STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1101

In re the Marriage of:
Tabitha Ann Sanborn, petitioner,
Respondent,

vs.

Matthew Charles Sanborn,
Appellant.

Filed June 20, 2023
Affirmed
Larson, Judge

Sherburne County District Court
File No. 71-FA-20-561

Caitlin E. O'Rourke, Hess & Jendro Law Office, Elk River, Minnesota (for respondent)

David Sjoberg, Sjoberg Law Office, P.A., Ham Lake, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Reilly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Matthew Charles Sanborn (husband) challenges the district court's judgment dissolving his marriage with respondent Tabitha Ann Sanborn (wife), arguing that the district court abused its discretion when it (1) denied his pretrial continuance

requests; (2) divided the parties' marital property and debt; and (3) determined spousal maintenance. We affirm.

FACTS

Husband and wife married in May 2006.[1] On October 13, 2020, wife served husband with a petition for dissolution of marriage. On December 4, 2020, husband filed an answer and counterpetition for marriage dissolution.

Husband moved for temporary relief. Relevant to this appeal, husband requested that the district court order wife "to pay reasonable conduct-based attorney's fees and costs for repeatedly and intentionally denying court-ordered parenting time." The district court granted husband's request for attorney fees and entered judgment.[2]

On May 26, 2021, the district court issued an order scheduling a bench trial for November 5, 2021. For reasons the record does not explain, the district court issued a "Notice of Hearing" dated November 3, 2021, rescheduling the bench trial to March 2, 2022.

On January 6, 2022, husband's counsel withdrew. Just over three weeks later, on January 29, 2022, husband emailed the district court and wife's counsel requesting a continuance so he could obtain new counsel. Wife objected to the continuance because:

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[1] The parties have two joint minor children from their marriage. The parties' son was born in 2006 but passed away shortly before these proceedings. The parties' daughter was born in 2015.

[2] On May 4, 2021, the district court approved husband's request for $3,276 in conduct-based attorney fees. The district court ordered wife to pay half of the sum within six months of the order (i.e., on or before November 4, 2021) and the other half within a year of the order (i.e., on or before May 4, 2022).

(1) the parties had "been in litigation for over two . . . years"; (2) husband "was represented by counsel over the last year and refused to engage in settlement discussions"; (3) husband "ha[d] options" for obtaining counsel; and (4) "[t]here [was] no guarantee that [husband would] retain legal counsel." On February 3, 2022, the district court denied husband's continuance request without findings.[3]

On February 5, 2022, husband sent another email requesting a continuance and noting that wife had yet to pay the conduct-based attorney fees. Husband stated, "But for the fact that [wife] is in contempt for failing to pay the judgment . . . awarding me attorney's fees . . . I would be better able to afford counsel." Husband requested a continuance until wife paid the attorney fees. Wife again objected to the continuance and commented that "any issue regarding payment of attorney's fees is an issue for trial or should be addressed by motion but is not a basis for continuing the trial date." The district court denied husband's second continuance request, leaving the bench trial scheduled for videoconference at 1:30 p.m. on March 2, 2022.

Around 1:00 p.m. on the trial date, husband claimed he experienced a "panic attack." Husband called the courthouse and sent an email at 1:11 p.m., stating:

> I'm having a bad panic attack, my throat is getting smaller and it hard to breathe. My chest hurts and I feel like I'm to going pass out. My vision is weird, I'm going to the emergency room. Please have mercy

[3] In a later order, the district court explained that "the [initial] continuance request of [husband] was denied . . . for many of the reasons stated by [wife]."

Husband later submitted hospital records showing he checked into the emergency room that afternoon shortly after sending the above email.

