STATE OF MINNESOTA

IN SUPREME COURT

A20-1234

Court of Appeals

Chutich, J.
Dissenting, Hudson, J.
Gildea, C.J., Anderson, J.

Rebecca Ellen Bender,

Respondent,

vs.

Filed: March 9, 2022
Office of Appellate Courts

Peter Howard Bernhard,

Appellant.

Rebecca E. Bender, Minnetonka, Minnesota, pro se.

Michael P. Boulette, O. Joseph Balthazor, Jr., Yuka Shiotani, Taft Stettinius & Hollister LLP, Minneapolis, Minnesota, for appellant.

S Y L L A B U S

1. Under Minnesota Statutes section 518.145, subdivision 2(2) (2020), a district court in a marriage dissolution case or child support matter may grant such relief as may be just based on newly discovered evidence that comes into existence after the underlying decision from which a party seeks relief. In exercising its discretion whether to admit this newly discovered evidence, the district court must consider whether the evidence could not have been discovered before trial or hearing by the exercise of due diligence, is relevant

and admissible, and is not merely collateral, cumulative, or impeaching but is likely to affect the outcome of the proceeding.

2. The court of appeals did not err in ordering the district court to consider whether the movant's newly discovered evidence warranted relief under Minnesota Statutes section 518.145, subdivision 2(2).

Affirmed.

O P I N I O N

CHUTICH, Justice.

This case raises the following issues: (1) whether a party to a marriage dissolution- or child support-related case may seek relief from judgment based on newly discovered evidence under Minnesota Statutes section 518.145, subdivision 2(2) (2020) if the evidence came into existence after the underlying decision from which that party seeks relief, and (2) whether the court of appeals erred in ordering the district court to consider the post-decision evidence submitted by the movant. These issues arise from marriage dissolution and child support proceedings between Rebecca Ellen Bender and Peter Bernhard. Years after their divorce, Bender moved the district court to extend Bernhard's child support payments for their special needs child beyond the child's 21st birthday. After the district court denied the motion and the court of appeals affirmed, Bender moved to modify the child support termination order based on "newly discovered evidence" under Minnesota Statutes section 518.145, subdivision 2(2) and Minnesota Rule of Civil Procedure 60.02. The district court denied the motion, but the court of appeals reversed and remanded.

Bernhard now seeks review of the court of appeals' nonprecedential opinion instructing the district court to consider whether Bender presented newly discovered evidence warranting relief from a child support order. Bernhard argues that newly discovered evidence must exist at the time of an underlying decision, and because the evidence at issue postdated the district court order, it does not qualify as newly discovered evidence. He further asserts that the district court did not abuse its discretion in declining to reconsider its order terminating child support, and therefore the court of appeals erred when it held otherwise. Because we conclude that a district court has discretion under section 518.145 to consider, as may be just, newly discovered evidence that arises after the court's underlying decision, we also hold that the district court should have determined whether Bender's proffered evidence warranted relief under that rule. Consequently, we affirm the court of appeals' decision remanding this case to the district court.

FACTS

Rebecca Bender and Peter Bernhard are the parents of an adult child with special needs.[1] When the parents divorced in 2004, the child, then age 5, displayed developmental delays consistent with autism. The district court ordered Bernhard to pay child support "until [the child's] emancipation or further order from the court." *See Bender v. Bernhard* (*Bender I*), No. A19-1611, 2020 WL 3409243, at *1 (Minn. App. June 22, 2020).

[1] Bender filed a motion to protect the child's identity in our opinion in this case. Because we have referred to the "child" in this opinion, rather than by reference to the child's name or initials, the motion is denied as moot, and we express no view on the merits of the motion or the arguments raised.

The child lived with Bender after the divorce. As the child approached high school graduation, a 2016 assessment from Behavior Care Specialists, Inc. validated a diagnosis of Autism Spectrum Disorder. The assessment showed that the child excelled academically but struggled socially. Shortly after this assessment, Bender requested that the district court order that child support continue beyond the child's 18th birthday. The child support magistrate found that the child was incapable of self-support, and consequently ordered Bernhard to continue paying child support until the child's 21st birthday or until further order. The trial court adopted the magistrate's order. *Id.*

Before turning 21, the child applied for Social Security disability benefits on June 18, 2019. Later that month, Bender moved the district court to extend child support payments beyond the adult child's 21st birthday. She contended that the adult child remained incapable of self-support, and that Minnesota Statutes section 518A.26, subdivision 5, required the district court to characterize him as a "child" entitled to continued support. *See* Minn. Stat. § 518A.26, subd. 5 (2020) (providing that an adult child may be considered a "child" and eligible for child support if the adult child is "an individual who, by reason of physical or mental condition, is incapable of self-support").

