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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1228**

Wade Alan Muhlhauser, petitioner,
Appellant,

vs.

Mary Ellyn Muhlhauser,
Respondent.

**Filed August 19, 2008
Affirmed
Ross, Judge**

Stearns County District Court
File No. 73-FX-06-000108

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(for appellant)

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Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Muehlberg,
Judge.*

UNPUBLISHED OPINION

ROSS, Judge

Wade Muhlhauser appeals from a marriage dissolution judgment and decree, arguing
that the district court abused its discretion by denying his motion for a continuance and

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

ordering him to pay conduct-based attorney fees. He challenges several of the court's factual findings and its award of joint physical custody of the parties' minor child. He also argues that he is entitled to a new trial because the district court's decisions were motivated by bias. We hold that the district court did not abuse its discretion by denying the motion to continue because the record supports the district court's conclusion that Wade Muhlhauser did not diligently prepare for trial. The record also belies Wade Muhlhauser's assertion that the district court failed to follow the Rules of Civil Procedure when ordering him to pay Mary Muhlhauser's attorney fees. Our review of the district court's factual findings and legal conclusions shows no grounds for reversal or a new trial, and the record does not demonstrate that the district court based its decisions on bias. We affirm.

FACTS

Wade Muhlhauser and Mary Muhlhauser were married on August 9, 1986, and have one minor child, W.M. In December 2005, Wade Muhlhauser petitioned for dissolution. While married, the parties acquired significant assets, including a homestead, commercial property, various retirement accounts, motor vehicles, recreational vehicles, an art collection, savings bonds, and other personalty.

Before trial, Wade Muhlhauser disobeyed the district court's order to maintain payments on the parties' property and debt. The district court had issued a temporary order on March 6, 2006, requiring Wade Muhlhauser to manage and maintain the parties' commercial property. The order also required him to make payments on the parties' credit card account. Wade Muhlhauser used rents from the parties' commercial property to meet his monthly personal expenses instead of applying those funds to make mortgage payments

on the property. To avoid foreclosure, Mary Muhlhauser obtained a loan secured by her vehicle and she paid the mortgage arrears. She moved for contempt against Wade Muhlhauser. The district court found that Wade Muhlhauser had violated its temporary order by failing to make mortgage payments on the parties' commercial property, failing to maintain the insurance on that property, and failing to pay the credit card debt. The district court ordered that possession of the property be turned over to Mary Muhlhauser for sale.

Wade Muhlhauser also violated the March 2006 scheduling order, which required discovery to be completed by September 15, 2006, and required the parties to appear at the pretrial conference on November 17, 2006. The district court ordered the parties to serve and file lists of witnesses and exhibits before the date of the pretrial conference and required the parties to serve and file all trial motions no later than seven days before the beginning of trial. In her contempt motion filed the day before the pretrial conference, Mary Muhlhauser moved the district court to order Wade Muhlhauser to answer her discovery requests, and for attorney fees. Wade Muhlhauser failed to appear at the pretrial conference. He also did not serve and file a list of witnesses and exhibits before the pretrial date.

The district court ordered Wade Muhlhauser to show cause as to why it should not grant the motion for contempt. He attended the show-cause hearing on December 6, 2006, and requested to be permitted to sell a motorcycle to obtain funds to hire an attorney. The district court granted Wade Muhlhauser's request and predicted that it would not grant a continuance of the trial based on his lack of counsel. The district court reserved the attorney-fee issue for trial.

Wade Muhlhauser appeared pro se at the December 18, 2006, trial and requested a continuance. The district court denied this request. The district court had planned to complete the trial in one day, but Wade Muhlhauser was not adequately prepared for trial. He spent much of the afternoon sifting through documents while the court waited for him to proceed with his case. At 6:18 p.m., the court recessed but determined that the record would need to remain open and an additional day of trial would be required. It scheduled the remainder of trial for January 24, 2007.

On January 23, 2007, Wade Muhlhauser's recently retained counsel told the district court that she needed a continuance to prepare for trial and to obtain evidence. The court denied the request, emphasizing that it was not supported by any affidavits alleging due diligence by Wade Muhlhauser. Trial commenced and concluded the following day.

The district court ordered joint legal and physical custody of W.M. and divided the property. The district court ordered Wade Muhlhauser to pay \$20,000 of Mary Muhlhauser's \$27,883 attorney fees on four grounds: (1) repeatedly failing to provide information to Mary Muhlhauser when requested informally and by formal discovery; (2) failing to cooperate with Mary Muhlhauser by filing delinquent joint federal and state income tax returns; (3) failing to appear at the pretrial conference; and (4) failing to be prepared for trial and requesting a continuance without complying with the scheduling order.

