, with an exception between 2011 and 2013. Also, wife testified at trial that, while they are not guaranteed, she is subject to pay raises based on her tenure at the school. The district court's determination that wife earned $26,604 in 2019 is consistent with this steady increase in wife's earnings over the previous decade. Thus, the district court's determination of wife's earned income is not clear error.

Second, wife argues that the district court erred by including the $1,300 she receives from the Faribault rental property in her monthly income. But the district court explicitly found that this amount was not part of wife's monthly income.

Third, wife argues that the district court erred by including in her income annual payments of $13,000 to $14,000 that she receives from her mother. The district court determined that, because wife had received these payments since 2013 and the amount did not significantly change year to year, the payments constituted a "significant and regular source of funds" for wife. Wife argues that the district court should have classified these payments as gifts rather than a source of income.

When money is periodically paid to an individual, it is considered income. *See* Minn. Stat. § 518A.26, subds. 1, 8 (2020) (defining gross income according to Minn. Stat. § 518A.29 for purposes of Chapters 518 and 518A of Minnesota Statutes); Minn. Stat. § 518A.29(a) (2020) (stating that gross income "includes any form of periodic payment to an individual"). We have held that a gift that is "regularly received from a dependable source" may be considered income when determining a party's child-support obligation.

Barnier v. Wells, 476 N.W.2d 795, 797 (Minn. App. 1991). Because the same definition of gross income applies to both child-support obligations and spousal maintenance, our holding in *Barnier* applies to this case.

Wife testified at trial that she received gift money from her mother every year since 2013 with the exception of 2015. Wife also testified that she received $14,000 each year from 2016 to 2018 and $13,000 a year in 2013 and 2014. Thus, the district court's determination that the periodic payments from her mother are income was not clear error.

Wife also argues that the district court erred because she testified that her mother would no longer be giving her this money. Because we defer to the district court on matters of witness credibility and the weight given to evidence, *see Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988), this argument fails.

C. The district court did not err by determining that wife could meet her monthly budget.

Wife next argues that the district court erred by determining that her income was sufficient to meet her monthly budget. Wife makes two arguments.

First, wife argues that the district court improperly calculated her monthly expenses. Wife did not submit a detailed monthly budget, so the district court relied on wife's testimony to determine her monthly budget. Wife testified that her expenses total $2,345.66 per month.[2] The district court determined that this testimony was "consistent with a

[2] Wife testified to the following expenses: $1,391 in mortgage payments, $120 for electricity on the homestead, $120 for other utilities, $383 in car payments, $75 in gas, $130 for groceries, $21.66 in water and sewage costs, $55 for her cell phone plan, and $50 in general expenses.

monthly budget being met with the income found herein, based upon what was known." This determination is supported by the record. Although wife's expenses are slightly above her monthly income, the district court determined that wife's consistent on-time payment of bills, coupled with her spending additional money on home repairs and improvements both before and during the parties' separation, indicates that wife has sufficient income to meet her monthly expenses.

Second, wife argues that her monthly expenses do not meet her marital standard of living. The standard of living established during the marriage is a factor to be considered in crafting maintenance orders. Minn. Stat. § 518.552, subd. 1. When awarding spousal maintenance, a district court must structure it to maintain both parties' marital standard of living as closely as is equitable under the circumstances. *Peterka*, 675 N.W.2d at 358.

But, here, wife did not testify about her marital standard of living nor did she testify as to how much spousal maintenance was required to meet that marital standard of living.[3] Because we cannot find facts on appeal, wife's argument fails. *Kucera v. Kucera*, 146 N.W.2d 181, 183 (Minn. 1966).

D. The district court did not err by denying wife's request for lump-sum payment of a portion of husband's disability benefits.

Wife also argues that she was entitled to a lump sum of money representing a portion of the disability payments from the Department of Veterans Affairs (VA) that husband received while the parties were married. As part of his VA disability benefits, husband

[3] On appeal, wife suggests $1,500 per month as an appropriate amount of spousal maintenance, but she did not raise that amount to the district court.

received an additional $147 per month because he was married. Wife argues she is entitled to this additional money for the time period that the parties were married but separated—a total of $7,056. The district court denied this request.

As the district court recognized, the disability payments were part of husband's income. Wife has not advanced a convincing argument for why she is entitled to a property award for any portion of the funds from the disability payments made to husband while the parties were married, before or after the valuation date. *See Horodenski*, 804 N.W.2d at 372 (stating that the appellant bears the burden of proving error on appeal). The district court did not abuse its discretion by rejecting wife's argument that she was entitled to such a property award.

