STATE OF MINNESOTA
IN COURT OF APPEALS
A10-465
A10-631

In re the Marriage of: Ki Ok Anderson, petitioner,
Respondent,

vs.

Philip R. Anderson,
Appellant,
Cass County HHVS, intervenor,
Respondent.

Filed December 7, 2010
Affirmed
Stoneburner, Judge

Cass County District Court
File No. 11FA09338

Ronald S. Cayko, Bemidji, Minnesota (for respondent Anderson)

Philip R. Anderson, Walker, Minnesota (pro se appellant)

Considered and decided by Stoneburner, Presiding Judge; Johnson, Chief Judge; and Bjorkman, Judge.

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

STONEBURNER, Judge

In these consolidated appeals, appellant challenges entry of a judgment of dissolution based on a stipulation of the parties and denial of his motion to vacate the judgment and reopen the dissolution action. We affirm.

FACTS

Prior to the final hearing in their dissolution-of-marriage action, appellant Philip R. Anderson (father) and respondent Ki Ok Anderson (mother), who were both represented by counsel, reached agreement on all of the issues relevant to this appeal. At the hearing, the entire agreement was placed on the record, along with Exhibits A and B. Exhibit A is an unsigned agreement relating to property and debt distribution, and Exhibit B sets out the custody and parenting-time agreement.

In relevant part, the parties agreed to joint legal and physical custody of their three children and a parenting schedule providing that father will drive to Baudette from his residence in Walker for exchanges in Baudette when mother resides on Flag Island. On the record at the February 5, 2010 hearing, mother's counsel reviewed the provisions in each exhibit, including the provision stating that when mother resides on Flag Island, exchanges will be in Baudette.

Both parties were questioned by the district court and counsel about their understanding and acceptance of the agreement. Each party stated that he or she had sufficient time to consult with counsel, understood the agreement and accepted the agreement. Father specifically stated that he had heard the agreement placed on the record and understood the implications of the agreement. Father's counsel asked "[Y]ou are of sound mind today?" Father replied, "[y]es," and added, "I took some medicine today, Your Honor." The district court then asked, "well, anything about the medicine that would make it difficult for you to understand?" Father replied, "no. It hasn't kicked in yet." The district court accepted the agreement, stated that the terms would be

incorporated into the judgment, and asked mother's counsel to prepare Findings of Fact, Conclusions of Law and Order for Judgment.

Father terminated his counsel's representation by telephone on February 10, 2010. Father's counsel filed a notice of withdrawal on February 12, 2010. On the same day, father sought in forma pauperis status and sent a letter to the district court, stating that he never agreed to travel to Baudette twice per month. Father asserted that he had taken "two hydrocodones 500 mg" (Percocet) before the hearing and was "out of it," such that his attorney should have asked for a continuance. Father asked that the proceedings be stayed until March 5, 2010, to allow him to obtain other counsel and that the district court find that the attorneys engaged in deceptive-trade practices. By letter dated February 17, 2010, the district court informed father that he would have to make a proper motion with notice to mother before the district court could consider any action in the case. The letter also notified father of the district court's intent to sign final documents consistent with the stipulation entered on the record.

On February 18, 2010, the district court signed the findings of fact, conclusions of law and order for judgment prepared by mother's attorney, which were consistent with the stipulation placed on the record. Judgment was entered on the same date. Father then moved to stay and reopen the judgment. Father's motion was heard on March 17, 2010. At the hearing, father made numerous arguments, including that the district court had entered judgment prematurely in violation of court rules, that father had not received copies of Exhibits A and B until after the final hearing, that he was not competent at the hearing due to having taken medication, and that his counsel was incompetent. Father

argued about subpoenas he had requested for the March 17 hearing. The district court asked father to specifically state the relief he was requesting. Father replied that he wanted the district court to "amend and correct the judgment" to state that (1) with mother's permission, he should only have to drive to Bemidji, not Baudette, except in the summer; (2) a bill from ACS should be corrected and each party be ordered to pay one-half of the amount owed;[1] and (3) his attorney violated the Deceptive Trade Practices Act. Father also stated that he did not want mother to be liable for past child support owed to father. Mother's attorney objected to reopening the judgment but noted that mother was not liable for past support under the parties' agreement.