Wade Muhlhauser appeals, arguing that the district court abused its discretion by refusing a continuance, that it abused its discretion by awarding conduct-based attorney's fees, that it acted on bias, and that its factual findings are clearly erroneous.

DECISION

I

We first address Wade Muhlhauser's challenge to the district court's denial of his motion to continue. We review a denial of a motion for continuance for an abuse of discretion. *Dunham v. Roer*, 708 N.W.2d 552, 572 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006). A district court's ruling on a motion to continue will not be altered unless it unfairly prejudices the outcome of the trial. *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 358 (Minn. App. 2006). In exercising its discretion, a district court may consider the detriment that a continuance would have on the nonmoving party and may consider a party's lack of pretrial diligence. *Chahla v. City of St. Paul*, 507 N.W.2d 29, 32 (Minn. App. 1993) (upholding the denial of a continuance based, in part, on possible prejudice to non-moving party), *review denied* (Minn. Jan. 20, 1994); *cf. Alliance for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 919 (Minn. App. 2003) (explaining that a court should consider whether a party had been diligent in discovery before granting a motion to continue for further discovery). The district court denied Wade Muhlhauser's motion to continue because he had not been diligent in preparing for trial. Diligence is "continual effort to accomplish something." *Black's Law Dictionary* 488 (8th ed. 2004).

Wade Muhlhauser offers various arguments in urging us to hold that the district court abused its discretion by denying his motion to continue. He asserts that he was diligent in attempting to retain an attorney, that Mary Muhlhauser would not have been prejudiced by the delay, and that he was harmed by being forced to proceed without legal counsel. He also asserts that one month was a reasonable period to secure an attorney.

But his failure to quickly retain an attorney does not address most of the conduct highlighted by the district court in denying the motion for a continuance. Between March 2006, when the district court issued its scheduling order, and the pretrial conference in November 2006, Wade Muhlhauser did very little to prepare for trial. The district court found that Wade Muhlhauser's original attorney withdrew, claiming that Muhlhauser did not communicate with him or provide sufficient information to prepare in the months leading up to trial. The court also found that Muhlhauser claimed to have fired his original attorney. Although he implies that his failure to respond to discovery should be excused because he discharged his attorney one month before trial, discovery was due on September 15, 2006, approximately two months before he dismissed his lawyer. Similarly, dismissal of his attorney cannot excuse his failure to appear at the pretrial conference because he fired his attorney after the pretrial conference had been scheduled.

The record supports the finding that Wade Muhlhauser was not diligent as it regards the basis for his motion to continue. "Withdrawal of counsel does not create any right to continuance of any scheduled trial or hearing." Minn. R. Gen. Pract. 105. We have affirmed a denial of a motion to continue when the motion was not timely, the moving party had sufficient time to hire counsel but failed to, the moving party knew the date of the hearing, and the party requested a continuance for delay. *Richter v. Richter*, 625 N.W.2d 490, 492 (Minn. App. 2001), *review denied* (Minn. July 24, 2001). Wade Muhlhauser alleged he had been unable to fund an attorney because of the death of his brother-in-law, who had planned to buy his motorcycle. This provides one factor bearing on his difficulty to secure counsel, but identifying a single buyer who could not complete the transaction

does not show good-faith effort. Wade Muhlhauser does not dispute that he failed to respond to discovery, that he failed to appear at the conference, or that he was unprepared for trial. The district court found that he had not established a valid excuse for his failures and that he largely ignored the court's process or did not take it seriously. And the district court determined that he had not made a good-faith effort to be prepared. Findings of good faith or lack of good faith are "essentially credibility determinations," and we rely on a district court's credibility determinations. *See Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 728 (Minn. 1985) (stating whether party acts in good faith is essentially a credibility question); *Richter*, 625 N.W.2d at 495 (noting that appellate courts defer to district court credibility determinations).

Wade Muhlhauser also challenges the district court's finding that Mary Muhlhauser would be prejudiced if the court granted his motion to continue. He provided no notice to Mary Muhlhauser or to the court that he would request a continuance on the day of trial. Prejudice to the non-moving party weighs against a motion for a continuance. *Chahla*, 507 N.W.2d at 32. Mary Muhlhauser argued that she would suffer significant financial consequences if the matter were continued because of the parties' extant financial difficulties and the likely foreclosure of their homestead. And she explained that she had hired an expert witness who was scheduled to appear the morning of trial to testify regarding Wade Muhlhauser's pension. She also argued that if the continuance were granted she would suffer emotional harm and pointed out that Wade Muhlhauser's noncompliance with the court's March 6, 2006, order had already required her to file a motion for contempt. The district court's finding of prejudice to Mary Muhlhauser is not

clearly erroneous and the court reasonably considered her prejudice when it denied the motion to continue.

