STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1234

In re the Marriage of: Clark Donald Kaml, petitioner,
Appellant,

vs.

Shannon Marie Skarphol-Kaml,
Respondent.

Filed July 18, 2022
Affirmed in part, reversed in part, and remanded
Johnson, Judge

Hennepin County District Court
File No. 27-FA-18-1642

Kathleen M. Miller, KMH Custom Family Law, P.L.L.C., Eagan, Minnesota (for appellant)

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Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

This appeal concerns the dissolution of a 27-year marriage. We conclude that the district court did not err with respect to most issues raised on appeal but did err in two respects. Accordingly, we affirm in part, reverse in part, and remand for further proceedings on two specific issues.

FACTS

Clark Donald Kaml and Shannon Marie Skarphol-Kaml were married in 1995. They have two children, who were born in 2005 and 2008. They separated in January 2018, and Clark petitioned for dissolution of the marriage two months later.

The case was tried to a district court judge on three days in June and July of 2020. The parties asked the district court to resolve disputes concerning custody, parenting time, child support, spousal maintenance, allocation of net income of rental properties, and division of marital property. The district court filed a lengthy order with findings of fact, conclusions of law, and a judgment and decree in November 2020.

The parties thereafter filed several post-trial motions. The motions were argued to a referee in March 2021 and were resolved in an order filed three months later. In July 2021, the referee and a newly assigned district court judge filed a second amended decree.

Clark appeals. His arguments for reversal are focused on the allocation of the net income of the parties' rental properties and on the parties' motions for attorney fees.

DECISION

I. Adoption of Proposed Findings

Clark first argues that the district court erred in its initial November 2020 decree by adopting, in a verbatim manner, the proposed findings submitted by both parties, thereby resulting in conflicting findings. Both parties thereafter filed motions for amended findings of fact. The district court granted both motions in part and eventually filed the second amended decree.

In support of this argument, Clark cites *Bliss v. Bliss*, 493 N.W.2d 583 (Minn. App. 1992), *rev. denied* (Minn. Feb. 12, 1993), in which this court stated that the "wholesale adoption" of proposed findings could "raise[] the question of whether the trial court independently evaluated each party's testimony and evidence." *Id.* at 590. But we also stated in *Bliss* that "the verbatim adoption of a party's proposed findings and conclusions of law is not reversible error per se." *Id.* In his principal brief, Clark does not request any particular remedy. At oral argument, his attorney suggested that this court should simply reverse and remand, presumably for a new trial or for new findings. Such a remedy is not compelled by caselaw. In addition, such a remedy would be disproportional to the alleged error in light of the fact that the parties filed motions to amend the findings, which were granted. Furthermore, we can and will review the relatively few findings that Clark challenges with specificity on appeal.

Thus, the district court's verbatim adoption of the parties' proposed findings in its initial decree is not a reversible error.

II. Allocation of Net Income

Clark next argues that the district court erred when allocating the net income of the parties' rental properties by requiring him to reimburse Shannon for certain expenses that she paid during the pendency of the dissolution action.

Before the dissolution, the parties jointly owned three parcels of real property, all of which were marital property. First, the parties owned a duplex on Warwick Street in Minneapolis. One unit was the marital homestead; the other unit was a rental unit, which was rented to Shannon's parents. Second, the parties owned a four-plex rental property on

St. Clair Avenue in St. Paul. Third, the parties owned 80 acres of undeveloped land in Morrison County, which generates no income.

At the initial case management conference in April 2018, the parties stipulated to an order that granted Shannon exclusive use and control of the Warwick property while the dissolution action was pending. Shannon was required to "pay the principal, interest, taxes and insurance due" on that property during the pendency of the dissolution action. The stipulated order also includes the following provision:

> Both parties hereto are mutually enjoined and restrained from obtaining credit and/or making charges of goods or services in the name of the other party, and from selling, disposing of, encumbering, assigning, secreting or dissipating the assets of the parties, whether the same be held jointly or severally, without further Order of the Court, except (i) for the necessities of life or for the necessary generation of income or preservation of assets, (ii) by an agreement in writing, or (iii) for retaining counsel to carry on or to contest this proceeding.