On the record, the district court found that issues relating to subpoenas served by father were moot and took the remaining issues under advisement. By order dated March 22, 2010, the district court denied father's motion to reopen the judgment, concluding that father "failed to show that there was fraud, excusable neglect, surprise, newly discovered evidence or any other basis under the rules which would justify reopening the judgment and decree." Attached to the order is the portion of the transcript of the February 5, 2010 hearing, in which father asserts that he understood and agreed to the stipulation as presented in open court and that he was of sound mind and not affected by the medicine he took.

Father's separate appeals challenging the terms of the judgment and the denial of his motion to reopen the judgment have been consolidated.

D E C I S I O N

[1] The stipulated judgment made father responsible for a $436.51 debt to ACS.

On appeal, father's pro se brief and supporting documents assert, often by mere question, nearly twenty issues. Many of the issues asserted are inadequately briefed to permit appellate review. *See 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). And many of the issues asserted by father were not raised in the district court and therefore are not considered on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 584 (Minn. 1988) (stating that this court will generally not consider issues that were not argued to and considered by the district court). Some issues are not supported by anything in the record,[2] or are beyond the scope of the dissolution action and will not be considered in this appeal.[3] We will address the issues adequately raised to permit appeal.

[2] For example, the following issues are without support in the record: (1) mother's attorney coerced father to settle; (2) an e-mail from the Court of Appeal's chief attorney somehow prejudiced father's case; (3) collusion existed between counsel and/or among court staff and counsel, to father's prejudice.

[3] For example, the following claims are beyond the scope of the action: (1) claims that attorneys' misrepresentations violate the Deceptive Trade Practices Act; (2) the assertion that pro se dissolution litigants should have court-appointed counsel at trial and on appeal. *See State ex rel. Ondracek v. Blohm*, 363 N.W.2d 113, 115 (Minn. App. 1985) (finding no statutory or constitutional right to counsel in dissolution proceedings); (3) claims that the district court violated father's rights under the Americans with Disabilities Act; (4) claims that Minn. Stat. § 563.01 (2008) (regarding in forma pauperis status) is unconstitutional as applied to pro se litigants; (5) assertions under 42 U.S.C.§ 1983 (2006).

I. Challenges to district court's dissolution order.

Father asserts, in relevant part, that the district court's entry of judgment is "unlawful" because: (1) father was incompetent at the final hearing; (2) the district court failed to defer entry of judgment for 14 days as required by Minn. R. Gen. Pract. 307(b); (3) father's counsel was incompetent; and (4) the district court adopted verbatim the proposed order prepared by mother's counsel.

A. The record demonstrates that father was sufficiently competent to validate the stipulation.

Father first argues that he was not competent during the February 5, 2010 hearing because he had taken two Percocet pills before the proceeding.[4] A district court judge's finding of competency will not be reversed unless it is a clear abuse of discretion. *Ellington v. Great N. Ry. Co.*, 92 Minn. 470, 475, 100 N.W. 218, 220 (1904).

Father attempted to present the testimony of his treating physician as new evidence supporting his assertion that he was not competent to proceed due to the medication. Father provided a letter to the district court from this physician stating that father reported taking two doses of Percocet and "suffered some mental confusion that lasted approximately 6 to 8 hours." The letter states that the doctor "has been informed that [father] was involved in a legal matter during this period of time and [the doctor] feel[s] that [father] may not have been totally competent during that evaluation."

[4] Father has made inconsistent statements about his own knowledge of the medication he took before the hearing. He has asserted that it was not until after the hearing that he discovered that he had taken Percocet rather than a different medication, but he has also asserted that both counsel were aware that father had taken Percocet before the hearing.