Wade Muhlhauser next asserts that because he had to represent himself his case was considerably weakened. He argues that if his motion to continue had been granted, he would have had an attorney and been prepared. He chides the court for allegedly forcing him to go to trial unprepared and then criticizing him for being unprepared. The district court was not responsible for Wade Muhlhauser's inaction and unpreparedness and it had an adequate basis to conclude that he had essentially ignored the obligations of the process, failed to respond to discovery, and failed to appear at the pretrial conference, and that Mary Muhlhauser would suffer financial prejudice, including potential foreclosure, if the matter were delayed.

Wade Muhlhauser asserts that the district court should have granted his motion to continue because the district court eventually continued the trial until January 24 anyway, once it became clear that trial could not be completed within the day assigned to it. He argues that the court's sua sponte continuance indicates that neither the court nor Mary Muhlhauser would have been harmed by waiting one week for him to secure a new attorney. The argument confuses necessary delay because of one party's negligence and discretionary delay premised on a legitimate good-faith basis.

The court appropriately considered the facts and circumstances surrounding Wade Muhlhauser's motion to continue. It did not abuse its discretion by denying his motion.

II

We turn to Wade Muhlhauser’s argument that the district court abused its discretion by awarding conduct-based attorney’s fees because the court did not comply with Minnesota Rule of Civil Procedure 11 or Minnesota Statutes section 549.211 (2006). We will not disturb an award of conduct-based attorney fees in a dissolution case absent a clear abuse of discretion. *Kirby v. Kirby*, 348 N.W.2d 392, 394 (Minn. App. 1984).

The fee award was not a sanction under rule 11 or under section 549.211. The judgment and decree states that the award was based on Wade Muhlhauser’s unreasonable contribution to the delay of the proceeding. It is an award of conduct-based attorney fees under section 518.14. *See* Minn. Stat. § 518.14, subd. 1 (2006) (“Nothing in this section . . . 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.”). Minnesota Statutes section 518.14 independently authorizes a district court to grant attorney fees. *Geske v. Marcolina*, 624 N.W.2d 813, 816 (Minn. App. 2001) (“[There are] several bases for attorney fee awards, including Minn. Stat. §§ 518.14, 549.211, [and] Minn. R. Civ. P. 11.”). Fees awarded under section 518.14 may be based solely on the party’s behavior and its effect on the cost of litigation, without regard to the relative financial resources of the parties. *Dabrowski v. Dabrowski*, 477 N.W.2d 761, 766 (Minn. App. 1991); *see also Geske*, 624 N.W.2d at 818–19 (explaining that bad faith is not required for a fee award). Conduct that frustrates, delays, or increases the costs of the dissolution proceeding is a sufficient basis for awarding fees under section 518.14. *Brodsky v. Brodsky*, 733 N.W.2d 471, 477 (Minn. App. 2007).

Wade Muhlhauser argues on appeal that the district court's fee award must be vacated because the award did not follow from the procedures of section 549.211 or rule 11. But he cites no legal authority that requires a district court to follow these procedures when awarding fees under section 518.14.

He also argues that the district court abused its discretion by awarding fees without requiring a supporting affidavit. A fee award in excess of \$1,000 generally must be supported by a detailed affidavit. Minn. R. Gen. Pract. 119.01.02. Mary Muhlhauser's attorney filed two such affidavits—one explains Mary Muhlhauser's pretrial legal expenses and the other explains trial and posttrial legal expenses. The affidavit for pretrial services was admitted at trial, and it included copies of all the monthly billing statements Mary Muhlhauser had received from her attorney. Mary Muhlhauser testified at trial that she was asking the court to order Wade Muhlhauser to pay her fees because of the delay he caused in the proceedings. The affidavit addressing fees for trial and posttrial services was filed after trial. Wade Muhlhauser's assertion that rule 119 was not followed is therefore contradicted by the record. And even if Mary Muhlhauser had not filed an affidavit that complied with rule 119, we could uphold the fee award because a district court may waive the rule's requirements. *Gully v. Gully*, 599 N.W.2d 814, 826 (Minn. 1999) (stating that a district court may waive rule 119's affidavit requirement if the court is "familiar with the history of the case and has access to the parties' financial information").