E. The district court did not err by not retaining jurisdiction over spousal maintenance.

Finally, wife argues that the district court erred by not reserving the issue of spousal maintenance. The district court denied wife's request to reserve spousal maintenance because she did not raise the issue prior to her posttrial motion for amended findings. An issue raised for the first time in a motion for amended findings is raised "too late." *Allen v. Cent. Motors, Inc.*, 283 N.W. 490, 492 (Minn. 1939); *see Antonson v. Ekvall*, 186 N.W.2d 187, 189 (Minn. 1971) (stating that an issue is raised "too late" if it is first raised in a motion for a new trial); *see also Grigsby v. Grigsby*, 648 N.W.2d 716, 726 (Minn. App. 2002) (citing these aspects of *Allen* and *Antonson* in a family-law appeal), *rev. denied* (Minn. Oct. 15, 2002). Thus, the district court did not abuse its discretion by denying wife's request to reserve spousal maintenance.

II. The district court did not abuse its discretion when allocating the parties' real property.

Wife next argues that the district court abused its discretion in allocating the parties' real property. "Whether property is marital or nonmarital is a question of law, but a reviewing court must defer to the [district] court's underlying findings of fact," absent clear error. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). A district court has broad discretion in the division of marital property during a marital dissolution proceeding. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). We will affirm the district court's division of marital property "if it had an acceptable basis in fact and principle even though we might have taken a different approach." *Id.*

A. The district court did not err when valuing wife's nonmarital interest in the parties' Faribault rental property.

Wife first argues that the district court erred in valuing her nonmarital interest in the parties' Faribault rental property. Specifically, wife argues that the district court erroneously failed to calculate the increase of her nonmarital interest in the property due to market forces.

All property acquired during a marriage is presumed to be marital property, regardless of whether the title to the property is held by only one of the spouses. Minn. Stat. § 518.003, subd. 3b (2020). However, when an asset has both marital and nonmarital

interests, the district court apportions the value of the asset between marital and nonmarital interests using the *Schmitz* formula. *Antone*, 645 N.W.2d at 102.[4]

Here, neither party disputes that wife used $27,000 of her nonmarital funds as a down payment on the Faribault rental property. The district court awarded wife that nonmarital interest in the property. But the district court rejected wife's argument that she was entitled to an additional award for an increase in value of her nonmarital interest under the *Schmitz* formula. The district court did so because it found that the property had *decreased* in value from the time the parties purchased the property to the valuation date. It found that the value of the Faribault rental property at the time of purchase was $181,700 and that the value as of the valuation date was $180,900.

Wife argues that the district court's determination of a decrease in the property's value is based on an error in determining the value of the property at the time of purchase. She argues that the district court should have valued the property at $146,500, which she asserts was the purchase price, rather than $181,700. But the district court's determination is supported by the record. Wife did not testify to a purchase price of $146,500, and she

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[4] In *Nardini v. Nardini*, the supreme court summarized the *Schmitz* formula as follows:

> The present value of a nonmarital asset used in the acquisition of marital property is the proportion the net equity or contribution at the time of acquisition bore to the value of the property at the time of purchase multiplied by the value of the property at the time of separation. The remainder of equity increase is characterized as marital property and is distributed according to Minn. Stat. § 518.58 (1980).

414 N.W.2d 184, 191 (Minn. 1987).

submitted, and testified that she agreed to, the property's 2016 property tax valuation, which was $181,700. The district court did not clearly err in its factual determinations and, because the value of the property decreased after purchase, did not err by rejecting wife's argument for an additional nonmarital interest in the property under the *Schmitz* formula.

B. The district court did not err by not giving wife all of the equity in the marital homestead.

Wife next argues that the district court should have awarded her all of the equity in the parties' homestead.

The parties purchased the marital homestead in 1997. In allocating the parties' interests in the homestead, the district court awarded wife $20,000, describing the sum, in quotation marks, as her "non-marital" interest in the marital homestead. This "non-marital" interest arose in 2017 when wife used $20,000 of the proceeds from the sale of the parties' cabin to extinguish the $86,528 debt then owing under the parties' home equity line of credit (HELOC). Wife argued to the district court, and seems to argue here, that she is also entitled either to the entire increase in equity in the homestead because she "rescued" the homestead or to the first $66,528 of proceeds from the sale of the homestead because husband "should not benefit from" the loan forgiveness that she achieved.

Although the district court used the term "non-marital" (again, in quotation marks) in giving credit to wife for $20,000 worth of equity in the homestead, it presumably was exercising its authority under Minn. Stat. § 518.58, subd. 1 (2020), to divide marital property. This statute allows the district court, when dividing marital property, to consider "the contribution of each [party] in the acquisition, *preservation*, depreciation or

appreciation in the amount or value of the marital property." Minn. Stat. § 518.58, subd. 1 (emphasis added). While wife disagrees with the district court's determination, the district court's decision to return to wife the money used to preserve the marital homestead and extinguish the HELOC was within its broad discretion in dividing marital property. *See Antone*, 645 N.W.2d at 100.