Meanwhile, the district court convened the bench trial with wife and her counsel in attendance. The district court observed that husband had not logged in, then noted that the district court received information husband had "contacted court administration just before 1:30 this afternoon indicating he was going to the emergency room and would not be . . . able to attend the hearing today." When asked, wife conveyed that she had received no communication regarding husband's medical situation or potential attendance. The district court expressed skepticism about husband's last-minute emergency given his previous continuance requests, the lack of other communications from husband, and the fact that these proceedings had been pending since December 2020. Wife requested the district court proceed with the bench trial. In granting this request, the district court elaborated that it could not grant a continuance request based only on husband's "very late call to court administration with limited information, other than he's attending or planning to perhaps go to the emergency room."

The district court heard wife's case and took judicial notice of several other matters involving the parties.[4] At the close of evidence, the district court instructed wife to submit a proposed dissolution judgment, and wife complied. Between the bench trial and the

[4] The district court took judicial notice of three cases involving the parties. The first, an order for protection case, in which wife received an order for protection against husband. The second, husband's criminal conviction for violating the order for protection. The third, a child-support case, which was consolidated with this matter through an order filed on February 3, 2022. Additionally, the district court took judicial notice of several collections cases against the parties.

district court signing wife's proposed dissolution judgment, husband did not contact the district court or submit a proposed dissolution judgment. The district court ruled that husband was in default for his failure to appear.

The district court adopted wife's proposed dissolution judgment verbatim. As relevant here, the dissolution judgment divided the parties' marital property and debt. The district court listed husband's 401(k) retirement plan as the parties' only known marital asset.[5] The district court divided husband's 401(k) in half between the parties. Then, the district court awarded each party their respective bank accounts, vehicles, and personal property. The district court further found the parties had $54,801.55 in known marital debt. The district court held wife responsible for $28,000 of the known debt and husband responsible for $26,801.55. The district court also held husband responsible for any debt stemming from a pending collections case. The dissolution judgment awarded wife $17,714 in need-based attorney fees.

Finally, the district court granted wife temporary spousal maintenance for seven years. The district court relied on the parties' previous child-support orders and wife's testimony to determine the parties' respective incomes.[6] The district court considered over

[5] The parties shared a homestead, but it was foreclosed upon during the proceedings underlying this appeal.

[6] Relevant to this appeal, the district court found wife worked approximately 15 hours a week at daughter's school.

a dozen factors in calculating the appropriate amount of spousal maintenance to award wife.[7] Ultimately, the district court awarded wife temporary spousal maintenance in the amount of $900.00 per month for a period of five years and then $200.00 per month for a period of two years.

Husband obtained new counsel, then moved the district court to vacate its dissolution judgment and reopen the record. Husband filed a supporting affidavit and an affidavit from his mother, which explained husband did not attend the bench trial due to a panic attack. Husband also submitted medical records, including those from the day of the bench trial. Wife filed a memorandum objecting to husband's motion, and the district court held a motion hearing.

The district court filed an order denying husband's motion to reopen judgment. In denying the motion, the district court determined that husband had not met his burden. The district court noted: (1) husband did not appear to take any steps to prepare for the bench trial after his counsel withdrew;[8] (2) husband presented no evidence that he struggled with

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[7] The district court said it considered the following factors in determining the appropriate amount of spousal maintenance to award wife: (1) the "standard of living established during the marriage"; (2) "the disparity in the parties' incomes"; (3) "the lack of marital property awarded to [wife]"; (4) "the financial resources of each party in light of the property distribution"; (5) "the fact that [wife] is currently employed part-time and also receiving MFIP"; (6) "the fact that [wife] has only historically worked as a personal care assistant (PCA) for the parties' [son]"; (7) "the length of [wife's] absence from employment"; (8) wife's "skills[,] training, [and] education"; (9) wife's "ability to provide care for [daughter] outside of school hours"; (10) husband's "income and work history"; (11) husband's "ability to meet his needs"; (12) wife's "loss of earnings . . . during the marriage"; and (13) wife's "age and the length of the marriage."

