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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2247**

In re the Marriage of:
Kyle W. Zweifel, petitioner,
Respondent,

vs.

Julie Zweifel,
n/k/a Julie A. Mead,
Appellant.

**Filed August 20, 2012
Affirmed; motions denied
Chutich, Judge**

St. Louis County District Court
File Nos. 69DU-FA-09-953;
69DU-FA-09-725;
69DU-CO-10-231

Jill I. Frieders, O'Brien & Wolf, L.L.P., Rochester, Minnesota (for respondent)

Julie Zweifel, Duluth, Minnesota (pro se appellant)

Considered and decided by Chutich, Presiding Judge; Kalitowski, Judge; and
Stoneburner, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Appellant challenges the district court's denial of her various motions and its refusal to recuse itself in this dissolution proceeding. Because the record shows that the

district court did not abuse its discretion, we affirm. We also deny the parties' motions to correct the record and to strike parts of a brief.

FACTS

Appellant Julie H. Zweifel, now known as Julie A. Mead (Mead) and respondent Kyle W. Zweifel (Zweifel) were married. After more than ten years of marriage, the parties decided to end their marriage, and they participated in a Financial Early Neutral Evaluation as a part of the dissolution process. All issues regarding the termination of the marriage were settled at the conclusion of the Financial Early Neutral Evaluation and the parties entered into a written marital termination agreement (agreement). The agreement covered, among other things, how bills and other financial matters would be handled, and also required that the parties' homestead be sold. During the Financial Early Neutral Evaluation and negotiation of the agreement, Mead was represented by counsel.

Shortly after the agreement was finalized, Mead fired her counsel and moved to set the agreement aside. On December 27, 2010, the district court denied Mead's motion and proceeded to issue an order enforcing the agreement. At the same time, the judge entered judgment and a decree of dissolution (dissolution judgment), incorporating the agreement. By order filed June 10, 2011, the district court appointed a receiver to facilitate the sale of the parties' home. The receiver was given the authority to remove Mead from the home if she failed to cooperate with the sale.

In a previous appeal to this court, Mead challenged the district court order enforcing the agreement and the entry of dissolution judgment. Mead asserted that the district court abused its discretion by (1) denying her motion to set aside the agreement;

(2) refusing to award her spousal maintenance; (3) issuing a qualified domestic relations order; (4) awarding Zweifel Mead's nonmarital property; and (5) ordering Mead to pay conduct-based attorney fees. *Zweifel v. Zweifel*, Nos. A11-972, A11-1424, 2012 WL 1380353, at *1 (Minn. App. Apr. 23, 2012), *review denied* (Minn. Jul. 17, 2012). Because Mead had shown "no valid basis for setting aside the [agreement], which also govern[ed] maintenance and [domestic relations issues], and failed to offer evidence that certain property was nonmarital in nature," this court affirmed those parts of the district court judgment. *Id.* at *1. Because Mead's "challenges to the district court's orders raised legitimate concerns and were not interposed solely to harass or delay," this court reversed the district court's order requiring Mead to pay conduct-based attorney fees. *Id.*

Shortly after Mead filed the appeal above, she moved to reopen and amend the dissolution judgment. Specifically, Mead requested that the court grant her compensation in the amount of the difference between her preferred homestead listing price and the actual sale price, and that the court require Zweifel to pay half of the current utility bills, half the veterinary bills, and half of her health insurance costs. Mead further asked the district court to require a St. Louis County Sheriff's Deputy to be present for Zweifel's walkthrough of the house, and that the district court judge, who had been presiding over the dissolution action since 2009, recuse himself from the proceedings. On August 30, 2011, the district court held a hearing on these motions, and on October 10, 2011, an order was filed denying them.

Mead, pro se, now appeals the district court's October 10, 2011 order denying her motions. Zweifel moved this court to strike portions of Mead's reply brief, and Mead moved to correct certain transcripts within the district court record.

D E C I S I O N

I. Recusal of the District Court Judge

Mead argues that the district court abused its discretion when it denied her motion for removal, and requests that this court "remove the trial court judge . . . to stop him from further coercing and harassing" her. Zweifel questions whether Mead's challenge to the district court judge's refusal to recuse is properly before this court. Our scope of review includes orders affecting the ruling from which an appeal is taken. Minn. R. Civ. App. P. 103.04. The district court's refusal to recuse affects the other rulings in the order filed on October 10, 2011, from which this appeal is taken. Further, under rule 103.04, appellate courts may address matters as justice requires. To forestall additional litigation regarding the judge's ability to preside in this case, and because we believe that, on this record, justice requires us to address the merits of Mead's argument regarding recusal, we do so.