At oral argument, Wade Muhlhauser asserted that it was improper to award Mary Muhlhauser attorney fees for Wade Muhlhauser's conduct at trial because her request for fees was made before trial. Because he did not make this argument in his brief, Mary

Muhlhauser had no chance to respond to it, and he has waived it. *Peterson v. BASF Corp.*, 711 N.W.2d 470, 482 (Minn. 2006) (explaining claims not addressed in appellant’s brief are deemed waived on appeal). Even if he had not waived it, the argument would not have prevailed. The record shows that he understood that the district court might base a fee award on his conduct at trial. In his final written argument to the district court, he argued that he should not be required to pay Mary Muhlhauser’s attorney fees because his delay was excusable, because Mary Muhlhauser also contributed to some delay, and because his lack of preparation *at trial* was a product of financial hardship. He did not argue then what he argues now, that it would be improper to award Mary Muhlhauser attorney fees for his trial conduct because her request for fees was made before trial. His attempt to excuse his lack of trial preparation indicates that he understood that the district court might award fees based on his trial conduct. He also had actual notice that Mary Muhlhauser’s fee request was based on trial conduct, because she asked the court during trial to order him to pay her attorney fees for “delaying the proceeding of this case.” And although the district court’s fee award of \$20,000 was based on both pretrial conduct and trial conduct, the amount the court actually awarded was less than the amount Mary Muhlhauser requested for her pretrial fees.

The district court found that Wade Muhlhauser improperly delayed the proceedings, and this finding is amply supported by the record. Therefore the district court did not abuse its discretion by awarding fees. *See Quade v. Quade*, 367 N.W.2d 87, 90 (Minn. App. 1985) (affirming an award of attorney fees under section 518.14 in part because of the opposing

party's dilatory tactics and noncooperation with the court and counsel), *review denied* (Minn. July 11, 1985).

III

Wade Muhlhauser challenges several of the district court's factual findings and some accompanying legal conclusions. We will not disturb the district court's factual findings unless those findings are clearly erroneous. *Schallinger v. Schallinger*, 699 N.W.2d 15, 22 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). We review legal determinations without deference to the district court. *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997). And we defer to the credibility determinations of the district court. *Richter*, 625 N.W.2d at 495. Each challenge is addressed below.

A. *Challenge to Court's Property Valuation Findings*

Wade Muhlhauser challenges the district court's valuation of the parties' art collection. He argues that the value of art and collectibles are highly subjective and that to rely on one party's testimony as a basis to value these items is "unconscionable." He cites no legal authority for his contention that the district court erred by relying on testimony to value the party's art and collectibles, and we are not persuaded by the contention. *See Doering v. Doering*, 385 N.W.2d 387, 391 (Minn. App. 1986) (upholding a district court's findings based on testimony).

Wade Muhlhauser also challenges the district court's valuation of the parties' jewelry. He argues that because the district court adopted Mary Muhlhauser's valuation, the district court was motivated solely by bias against him. The district court's reliance on Mary Muhlhauser's valuation does not render its finding against logic, and he offers only

the bald allegation that the district court's reliance on Mary Muhlhauser's testimony was a product of particularity. A mere assertion of bias is not persuasive. *See Braith v. Fischer*, 632 N.W.2d 716, 724–25 (Minn. App. 2001) (noting that allegations of bias were merely “dissatisfaction with the district court's rulings and a repackaging of . . . earlier arguments”), *review denied* (Minn. Oct. 24, 2001). We address the claims of bias more particularly in the next section.

Wade Muhlhauser next challenges the district court's rejection of his valuation of the parties' commercial property. He asserts that Mary Muhlhauser's testimony was not a sufficient basis upon which the district court could rest its valuation of the property. Again, this is an incorrect understanding of the law. *Doering*, 385 N.W.2d at 391. Additionally, Mary Muhlhauser supported her testimony with a market analysis report. Wade Muhlhauser implies that because the district court judge is neither an appraiser nor a real estate agent, the court's valuation was erroneous. But he does not adequately support his assertion that the district court's valuation is against logic and facts on the record, and he cites no legal authority to support the facially unreasonable proposition that a district court judge must have particular industry experience to make factual findings as to property valuations.

Wade Muhlhauser challenges the district court's conclusion that his testimony regarding some items located on the parties' commercial property was not credible. But we lack the district court's vantage point, and an attack on a district court's credibility determination is not sufficient to overturn a factual finding. *Richter*, 625 N.W.2d at 495 (noting that the court of appeals defers to a district court's credibility determinations). Wade Muhlhauser asserts that the district court's findings are so contrary to the record that

he should be awarded a new trial. But he has not shown that these disputed findings are clearly erroneous.

