STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1252

In re the Marriage of: Nancy Louise Weyker, petitioner,
Respondent,

vs.

James Jay Weyker,
Appellant.

Filed November 23, 2010
Affirmed
Stoneburner, Judge

Hennepin County District Court
File No. 27FA075032

John R. "Rob" Hill, Larkin, Hoffman, Daly & Lindgren Ltd., Minneapolis, Minnesota (for respondent)

James Jay Weyker, Minneapolis, Minnesota (pro se appellant)

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and Stoneburner, Judge.

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

STONEBURNER, Judge

Pro se appellant challenges the district court's dissolution judgment, arguing primarily that the court erred in its determinations regarding custody of the parties' minor children, child support, spousal maintenance, the valuation and distribution of marital assets, and attorney fees. Appellant makes several other unsupported arguments and

assertions on appeal. Because the district court did not abuse its discretion in any of the challenged decisions, we affirm.

FACTS

The marriage of appellant James Weyker (father) and respondent Nancy Weyker (mother) was dissolved by judgment of the district court in May 2009 after a trial at which father was present but chose not to present any evidence. The district court awarded sole legal and physical custody of the parties' minor children to mother, ordered father to pay monthly child support in the amount of $451, reserved the issue of spousal maintenance, valued the parties' marital assets based on father's estimates and mother's evidence, distributed the parties' marital assets approximately equally, and declined to award attorney fees to father.

D E C I S I O N

The district court has broad discretion in making child custody and child support determinations. *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002). We review such determinations under an abuse-of-discretion standard. We also review a district court's decisions regarding spousal maintenance for abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). We review a district court's determination of an asset valuation date for an abuse of discretion, *Grigsby v. Grigsby*, 648 N.W.2d 716, 720 (Minn. App. 2002), but a district court's valuation of an item of property is a finding of fact that will not be set aside unless it is clearly erroneous. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). "A [district] court has broad discretion in evaluating

and dividing property in a marital dissolution and will not be overturned except for abuse of discretion." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002).

I. Custody and child support

Father argues that the district court abused its discretion by failing to recognize Parental Alienation Syndrome. But father presented no evidence at trial regarding Parental Alienation Syndrome. A party may not complain of a ruling on appeal when the party did not provide the district court with the evidence needed to rule in the party's favor. *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). The district court did not abuse its discretion by failing to address this alleged syndrome.

Father argues that the district court abused its discretion by failing to follow the recommendation of the custody evaluator. We disagree. District courts have discretion to decline to follow all or portions of a custody evaluator's recommendations. *Rutanen v. Olson*, 475 N.W.2d 100, 104 (Minn. App. 1991). The court provided specific reasons for declining to follow the custody evaluator's recommendation, including that the facts related to the children's best interests changed significantly after the custody evaluation was submitted. The most significant change was that father had no contact with the children after the recommendation was submitted and refused to further participate in the reunification therapy that was recommended by the guardian ad litem. The district court made extensive and detailed findings on all of the statutory custody factors in Minn. Stat. § 518.17 (2008). Father does not contend that the district court's findings are clearly

erroneous, and the findings support the district court's award of sole legal and physical custody to mother.

Father argues that the district court abused its discretion in setting his child-support obligation at $541 per month based on imputed income, asserting that he cannot afford to make the monthly payments. The court's finding that father has the ability to work is supported by mother's testimony that father did intermittent "handyman" work throughout the marriage. Because neither party presented any evidence of father's income, the district court appropriately determined that father has a potential income of 150% of the then-current federal minimum wage. *See* Minn. Stat. § 518A.32, subd. 2(3) (2008) (providing that a child-support obligor's potential income may be determined by "the amount of income a parent *could* earn working full time at 150 percent of the current federal or state minimum wage, whichever is higher" (emphasis added)). The district court then correctly determined, under Minn. Stat. §§ 518A.34, .35, .41, subd. 5(a) (2008), that the parties' combined parental income for determining child support (PICS) is $6,334; that father's potential income represents a 27% contribution to the combined PICS; and that father's total monthly child-support obligation is therefore $451 (the presumptive child-support obligation under Minn. Stat. §§ 518A.35 (basic support), .41, subd. 5(a) (medical support)). [1]

[1] Father's argument that the district court used an incorrect child-support modification analysis is meritless. A modification analysis was not required because the district court was setting appellant's initial child-support obligation, not modifying it.