We construe Mead's motion to be one to remove the judge for prejudice against her. *See* Minn. R. Civ. P. 63.03 (stating that, after a judge has "presided at a motion or other proceeding," that judge may not be removed "except upon an affirmative showing of prejudice on the part of that judge"). An appellate court will not alter a district court's decision to deny a motion to remove for prejudice unless the denial constituted an abuse

of the district court's discretion. *Haefele v. Haefele*, 621 N.W.2d 758, 766 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).

Minn. R. Gen. Pract. 106 requires that the initial motion or notice to remove be brought before the judge who is the subject of the motion, which Mead properly did. Rule 106 also provides for a permissive rehearing and reconsideration by the chief judge of the district if the motion is denied. After the district court judge denied her motion, Mead appropriately sought reconsideration by the chief judge. In an order filed December 21, 2011, the chief judge denied Mead's appeal.

To justify removing a district court judge who, as here, had presided over numerous motions and proceedings in this dissolution matter, Mead must make "an affirmative showing of prejudice on the part of the judge." Minn. R. Civ. P. 63.03. Mead tries to meet this high bar by contending that the judge has been "coercing and harassing" her. She asserts that the judge "is allowing fraud, and impropriety to commence in his court," and that he "uses oppressive [o]rders to cause her further hardship, duress, and take away any quality of life she still has." Additionally, Mead alleges self-interest and bias because (1) the judge has ruled in favor of Zweifel on various motions, (2) the judge was involved in introducing the Financial Early Neutral Evaluation process to the county, and (3) the judge allegedly makes faces at her and scolds her when she is addressing the court.

In denying Mead's motion for recusal, the district court emphasized that its adverse rulings, by themselves, are not indicative of bias, and that the court has no financial, emotional, or personal interest in this dissolution or in the Financial Early

Neutral Evaluation process. Upon review affirming the denial, the district court's chief judge made detailed findings of fact, including that "[t]here is nothing in the Orders or in the proceedings as reviewed by this court that would in any way suggest that there is evidence of bias or favoritism toward either party." Additionally, the chief judge found that the tone of the district court judge's orders was neither disrespectful nor demeaning toward either party in any way.

Reviewing the record carefully, we conclude the district court did not abuse its discretion when it denied Mead's recusal motion. Adverse rulings, even if erroneous, do not establish bias. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986). Transcripts contained in the record show that the district court judge exercised restraint and acted fairly, exhibiting respect and patience toward Mead. Indeed, the judge even explained certain procedural matters relating to service of process so that Mead could reduce her litigation costs. The record contains no evidence the judge had or has any inappropriate interests in the Financial Early Neutral Evaluation process, financial or otherwise. Therefore, we affirm the district court's denial of Mead's motion to remove.

II. Motions to Reopen and Modify the Dissolution Judgment

Mead appeals the district court's denial of her motions to reopen the dissolution judgment, which incorporated the parties' agreement. Mead now seeks compensation in the amount of the difference between her preferred homestead listing price and the actual sale price; requests Zweifel be required to pay half of the current utility bills, half the veterinary bills for Mead's cats, and half of Mead's health insurance costs.

To the extent Mead's motion is functionally one for spousal maintenance to assist her in paying her utility, veterinary, and health insurance expenses, the district court did not have jurisdiction over these issues because the dissolution judgment specifically included an agreement by Zweifel and Mead to waive maintenance and to divest the court's jurisdiction over the issue. *See Zweifel*, 2012 WL 1380353, at *2. Furthermore, filing "a timely and proper appeal suspends the trial court's authority to make any order that affects the order or judgment appealed from, though the trial court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from." Minn. R. Civ. App. P. 108.01, subd. 2. At the time Mead moved to reopen the dissolution judgment, her appeal seeking to set aside enforcement of the agreement and challenging the denial of a maintenance award was still pending before this court. *Zweifel*, 2012 WL 1380353.

Even if the district court retained jurisdiction to reopen the dissolution judgment during Mead's then-pending appeal, whether to reopen and alter the judgment is discretionary with the district court. *See* Minn. Stat. § 518.145, subd. 2 (2010) (stating that the district court "may relieve a party from judgment" for reasons including, but not limited to, mistake, newly discovered evidence, and fraud). The record shows that Mead had not demonstrated a reason to reopen the dissolution judgment under Minn. Stat. § 518.145, subd. 2.