B. Challenge to the Court's Income Findings

Wade Muhlhauser argues both that the court's finding that spousal maintenance was not appropriate is clearly erroneous and the findings do not address any criteria upon which an award is to be analyzed under Minnesota Statutes section 518.552, subdivision 1 (2006). He is incorrect. The district court found that "[Wade Muhlhauser] is capable of providing for his own support." The statute authorizes a district court to order maintenance if it finds that one spouse "is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment." Minn. Stat. § 518.552, subd. 1(b). The court based this finding on Wade Muhlhauser's testimony that he was refraining from work until his termination appeal was complete, because if he were to take other work, he could jeopardize his reinstatement. The district court's finding was not clearly erroneous, and the court properly applied the statute to the finding.

Wade Muhlhauser challenges the district court's finding that he has the ability to earn \$4,522 in gross pay each month. The district court appears to have based this finding on his earning capacity before his termination from employment. He told the district court that he expects to be reinstated to his job. The finding is therefore supported by Wade Muhlhauser's testimony. Having received his testimony that he expects to return to his job, the district court had an adequate basis to reject his claim that he lacks the ability to earn that job's salary. A party may not contradict its trial position on appeal. *Accord W. H.*

Barber Co. v. McNamara-Vivant Contracting Co., 293 N.W.2d 351, 358 (Minn. 1979); *N. States Power Co. v. Gas Servs., Inc.*, 690 N.W.2d 362, 366 (Minn. App. 2004) (listing examples).

Wade Muhlhauser challenges the district court's finding that Mary Muhlhauser's gross monthly income was approximately \$6,000. He argues that the district court should have found that she had been self-limiting her income. *See Anderson v. Anderson*, 450 N.W.2d 384, 386 (Minn. App. 1990) (providing that the district court may consider whether a party has unjustifiably self-limited her income in setting child support). Whether a reduction in income occurs in good faith is a question for the district court, *id.* at 386-387, and we defer to factual findings of good faith because those findings include credibility determinations. *Tonka Tours, Inc.*, 372 N.W.2d at 728. Because the district court's income findings are consistent with Mary Muhlhauser's testimony, we infer that it found that her income testimony was credible and her employment decisions made in good faith. And we defer to that determination. *Id.*

C. *Challenge to Lack Of Best Interest Findings*

Wade Muhlhauser also challenges the district court's award of joint physical custody of W.M. A district court has broad discretion to determine matters of custody. *In re Custody of N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002). Our review of custody determinations is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law. *Id.* We rely on the district court's findings unless they are clearly erroneous. *Schallinger*, 699 N.W.2d at 22.

In awarding joint custody, a district court must consider the statutory best-interests factors and joint-custody factors. *Zander v. Zander*, 720 N.W.2d 360, 366 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006); *see* Minn. Stat. §§ 518.17, subd. 1(a) (enumerating best-interests factors), subd. 2 (listing the joint-custody factors) (2006). The district court is not required to expressly address each statutory best-interests factor. *Rosenfeld v. Rosenfeld*, 311 Minn. 76, 83, 249 N.W.2d 168, 171–72 (1976). Rather, the “findings as a whole” must “reflect that the [district] court has taken the statutory factors into consideration.” *Id.* Where there is record support for a district court’s custody award, that award will be affirmed on appeal. *Guetzkow v. Guetzkow*, 358 N.W.2d 719, 721 (Minn. App. 1984) (“While the trial court should have set forth with a higher degree of particularity its findings concerning custody . . . the record as a whole supports the trial court’s award of custody.”).

The record supports the district court’s award of joint custody. The guardian ad litem’s report recommends joint physical custody. The guardian noted that Mary Muhlhauser’s relationship with W.M. had been improving and that W.M. “recognized the important role his mother has played in his life and desires to try to restore that relationship.” *See* Minn. Stat. § 518.17, subd. 1(a)(2), (4) (listing preference of the child and intimacy of parental relationship as best-interests factors). Mary Muhlhauser testified that she believed joint custody was in W.M.’s best interests and that she was doing whatever she could to spend time with him. And as the parties agreed, W.M.’s primary residence is with Wade Muhlhauser. *See id.*, subd. 2(a) (directing a court to consider the ability of parents to

cooperate when awarding joint physical custody). The district court's findings show that it considered the requisite statutory factors.

D. Other Challenges

Wade Muhlhauser contends that by awarding the homestead to Mary Muhlhauser his investment in the home effectively "disappears." This argument misunderstands the district court's property division. The court credited Mary Muhlhauser with the full equity value of the house, just as it credited Wade Muhlhauser with the full value of the timeshare and other property. His ownership interest did not disappear. Instead, it offset the value of Mary Muhlhauser's assets awarded to him. There was no error.