In her motion to extend child support, Bender explicitly referred to the adult child's pending Social Security disability application. She also submitted the 2016 Behavior Care Specialists assessment showing that the adult child's social skills were in the bottom 20 percent of his class. She additionally submitted a 2019 diagnostic assessment saying that the adult child showed "marked impairment in social interaction." Bernhard's child

support obligations terminated in early August 2019 when the child turned 21. Later that month, the district court heard arguments on extending his child support obligations.

On September 10, 2019, the district court issued an order declining to extend child support past the adult child's 21st birthday. Referencing section 518A.26, the district court stated that this definitional section did not define "incapable of self-support," but stated that courts tend to focus on the parent's right to control the child's actions. A magistrate had previously found the adult child to be incapable of self-support in June 2017, but the district court noted that the magistrate declined to require that the determination be permanent. Rather, the district court reasoned that the law entitled it to determine the adult child's present self-sufficiency based on the evidence before it. The court specifically acknowledged that the adult child faced "certain social challenges and limitations," and needed "assistance in strengthening his abilities to live independently." The court nevertheless found that those impediments did not "rise to a level that, by reason of physical or mental condition, the child is incapable of self-support." Further reasoning that Bender had no right to control the adult child's actions, the court determined that the adult child was "capable of self-support," and it therefore declined to extend Bernhard's child support obligations.

Bender appealed the district court's decision. On May 1, 2020 (while the case was pending at the court of appeals) the Social Security Administration found the adult child to be eligible for Social Security disability payments. This determination meant that the Social Security Administration had concluded that the adult child was incapable of "substantial gainful activity." *See* 42 U.S.C. § 1382c(a)(3)(A).

Shortly thereafter, on June 22, 2020, the court of appeals affirmed the district court's decision denying continued child support. *Bender I*, 2020 WL 3409243, at *1. The court of appeals reasoned that a diagnosed "physical or mental condition does not necessarily mean that the individual is incapable of self-support." *Id.* at *3. Although the court noted that the district court record showed that the adult child faced challenges, the court also cited record evidence of the adult child's academic success and interest in pursuing a career. *Id.* The court of appeals acknowledged that Bender's district court evidence might have supported "another outcome," but the court ultimately decided that the district court did not abuse its discretion in terminating child support. *Id.*

In August of 2020, Bender moved under section 518.145 and Minnesota Rule of Civil Procedure 60.02 to modify the child support termination order based on "newly discovered evidence." That evidence consisted of a May 1, 2020, Social Security Administration letter informing the adult child that he was eligible for disability payments, and a report explaining the rationale for the Social Security disability determination. Bender asserted that the Social Security administration's "in-depth," 11-month "investigation and analysis" had determined that the adult child was "not capable of substantial gainful activity." She also stated that the Social Security Administration appointed her as representative payee to handle the adult child's disability payments, which she alleged proved that the adult child was "incapable" of managing the child's disability payments. Bender therefore maintained that the Social Security evidence contradicted the district court's previous determination that the adult child was "capable of self-support"

under section 518A.26, subdivision 5. She consequently requested that the district court review and reverse its previous decision terminating child support.

In September of 2020, the district court denied Bender's motion to consider the proffered evidence. In so deciding, the district court noted that it was aware of the adult child's pending Social Security application when it initially declined to extend child support. The district court further explained that the information in the Social Security evidence essentially restated the information that it had considered in its initial determination. The district court therefore found that the Social Security evidence was not "new," and it consequently treated Bender's motion as a motion for reconsideration, rather than as a motion for relief because of newly discovered evidence. The court determined that granting a motion for reconsideration requires "compelling circumstances." Finding no such circumstances, the district court denied her motion.