Notwithstanding the stipulated order, the record reveals that Shannon paid all or nearly all of the expenses attributable to the parties' non-homestead properties, which consisted of both regular monthly expenses and various one-time expenses. The record also reveals that Shannon received (or was deemed to have received) all rental income from the parties' rental properties. Accordingly, both parties asked the district court to determine the amounts of money that each owed to the other with respect to each of their non-homestead properties.

In the second amended decree, the district court found that, during the relevant time period, Shannon made mortgage payments on the Warwick property totaling $64,819. Of this amount, 57.15 percent, or $37,044, was attributed to the marital homestead. Of that

amount, the district court allocated $6,410.50 to the St. Clair property and $7,140.50 to the Morrison County property, for a total reallocation of $13,551. Accordingly, the total amount of mortgage payments on the marital homestead was deemed to be $23,493. The district court took these amounts into consideration when calculating the total expenses for the St. Clair and Morrison County properties. The net effect of the reallocation was to decrease the amount that Shannon was required to pay Clark for his share of the net income on the St. Clair property and to increase the amount that Clark was required to pay to Shannon for her share of the net loss on the Morrison County property. Consequently, the district court found that Clark owes Shannon $5,502 for the Warwick rental unit, Shannon owes Clark $6,115 for the St. Clair property, and Clark owes Shannon $5,750 for the Morrison County property. After considering and offsetting other expenses that are not at issue on appeal, the district court found that Clark owes Shannon a net amount of $14,480.

Clark challenges this part of the district court's order in two ways. We apply a clear-error standard of review to the district court's findings. *McCulloch v. McCulloch*, 435 N.W.2d 564, 566 (Minn. App. 1989). Before considering Clark's arguments, we note that neither party retained an accountant or other expert to present their evidence on these financial issues. Rather, each party submitted financial evidence in the form of his or her own testimony, documents prepared by the party that are similar to summary exhibits, and a few documentary exhibits created by third parties. As a result, the factual record is not as complete, organized, or understandable as it otherwise might have been. The parties surely conserved resources by not retaining professionals. But their do-it-themselves approach likely hindered the district court's factfinding process.

A. Mortgage Payments

Clark challenges the district court's analysis of Shannon's mortgage payments on the Warwick property, some of which the district court reallocated to other properties.

During the parties' marriage, they allocated their Warwick mortgage payments to the homestead unit and the rental unit based on the ratio of the square footage of the two units, which resulted in 57.15 percent being allocated to the homestead and 42.85 percent being allocated to the rental unit. At trial, Shannon asked the district court to reallocate some of her Warwick mortgage payments to the St. Clair and Morrison County properties on the ground that, when the Warwick property was refinanced in 2011, some of the proceeds were used to pay off a mortgage on the St. Clair property and to pay closing costs on the Morrison County property. Clark has not challenged the legal basis of Shannon's request to reallocate expenses based on mortgage payments on the Warwick property, either in the district court or in this court. The effect of such reallocation is to increase the expenses on the St. Clair and Morrison County properties and correspondingly decrease the net income on the St. Clair property and to make greater the net loss on the Morrison County property.

We first consider Clark's contention that Shannon's method of reallocation is flawed because it decreases the expenses on the Warwick *homestead* unit but not the Warwick *rental* unit. He complains that Shannon's method unfairly decreases the net income on the Warwick rental unit, which is shared by the parties, and also decreases Shannon's expenses on the Warwick homestead unit, for which she is solely responsible. Shannon does not respond to this particular contention in her responsive brief. We agree

with Clark that the Warwick mortgage payments should have been reallocated from both of the Warwick units, not just the homestead unit. Specifically, the district court should have assigned 42.85 percent of the $13,551 reallocation to the Warwick rental unit, which would have decreased its expenses, and increased its net income, by $5,807, which would have benefitted Clark by half that amount. Thus, the district court should have found that Clark owes Shannon only $2,598 for the Warwick rental unit, and, ultimately, that Clark owes Shannon only $11,577.

Clark's other contention is that Shannon did not introduce sufficient evidence to prove the reallocations that she sought. We conclude that the district court's findings are supported by the undisputed facts and by evidence submitted by Shannon. The parties do not dispute that the Warwick property was refinanced in 2011. Shannon testified that some of the proceeds of the 2011 refinancing of the Warwick property were used to pay expenses associated with the St. Clair and Morrison County properties. She prepared and introduced multiple exhibits (numbered 141, 143, and 145), which show her calculations of the amounts at issue. She also introduced various other exhibits that generally corroborate her self-prepared exhibits, such as a settlement statement from the 2011 refinancing, which indicates that some of the proceeds were paid to a lender other than the lender with a lien on the Warwick property.