Wade Muhlhauser notes that the district court's order contains a purported error in one of its conclusions. The district court ordered the parties' \$15,600 in savings bonds to be put in Mary Muhlhauser's name, but Wade Muhlhauser claims that the savings bonds are already in her name. This appears to be an error, because the district court credited Wade Muhlhauser with the value of the bonds in the asset division. Wade Muhlhauser asserts that the parties tried to correct this error by signing a stipulation allowing an amendment to the findings, but he claims the parties are now arguing in the district court over who failed to file the stipulation. It is unclear what relief Wade Muhlhauser asks regarding this error, but he does not show that it warrants a reversal or action by this court on appeal.

Wade Muhlhauser attacks the district court's expressed concern that he might not make court-ordered payments. He claims that the record does not support the district court's conclusion that he cannot be trusted to obey a court order, noting that he was not found to be in contempt. The record contradicts Wade Muhlhauser's claim that the district

court was unjustified in doubting his willingness or ability to comply with its orders. The district court's December 2006 order listed several violations of previous orders: failure to respond to formal and informal discovery requests; failure to cooperate with Mary Muhlhauser to file their joint tax returns; failure to appear at a pretrial conference; and failure to maintain the parties' commercial property. Wade Muhlhauser's prior noncompliance gave the district court a basis to doubt his willingness or ability to comply with the district court's order.

IV

We turn to Wade Muhlhauser's most serious charge. He argues that he is entitled to a new trial because the district court acted with bias. The record reveals the tension between Wade Muhlhauser and the district court, and we will consider each concern. We note that Wade Muhlhauser offers the instances of alleged bias without challenging the substance of the district court's decisions, except as previously discussed. We review the totality of circumstances regarding the claim of judicial bias. And when reviewing an allegation of judicial bias, this court presumes that the judge discharged all judicial duties in a proper manner. *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998).

The supreme court has cautioned that "the extraordinary prestige of the trial judge . . . creates in turn an extraordinary obligation to refrain from any act [that suggests] a predisposition on the part of the court toward one side or the other in connection with the legal controversy." *Hansen v. St. Paul City Ry.*, 231 Minn. 354, 361, 43 N.W.2d 260, 265 (1950). To this end, judges should act in a manner that "assure[s] that parties have no

reason to think their case is not being fairly judged.” *Pederson v. State*, 649 N.W.2d 161, 164–65 (Minn. 2002). We consider Wade Muhlhauser’s claims under these principles.

Wade Muhlhauser argues that the district court’s exasperation with his conduct shows the court’s bias. At one point the court stated “[y]ou’ve done nothing pursuant to the rules. Absolutely nothing. Everything you’ve given me today now you’ve given me orally. Nothing’s under oath. Nothing’s by affidavit.” But frustration is not bias. *See Gummow v. Gummow*, 375 N.W.2d 30, 34 (Minn. App. 1985) (holding that district court’s evident exasperation with party’s attorney did not amount to bias).

Wade Muhlhauser cites an instance where the district court notes how long it had to wait for him to search for documents during trial. He also asserts that Mary Muhlhauser goaded the court to continue:

The Court: You’re totally unprepared for this, and we’re going-for the time that we spend because you’re totally unprepared, she shouldn’t be paying her lawyer. And I’m making a record. You’ve come in with a thing now from your attorney. Your attorney’s office has been the same for several months, and now you’re [going to] start digging through that. Is that fair?

[Wade Muhlhauser]: I’m trying to prove to you that the reason I fired him was because of a conflict of interest. And all this stuff that they really want, most of it is in here.

The Court: But why didn’t you get that months ago or at least in November when you fired him or he withdr[e]w, whatever it was?

[Wade Muhlhauser]: I just fired the guy. I thought that the attorney that I would hire would help-how do you that-give me your record or that kind of stuff. And I didn’t have a title or nothing until eleven days ago to get one of these until you gave it to me. And now --.

....

[Mary Muhlhauser’s counsel]: Your Honor, I’m going to ask you to instruct Mr. Muhlhauser to move on.

The Court: Well, I'm just [going to] make a record of how long we're waiting.

Then the court continued to express its frustration:

The Court: Now I'm just-just go ahead and work on that point or we'll be all over the board. But I'm just keeping track of how long we're waiting because you're not prepared to proceed here.

[Wade Muhlhauser]: I'm not prepared for this whole procedure. And I'm not able to really represent myself, and I'm only doing it because you're forcing me to. I tried to explain that when we walked in.

As Wade Muhlhauser moved slowly, the court noted how much time had passed:

The Court: For the record, we've been at this one question with the interruptions for --

[Wade Muhlhauser]: And for the record, I'm going through probably eight inches thick of stuff that I just got.

