STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0341

In re the Marriage of:
Jeffrey Scott Jovaag, petitioner,
Appellant,

vs.

Melissa Jo Helene Jovaag,
Respondent.

Filed October 11, 2021
Affirmed
Florey, Judge

Scott County District Court
File No. 70-FA-19-2468

Jodi S. Exsted, Exsted Legal Services, LLC, Savage, Minnesota (for appellant)

Adam Y. Galili, Metro Law & Mediation, Minneapolis, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Connolly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this appeal from the district court's judgment and decree dissolving the parties' marriage, appellant-husband argues that the district court erred by (1) failing to make the requisite findings to award need-based attorney fees; (2) addressing conduct-based attorney fees and unpaid utility bills despite the parties' mediated settlement agreement

(MSA) and oral stipulation limiting the remaining issues; and (3) failing to order reimbursement for husband's junk-removal and lawn-care costs. We affirm.

FACTS

Appellant-husband Jeffrey Scott Jovaag and respondent-wife Melissa Jo Helene Jovaag, n/k/a Melissa Jo Helene Hanson, were married in 1993. They have three adult children. They separated in 2018, and husband filed a petition for dissolution. The parties entered an MSA on December 9, 2019. The MSA describes itself as "a global settlement of all issues, with the exception of spousal maintenance, marital debt and needs based attorney fees." The parties reached an agreement on maintenance and debt shortly before trial, which was scheduled for October 2020. Instead of a trial, a non-evidentiary hearing took place. The parties entered an oral stipulation on the record recounting their resolution of the spousal-maintenance and marital-debt issues. They agreed to submit the issues of attorney fees and reimbursement for work done on the parties' home, as well as how wife's obligation to pay $3,000 of the parties' credit-card debt would be satisfied to the district court based on written arguments of counsel. No exhibits were admitted at the hearing.

Each party submitted a post-hearing written argument and rebuttal argument. Each also submitted a proposed judgment and decree. Wife argued, as she had prior to the hearing, that husband should pay *both* need-based and conduct-based attorney fees. She argued that the MSA's terms, which require written agreement prior to either party undertaking repairs to the parties' home, bars husband's request for reimbursement for junk removal and lawn care. Wife also asked the district court to order husband to pay unpaid utility bills totaling $1,520.73. Husband argued that the only attorney-fees issue was need-

based attorney fees and that he was entitled to reimbursement for junk-removal and lawn-care costs. He did not address the unpaid-utility-bills issue.

The district court adopted wife's proposed judgment and decree and ordered husband to pay need-based and conduct-based attorney fees and the unpaid utility bills. The district court denied husband's request for reimbursement for junk-removal and lawn-care costs. Husband appeals.

DECISION

I. The district court's failure to make specific findings regarding need-based attorney fees is not reversible error, and its findings are not clearly erroneous.

Husband argues that (1) the district court failed to make the requisite findings to award need-based attorney fees and (2) the evidence does not support the district court's findings, such as they are. We disagree.

A. The district court's failure to make specific findings is not reversible error.

The district court "shall" award need-based attorney fees if it finds

> (1) that the fees are necessary for the good faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;
>
> (2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and
>
> (3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Minn. Stat. § 518.14, subd. 1 (2020).[1] Conclusory findings on the statutory factors are insufficient to support a district court's order of need-based attorney fees. *Geske v. Marcolina*, 624 N.W.2d 813, 817 (Minn. App. 2001). However, lack of specific findings is not fatal if the district court's order "reasonably implies" that it considered the relevant factors and if "the district court was familiar with the history of the case and had access to the parties' financial records." *Id.*

Here, although the district court's findings that wife cannot pay and husband can pay need-based attorney fees are conclusory, the district court's order recites the property division and the parties' relative financial positions. The district court, having presided over this matter since March 2019, was familiar with the case and had access to the parties' financial records. The district court's order reasonably implies that it considered the relevant factors, and the lack of specific findings is therefore not reversible error.