We acknowledge that Clark introduced some evidence that contradicts Shannon's evidence, including his own self-prepared exhibits. But his evidence generally is less detailed. He contends on appeal that he was unable to introduce more evidence because Shannon was in exclusive control of the relevant financial information. We assume that

Clark had an adequate opportunity to conduct discovery on financial issues because he has not argued otherwise. Clark also contends that Shannon had the burden of proof on her request for reimbursement of expenses. Regardless, our standard of review is limited to determining whether the district court's findings were "clearly erroneous," *McCulloch*, 435 N.W.2d at 566 (quotation omitted), and we defer to the district court's findings of credibility, *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). It appears that the district court found Shannon to be a credible witness and was persuaded by her evidence. We cannot conclude that the district court's implicit credibility determination is erroneous or that the district court's findings are clearly erroneous.

B. Repair and Maintenance Expenses

Clark also challenges the district court's findings concerning certain one-time expenses paid by Shannon.

In the second amended decree, the district court found that Shannon had incurred one-time expenses of $21,334 on the Warwick rental unit and $11,580 on the St. Clair property. The district court found that these expenses were reasonable and necessary and determined that Clark should be responsible for half of the total amount.

Clark contends that Shannon did not introduce sufficient evidence to prove that she incurred the one-time expenses or that they were necessary. The district court's findings concerning repair and maintenance expenses are supported by the evidence submitted by Shannon. She testified that she incurred expenses of $21,334 for Warwick rental unit and $11,580 for the St. Clair property. Her testimony is corroborated by her self-prepared exhibits, which itemizes expenses relating to things such as a gas line, a shower, a toilet, a

sink, and a boiler. Shannon testified that all expenses for which she sought reimbursement from Clark were necessary to properly maintain the rental properties. For expenses related to the Warwick property, which included tree removal and the replacement of a leaking water main, Shannon sought reimbursement for only 42.85 percent of the expenses paid, which reflects the parties' historical allocation of expenses to the rental unit.

Clark contends that Shannon's evidence is lacking in various ways. He notes that she introduced very few third-party receipts to document her expenditures. But the applicable caselaw provides that such evidence is not necessarily required. *See Bury v. Bury*, 416 N.W.2d 133, 136 (Minn. App. 1987) (noting that parties are presumptively competent to testify to the value of their assets); *Doering v. Doering*, 385 N.W.2d 387, 390-91 (Minn. App. 1986) (holding that district court did not err by finding value of property based on one party's testimony). Clark also notes that the expenses incurred between 2018 and 2020 are much larger than repair-and-maintenance expenses in prior periods; he asserts that, after he moved out of the marital homestead, Shannon "saw an opportunity to do some home improvement at half price." But Clark did not elicit any evidence in support of that theory, so it is mere speculation. In light of the applicable standard of review, we cannot conclude that the district court clearly erred in its findings on this issue.

Thus, the district court did not err in its findings concerning the parties' rental properties, except in the manner in which the district court reallocated mortgage payments made on the Warwick property. Therefore, we reverse and remand. On remand, the district court shall further amend the second amended decree to decrease the amount on the last

line in paragraph 139 from $5,502 to $2,598; to make the same change on the fourth line of paragraph 149; and to decrease the amount on the last line of paragraph 149 from $14,480 to $11,577.

III. Post-Trial Motion to Enforce

Clark next argues that the district court erred by denying, without making adequate findings, his post-trial motion to compel Shannon to pay him his share of the net income of the St. Clair property for the period of June 2020 to November 2020. The district court denied the motion summarily by stating, "All other relief not addressed herein . . . is denied." Clark cites rule 52.01 of the rules of civil procedure, which provides as follows:

> In all actions tried upon the facts . . . the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment . . . . *Findings of fact and conclusions of law are unnecessary on decisions on motions pursuant to Rules 12 or 56 or any other motion* except as provided in Rules 23.08(c) and 41.02.