The Court: That's correct. But we've been at it for about four minutes now, and it's 3:29.

....

[Wade Muhlhauser]: I'm not [going to] ask the questions to stall for time. They're pertinent questions that I wrote down in this book.

The Court: All right. But you can't do both. You've got to do one or the other. For the record, it's been another two minutes since 3:29. You can do one or the other.

(At this time, [Wade Muhlhauser] continues to look through his documents)

The Court: It's now 3:33.

[Wade Muhlhauser]: I guess I can't get-seeing it in here right now, so I guess I got to go to other questions.

The Court: I would think so. It's now 3:34. Go ahead.

And again:

The Court: Just so you understand, I'm making a record. We just spent four or five minutes waiting for one document. And, in theory, there's no reason you can't keep us here till midnight with one question, then four minutes of looking for the record, and get the continuance that you're asking for. I'm not saying you're doing that. But I'm simply not-I'm [going to] finish this today. And so it's-there's no point in simply stalling, so go ahead-

....

[Wade Muhlhauser]: You postponed this twice and tried two other things in here and asked us to take a recess. And now you want to rush me and push me through this because you won't grant a continuance because you brought other cases in here and sat them down. I don't think that's fair to me. I really don't.

Wade Muhlhauser also points out that the court chastised him for his lack of preparation:

The Court: It is unfair to other litigants and to the efficient process for you to come in here totally unprepared, go get your documents from your lawyer that you fired a month ago, month and a half ago, whatever it was, and now start looking for them, and then expect to use up this [c]ourt's time for that. And so I'm [going to] give you some time here to do the cross-examination, and if you decide to use it-and that's why I'm making a record. If you decide to use it to look for papers for five minutes, fine, use it that way. But I'm [going to] make a record that you had an opportunity and you simply were not in any way efficient. And at some point, the Court simply has to say move on.

And, [c]ounsel, if you think I'm making things harder for you on appeal, you can tell me; but I-I mean, there has to be some reason to this.

In addition to these alleged examples of bias, Wade Muhlhauser claims that none of his objections were sustained and that Mary Muhlhauser's objections were frequently sustained. But he does not cite to the record showing that he objected. *See* Minn. R. Civ. App. P. 128.02, subd. 1(c) ("Each statement of a material fact shall be accompanied by a reference to the record."). Citations to the record "are particularly important where, as here, the record is extensive." *Hecker v. Hecker*, 543 N.W.2d 678, 681 n.2 (Minn. App. 1996), *aff'd* 568 N.W.2d 705 (Minn. 1997). And he does not allege that those rulings were in error.

Adverse rulings are not a basis for imputing bias to a judge. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986), *cited with approval in Ag Servs. of Am., Inc. v. Schroeder*, 693 N.W.2d 227, 236–37 (Minn. App. 2005); *see also United States v. Anderson*, 433 F.2d 856, 860 (8th Cir. 1970) (“Bias and prejudice must stem from some extrajudicial source and result in an opinion on the merits on some basis other than what the judge has learned from his participation in the case.”).

Wade Muhlhauser also points to a series of leading questions given to Mary Muhlhauser by her counsel as evidence that the court was improperly biased against him. But allowing leading questions is not unreasonable per se. *See* Minn. R. Evid. 611(a), (c) (providing the district court with discretion to permit leading questions to ensure effective presentation of the truth, to avoid needless consumption of time, and as necessary to develop testimony). Evidentiary rulings are within a district court’s discretion. *Colby v. Gibbons*, 276 N.W.2d 170, 175 (Minn. 1979). The district court was expressly concerned with consumption of time and with the completeness of the record; these considerations permit a district court to authorize leading questions. Minn. R. Evid. 611(a)(c). Wade Muhlhauser’s claim that the court’s allowance of leading questions proves its bias fails because the district court relied on legally appropriate factors when allowing the leading questions.

Wade Muhlhauser asserts that the district court also showed its bias by its finding valuing the commercial property. He contends that bias is apparent because the court found that his valuation was unsupported by evidence and was so high as to show his unreasonableness. But he does not offer record evidence to contradict the district court’s conclusion that his valuation lacked record support. The district court’s reliance on the

record shows that it properly acted as a fact-finder, not that it was partial. *Cf. Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 102 (Minn. 1999) (stating that a district court's findings must be supported by the record).

As further example of the court's alleged partiality, Wade Muhlhauser cites an instance where Mary Muhlhauser's attorney instructed her that there was no question before her while she was testifying. He castigates the court's behavior as "ridiculous." But he cites to no legal authority as to why Mary Muhlhauser's attorney could not instruct her not to speak unless responding to a question, or how the instruction shows that the district court was biased.