B. The district court's findings are not clearly erroneous.

When reviewing a district court's award of need-based attorney fees, we review its findings of fact for clear error and its ultimate decision to award fees for an abuse of discretion. *Muschik v. Conner-Muschik*, 920 N.W.2d 215, 225 (Minn. App. 2018). Here, husband points to no evidence in the record that contradicts the district court's findings

[1] We express no opinion regarding whether the district court *must* order need-based attorney fees if it finds these statutory criteria met. *See Geske v. Marcolina*, 624 N.W.2d 813, 817 n.1 (Minn. App. 2001) (noting that, despite statutory use of "shall," it is an open question whether district court must award fees if statutory criteria are met).

regarding the parties' relative financial situations.[2] And in his appellate brief, after reciting some of the district court's underlying fact findings regarding the parties' financial situations, husband appears to contest only whether those underlying findings support the district court's findings regarding the parties' respective abilities to pay attorney fees.

The record before us on appeal supports the district court's findings that husband could pay attorney fees and that wife could not pay attorney fees. For example, wife does not have access to much of the funds and property awarded to her because husband must first pay her in cash or sign documents to transfer accounts to her. Additionally, husband has substantial annual income, whereas wife has irregular income, placing husband in a better position to pay attorney fees.

Husband compares this case to *Schallinger v. Schallinger*, in which this court affirmed the district court's denial of wife's need-based-attorney-fee request. 699 N.W.2d 15, 24 (Minn. App. 2005). But there, the wife had already paid her attorney and expert fees by liquidating some assets and by requesting and receiving an advance marital-fund distribution. *Id.* Here, in contrast, wife has not paid attorney fees, has not liquidated any assets, and has neither requested nor received any advance distributions. Further, her receipt of her portion of the marital estate depends on payment or transfer by husband of

[2] Moreover, the record shows that the parties disclosed various documents to each other and apparently provided those documents to the district court but failed to formally submit those documents to the district court as exhibits. The record also shows that the district court considered those documents in making its decision. By failing to submit the documents to the district court as exhibits, the parties did not preserve for appellate review the entirety of what was considered by the district court when it made its decision in this matter. In any event, husband points to no evidence in the missing documents that would undermine the district court's decision.

certain funds and assets, and therefore, at the time of the district court's judgment and decree, she did not yet have access to those funds or assets. Husband's comparison to *Schallinger* is unpersuasive. In sum, the district court's findings that husband could pay attorney fees and wife could not pay attorney fees are not clearly erroneous.

II. The district court did not err by addressing conduct-based attorney fees and utility bills despite language in the MSA and the parties' oral stipulation limiting remaining issues.

Husband argues that the district court erred by requiring husband to pay (1) conduct-based attorney fees and (2) unpaid utility bills because the parties "waived" these issues under the terms of the MSA and oral stipulation. We disagree.

Although courts favor stipulated agreements in dissolution cases, *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997), the district court may refuse to accept all or some terms of a stipulated agreement, *Toughill v Toughill*, 609 N.W.2d 634, 638 n.1 (Minn. App. 2000). In refusing to accept certain provisions, the district court may not impose conditions to which the parties have not agreed or on which they have not had an opportunity to litigate. *Id.*

A. Attorney fees

As an initial matter, husband does not challenge the amount of attorney fees awarded, nor does he challenge the district court's failure to separate the attorney-fee award into that awarded for need-based fees and that awarded for conduct-based fees. As a result, even if the district court erred by addressing conduct-based attorney fees, we could affirm the entire attorney-fee award based on the need-based-attorney-fees analysis above. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975) ("[E]rror is

not presumed on appeal, and the burden of showing error rests on the party asserting it."). We nevertheless address husband's argument in the interest of completeness. *See In re Welfare of Children of M.L.S.*, ___ N.W.2d. ___, ___, 2021 WL 2640559, at *9 (Minn. App. Jun. 28, 2021) (addressing question in interests of completeness); *see generally* Minn. R. Civ. App. P. 103.04 (allowing appellate court to address questions in interest of justice).