Bender appealed a second time. *Bender v. Bernhard* (*Bender II*), No. A20-1234, 2021 WL 1525239, at *2 (Minn. App. Apr. 14, 2021). On her second appeal, the court of appeals considered whether the district court abused its discretion in refusing to reopen the child-support order to review the Social Security evidence. *Id.* at *3. The court of appeals focused its analysis on the district court's determination that the Social Security evidence was not "new evidence," but merely restated the information underlying the district court's initial decision. *Id.* The court of appeals noted that several psychologist entries in the Social Security evidence *postdated* the district court's initial decision and included information that the adult child "was experiencing difficulties at work related to his social skills and behavior." *Id.* The court also noted that the Social Security disability

determination was *itself* new evidence regarding the child's ability to be self-supporting. *Id.* Given that some psychological entries and the Social Security determination itself postdated the district court's initial determination, the court of appeals held that the district court's finding that Bender had presented "no new evidence" contradicted "logic and facts in the record" and was an abuse of discretion. *Id.* In addition, the court of appeals concluded that the district court erred in treating Bender's motion as a motion for reconsideration and not applying section 518.145, subdivision 2(2). *Id*. at *2. The court reversed and remanded, ordering the district court to "analyze whether this newly discovered evidence warrants relief" under section 518.145, subdivision 2(2). *Id.* at *4. We granted Bernhard's petition for review.

ANALYSIS

An appellate court will not reverse a district court's decision to grant or withhold relief under section 518.145 and Rule 60.02 except for an abuse of discretion. *Peterson v. Eishen*, 512 N.W.2d 338, 341 (Minn. 1994) ("The same abuse of discretion standard of review applies to decisions under both provisions.") (overruled on other grounds by *Bode v. Minn. Dep't. of Nat. Res.*, 612 N.W.2d 862, 868 (Minn. 2000)). A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is "against logic and the facts on record." *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

I.

The controlling issue here—which Bernhard's petition for review asks us to address—is whether a party requesting relief from judgment under Minnesota Statutes

section 518.145, subdivision 2(2), which governs reopening a marriage dissolution-related judgment for newly discovered evidence, may base the request on evidence arising after the decision from which they seek relief. Accordingly, we address that issue first.

Minnesota law generally precludes parties from reopening marital judgments and decrees after they exhaust their appellate remedies. Minn. Stat. § 518.145, subd. 1 (2020). But another statutory provision addresses the reopening of child-support awards and expressly provides that subdivision 2(2) of section 518.145 "applies to awards of child support." Minn. Stat. § 518A.38, subd. 6 (2020). Section 518.145, subdivision 2(2) allows a court to "relieve a party from a judgment and decree, order, or proceeding" for one of five reasons, including, as pertinent here, newly discovered evidence. Section 518.145, subdivision 2(2) provides in relevant part:

> On motion and upon terms as are just, the court may relieve a party from a judgment and decree, order, or proceeding under this chapter, . . . and may order a new trial or grant other relief as may be just for the following reasons:
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> . . .
>
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under the Rules of Civil Procedure, rule 59.03[.][2]

A motion under this subdivision must be made "within a reasonable time, and . . . not more than one year after the judgment and decree, order, or proceeding was entered or taken." *Id.*, subd. 2.

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[2] Minnesota Rule of Civil Procedure 59.03 states in pertinent part: "A notice of motion for a new trial shall be served within 30 days after a general verdict or service of notice by a party of the filing of the decision or order."

This language mirrors the text of Rule 60.02(b) of the Minnesota Rules of Civil Procedure. Minn. R. Civ. P. 60.02(b).[3] Notably, when the newly discovered evidence provision applies, both the statute and the rule emphasize that the district court "upon terms as are just, . . . may order a new trial or grant other relief as may be just." Minn. Stat. § 518.145; Minn. R. Civ. P. 60.02. By their emphasis on justice, the statute and the rule enable district courts to balance the systemic need for finality of judgments against circumstances when an injustice is likely to result if newly discovered evidence is not considered. *See Anderson v. Anderson*, 179 N.W.2d 718, 722 (Minn. 1970). Because Rule 60.02 and section 518.145 are virtually "identical," we use cases evaluating Rule 60.02 when addressing the application of section 518.145.[4] *See, e.g.*, *Peterson*, 512 N.W.2d at 341.

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[3] Minn. R. Civ. P. 60.02 provides in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final judgment (other than a marriage dissolution decree), order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons:
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> * * *
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> (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial pursuant to Rule 59.03 . . . .