[8] The district court observed husband "did not provide any exhibits to opposing counsel or the Court, did not provide a witness or exhibit list, and appears to have taken no other steps to obtain counsel or otherwise prepare for trial."

anxiety-related symptoms prior to the day of the bench trial; and (3) granting husband's motion to vacate would unduly prejudice wife and daughter. The district court summarized by saying:

> [Husband] failed to present a reasonable defense or reasonable excuse for his failure to attend the trial. . . . While medical emergencies do occur, the Court does not find [husband]'s argument persuasive due to his pattern of behavior prior to the court trial. It seems unlikely that this was a coincidence and that instead [husband] attempted to delay the matter again after more than two years of litigation.

Husband appeals.

DECISION

Husband challenges the district court's decisions to deny his numerous continuance requests and portions of the dissolution judgment. Husband argues the district court erred when it: (1) denied husband's three requests[9] to continue the bench trial; (2) adopted wife's proposed judgment dividing the parties' marital property and debt verbatim; and (3) awarded wife spousal maintenance.

We review all issues husband raised for an abuse of discretion. *See Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 418 (Minn. App. 2010) (citing *Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977)) (continuances); *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002) (division of marital property); *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016) (spousal maintenance). "A district court abuses its discretion by making

[9] The district court construed appellant's trial-day communications as a third continuance request. Husband does not challenge the district court's characterization, and we conclude the district court properly analyzed the trial-day communications as a third continuance request.

findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

We give a district court's findings of facts great deference and will not set them aside unless clearly erroneous. *See Chahla v. City of St. Paul*, 507 N.W.2d 29, 32 (Minn. App. 1993) (continuances), *rev. denied* (Minn. Jan. 20, 1994); *Antone*, 645 N.W.2d at 100 (division of marital property); *Curtis*, 887 N.W.2d at 252 (spousal maintenance). When applying the clear-error standard, we view the evidence in the light most favorable to the district court's findings and do not reweigh the evidence or reconcile conflicting evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021); *see also Bayer v. Bayer*, 979 N.W.2d 507, 513 (Minn. App. 2022) (citing *Kenney* in a family law appeal). "We will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed." *Kenney*, 963 N.W.2d at 221 (quotation omitted).

I.

Husband argues the district court abused its discretion when it denied his three pretrial continuance requests.[10] "The test [regarding continuances] is whether a denial

[10] In his brief, husband recites the standard for default judgment, but does not otherwise challenge the district court's order denying husband's motion to reopen the judgment. To the extent husband raises this issue, we decline to reach it on the basis that it was inadequately briefed. *See Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family law appeal).

prejudices the outcome of the trial." *Chahla*, 507 N.W.2d at 32. The district court "should base its [continuance] decision on the facts and circumstances surrounding the request." *Hamilton v. Hamilton*, 396 N.W.2d 91, 94 (Minn. App. 1986).

"If a trial setting has been established by scheduling order after hearing the parties, the court shall decline to consider requests for continuance except those made by motion or when a judge determines that an emergency exists." Minn. R. Gen. Prac. 122; *see also* Minn. R. Gen. Prac. 304.06 (applying rule 122 to continuances for trial settings in family court proceedings). "Withdrawal of counsel does not create any right to continuance of any scheduled trial or hearing." Minn. R. Gen. Prac. 105. However, "withdrawal . . . may be part of a set of circumstances justifying the exercise of the court's discretion to grant a continuance." Minn. R. Gen. Prac. 105, cmt.

The district court did not abuse its discretion when it denied husband's pretrial continuance requests. Regarding the first continuance request, husband asserted he needed a continuance due to his counsel's withdrawal from representation. But husband made the request approximately three weeks after his attorney withdrew and approximately one month before the scheduled bench trial. We have previously concluded a party has sufficient time to obtain an attorney when an attorney withdraws two months before a hearing. *Hamilton*, 396 N.W.2d at 94 (affirming district court's denial of continuance request because appellant had two months to find a new lawyer before trial). Here, husband had 55 days, or nearly two months, between his counsel withdrawing and the scheduled bench trial. We therefore conclude the district court did not abuse its discretion when it

denied husband's first continuance request because he had sufficient time to obtain a new attorney.