Minn. R. Civ. P. 52.01 (emphasis added). Because neither exception in the second sentence applies, the district court was not required by rule 52.01 to make specific findings of fact when denying Clark's motion. Clark has not argued that there is any other legal authority requiring specific findings on his post-trial motion. Thus, the district court did not err by not making specific findings on Clark's post-trial motion to compel compliance with the decree.

IV. Conduct-Based Attorney Fees

Clark last argues that the district court erred in its rulings on the parties' motions for conduct-based attorney fees.

By statute, a party to a dissolution action may obtain an award of need-based attorney fees. Minn. Stat. § 518.14, subd. 1(1)-(3) (2020). The same statute provides, "Nothing in this section or section 518A.735 precludes the court from awarding, in its discretion, additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding." *Id.* This court has interpreted the statute to provide a legal basis for an award of "conduct-based" attorney fees. *See, e.g.*, *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295-96 (Minn. App. 2007); *Geske v. Marcolina*, 624 N.W.2d 813, 818-19 (Minn. App. 2001). Whether to award conduct-based attorney fees generally depends on "the impact a party's behavior has had on the costs of the litigation." *Dabrowski v. Dabrowski*, 477 N.W.2d 761, 766 (Minn. App. 1991). This court applies an abuse-of-discretion standard of review to such an award. *Haefele v. Haefele*, 621 N.W.2d 758, 767 (Minn. App. 2001), *rev. denied* (Minn. Feb. 21, 2001).

A. Grant of Shannon's Motion

Clark first challenges the district court's grant of Shannon's motion for conduct-based attorney fees based on Clark's failure to attend a financial early neutral evaluation (FENE) in September 2019.

The district court required both parties and their counsel to attend the FENE. Clark did not appear, and his attorney was unable to contact him by telephone. The FENE went forward without him. At trial, Shannon requested conduct-based attorney fees for three reasons, including Clark's non-appearance at the FENE, and she sought $3,643 in fees in connection with the FENE. Clark testified that he did not attend the FENE because he was sick with the flu and missed his flight from Oregon, where he then was living.

In its second amended order, the district court found that Clark's "failure to attend and participate in the FENE . . . unreasonably contributed to the length and expense of the proceeding in that [Shannon] and her attorney unnecessarily prepared and attended the FENE." The district court awarded Shannon $3,523 in conduct-based attorney fees on that basis.

Clark contends on appeal that the district court erred by finding that his absence from the FENE contributed to the length and expense of the proceeding. He relies on evidence that Shannon, the two attorneys, and the court-appointed mediator met for three hours and accomplished something. In response, Shannon contends that the attorneys and the mediator "made the best out of [the] situation" but were limited to discussing discovery issues and were prevented from resolving any issues.

The district court is in the best position to understand the dynamics and nuances of a pending dissolution action and to determine the impact of a party's failure to cooperate with a court-ordered FENE. In light of the applicable standard of review, we cannot conclude that the district court abused its discretion by finding that Clark unreasonably contributed to the length or expense of the dissolution action by not attending the FENE and not being available by telephone.

Thus, the district court did not err by granting Shannon's motion for conduct-based attorney fees based on Clark's failure to attend the FENE.

B. Denial of Clark's Motions

Clark also challenges the district court's denial of his two post-trial motions for conduct-based attorney fees. Clark's motions sought to recover the fees he incurred in

bringing a post-trial motion to compel Shannon's compliance with the decree and in responding to Shannon's motion for attorney fees.

The district court denied both of Clark's motions summarily by stating, "All other relief not addressed herein . . . is denied." Clark contends that the applicable caselaw requires a district court to make specific findings when ruling on a motion for attorney fees. He relies on *Geske*, in which the supreme court held that a district court must make specific findings in ruling on an attorney-fee motion in order to facilitate appellate review. 624 N.W.2d at 819-20. In response, Shannon contends that *Geske* is distinguishable because it concerned a *grant* of an attorney-fees motion, not a *denial*. *Id.* But this court has held that findings also are necessary when a district court denies a motion for conduct-based fees. *See Kronick v. Kronick*, 482 N.W.2d 533, 536 (Minn. App. 1992).

Thus, the district court erred by not making any findings to support its ruling on Clark's attorney-fee motions. Therefore, we reverse and remand. On remand, the district court shall reconsider Clark's motions and shall make the findings that are necessary for appellate review.

Affirmed in part, reversed in part, and remanded.