[4] We recognize that other provisions of law govern newly discovered evidence. For example, Minnesota Statutes section 590.01, subdivision 4(b)(2) (2020), permits persons convicted of crimes to seek postconviction relief based on newly discovered evidence. And Minnesota Rule of Civil Procedure 59.01(d) permits a new trial to be granted based on "[m]aterial evidence newly discovered, which with reasonable diligence could not have been found and produced at the trial." Because those provisions are not directly implicated here, we express no opinion on them.

To warrant relief under section 518.145, subdivision 2(2) and rule 60.02(b), Minnesota courts hold that (1) newly discovered evidence must not have been discoverable before the relevant proceeding "by the exercise of reasonable diligence," *Frazier v. Burlington Northern Santa Fe Corp.*, 811 N.W.2d 618, 631 (Minn. 2012) (internal quotation omitted); (2) the "evidence must be relevant and admissible," *id.*; and (3) the evidence must not be "cumulative, contradictory, or impeaching," but "must be such as will likely affect the outcome of the case." *Swanson v. Williams*, 228 N.W.2d 860, 862 (Minn. 1975). Whether these factors have been met is within the trial court's sound discretion. *Frazier*, 811 N.W.2d at 631.

Both parties recognize the prominence of our decision in *Swanson* in further setting forth the governing legal principles for a motion for relief of judgment based on newly discovered evidence, but disagree as to the rule established by that case and its application to the facts here.[5] Bernhard asserts that *Swanson* stands for the rule that when parties seek relief from judgment based on newly discovered evidence, that evidence must exist at the time of the underlying decision. Citing another one of our cases—*In re Wood*, 167 N.W. 358 (Minn. 1918)—Bernhard claims that the only exception to this rule arises when post-decision evidence is so compelling that it would *require* a different outcome. Bender counters that *Swanson* only purports to articulate a general rule, not an absolute one that prohibits the granting of relief based on facts arising after the original proceeding.

[5] *Swanson*'s applicability to the facts here was not addressed by the court of appeals.

In *Swanson*, we stated that the newly discovered evidence referenced in Rule 60.02(2) must generally exist at the time of the underlying decision or judgment. There, a patient bringing a medical malpractice suit alleged that certain drugs caused him to go blind. *Swanson*, 228 N.W.2d at 861. At trial, his expert witnesses testified that an ulcer, not the drugs, caused his blindness. *Id.* at 861–62. The trial court dismissed the case with prejudice. *Id.* at 861. After trial, the plaintiff consulted with, and obtained a new expert who was willing to testify that the drugs caused the blindness. *Id.* at 862. The plaintiff made an untimely motion for a new trial—which we treated as a motion under Rule 60.02—alleging in part that the new expert's testimony was newly discovered evidence. *Id.* at 861−62.

After noting that the trial court had the "unique opportunity to hear the testimony at trial over a period of several days and to evaluate the request for a new trial in light of the evidence adduced," we concluded that the court properly exercised its discretion in denying the motion. *Id.* at 862. We then stated: "[*g*]*enerally*, to be 'newly discovered evidence' within the meaning of Rule 60.02(2) evidence must have been in existence at the time of trial but not known to the party at that time." *Id.* at 862 (emphasis added). We further held that, under that definition, newly discovered evidence "would not include expert testimony procured following trial." *Id.* We were unpersuaded by the plaintiff's argument that the difficulty of obtaining expert medical testimony in malpractice cases justified holding that a "trial court loses its discretion in evaluating new trial motions." *Id.*

Notably, we specifically declined to base our affirmance on existing authority holding that "expert testimony cannot be considered newly discovered evidence under any

circumstances." *Id.* at 862–63. Rather than applying this bright-line rule, we held instead that "the trial court properly exercised its discretion in denying plaintiff's motion for a new trial on the ground[] of . . . newly discovered evidence." *Id.*

The court of appeals has rigorously applied *Swanson* to exclude post-decision evidence from the definition of newly discovered evidence under section 518.145, and Rule 60.02. For instance, in *Adams v. Adams*, the court of appeals considered whether a man's post-divorce loss of employment was "newly discovered evidence" that required the district court to reconsider his request for spousal maintenance. No. A17-1526, 2018 WL 4201173, at *2 (Minn. App. Sept. 4, 2018). Citing the rule in *Swanson*, the court of appeals concluded that the party's "post-trial lay-off is not considered 'newly discovered evidence' " because "the lay-off did not actually occur until after the . . . district court's issuance of the dissolution decree." *Id.* at *3. In fact, some court of appeals cases treat *Swanson*'s rule as an absolute prohibition on considering post-decision evidence as newly discovered, rather than as a general one.[6] *See, e.g.*, *Life Clinic PA v. Anderson*, No. A20-1377, 2021 WL 2201477, at *2 (Minn. App. June 1, 2021) (finding that emails