Even assuming that the language of the MSA and the parties' oral stipulation limited the remaining issues, the district court had authority to reject that limitation and address conduct-based attorney fees. *Toughill*, 609 N.W.2d at 638 n.1. Wife raised the issue of conduct-based attorney fees both prior to and after the hearing in this matter. At the hearing, wife's attorney noted that the issue of "attorney fees" remained for resolution by the district court. Husband therefore had opportunities before, during, and after the hearing to litigate and clarify this issue. Husband's reliance on his statement at the hearing that only need-based attorney fees remained is unreasonable considering wife's consistent assertion of a conduct-based-fee claim. Further, as a practical matter, some of the conduct on which the district court based the conduct-based-fee award occurred after the parties entered the MSA, including husband's failure to cooperate with the home-selling process. Thus, even if the MSA limits conduct-based attorney fees, that limitation would not cover this subsequent conduct. To rule otherwise would be to give the parties license to act improperly.

Additionally, although in nonprecedential opinions, this court has affirmed the district court's sua sponte award of conduct-based attorney fees. *See Hamilton v. Hamilton*, No. A08-1491, 2009 WL 2497772, at *3 (Minn. App. Aug. 18, 2009) (rejecting

assertion that sua sponte award of conduct-based attorney fees was defective absent motion for those fees under Minn. R. Gen. Prac. 119); *Baudhuin v. Baudhuin*, No. A07-0156, 2008 WL 667935, at *8 (Minn. App. Mar. 11, 2008) (same). These cases persuade us that the district court could have addressed conduct-based fees on its own initiative, even if the parties' agreements limited the issues. In sum, the district court did not err by addressing conduct-based attorney fees.

B. Utility payments

Unlike the conduct-based-attorney-fees issue, wife did not raise the unpaid-utility-bills issue until written final arguments submitted after the hearing. Nevertheless, husband had notice of the issue and an opportunity to argue the point in his rebuttal written arguments after the hearing, but he did not do so. Further, a prior court order requires husband to pay the utility bills for the home, but he failed to comply with that order. His nonpayment has continued after the parties entered the MSA. Because husband had an opportunity to argue the unpaid-utility-bills issue but failed to do so, and because the district court had previously and separately ordered husband to pay house utilities, the district court did not err by addressing this issue.

III. The district court did not err by denying husband's request for reimbursement for junk-removal and lawn-care costs.

Husband argues that the district court erred by denying his request for reimbursement for junk removal and lawn care. We disagree.

As an initial matter, an "assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be

considered on appeal unless prejudicial error is obvious on mere inspection." *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971); *see Braith v. Fischer*, 632 N.W.2d 716, 725 (Minn. App. 2001) (applying *Schoepke* in a family law appeal), *rev. denied* (Minn. Oct. 24, 2001). Here, husband cites to no legal authority for his argument. Further, we discern no obvious prejudicial error by the district court. Although it appears that husband forfeited this issue, we nevertheless exercise our discretion to address the merits of this question in the interests of justice under Minn. R. Civ. App. P. 103.04.

Husband's argument hinges on whether his junk-removal and lawn-care work constitute "repairs" under the MSA. We treat a stipulated agreement to dissolve a marriage as a binding contract. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). We will construe contract language only if it is ambiguous. *Starr v. Starr*, 251 N.W.2d 341, 342 (Minn. 1977). Language is ambiguous if it has multiple reasonable interpretations. *Nelson v. Nelson*, 806 N.W.2d 870, 872 (Minn. App. 2011). Whether contract language is ambiguous is a question of law that we review de novo. *Id.* And if the language is ambiguous, its meaning is a question of fact that we review for clear error. *Id.* We read contract provisions in the context of the entire contract, deriving the parties' intent from the whole document rather than individual clauses. *Country Club Oil Co. v. Lee*, 58 N.W.2d 247, 249 (Minn. 1953).

The MSA is ambiguous in that it does not define "repairs." Although neither party offers a definition of "repairs," it appears that "repairs" could refer either to literal repairs, such as fixing a leaky roof or faucet, or to work the parties must undertake to ready the

home for sale, or to both. The MSA lacks a separate provision governing maintenance of the home, under which junk removal and lawn care might have fit more intuitively. The "repairs" language is within the provision relating to readying the parties' home for sale. These two facts tend to show that the parties meant "repairs" to include work completed in preparing the home for sale; i.e., that the "repairs" language covered both literal repairs and what otherwise might have been maintenance. The district court therefore did not clearly err by finding that husband's junk-removal and lawn-care expenses are "repairs" for which he cannot be reimbursed absent wife's written agreement. It therefore did not err by denying husband's reimbursement request.

Affirmed.