Nevertheless, the district court addressed the merits of her arguments and properly denied her motion. The district court explained that the market, not the court, would determine the sale price of the home. The district court also stated that Mead's requests

that Zweifel pay certain bills would not be fair because the agreement, incorporated into the dissolution judgment, specifically addressed payment of bills, and Zweifel had not agreed to pay those particular bills. Moreover, the district court found it would be unfair to require Zweifel to pay for the utilities because he does not currently reside in the house. The district court took care to emphasize that Mead was not in danger of being evicted and stressed that she will be able to remain in the home as long as she cooperates with the receiver. Thus, the district court properly denied Mead's motions. *Cf. Evans v. Blesi*, 345 N.W.2d 775, 780 (Minn. App. 1984) (noting that even though an amended judgment entered while an appeal was pending was without effect, this court could take "cognizance of it for the insight it affords"), *review denied* (Minn. June 12, 1984).

III. Appointment of a Receiver

On June 10, 2011, the district court entered an order appointing a receiver to facilitate the sale of Zweifel and Mead's home. Mead now asks this court to take away the receiver's power to remove Mead from the homestead if she fails to cooperate with the sale, and claims that the receiver was appointed as a result of fraud by Zweifel's attorneys. For several reasons, this issue is not properly before this court.

First, Mead's notice of appeal for the current appeal states that she is appealing the October 10, 2011 order denying her motion to compel communication from the receiver. Consistent with the fact that Mead's motion did not address the receiver's authority to remove Mead from the property, the October 10, 2011 order does not address that question. Generally, appellate courts will not consider matters not argued to and considered by the district court, *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), and,

for the reasons set out below, we decline to exercise our discretion under Minn. R. Civ. App. P. 103.04, to address a question not properly before us.

Second, the June 10, 2011 order appoints the receiver and defines the scope of the receiver's authority. To the extent that Mead challenges the scope of the receiver's authority in this current appeal, she is functionally seeking to amend her notice of appeal to include the June 10, 2011 order. "The appellate rules[, however,] do not authorize amendments to notices of appeal." *In re Welfare of G. (NMN) M.*, 533 N.W.2d 883, 884 (Minn. App. 1995) (citing *Lehman v. Terry*, 424 N.W.2d 584, 585 (Minn. App. 1988)).

Third, the notice of appeal for one of Mead's earlier appeals to this court stated that she, in that appeal, was challenging the June 10, 2011 order as well as a July 14, 2011 order denying her motions to enjoin the appointment of the receiver and to amend the June 10, 2011 order appointing the receiver. Our opinion in that prior appeal did not address the scope of the receiver's authority because Mead did not address the scope of the receiver's authority. *See Zweifel*, 2012 WL 1380353. Issues not briefed on appeal are waived. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). Moreover, any attempt to challenge the June 10, 2011 order in the current appeal is, essentially, a request that this court rehear that portion of the prior appeal. Under the rules, however, "[n]o petition for rehearing shall be allowed in the Court of Appeals." Minn. R. Civ. App. P. 140.01.

IV. Protective Order

Mead challenges the district court's denial of her request that a St. Louis County Sheriff's Deputy be present when Zweifel conducts his walkthrough of the homestead. Whether to grant protective orders is within the district court's discretion. *See Kush v.*

Mathison, 683 N.W.2d 841, 843 (Minn. App. 2004) (reviewing the district court’s issuance of a harassment restraining order for an abuse of discretion), *review denied* (Minn. Sept. 29, 2004).

In denying Mead’s motion, the district court noted that Zweifel did not object to having a deputy present during the walkthrough and that there was no evidence of ongoing threats of harm to Mead or to her property. Further, Zweifel’s attorney commented that he was planning to recommend to his client that a deputy be present during the walkthrough regardless of how the court ruled. Therefore, the district court did not abuse its discretion in denying this request.

V. Motions to Strike and to Correct

We deny Mead’s motion to correct certain transcripts in the record because a motion to correct alleged misstatements in the record must be made to the district court. *Doty v. Doty*, 533 N.W.2d 72, 75 (Minn. App. 1995); *see also* Minn. R. Civ. App. P. 110.05 (“If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and determined by the trial court and the record made to conform.”). Thus, this court cannot resolve a factual dispute about the accuracy of the transcript. *See Doty*, 533 N.W.2d at 75.

Zweifel moves to strike portions of Mead’s reply brief, alleging that it contains references to matters outside the record. “The papers filed in the [district court], the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.” Minn. R. Civ. App. P. 110.01. “An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not

produced and received in evidence below.” *Thiele*, 425 N.W.2d at 582–83. The information Zweifel seeks to strike was not considered in this decision, and we therefore deny as moot Zweifel’s motion to strike portions of Mead’s reply brief. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007).

Affirmed; motions denied.