As more evidence of alleged bias, Wade Muhlhauser asserts that the court excluded his exhibits. But the court excluded his exhibits because he did not produce them in discovery. The district court may exclude evidence because of discovery violations. *Younggren v. Younggren*, 556 N.W.2d 228, 233 (Minn. App. 1996). Wade Muhlhauser contends that had the court been impartial, it would have inquired as to the production of his exhibits. But the district court had already excluded his exhibits because he failed to respond to discovery requests and had not been candid about it. Muhlhauser does not explain why the district court should have inquired about the production of the exhibits that would not be admitted.

Wade Muhlhauser makes other arguments that lack legal support. He implies that after he allegedly fired his previous attorney, Mary Muhlhauser's counsel ought to have indicated to him that he was now under a duty to respond to the interrogatories. He asserts that his noncompliance with discovery requests should have weighed in favor of granting

his motion for continuance. But he offers no legal authority supporting these propositions, and we have found none.

Wade Muhlhauser also complains of instances of improper “coercive mediation”:

The Court: And you’re not asking for maintenance, I assume?

[Wade Muhlhauser]: Yeah, I’m asking for maintenance and I’m asking for child support.

And

The Court: I’m very hesitant to ever tell people how I am [going to] rule; but unless you are unemployed through no fault of your own-I mean, if you get your job back because the railroad is wrong, fine, then you have no claim for maintenance. But if you lose your job because of something you did, I don’t think that would ever withstand a maintenance claim.

[Wade Muhlhauser]: Can I respond?

....

The Court: I am very hesitant to say you have no claim; but you do not have a claim for maintenance and-based on what I know already.

This exchange shows the district court’s frankness, not bias.

Wade Muhlhauser also points to discrepancies between Mary Muhlhauser’s testimony and her property lists. He argues that the court’s conduct, its evidentiary rulings, and its denial of his motion to continue denying him “simple justice” and that he is therefore entitled to a new trial. Although the district court might have exhibited less impatience, its actual conduct is explained by its duty to proceed efficiently. A district court has broad discretion to control the courtroom. *See Rice Park Props. v. Robins, Kaplan, Miller & Ciresi*, 532 N.W.2d 556, 556 (Minn. 1995). The district court explicitly stated on the record

that it intended the record to reflect its impression of Wade Muhlhauser's degree of preparation and candor:

The Court: Just for the record, for appellate review, you are not prepared. Those documents have been there for months, and this is the first time you apparently picked them up today. That is why I did not continue it, because you have not made a good-faith effort to be ready to proceed.

[Wade Muhlhauser explains he recently fired his attorney, and only recently was allowed to sell a motorcycle to obtain funds to hire another attorney.]

The Court: And then just for the record, for purposes of appellate review, discovery was sent. He did not answer it. Most of it could have been answered So that shows that he has absolutely no credibility on that [i.e., the discovery] issue.

[Wade Muhlhauser asks if the court does not want him to continue questioning.]

The Court: No, no, move on. Finish what you're doing there. We have argued out the continuance. There is a record. It's just that by not responding, I want the Appellate Court to understand that I don't believe you. That you are not credible, that you lied about your inability to do this

Although the district court could have attempted to demonstrate more patience, its frustration appears to be a product of Wade Muhlhauser's failure to answer discovery, failure to comply with court orders, and failure to engage candidly. A district court may keep a trial moving forward. *Cf. Minneapolis Star & Tribune Co. v. Kammeyer*, 341 N.W.2d 550, 559 (Minn. 1983) (“[A] trial court must have control of its courtroom.”). A court's own objections and admonishments do not necessarily require a new trial. *See Gum v. Medcalf Ortho. Appliance Co.*, 380 N.W.2d 916, 920 (Minn. App. 1986) (finding that trial judge's repeated sua sponte objections did not constitute prejudicial error). The examples that Wade Muhlhauser cites as showing improper adversarial or biased conduct

are instances in which the district court took active steps to maintain the flow of the trial or to make a record for appellate review. Indeed, but for the district court's descriptions on the record, the extent of Wade Muhlhauser's disorganized and slow progression during the first day of trial would not have been evident on appeal. Wade Muhlhauser was "entitled to a fair trial, not a perfect trial," *id.*, and, despite occasional tension expressed between his counsel and the court, he has not shown that his trial was unfair. The court's findings that he failed to answer discovery requests, comply with court orders, and demonstrate candor are supported by the record, and he has failed to establish that bias, rather than those findings, motivated the district court's determinations. Wade Muhlhauser is not entitled to a new trial.

Affirmed.