[6] Distinct from the circumstances in *Adams* and *Life Clinic PA* is *Kozak v. Weis*, 348 N.W.2d 798, 802–03 (Minn. App. 1984), which is more factually analogous to *Swanson* itself. In the same way that in *Swanson* expert testimony procured after trial was deemed not to be "newly discovered evidence," in *Kozak*, the court of appeals observed that the party's efforts of "[c]ontact[ing] of the expert, surveying of the land, and establishment of the reputed boundary . . . were all accomplished after trial." *Kozak*, 348 N.W.2d at 803. The court of appeals also emphasized that "[t]he exercise of the same diligence prior to trial may have produced" the same result produced after trial. *Id.* The court of appeals concluded that, "[a]s such, the evidence was not newly discovered and the trial court did not err in denying appellant's motion for a new trial." *Id.*

sent after a trial are not newly discovered evidence because "newly discovered evidence *must* have been in existence at the time of the underlying proceeding" (emphasis added)).

We do not view *Swanson*, with its emphasis on the discretion that the trial court retains when evaluating a request for a new trial, to have implicitly overruled previous Minnesota caselaw that explicitly held that post-decision evidence *can* be newly discovered evidence. In *Wood*, for example, we considered a motion for a new trial to determine the necessity of a guardian. 167 N.W. at 359. In a previous trial, the brother of David Wood had moved the district court to appoint a guardian to manage Wood's funds, stating that Wood was "below normal in mentality, and physically incapable of earning a living." *Id.* The district court had denied the motion for a guardian, "moved largely by the fact that there was no evidence having any tendency to show that any of . . . [Wood's money] would be dissipated." *Id.* After the trial, Wood had allegedly transferred "all" of his money to his sister, leaving "[n]o provision . . . for his future support." *Id.*

Despite the new evidence, the district court denied the brother's motion for a new trial. *Id.* We reversed, stating flatly that "[n]ewly discovered evidence is any evidence newly discovered, whether the facts existed at the time of the trial or not." *Id.* Although we recognized that the motion "rests largely in the discretion of the trial court," given Wood's transfer of all of his means of support, we concluded that the trial court should order a new trial to see "that the justice of this claim is properly determined." *Id.*

We affirmed *Wood*'s rule that post-decision evidence may be newly discovered evidence in two other cases. In *State v. Watrous*, 224 N.W. 257, 257 (Minn. 1929), we cited *Wood* for the proposition that a motion for a new trial "may be supported by facts

arising after the trial." Similarly, in *Gau v. J. Borgerding & Co.*, 225 N.W. 22, 22 (Minn. 1929), we cited *Watrous* in considering a motion for a new trial based on newly discovered evidence even though the evidence consisted "solely of happenings subsequent to the trial." In *Gau*, however, we noted a "special need for caution" when newly discovered evidence arises after the decision from which a party seeks relief. *Id.*

Wood, *Watrous*, and *Gau* admittedly preceded our adoption of the Minnesota Rules of Civil Procedure. Our decision in *Swanson*, however, *followed* the adoption of the rules of civil procedure by over two decades. *See Swanson*, 228 N.W.2d at 860. And in *Swanson*, we explicitly declined to adopt a categorical prohibition on post-decision evidence. *Id.* at 862–63. Instead, we adopted a *general* rule, and emphasized the need to preserve trial court discretion. *Id.*

To be sure, the need for caution in reopening proceedings based upon happenings after a hearing or trial, as recognized in *Gau*, 225 N.W. at 22, is also reflected in *Swanson's* statement that newly discovered evidence "[g]enerally . . . must have been in existence at the time of trial." *Swanson*, 228 N.W.2d at 862. But *Swanson* did not overrule past cases or interpret Rule 60.02(2) as creating an inflexible rule precluding post-decision evidence from ever qualifying as newly discovered evidence that can justify reopening a proceeding. To the contrary, *Swanson* twice emphasized the trial court's discretion to determine whether such evidence justified reopening proceedings and explicitly declined to hold that "expert testimony cannot be considered newly discovered under any circumstances." *Id.* at 862–63. Instead of creating a bright-line rule prohibiting the granting of relief based on facts arising after the original proceeding, *Swanson* focused on the district court's broad

discretion to consider an assertion of newly discovered evidence under the circumstances of that particular case, which involved an expert witness who the plaintiff discovered only after an unsuccessful trial had already occurred.