The district court similarly did not abuse its discretion when it denied husband's second continuance request on the basis that wife had not paid conduct-based attorney fees. First, husband again tied this request to his counsel's withdrawal, which, as set forth above, did not provide a basis for a continuance given the time between the withdrawal and the bench trial. Second, a motion for a continuance is not the correct procedural mechanism to collect conduct-based attorney fees, even if the motion claims the opposing party "is in contempt." Instead, the appropriate procedure typically calls for enforcement through execution. *See* Minn. Stat. § 518.14, subd. 1(3) (2022) ("The court may authorize the collection of [attorney fees] awarded by execution, or out of property sequestered, or in any other manner within the power of the court."); Minn. Stat. § 550.02 (2022) (explaining the process for enforcement through execution); *Burgardt v. Burgardt*, 474 N.W.2d 235, 236-37 (Minn. App. 1991) ("Generally, a judgment that requires the payment of money is enforceable by execution, not contempt proceedings."). Therefore, the district court did not abuse its discretion when it denied husband's second continuance request.

Finally, the district court did not abuse its discretion when it proceeded with the bench trial after husband emailed that he was going to the emergency room. Although medical incapacity may be grounds for a continuance, this applies only when the evidence is uncontroverted, and a district court may make its own observations of a party's ability to proceed. *See Chahla*, 507 N.W.2d at 32. At the time of the bench trial, the district court had minimal information regarding husband's condition and husband's previous behavior

gave the district court reason to believe he was attempting to stall the proceedings. *See id.* (concluding "numerous previous continuance requests" prevented the evidence of medical incapacity from being uncontroverted). Additionally, despite the length of this case, husband had never mentioned an anxiety disorder prior to the day of trial and his later medical-record submissions did not reveal a pretrial history of panic attacks. Finally, at the time of the bench trial, husband had not submitted any exhibits, any witness lists, or given any indication he was actively seeking new counsel. Thus, proceeding with the bench trial did not prejudice the outcome. *See id*.

For these reasons, the district court did not abuse its discretion when it denied husband's three pretrial continuance requests.

II.

Husband argues the district court abused its discretion when it divided the parties' marital property[11] and debt. Husband contends the district court erred by "adopt[ing] [wife]'s proposed [judgment] without any independent analysis." We are not persuaded.

"Upon a dissolution of a marriage . . . the [district] court shall make a just and equitable division of the marital property of the parties" after considering all relevant factors. Minn. Stat. § 518.58, subd. 1 (2022). "[W]hile the district court must make a just and equitable division of the marital property, an equitable division of marital property is not necessarily an equal division." *Sirek v. Sirek*, 693 N.W.2d 896, 900 (Minn. App. 2005)

[11] Husband does not appear to challenge what the district court labeled marital and nonmarital property. To the extent he intended to do so, that argument is inadequately briefed, and we decline to reach it. *See Wintz*, 558 N.W.2d at 480; *Brodsky*, 733 N.W.2d at 479.

(quotation omitted). "Debts, like assets, are apportionable, and each division of property is considered in the light of the particular facts of that case." *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 414 (Minn. App. 2000), *rev. denied* (Minn. Oct. 25, 2000).

Husband correctly observes that the district court fully adopted wife's proposed dissolution judgment, which "raises the question of whether the trial court independently evaluated each party's testimony and evidence." *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992), *rev. denied* (Minn. Feb. 12, 1993). But "the verbatim adoption of a party's proposed findings and conclusions of law is not reversible error per se." *Id.* To determine whether the district court independently examined the evidence, we review the district court's findings for clear error. *Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 2005), *rev. denied* (Minn. Sept. 28, 2005).