The district court's denial of father's motion to reopen the judgment constitutes an implicit ruling that father was sufficiently competent to proceed at the hearing. That determination is supported by the district court's attachment of the portion of the hearing transcript in which father asserts his understanding of the stipulation and that he was not affected by the medication he had taken at the time of the hearing.

Father does not provide any analysis of the issue of competency. We conclude that, in this case, the level of competency required is the competence to enter into an agreement. "Mere mental weakness does not incapacitate a person from contracting. It is sufficient if he has enough mental capacity to understand, to a reasonable extent, the nature and effect of what he is doing." *Timm v. Schneider*, 203 Minn. 1, 4, 279 N.W. 754, 755 (1938) (quotation omitted). The physician's speculation that father may not have been "totally" competent at the time of the hearing is irrelevant to father's capacity to contract. There is no indication in the transcript that father was not able to understand, to a reasonable extent, the nature and the effect of the stipulation. Because the judge observed father at the hearing and questioned father to determine that he was sufficiently competent, in the absence of contrary evidence, we cannot conclude that the district court abused its discretion or that father is entitled to any relief based on his current assertion that he was impaired by the medication.

B. Premature entry of the judgment in violation of Minn. R. Gen. Pract. 307(b) is harmless error.

Father argues that the district court improperly entered judgment 13 days after the stipulation was entered on the record in violation of Minn. Gen. R. Pract. 307(b)[5] which provides, in relevant part, that

> [w]here a stipulation has been entered orally upon the record, the lawyer directed to prepare the decree shall submit it to the court with a copy to each party. . . . Entry of the decree shall be deferred for 14 days to allow for objections unless the decree contains the written approval of the lawyer for each party.

Interpretation and application of procedural rules are legal issues that are reviewed de novo. *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 153 (Minn. 2001).

Because the proposed judgment did not contain the written approval of father, or father's attorney before that attorney withdrew, the district court violated the rule by entering the judgment 13 days, rather than 14 days after submission. But the purpose of rule 307(b) is to allow objections, and once objections are made, a timing defect is not fatal. *See Clark v. Clark*, 642 N.W.2d 459, 465 (Minn. App. 2002) (holding that failure to comply with rule 307(b) is harmless error when the litigant receives the review that he or she would have received had the rule been followed). In this case, father immediately objected to entry of judgment based on the stipulation and does not allege any prejudice

[5] At the hearing on father's motion to reopen the judgment, father cited Minn. R. Gen. Pract. 308 as requiring the 14-day delay. Mother's counsel correctly pointed out that there is no such requirement in rule 308, but incorrectly stated that no such requirement exists. Father's written submissions correctly identified rule 307(b).

from the violation. We therefore conclude that violation of rule 307(b) was harmless error. *See* Minn. R. Civ. P. 61 (requiring that harmless errors be ignored).

C. The record does not support father's allegations of attorney incompetence.

Father essentially asserts that his attorney was incompetent. The two allegations made by father in support of this argument are that his counsel lost the witness list before trial and therefore did not call any witnesses, and that his attorney failed to move for a continuance after father informed his counsel that he had taken Percocet before the hearing.

Father cites *Shirk v. Shirk*, 551 N.W.2d 504, 506 (Minn. App. 1996) (holding that "incompetent representation is by itself a sufficient basis for vacating" a stipulation in a dissolution matter). In *Shirk*, this court affirmed the order of the district court that set aside a stipulation in a dissolution matter based on a finding that counsel's sexual advances toward his client, coupled with counsel's haste to end the case due to counsel's own financial needs, precluded a finding of competency of counsel. But the facts of *Shirk* are distinguishable and, more importantly, *Shirk* has been reversed on this point of law. *See Shirk v. Shirk*, 561 N.W.2d 519, 523 (Minn. 1997) (overruling the Minnesota Court of Appeals' interpretation of *Shirk*, holding that the alleged "ethical violation does not constitute grounds for reopening the judgment and decree").