Accordingly, district courts, in exercising their discretion in weighing whether post-decision evidence is newly discovered evidence that justifies relief "as may be just," are guided by the timing requirements of section 518.145 and the standard rules concerning newly discovered evidence. Section 518.145 preserves the important principles of judicial finality and certainty by requiring that a motion for relief must be made "within a reasonable time," and, in any event, "not more than one year after the judgment and decree, order, or proceeding was entered or taken." Minn. Stat. § 518.145, subd. 2. And the standard rules concerning newly discovered evidence require that: (1) newly discovered evidence must not have been discoverable before the relevant proceeding "by the exercise of reasonable diligence," *Frazier*, 811 N.W.2d at 631 (internal quotation omitted); (2) the "evidence must be relevant and admissible," *id.*; and (3) the evidence must not be "cumulative, contradictory, or impeaching," but "must be such as will likely affect the outcome of the case." *Swanson*, 228 N.W.2d at 862. It is these principles—not a bright-line rule prohibiting newly discovered evidence from including facts not existing at the time of the underlying judgment—that are to guide the district court's exercise of its discretion.[7]

[7] To the extent the court of appeals has interpreted *Swanson* as absolutely requiring newly discovered evidence to exist at the time of the underlying decision, those opinions are overruled.

II.

We next turn to the issue of whether the court of appeals erred in requiring the district court to reopen the child-support order and consider Bender's newly discovered Social Security evidence. We hold that the court of appeals did not err. Under *Swanson*'s general rule, which we reaffirm, newly discovered evidence can consist of post-decision evidence. Rather than evaluating Bender's newly discovered evidence under the appropriate standard as articulated above, the district court found that her asserted newly discovered evidence was not "new." In so finding, the district court contradicted facts in the record because elements of the Social Security determination (as well as the determination itself and the appointment of Bender as the child's representative payee) postdated the district court's initial child support decision, and therefore *were* new.

Further, by evaluating Bender's motion as a motion to reconsider, rather than a motion for relief based on newly discovered evidence, the district court misapplied the law. Because the standard for a motion to reconsider is sufficiently distinct from the factors to be considered when evaluating a motion for relief based upon newly discovered evidence, we cannot evaluate whether the district court properly exercised its discretion here. In sum, in contradicting facts in the record and misapplying the law, the district court abused its discretion. *Dobrin*, 569 N.W.2d at 202. Accordingly, we agree with the court of appeals that reversal of the district court's order and remand for consideration under the proper standard is required.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

D I S S E N T

HUDSON, Justice (dissenting).

I.

We have not previously addressed whether newly discovered evidence must exist at the time of trial for the purposes of Minnesota Statutes section 518.145 (2020), which is applicable only to marriage dissolution and legal separation decrees. Section 518.45 closely resembles Minnesota Rules of Civil Procedure Rule 60.02, however, which applies to all other civil matters. Using identical language, each provides for relief based on "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial." Minn. Stat. § 518.145, subd. 2(2); *see also* Minn. R. Civ. P. 60.02(b) (capitalizing "newly").

"Generally, to be 'newly discovered evidence' within the meaning of Rule 60.02(2) evidence must have been in existence at the time of trial." *Swanson v. Williams*, 228 N.W.2d 860, 862 (Minn. 1975). Court of appeals decisions applying Rule 60.02 treat this principle as nearly or completely absolute. *See, e.g.*, *Kozak v. Weis*, 348 N.W.2d 798, 802–03 (Minn. App. 1984) (relying on *Swanson*); *Life Clinic PA v. Anderson*, No. A20-1377, 2021 WL 2201477, at *2 (Minn. App. June 1, 2021) (citing *Swanson*, 228 N.W.2d at 862) ("newly discovered evidence *must* have been in existence at the time of the underlying proceeding" (emphasis added)). This is for good reason: the protection of judicial finality and certainty. Courts in foreign jurisdictions that have addressed this issue overwhelmingly agree. *See, e.g.*, *Swope v. Siegel-Robert, Inc.*, 243 F.3d 486, 498 (8th Cir. 2001) ("[The federal analogue to Rule 60.02] permits consideration only of facts