Here, the district court's findings are not clearly erroneous because they are fully supported by the record. The record contains wife's testimony and several supporting exhibits, which establish the parties' marital assets and debts. Further, the district court divided the parties' known marital assets and debts almost exactly in half. The district court divided the parties' only known marital asset, husband's 401(k), directly in half. Then the district court divided the parties' known marital debts nearly in half, with wife being responsible for $28,000 and husband being responsible for $26,801.55 plus any debt stemming from a pending collections case.[12]

[12] Husband contends on appeal that the debt distribution is unfair because the $28,000 debt assigned to wife is a personal loan to her from her parents for legal fees, and the district court's award of $17,714.00 in need-based attorney fees will pay much of that debt. We decline to address this argument because husband did not raise it before the district court,

For these reasons, the district court did not abuse its discretion when it divided the parties' marital property and debt.

III.

Husband argues the district court abused its discretion when it awarded wife spousal maintenance. Spousal maintenance is "an award made in a dissolution or legal separation proceeding of payments from the future income or earnings of one spouse for the support and maintenance of the other." Minn. Stat. § 518.003, subd. 3a (2022); *see also Honke v. Honke*, 960 N.W.2d 261, 266 (Minn. 2021) ("These awards are based on the notion that the marital relationship involves an economic partnership in which the spouses equally share the burdens and responsibilities of both marriage and dissolution." (quotation omitted)). When a party requests spousal maintenance, the district court must address whether the spouse seeking spousal maintenance established a need for maintenance under Minn. Stat. § 518.552, subd. 1 (2022). *Curtis*, 887 N.W.2d at 251-52. A party shows a need for maintenance if, considering the standard of living during the marriage, the party shows that he or she cannot provide for the payment of his or her reasonable expenses calculated at the marital standard of living. Minn. Stat. § 518.552, subd. 1; *see also Honke*, 960 N.W.2d at 266. If a party shows a need for maintenance, the district court may award spousal maintenance "in amounts and for periods of time, either temporary or permanent, as the court deems just, . . . after considering all relevant factors." Minn. Stat. § 518.552,

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and he did not adequately brief a challenge to the need-based attorney fees. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally will not consider matters not argued to and considered by the district court); *Wintz*, 558 N.W.2d at 480; *Brodsky*, 733 N.W.2d at 479.

subd. 2 (2022) (listing eight relevant factors). "[N]o single statutory factor for determining the type or amount of maintenance is dispositive" and "each case must be determined on its own facts." *Erlandson v. Erlandson*, 318 N.W.2d 36, 39 (Minn. 1982).

Husband contends the district court erred when it failed to impute additional income to wife because she is not "appropriately employed" when she works 15 hours a week. Husband relies on *Passolt v. Passolt*, 804 N.W.2d 18 (Minn. App. 2011), *rev. denied* (Minn. Nov. 15, 2011), to claim "that it is not appropriate for a person seeking maintenance to only work part-time when they could work full time even without a finding of bad-faith underemployment." But husband mischaracterizes *Passolt*. There, we simply concluded that a district court "*may* consider a maintenance recipient's prospective ability to become fully or partially self-supporting without making a finding that the recipient has acted in bad faith to remain unemployed or underemployed." *Passolt*, 804 N.W.2d at 19 (emphasis added). Thus, the district court had no *obligation* to impute income because wife was "underemployed."

Husband also argues the district court erred when it failed to "mak[e] any findings regarding the standard of living during the marriage." However, this assertion does not accurately reflect the dissolution judgment. At the bench trial, the district court received an exhibit containing an estimated budget for wife's and daughter's needs. Wife testified that she made this budget after reviewing the bills she paid during the marriage and then "lower[ing] [the] number[s] because it would just be [wife] and [daughter] instead of a family of four." In the dissolution judgment, the district court described this budget as "reasonable and less than the budget the parties relied on during the marriage." Implicit in

this statement is a finding about the parties' standard of living during the marriage. Namely, that this budget is akin to the parties' budget while married. Additionally, the district court listed the "standard of living established during the marriage" as one of the factors it considered in granting spousal maintenance. Therefore, husband's argument is unpersuasive.

For these reasons, the district court did not abuse its discretion when it awarded wife spousal maintenance.

Affirmed.