And father does not clarify how any prejudice resulted from counsel's alleged loss of the witness list in light of the parties' stipulation that eliminated the need for witnesses. The record does not support father's assertion that his attorney knew what medication

father took before the hearing or that his attorney had any indication that father was not sufficiently competent to proceed. Father has failed to establish that he is entitled to reopen the judgment due to incompetent counsel.

D. The district court did not commit reversible error by adopting verbatim the proposed findings of fact, conclusions of law, and order for judgment prepared by mother's attorney.

At the close of the dissolution hearing, the district court asked mother's counsel to prepare the final documents. Father now challenges the district court's verbatim adoption of the documents prepared. This court has criticized the verbatim adoption of one party's proposed findings, conclusions and order in a *contested* matter, but even in contested matters, we have never held that such practice is reversible error per se. *See Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992) (strongly cautioning that "wholesale adoption of one party's findings and conclusions raises the question of whether the district court independently evaluated each party's testimony and evidence," but reiterating that verbatim adoption is not reversible error per se). We are not aware of any authority discouraging verbatim adoption of documents prepared at the district court's direction and based on the stipulation of the parties. We find no merit in father's assertion that the district court committed any error by adopting the documents that accurately reflected the agreement submitted to the district court.

II. Challenges to the denial of father's motion to reopen the dissolution order.

Father challenges the denial of his motion to reopen the judgment, arguing that (1) the court should have appointed counsel to represent him; (2) his rights to substantive and procedural due process were violated when he was not allowed to present evidence or

witnesses at the court's expense and when the court did not explain witness procedures to him; and (3) an e-mail from this court's chief staff attorney created some disadvantage during the hearing and illustrated collusion to disadvantage father. As noted above, most of these assertions are not addressed on appeal because they are outside the scope of the dissolution, unsupported by any evidence in the record and/or inadequately briefed.

The district court found that appellant did not establish grounds on which the judgment and decree could be reopened. A district court's findings of fact are not set aside unless clearly erroneous. Minn. R. Civ. P. 52.01; *Kucera v. Kucera*, 275 Minn. 252, 254–55, 146 N.W.2d 181, 183 (1966). A decision not to reopen the judgment and decree will not be disturbed absent an abuse of discretion. *Maranda v. Maranda*, 449 N.W.2d 158, 164 (Minn. 1989).

Father argues that at the hearing on his motion to reopen the judgment, the district court should have allowed him to call witnesses, that the district court should have explained the procedures for presenting witnesses, and that father was not properly notified when the district court granted him in forma pauperis status, which, father argues, would have allowed him to obtain the funds to properly secure his witnesses. Father argues that not allowing him to present live testimony violates his right to due process.

"[T]he use of oral testimony upon the hearing of a motion has been said to be discretionary with the district court and not a matter of right." *Saturnini v. Saturnini*, 260 Minn. 494, 496, 110 N.W.2d 480, 482 (1961). Hearings on family law motions are governed by Minn. R. Gen. Pract. 303.03(d), which provides, in relevant part, that

"[m]otions . . . shall be submitted on affidavits, exhibits, documents subpoenaed to the hearing, memoranda, and arguments of counsel unless otherwise ordered by the court for good cause shown." Father testified that his doctor and an unnamed detective were prepared to testify that on the day of the final divorce hearing, appellant was incompetent because he had taken medication. The information from father's doctor is discussed above. Because the district court personally observed father at the hearing and questioned him about his understanding of the agreement and effect of medication he had taken, the district court did not abuse its discretion by declining to allow the testimony of any other person who may have observed father.

III. Father's additional claims.

To the extent that father has made allegations and assertions on appeal that are not specifically mentioned in this opinion, we have declined to review such assertions as insufficiently articulated or analyzed to permit meaningful review. Despite father's dissatisfaction with the process and result of the dissolution action, we conclude that he has failed to present any basis to vacate, reopen, or amend the judgment. The district court retains jurisdiction over parenting issues, and the law permits modification of parenting agreements if the statutory bases for modification are met. *See* Minn. Stat. § 518.18 (2008) (governing modification of custody orders and parenting plans).

Affirmed.