II. Spousal maintenance

Father argues that he should be awarded spousal maintenance retroactively and asserts that because he was not awarded maintenance, the condominium awarded to him was lost to foreclosure. Because father did not provide the district court with the evidence it needed to award him maintenance, he may not complain of the district court's failure to do so. *Eisenschenk*, 668 N.W.2d at 243. The district court reserved the issue of maintenance, therefore father is not prevented from seeking future maintenance in district court.

III. Valuation and distribution of marital assets

Contrary to father's argument, the district court's valuations of the homestead and the parties' condominium were not clearly erroneous. The valuation date used by the district court for both properties was January 23, 2008, the date of the prehearing settlement conference in this dissolution matter. *See* Minn. § 518.58, subd. 1 (2008) (stating, in pertinent part, that "[t]he court shall value marital assets for purposes of division between the parties as of the day of the initially scheduled prehearing settlement conference"). The district court's valuation of the homestead ($168,700) is supported by evidence that the assessed value of the homestead for the purposes of taxes payable in 2009 was $168,700. Father did not dispute this evidence or present any evidence of the value of the homestead.

Neither party produced evidence at trial regarding the value of the condominium on the valuation date, but the district court's $90,000 valuation of the condominium is supported by father's opinion of the value contained in his answer and counter-petition

filed on January 7, 2008. An appellate court does not require the district court to be exact in its valuation of assets. "[I]t is only necessary that the value arrived at lies within a reasonable range of figures." *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979).

Father argues the district court, in dividing the parties' assets, unfairly made a downward adjustment to the value of mother's IRA by changing the valuation date of the IRA from January 23, 2008 to December 2008. But the district court acted within its discretion when it changed the valuation date. Minn. Stat. § 518.58, subd. 1, provides that the district court may adjust the valuation of a marital asset "[i]f there is a substantial change in value of the asset between the date of valuation and the final distribution." At the time of the dissolution judgment in May 2009, the value of the IRA had declined by approximately 35% since January 2008, solely due to market conditions. To value the IRA as of January 23, 2008 would have caused mother to bear a disproportionate share of the substantial loss on the marital asset.

Father's argument that the district court distributed the parties' marital assets inequitably is also meritless. The distribution of marital assets in this case resulted in an approximately equal distribution, with father being awarded assets valued slightly higher than the assets awarded to mother. Father fails to explain on appeal why he considers this distribution inequitable.

Father challenges the district court's finding that $10,000 in father's personal bank account was a marital asset. But the finding is supported by mother's testimony that, during the pendency of the dissolution proceeding, father unilaterally withdrew $10,000

from the parties' joint bank account and deposited the funds into a bank account held in his name alone. Therefore the finding is not clearly erroneous.

On appeal, father requests that he be awarded half of all the parties' tax refunds from 2007 (including a stimulus payment apparently received in 2008), and half of the value of various items of personal property awarded to mother. But, at trial, father did not provide the district court with any evidence or argument regarding the division of personal property; therefore he may not complain about the ruling on appeal. *Eisenschenk*, 668 N.W.2d at 243.

IV. Attorney fees

The district court did not abuse its discretion by denying father's request for attorney fees. The party seeking need-based or conduct-based attorney fees has the burden of establishing that he is entitled to the fees. *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001) (stating, "because mother moved for [conduct-based] attorney fees, she had the burden of showing that father's conduct unreasonably contributed to the length or expense of the proceeding"); *see In re Marriage of Sammons*, 642 N.W.2d 450, 458 (Minn. App. 2002) (refusing to award attorney fees because the party failed to establish "the existence of those elements required by section 518.14 that would entitle her to need-based attorneys' fees"). Father has not met his burden of establishing that he is entitled to attorney fees.

V. Other issues

Father's arguments that mother should be required to provide him with health insurance coverage and that the district court erred by not allowing him counsel are

meritless. Father has not provided any authority to support his argument that he is entitled to health insurance provided by mother. At trial, he failed to establish that he is entitled to maintenance or any other form of support from mother. And the record reflects that the district court did not prevent father from seeking counsel and that it granted father leeway as a pro se litigant at trial.

Father makes several additional assertions on appeal including that the district court was biased against him, that the trial transcript is an inaccurate reflection of the proceedings, that the district court erred by denying his request for funds to pay his bills, and, contrary to the district court's order, that he did not waive the 30-day stay of judgment. Because these issues are inadequately briefed, we decline to address them. *Ganguli v. University of Minnesota*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to address allegations unsupported by analysis or citation).

Affirmed.