III. The district court did not err by ordering the sale of the marital homestead.

Wife next argues that the district court erred by ordering the sale of the marital homestead following the judgment and decree. Pending the sale, wife is the sole occupant of the home and is responsible for all costs involved with the homestead until it is sold.

A district court has broad discretion in the division of marital property. *Antone*, 645 N.W.2d at 100. The district court's discretion may extend to ordering the sale of a marital homestead. *Ruprecht v. Ruprecht*, 96 N.W.2d 14, 24-25 (Minn. 1959).

We discern no abuse of discretion in the district court's order to sell the marital homestead. The district court found that, if the homestead were sold, husband's obligations under the mortgage would be extinguished and provide him the ability to purchase a home more suited to his health needs. This conclusion is supported by the record. Husband has congestive heart failure and cannot walk up many stairs. He is considered 100% disabled by the VA. Husband also was denied a mortgage on a new home due to insufficient income and excessive obligations. Requiring the sale of the homestead would relieve husband of the homestead's mortgage obligations while also providing him with part of the remaining proceeds of the sale to put towards a new home. Thus, the district court's order to sell the marital homestead is supported by the record and within the district court's discretion.

Wife argues that selling the house would unfairly force her to move. Though wife will have to move, we defer to the district court's division of property and the orders to sell marital property. *Id.* Wife also argues that the district court's decision is against logic because husband has since been able to purchase a home before the sale of the homestead. But that information is outside of the record both for wife's motion to amend findings and on appeal, and we will not consider an argument based on extra-record materials. *See Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006), *rev. denied* (Minn. Nov. 14, 2006); Minn. R. Civ. App. P. 110.01 (defining the record on appeal).

IV. Wife forfeited her argument regarding husband's life-insurance policy.

Wife next argues, for the first time on appeal, that husband improperly disposed of an asset when he cancelled his option B universal life insurance policy listing wife as the beneficiary while the divorce was pending. Generally, a party to a divorce has a fiduciary duty to the other party "for any profit or loss derived by the party, without the consent of the other, from a transaction or from any use by the party of the marital assets." Minn. Stat. § 518.58, subd. 1a (2020). Wife construes husband's life-insurance policy as a marital asset, which would in turn mean that, by removing her as a beneficiary, husband improperly disposed of a marital asset without her consent. However, because wife raises this issue for the first time on appeal, the issue is forfeited. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *Bedner v. Bedner*, 946 N.W.2d 921, 926 (Minn. App. 2020) (applying this aspect of *Thiele* in a family-law appeal).

V. The district court did not err by not apportioning two debts asserted by wife.

Wife next argues that the district court erred because it did not include two alleged debts in its allocation of marital debts. These alleged debts are $15,000 to wife's friend and $14,000 to wife's mother.

Because wife did not present evidence of either debt before or at trial, the district court was not notified of these debts and therefore could not apportion them. A motion to amend findings must be based on the files, exhibits, and evidence presented during trial, not on evidence outside the record. *Zander*, 720 N.W.2d at 364.

There is nothing in the record before trial listing the $15,000 debt to wife's friend. At trial, wife did testify that the friend gave her a "gift" of $15,000, but that is the only time wife mentioned this debt. Because there is no record of the debt to wife's friend before trial and the only reference to this debt at trial characterized it as a gift, the district court properly declined to allocate part of this debt to husband. *See id.*

Similarly, there is no reference to the $14,000 debt to wife's mother before trial. At trial, wife mentioned a $14,000 payment to her by her mother during trial and mentioned how her mother paid for certain renovations at the Faribault rental property. However, wife never explicitly connected any of her mother's $14,000 gifts to wife as the money used for these renovations. Because there was no evidence of the debt owed to wife's mother, the district court could not allocate that debt. *Id.*

VI. There is no evidence that the district court judge was biased against wife.

Finally, wife alludes to the district court judge being biased against her.

An appellate court presumes that the district court judge discharged all judicial duties in a proper manner. *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998). The appellate court objectively reviews the facts and circumstances surrounding a claim of judicial bias. *State v. Burrell*, 743 N.W.2d 596, 603 (Minn. 2008). The presumption that a judge discharged all judicial duties in an objective and neutral manner may be overcome only if the party alleging bias offers evidence of favoritism or antagonism. *Id.*

Wife's claim of bias fails because she did not raise the issue of judicial bias to the district court. We consider "only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Gummow v. Gummow*, 375 N.W.2d 30, 34 (Minn. App. 1985) (quotation omitted) (observing that appellant raised no objections that the district court was biased against her and did not move the district court to recuse himself). Because wife did not raise her claims of bias to the district court, the argument is forfeited on appeal. *See Thiele*, 425 N.W.2d at 582.

Even were wife's claims properly presented on appeal, we see no evidence of judicial bias by the district court judge. Wife seems to argue that the judge was biased against her because the district court rejected several of her requests during the separation proceedings. However, adverse rulings are not a basis for imputing bias to a judge. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986).

Affirmed.