STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2096

In re the Marriage of:

Erica Beth Petelin, petitioner,
Respondent,

vs.

Michael Alexander Petelin,
Appellant.

Filed July 22, 2013
Affirmed
Johnson, Chief Judge

Hennepin County District Court
File No. 27-FA-10-3710

JoMarie Alexander, Alexander Law Office, P.A., Minnetonka, Minnesota (for respondent)

Michael Petelin, Plymouth, Minnesota (*pro se* appellant)

Considered and decided by Stoneburner, Presiding Judge; Johnson, Chief Judge; and Willis, Judge.[*]

[*]Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

JOHNSON, Chief Judge

Michael Alexander Petelin appeals from a judgment and decree that dissolved his marriage to Erica Beth Johnson (formerly known as Erica Beth Petelin). He raises several issues relating to the district court's division of marital assets, custody award, and child-support award. We affirm.

FACTS

Petelin and Johnson were married in 1995. Three children were born during the marriage: V.P. in 1996, A.P. in 2001, and S.P. in 2004.

In May 2010, Johnson petitioned for dissolution. In May 2011, a referee issued an order that awarded temporary exclusive possession of the marital homestead to Petelin and required him to make temporary child-support payments of $700. The order did not award temporary spousal maintenance. Both parties continued to live in the marital homestead until July 2011.

The matter was tried for three days in May 2012. In August 2012, the district court issued its judgment and decree. The district court divided the marital assets, awarded sole legal and physical custody to Johnson, awarded Petelin parenting time with the two younger children, and ordered Petelin to pay child support in the amount of $943 per month. The district court reserved the issue of spousal maintenance.

Petelin filed a motion for amended findings in which he raised multiple issues but did not include any proposed alternative findings. The district court construed the motion

as a motion for reconsideration under Minn. R. Gen. Prac. 115.11 and denied it. Petelin appeals.

D E C I S I O N

Petelin's *pro se* appellate brief makes numerous general complaints about Johnson, the circumstances that gave rise to the parties' separation, Johnson's attorney, the dissolution process, and other things. Petelin's *pro se* brief also complains about the district court, but he makes relatively few assertions that the district court erred in a particular ruling. Because this court is an error-correcting court, we are focused on identifying and analyzing an appellant's assertions of error. That is a difficult task in this case because of the lack of organizational structure in Petelin's *pro se* brief and the abundance of general and rhetorical statements. Furthermore, Petelin's *pro se* brief does not contain any citations to legal authorities.

In this situation, an appellate court is justified in concluding that the appellant has waived an argument for reversal or waived all arguments for reversal. As the supreme court stated in another dissolution case, "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." *Kaehler v. Kaehler*, 219 Minn. 536, 537, 18 N.W.2d 312, 313 (1945). Despite the absence of any legal authority in Petelin's *pro se* brief, we will analyze five assertions of error, which are the only assertions we are able to discern in which he has stated that the district court committed error in the course of the dissolution proceedings or in its judgment and decree.

First, Petelin argues that the referee erred in May 2011 by awarding Johnson $700 in temporary child support for two months during which Johnson and the children lived in the same home as Petelin. The referee did not, however, require Petelin to simultaneously pay child support and provide housing to Johnson and the children while they were in Johnson's care. In the May 2011 order, the referee awarded Petelin temporary exclusive occupancy of the homestead. The referee appears to have assumed that Johnson would move out of the homestead. That Petelin subsequently allowed Johnson to remain for two months does not alter his child-support obligation, at least not without a court-ordered modification. *See* Minn. Stat. § 518A.38, subd. 3 (2012). Thus, the district court did not err by awarding Johnson temporary child support.

Second, Petelin argues that the district court erred by not allowing him to introduce affidavits at trial in lieu of witness testimony. Petelin offered affidavits from two persons who were unavailable to testify. Johnson objected, and the district court sustained the objection on the ground that the affidavits are inadmissible because they contain hearsay. Hearsay is an out-of-court statement offered into evidence to prove the truth of the matter asserted in the statement. Minn. R. Evid. 801(c). The affidavits that Petelin offered are hearsay. Hearsay evidence is inadmissible unless an exception applies. Minn. R. Evid. 802. At trial, Petelin did not assert an exception to the hearsay rule, and he does not do so on appeal. Thus, the district court did not err by excluding the two affidavits from the evidentiary record.

Third, Petelin argues that the district court erred by imposing a child-support obligation on him even though he was unemployed and receiving unemployment benefits

at the time of trial. An award of child support must be based on the parties' respective gross incomes. Minn. Stat. § 518A.34(b)(1) (2012). Three months before trial, Petelin was terminated from a job at which he earned approximately $6,000 per month. At the time of trial, Petelin was receiving unemployment benefits of $2,585 per month. If a parent is receiving unemployment compensation, "that parent's income may be calculated using the actual amount of the unemployment compensation . . . benefit received." Minn. Stat. § 518A.32, subd. 2(2) (2012). That is exactly what the district court did in this case; the district court used Petelin's benefit level of $2,585 per month as his income for purposes of the child-support calculation worksheet. The district court could have used Petelin's prior income of $6,000 per month but elected not to do so. *See Id*., subd. 2(1). Because the district court's method of calculating the child-support award is expressly authorized by statute, the district court did not err by imposing a child-support obligation on Petelin despite his unemployment.

Fourth, Petelin argues that the district court erred when dividing the parties' marital assets by not considering $40,000 that Johnson allegedly had concealed. The district court considered Petelin's allegation that Johnson hid or dissipated some of her earned income but credited her testimony that she used all of the income she earned from part-time employment after the parties' separation to pay for reasonable living expenses for herself and the children. We must defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Thus, the district court did not err by declining to find that Johnson possessed an additional $40,000 before dividing the marital assets.

Fifth, Petelin argues that the district court erred by ignoring the preferences of the second child and third child for an award of joint custody with an equal division of parenting time. The record, however, does not indicate the preferences described in Petelin's brief. The district court noted that both children expressed a desire to live with their mother and to visit their father on some weekends. In any event, the district court declined to rely on the younger children's preferences because the district court found them to be too young at the time of trial to express a reliable preference. The district court's assessment of the younger children's ability to express a reliable preference was not an abuse of discretion. *See Sucher v. Sucher*, 416 N.W.2d 182, 185 (Minn. App. 1987), *review denied* (Minn. Mar. 18, 1988). Thus, the district court did not err in the manner in which it considered the younger children's stated preferences concerning custody and parenting time.

Affirmed.