which were in existence at the time of trial."); *Rivera v. M/T Fossarina*, 840 F.2d 152, 156 (1st Cir. 1988) ("[N]ewly discovered evidence normally refers to evidence of facts in existence at the time of trial." (internal quotation marks omitted)); *Gonzalez v. Gannett Satellite Information Network, Inc.*, 903 F. Supp. 329, 332 (N.D.N.Y. 1995), *aff'd*, 101 F.3d 109 (2d Cir. 1996); *Gen. Universal Sys., Inc. v. Lee*, 379 F.3d 131, 158 (5th Cir. 2004) ("[N]ewly discovered evidence must be in existence at the time of trial." (internal quotation marks omitted)); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996, 1005 (9th Cir. 2007).

The court embraces a more than 100-year-old guardianship case, *In re Wood*, for its proposition that "[n]ewly discovered evidence is any evidence newly discovered, *whether the facts existed at the time of the trial* or not." 167 N.W. 358, 359 (Minn. 1918) (emphasis added). But today, Rule 60.02 governs when a new trial may be granted in guardianship cases like *Wood*.[1] The evolution of the law in the intervening years has rendered *Wood* inapplicable; to apply its outdated, pre-Minnesota Rules of Civil Procedure principle here would carve out an unreasonable exception to an otherwise expedient and long-settled rule.[2] Indeed, Rule 1 describing the scope of the rules says that "[t]hese Rules govern the

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[1] We do not speculate regarding how the facts in *Wood* would be analyzed and whether relief would be granted under Rule 60.02 today. It is notable, however, that Rule 60.02 permits courts to grant relief for "[a]ny other reason" meriting relief—such as where the interest of justice would require it. Minn. R. Civ. P. 60.02(f). Conspicuously, there is no analogous provision in the otherwise-similar Minnesota Statutes section 518.145, subdivision 2.

[2] The court cites two other cases in which we affirmed *Wood*, but those cases were decided close in time to *Wood* and still predate the 1951 adoption of the Minnesota Rules of Civil Procedure by more than two decades. *State v. Watrous*, 224 N.W. 257 (Minn.

procedure in the district courts," Minn. R. Civ. P. 1, effectively abrogating the conflicting court-created rule in *Wood*. *Wood*, therefore, is distinguishable from and inapplicable to the case before us.

Consequently, for the purposes of Minnesota Statutes section 518.145, subdivision 2(2), evidence that is "newly discovered" must have existed at the time of the underlying decision. Evidence arising after the underlying decision is merely *new*—not *newly discovered*—and, therefore, cannot merit relief. To decide otherwise would weaken the purpose of the statute and undermine judicial certainty.

II.

We do not reverse a district court's decision to grant or withhold relief under section 518.145 unless there is a clear abuse of discretion. *Peterson v. Eishen*, 512 N.W.2d 338, 341 (Minn. 1994) ("The same abuse of discretion standard of review applies to decisions under both provisions.") (overruled on other grounds by *Bode v. Minn. Dep't. of Nat. Res.*, 612 N.W.2d 862, 868 (Minn. 2000)). When a district court makes unsupported findings of fact, misapplies the law, or delivers a decision "against logic and the facts on record," it abuses its discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

Here, the district court erred by analyzing Bender's claim as a motion for reconsideration rather than as a motion under section 518.145. It is undeniable, however, that the social security decision did not exist at the time of trial. Consequently, the evidence

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1929); *Gau v. J. Borgerding & Co.*, 225 N.W. 22 (Minn. 1929). Soon thereafter, we characterized *Wood* as an "exceptional" case. *Valencia v. Markham Co-op. Ass'n*, 297 N.W. 736, 738–39 (Minn. 1941).

is merely new—not newly discovered. The social security decision reiterates the adult child's need for some level of support, but it regrettably cannot satisfy the newly-discovered-evidence exception in section 518.145 necessary for relief. Because Bender's claim does not qualify for relief, I conclude that the district court's error was harmless and its decision to deny relief should be affirmed.

For these reasons, I respectfully dissent.

GILDEA, Chief Justice (dissenting).

I join in the dissent of Justice Hudson.

ANDERSON, Justice (dissenting).

I join in the dissent of Justice Hudson.